

**CITY OF MIDLAND, TEXAS
BRIEFING SESSION AGENDA**

May 14, 2013 - 9:00 AM

Basement Conference Room
300 North Loraine
Midland, Texas

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

1. Receive a report from Administration Services on the proposed Compensation and Classification study.
2. Receive a presentation regarding the proposed Transportation Action Plan.
3. Receive a presentation on Pictometry Imagery and its use within the City.

AGENDA FOR CITY COUNCIL MEETING

May 14, 2013 – 10:00 AM
Council Chamber - City Hall

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

OPENING ITEMS

1. Invocation - Father Ricardo Lopez, Saint Ann's Catholic Church
2. Pledge of Allegiance

PRESENTATIONS

3. Presentation of special events, organizations, individuals, or periods of time including, but not limited to:
 - a. Presentation of a Proclamation for National Missing Children's Day.
 - b. Presentation of a Proclamation for Motorcycle Safety Awareness Month.
 - c. Receive presentation from Midland Retired School Personnel Program.

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 23, 2013.
6. Receive information and possibly discuss second quarter Fiscal Year 2012 - 2013 Investment Report. (FINANCE)

7. Consider a resolution authorizing the execution of a Professional Services Agreement with Public Sector Personnel Consultants, Incorporated, of Dallas, Texas, to perform a Classification and Compensation Study for the Administrative Services Department; and appropriating funds. (GENERAL SERVICES) (2013 - 136)
8. Consider a resolution approving the purchase of twenty-seven (27) Panasonic CF-31 laptop computers for use in police vehicles, including a 3-year protection plan, through the Texas Department of Information Resources at a total cost of \$111,105.00; and this item was not bid but purchased through a State of Texas Cooperative Program. (GENERAL SERVICES) (2013 - 137)
9. Consider a resolution rescinding Resolution No. 2013-065; rejecting all bids received for bid number 6078-13 for the Lamesa Road Pedestrian Access Project; and ratifying all actions taken by the Engineering Services Department and the General Services Department regarding the re-bid of the Lamesa Road Pedestrian Access Project. (GENERAL SERVICES) (2013 - 138)
10. Consider a resolution authorizing the execution of a first amendment to the Lease Agreement between COG Realty LLC and the City of Midland regarding an airport hangar facility at Midland International Airport. (AIRPORTS) (2013 - 139)
11. Consider a resolution authorizing the execution of a Memorandum of Lease Agreement for Airport Hangar Facility between COG Realty LLC and the City of Midland; and ordering recordation by the City Secretary. (AIRPORTS) (2013 - 140)
12. Consider a resolution authorizing the execution of an Affidavits and Indemnity as to Debts, Liens and Possession regarding the Airport Hangar Facility Lease Agreement between COG Realty LLC and the City of Midland. (AIRPORTS) (2013 - 141)
13. Consider a resolution accepting preclearance from the United States Department of Justice regarding annexations by Ordinance Nos. 9077, 9078, 9079 and 9080 effective in 2012; preclearance being effective April 26, 2013 (CITY SECRETARY'S OFFICE) (2013 - 142)
14. Consider a resolution authorizing the acceptance of a grant award from Community National Bank for the Owner Occupied Housing Assistance Program; the grant award is in the amount of \$20,000.00; the award will be utilized for reconstruction project costs for the City's Owner Occupied Housing Assistance Program; authorizing the execution of acceptance documents; and appropriating grant funds therefor. (DEVELOPMENT SERVICES) (2013 - 143)

15. Consider a resolution authorizing a right-of-way license between the City of Midland, Texas and Rust Oil Corporation; said Right-of-Way License is for the purpose of entering the City of Midland's right-of-way for the purpose of placement, operation and maintenance of a four (4) inch poly gas pipeline contained within a thirteen and three/eighths (13 3/8) inch diameter steel casing pipe, in a portion of Garfield Street right-of-way and a portion of the Midland Draw Floodway; the pipeline is located within the City of Midland right-of-way, Section 9, Block "X", H.P. Hilliard Survey, Midland County, Texas; the license term is for twenty-five (25) years, commencing with the date of this license and shall automatically renew at the end of the term for one additional twenty-five (25) year term upon 90 days written request prior to expiration. (ENGINEERING SERVICES) (2013 - 144)
16. Consider a motion on a request by Landgraf, Crutcher & Associates for the Lost Mountain Addition - Section 3, to approve items requested for deferral in the amount of \$29,000, and to waive the associated public improvement guarantee. The subject property is located between Midkiff Road and Garfield Street along the extension of Greentree Boulevard. (ENGINEERING SERVICES)

SECOND READINGS

17. 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 104.50-acre tract of land out of Section 38, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas, and being more specifically described by metes and bounds in Section One hereof (Generally located on the west side of the Avalon Drive extension, south of State Highway 191); and approving a public service plan. (DEVELOPMENT SERVICES)(First reading held April 23, 2013.)(9141)
18. Consider an ordinance on second reading establishing the zoning classification of the area indicated as being a 104.50-acre tract of land out of Section 38, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas, and being more specifically described by metes and bounds in Section One hereof, as a PD, Planned District for a housing development; said tract is generally located on the west side of the Avalon Drive extension, south of State Highway 191; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2,000.00); and ordering publication. (DEVELOPMENT SERVICES)(First reading held April 23, 2013.)(9138)
19. 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 38.60-acre tract of land out of Section 13, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas, which is presently zoned FD,

Future Development District, to be used as a 1F-3, One-Family Dwelling District (Generally located on the corner of Sherwood Drive and Sandstone Drive, approximately 1,000 feet west of Holiday Hill Road); containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2,000.00); and ordering publication. (DEVELOPMENT SERVICES)(First reading held April 23, 2013.)(9139)

20. Consider an ordinance on second reading vacating and abandoning a 0.632-acre right-of-way dedication within Lots 7-12, Block 93, Lots 1, 2, 5 and 6, the adjacent vacated 20-foot alley and the adjacent vacated right-of-way of West Kentucky Avenue, Block 109, all out of Original Town, City and County of Midland, Texas (Generally located on the north side of West Front Street between South Marienfeld Street and South Big Spring Street); adopting the appraisal by the City Manager of \$38,267.00; waiving the fee for the cost of the right-of-way; and ordering recordation by the City Secretary. (DEVELOPMENT SERVICES)(First reading held April 23, 2013.)(9140)
21. 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 Lots 1-6, Block 7, Langford-Weatherred Addition, City and County of Midland, Texas, which is presently zoned 1F-1, One-Family Dwelling District, to be used as a PD, Planned District for a housing development (Generally located on the southeast corner of north "A" Street and Douglas Avenue); containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2,000.00); and ordering publication. (DEVELOPMENT SERVICES)(First reading held April 23, 2013.)(9134)

PUBLIC HEARINGS

22. At approximately 10:30 a.m. hold a public hearing and consider an ordinance changing the zoning classification by amending Chapter One, Title XI, of the City Code of Midland, Texas, by permitting Lot 1, Block 10, Lot 15, Block 11, and the adjacent vacated 0.23-acre alley right-of-way, all out of Trueland Addition, Section 2, City and County of Midland, Texas, which is presently zoned LR-1, Local Retail District, in part, and MF-1, Multiple-Family Dwelling District, in part, to be used as a PD, Planned District for a Shopping Center (Generally located on the southwest corner of the intersection of East Scharbauer Drive and North Fairgrounds Road); providing for such use to be subject to certain special conditions and restrictions as set out herein; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2,000.00); and ordering publication. (DEVELOPMENT SERVICES) (9142)

23. At approximately 10:33 A.M. hold a public hearing and consider a resolution granting a variance for the east 1/3 of Lot 9, all of Lot 10 and the west 2/5 of Lot 11, Block 14, North Park Hill Addition, City and County of Midland, Texas (Generally located on the north side of Country Club Drive, approximately 270 feet west of North "G" Street), by permitting access to said property from an unpaved alley which does not conform to City of Midland standard specifications. (DEVELOPMENT SERVICES) (2013 - 149)
24. At approximately 10:36 A.M. hold a public hearing regarding a proposed Oil and Gas Permit to Petroplex Energy, Inc. (Operator) for a Permit to Drill an Oil & Gas Well within the City Limits, (Western T-8 #3) located 467 feet from north line and 2058 feet from west line, Section 8, Block 39, T-1-S, T&P RR Co. Survey, Midland County, Texas. (Generally located on the east side of extension of North Midland Drive, approximately 1 mile north of Green Tree Boulevard.) This is a public hearing only, no further action will be taken. (DEVELOPMENT SERVICES)
25. At approximately 7:00 p.m. hold a public hearing on the 2013-2014 Community Development Block Grant Program. Public hearing only. This is a public hearing only, no further action will be taken. (DEVELOPMENT SERVICES)

MISCELLANEOUS

26. Consider a 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 467 feet from the east line and 467 feet from the south line, Section 22, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas (Generally located approximately 430 feet north of Briarwood Avenue, north of North County Road 1250); and providing that said permit does not require a new Road Repair Agreement but shall be consolidated under an existing Road Repair Agreement. (DEVELOPMENT SERVICES) (2013 - 145)
27. Consider a resolution approving the issuance of a permit to Vector Oil & Gas LP ("Operator") to drill an oil and gas well within the City limits located 2,050 feet from the north line and 2,071 feet from the west line, Section 6, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas (Generally located on the west side of Oriole Drive, approximately ½ mile south of Mockingbird Lane); and providing that said permit does not require a new Road Repair Agreement but shall be consolidated under an existing Road Repair Agreement. (DEVELOPMENT SERVICES) (2013 - 146)
28. Consider a motion appealing the Building Official's denial of a sign permit application by Cinergy Cinemas. (Generally located on Lots 1A and 2A, Block 2, Gateway Plaza Addition, Section 3.) (DEVELOPMENT SERVICES)

29. Consider an ordinance amending Title III, "Departments," Chapter 1, "Water Department," Section 10, "Permitted Uses of the Optional Litter Abatement and Beautification Fee," of the City Code of Midland, Texas, so as to reflect the current Ordinance No. 9065 which made said fee mandatory; containing a cumulative clause; containing a savings and severability clause; and ordering publication. (SOLID WASTE) (9144)
30. Consider an ordinance amending Title III, "Departments," Chapter 1, "Water Department," Section 11, "Billing of the Optional Litter Abatement and Beautification Fee," of the City Code of Midland, Texas, so as to reflect the current Ordinance No. 9065 which made said fee mandatory; containing a cumulative clause; containing a savings and severability clause; and ordering publication. (SOLID WASTE) (9145)
31. Consider a motion making appointments to various Boards and Commissions.
32. Consider a resolution authorizing the City Attorney to enter into a Professional Services Contract with Jason Hill of the law firm of Lloyd Gosselink Rochelle and Townsend, P.C. of Austin, Texas in connection with the protest of a commercial saltwater disposal well in Section 7, Block 74, Public School Land Survey, Winkler County, Texas; and allocating funds; and the City Attorney and attorneys with the law firm of Lloyd Gosselink Rochelle and Townsend, P.C. are hereby authorized to employ needed experts and make all appearances before the Railroad Commission of Texas. (CITY ATTORNEY'S OFFICE) (2013 - 147)
33. Consider a resolution ratifying the actions of the City of Midland's Oil and Gas Coordinator in relation to protesting the application of Heritage Gathering Corporation for the development of a commercial saltwater disposal well in Section 7, Block 74, Public School Land Survey, Winkler County, Texas; ratifying and affirming all prior acts of the Mayor, City Manager, and City Attorney in any way related to the T-Bar Ranch water field in Winkler and Loving County, Texas; and authorizing the City Manager to purchase water rights and/or the surface of property in Winkler and Loving County, Texas, in the vicinity of the T-Bar water field; and appropriating funds. (CITY ATTORNEY'S OFFICE) (2013 - 148)

EXECUTIVE SESSION

34. 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 legal issues related to a hearing before the Railroad Commission of Texas regarding the application of Heritage Gathering Corporation for development of a commercial saltwater

disposal well in Section 7, Block 74, Public School Land Survey, Winkler County, Texas.

- a.2. Discuss a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Chapter 551 of the Texas Government Code.

Respectfully Submitted,

Courtney B. Sharp
City Manager

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

**MIDLAND CITY COUNCIL
MINUTES
April 23, 2013**

BRIEFING SESSION

The City Council convened in a Briefing Session in the basement conference room, City Hall, Midland, Texas, at 9:00 a.m. on April 23, 2013.

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

Council Members absent: Mayor W. Wesley Perry (Perry arrived at 9:05 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, General Services Director Robert Patrick, Community Services Director Tina Jauz, Engineering Director Jose Ortiz, Senior Planner Ken VanDyne, City Engineer David Beard, Building Official Steve Thorpe, Public Information Officer Sara Higgins, Assistant City Attorney Natasha Brooks, Parks & Recreation Manager Laurie Williams, Downtown Development Director Genora Young, Assistant Code Administration Manager Ron Jenkins, and Assistant Utilities Director Holly Rosas.

1. Receive and discuss information regarding Residential Development Density.

Assistant City Manager Jim Nichols reported that the current City Code allows for density up to 16 units per acre. The Council has approved density up to 24 units per acre on a case by case basis. There have been about a dozen requests to exceed the current density. He explained the options were to continue bringing cases to the City Council, hold firm to 16 and below, or negotiate exceeding density in exchange for needs.

Discussion ensued about the different options. Council gave direction for staff to come up with a list of items that could be negotiated such as requiring green space. Staff will have another briefing in the future to share a list of potential item that could be negotiated.

2. Receive an update regarding the naming rights of the baseball stadium located at the Scharbauer Sports Complex.

Deputy City Manager Tommy Hudson reported that the City Council would consider the naming rights at the Scharbauer Sports Complex on today's agenda (Item #10).

Community Services Director Tina Jauz noted that the City received notification from Citibank last October that they would be opting out of the naming rights as of December 2013. Staff put together a Request for Proposals (RFP). She noted it has generated

some interest and they are excited to see who their next partner will be. Once Council approves the RFP, it will go out for six weeks. A subcommittee will be assembled with representatives from staff, the Rockhounds and the 4B to review the proposals received.

3. Receive an update from the Planning Division regarding the Code Update Project.

Senior Planner Ken VanDyne gave an overview of the code update project noting the kickoff was held in early March. It will take about 13 months for the entire rewrite of the Zoning Codes noting it would require public hearings and public input. He reviewed the schedule of the project.

Discussion ensued about Planned Districts with Mr. VanDyne noting it is difficult to keep up and maintain Planned Districts.

The foregoing agenda items were discussed by the City Council with no formal action taken. The Briefing Session was adjourned at 9:45 a.m.

REGULAR SESSION

The City Council convened in regular session in the Council Chamber, City Hall, Midland, Texas, at 10:01 a.m., April 23, 2013.

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

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

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

OPENING ITEMS

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

PRESENTATIONS

3. Presentation of special events, organizations, individuals, or periods of time including, but not limited to:
 - a. Council Member Dufford presented the 18th 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 Police Week Memorial to

Police Chief Price Robinson and his staff.

- c. Council Member Sparks presented a Proclamation for Employee Appreciation Week to various City of Midland employees.
- d. Wanda Morris was not present to receive her retirement proclamation.
- e. Mayor Perry and City Manager Sharp presented a retirement proclamation to Roger Hal Johnston.

PUBLIC COMMENT

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

Molly Murphy, 4745 Boulder Drive, representing Basin PBS, thanked the Council for their support and announced that they have officially reached their capital campaign goal.

Ignacio Lopez, 5105 San Antonio, reported he had a problem with one of his diesel trucks on Andrews Highway and relayed his negative experience with a Police Officer.

Quinton Walter, 1206 South Dallas, reported he was being harassed by a Police Officer and asked that the officer leave him and his family alone.

Glenda Southerland, 728 Beckley, reported her continued problem with trash in alleys. She shared pictures with the Council and asked that the Code Compliance Officers be given the ability to write citations instead of Police Officers and suggested that inmates be used to pick up alleys.

Rosa Gonzalez, 4407 Brookdale, reported she is a volunteer at Henderson Elementary. She expressed concern that if the parking is changed it would endanger the safety of the children who attend the school.

CONSENT AGENDA

Council Member Morales moved to approve Consent Agenda items 5 - 15 excluding 6, 7, 8; seconded by Council Member Love. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

- 5. Approved a motion approving the following minutes:
 - a. Regular meeting of April 9, 2013.
- 9. Approved a resolution authorizing a master agreement for an annual supply of brass fittings and valves for the Municipal Warehouse. (GENERAL SERVICES)

RESOLUTION NO. 2013 - 128

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

10. Approved a resolution authorizing the issuance of a request for proposals for naming rights of the baseball stadium located at the Scharbauer Sports Complex. (GENERAL SERVICES)

RESOLUTION NO. 2013 - 129

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

11. Approved a resolution authorizing the Office of the City Attorney to represent the City of Midland in a lawsuit styled Nada McMahan v. City of Midland. (CITY ATTORNEY'S OFFICE)

RESOLUTION NO. 2013 - 130

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

12. Approved a resolution authorizing the Office of the City Attorney to represent the City of Midland and Police Chief Price Robinson in a lawsuit styled Perry Laszlo Harsman v. Price Robinson, Chief of Police City of Midland, Texas (CITY ATTORNEY'S OFFICE)

RESOLUTION NO. 2013 - 131

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

13. Approved a resolution approving the purchase of bleachers for Midland United Girls Softball and appropriating funds. (CITY SECRETARY'S OFFICE)

RESOLUTION NO. 2013 - 132

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

14. Approved a resolution approving the purchase of fence slating for Midland United Girls Softball and appropriating funds. (CITY SECRETARY'S OFFICE)

RESOLUTION NO. 2013 - 133

RESOLUTION AUTHORIZING THE PURCHASE OF FENCE SLATING AND INSTALLATION FOR MIDLAND UNITED GIRLS SOFTBALL IN ORDER TO PLACE FENCE SLATING AT THE FREDDIE EZELL COMPLEX LOCATED AT ULMER PARK, AT A TOTAL COST OF \$49,639.00; SAID PURCHASE WAS NOT BID; AND APPROPRIATING FUNDS

15. Approved a resolution authorizing the execution of a Public Improvement Development Agreement in the amount of \$24,966 with M. Jackson Construction 1 Ltd., (Mike Jackson) for the utility and paving improvements to serve the Mayfield Place Addition - Section 5. Said agreement being authorized by Section 395.081 of the Texas Local Government Code. (ENGINEERING SERVICES)

RESOLUTION NO. 2013 - 134

RESOLUTION AUTHORIZING THE EXECUTION OF A PUBLIC IMPROVEMENT DEVELOPMENT AGREEMENT WITH M. JACKSON CONSTRUCTION 1 LTD. FOR DEVELOPMENT OF MAYFIELD PLACE ADDITION, SECTION 5, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF MIDKIFF ROAD, APPROXIMATELY 2,500 FEET NORTH OF MOCKINGBIRD LANE); AND AUTHORIZING PAYMENT IN THE AMOUNT OF \$24,966.00 THEREFOR; SAID AGREEMENT BEING AUTHORIZED BY SECTION 395.081 OF THE TEXAS LOCAL GOVERNMENT CODE

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

6. Consider a resolution rejecting all bids received for Centennial Plaza - Phase II Improvements for the Engineering Services Department. (GENERAL SERVICES)

RESOLUTION NO. 2013 - 125

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

Following brief discussion noting all bids would be rejected, Council Member James moved to adopt Resolution No. 2013 - 125; seconded by Council Member Trost. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

7. Consider a resolution authorizing a sole source contract for 2013 pictometry imagery updates of the City of Midland for the GIS Division. (GENERAL SERVICES)

RESOLUTION NO. 2013 - 126

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

Council Member Morales asked how the City could take advantage of pictometry and how it could be utilized by Council at meetings. City Manager Sharp suggested the Council be given information at a future briefing session. Staff noted that this will likely be updated every few years and would look into cost-sharing with other entities so the

information could be updated more frequently.

Council Member Morales moved to adopt Resolution No. 2013 - 126; seconded by Council Member Trost. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

8. Consider a resolution authorizing a contract for FY2013 Pavement Restoration for the Engineering Services Department. (GENERAL SERVICES)

RESOLUTION NO. 2013 - 127

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

Council Member Dufford asked for a brief overview of the project.

Transportation Manager Gary Saunders reported that there is no gravel involved in this process and that this process is currently utilized by many other cities. He reported the process slows down the aging of the streets: This project would include approximately 43 miles of street restoration and is less expensive when compared to the amount of the time the street life is extended.

Council Member Dufford moved to adopt Resolution No. 2013 - 127; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

SECOND READINGS

16. Consider an ordinance on second reading on a request for the vacation of the 0.23-acre north/south and east/west alley adjacent to Lot 1, Block 10, and to Lot 15, Block 11, Trueland Addition, Section 2, City and County of Midland, Texas. (Generally located near the southwest corner of E. Scharbauer Drive and N. Fairgrounds Road.) (DEVELOPMENT SERVICES) (First reading held January 8, 2013.)

ORDINANCE NO. 9102

AN ORDINANCE VACATING AND ABANDONING A 0.23-ACRE NORTH/SOUTH AND EAST/WEST ALLEY ADJACENT TO LOT 1, BLOCK 10, AND LOT 15, BLOCK 11, TRUELAND ADDITION, SECTION 2, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED NEAR THE SOUTHWEST CORNER OF THE INTERSECTION OF SCHARBAUER DRIVE AND NORTH FAIRGROUNDS ROAD); ADOPTING THE APPRAISAL BY THE CITY MANAGER OF \$902.00; WAIVING THE FEE FOR THE COST OF THE RIGHT-OF-WAY; AND ORDERING RECORDATION BY THE CITY SECRETARY.

Deputy City Secretary Adriana Moreno read the caption of Ordinance No. 9102.

Senior Planner Ken VanDyne clarified that the reason for the delay in having the second reading was due to a delay in getting correct line work for the drainage from the engineer.

Council Member Dufford moved to approve the second and final reading of Ordinance No. 9102 in accordance with the Charter of the City of Midland; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

17. Consider an ordinance on second reading for the vacation of a 700 square foot portion of the right-of-way of East Wall Street adjacent to the south 50 feet of Lot 2, Block 47, Original Town, City and County of Midland, Texas. (Generally located on the northwest corner of the intersection of East Wall Street and North Marshall Street.) (DEVELOPMENT SERVICES) (First reading held March 26, 2013.)

ORDINANCE NO. 9124

AN ORDINANCE VACATING AND ABANDONING A 700 SQUARE FOOT PORTION OF EAST WALL STREET RIGHT-OF-WAY ADJACENT TO LOT 2, BLOCK 47, ORIGINAL TOWN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTHWEST CORNER OF THE INTERSECTION OF EAST WALL STREET AND NORTH MARSHALL STREET); ADOPTING THE APPRAISAL BY THE CITY MANAGER OF \$560.00; AND ORDERING RECORDATION BY THE CITY SECRETARY

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

Council Member Dufford moved to approve the second and final reading of Ordinance No. 9124 in accordance with the Charter of the City of Midland; seconded by Council Member James. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

18. Consider an ordinance on second reading on a request by KTJ LP One Hundred Twenty Five (south) for a zone change from PD, Planned District for a Shopping Center, to an Amended Planned District on 2.00-acre portion of Lot 6, Block 2, Westridge Park Addition, Section 11, City and County of Midland, Texas. (Generally located on the west side of North Loop 250 West, approximately 300 feet north of Deauville Boulevard.) (DEVELOPMENT SERVICES) (First reading held April 9, 2013.)

ORDINANCE NO. 9125

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 2.00-ACRE PORTION OF LOT 6, BLOCK 2, WESTRIDGE PARK ADDITION, SECTION 11, CITY AND COUNTY OF MIDLAND, TEXAS, AND MORE SPECIFICALLY DESCRIBED IN SECTION ONE HEREOF, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A SHOPPING CENTER, TO BE USED AS AN AMENDED PLANNED DISTRICT (FOR A HOTEL DEVELOPMENT) (GENERALLY LOCATED ON THE WEST SIDE OF NORTH LOOP 250 WEST, APPROXIMATELY 300 FEET NORTH OF DEAUVILLE BOULEVARD); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

Deputy City Secretary Adriana Moreno read the caption of Ordinance No. 9125.

Council Member Morales moved to approve the second and final reading of Ordinance No. 9125 in accordance with the Charter of the City of Midland; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

19. Consider an ordinance on second reading on a request by Larry Carrasco for a zone change from MH, Manufactured Home District to LR-3, Local Retail District on Lot 9, Block 189, Southern Addition, City and County of Midland, Texas. (Generally located on the east side of South Fort Worth Street, approximately 150 feet south of East Florida Avenue.) (DEVELOPMENT SERVICES) (First reading held April 9, 2013.)

ORDINANCE NO. 9126

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOT 9, BLOCK 189, SOUTHERN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED MH, MANUFACTURED HOME DWELLING DISTRICT, TO BE USED AS AN LR-3, LOCAL RETAIL DISTRICT (GENERALLY LOCATED ON THE EAST SIDE OF SOUTH FORT WORTH STREET, APPROXIMATELY 150 FEET SOUTH OF EAST FLORIDA AVENUE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

Deputy City Secretary Adriana Moreno read the caption of Ordinance No. 9126.

Council Member Morales moved to approve the second and final reading of Ordinance No. 9126 in accordance with the Charter of the City of Midland; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

20. Consider an ordinance on second reading on a request by KTJ LP One Hundred Twenty Five (north) for a zone change from PD, Planned District for a Shopping Center, to an Amended Planned District on a 2.12-acre portion of Lot 6, Block 2, Westridge Park Addition, Section 11, City and County of Midland, Texas. (Generally located on the west side of North Loop 250 West, approximately 300 feet north of Deauville Boulevard.) (DEVELOPMENT SERVICES) (First reading held April 9, 2013.)

ORDINANCE NO. 9127

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 2.12-ACRE PORTION OF LOT 6, BLOCK 2, WESTRIDGE PARK ADDITION, SECTION 11, CITY AND COUNTY OF MIDLAND, TEXAS, AND MORE SPECIFICALLY DESCRIBED IN SECTION ONE HEREOF, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A SHOPPING CENTER, TO BE USED AS AN AMENDED PLANNED DISTRICT (FOR A HOTEL DEVELOPMENT) (GENERALLY LOCATED ON THE WEST SIDE OF NORTH LOOP 250 WEST, APPROXIMATELY 300 FEET NORTH OF DEAUVILLE BOULEVARD); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

Deputy City Secretary Adriana Moreno read the caption of Ordinance No. 9127.

Council Member Love moved to approve the second and final reading of Ordinance No. 9127 in accordance with the Charter of the City of Midland; seconded by Council Member Trost.

Council Member James asked if staff was able to confirm the potential flag for the property.

Senior Planner Ken VanDyne reported that the northern hotel would be Cambria Suites and that due to a non-disclosure statement the City was unable to determine the flag for the southern hotel. They were told it would be an upscale property and the flag name would be revealed after the zoning was approved.

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

21. Consider an ordinance on second reading on a request by Midland Park Mall for a zone change from PD, Planned District for a Shopping Center to an Amended Planned District on a 0.791-acre portion of Lot 1, Block 17, Skyline Terrace, Unit 2, City and County of Midland, Texas. (Generally located on the west side of North Midkiff Road, approximately 200 feet south of West Loop 250 North.) (DEVELOPMENT SERVICES) (First reading held April 9, 2013.)

ORDINANCE NO. 9128

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 0.791-ACRE PORTION OF LOT 1, BLOCK 17, SKYLINE TERRACE, UNIT 2, CITY AND COUNTY OF MIDLAND, TEXAS, AND MORE SPECIFICALLY DESCRIBED IN SECTION ONE HEREOF, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A SHOPPING CENTER, TO BE USED AS AN AMENDED PLANNED DISTRICT (GENERALLY LOCATED ON THE SOUTHWEST CORNER OF LOOP 250 AND MIDKIFF ROAD); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

Deputy City Secretary Adriana Moreno read the caption of Ordinance No. 9128.

Council Member Love moved to approve the second and final reading of Ordinance No. 9128 in accordance with the Charter of the City of Midland; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

22. Consider an ordinance on second reading on a request by Mike Massey for a zone change from PD, Planned District for an Office Center on Lot 1 and the north 40 feet of Lot 2, Block 5; from O-1, Office District, on the south 160 feet of Lot 2 and Lots 3 through 5, Block 5 and on Lots 11 through 14, Block 6; from MF-1 Multiple Family Dwelling District on Lot 10, Block 6; and from 2F-Two-Family Dwelling District on Lots 1

through 9, Block 6, and Lots 1 through 9, Block 7, to PD, Planned District for a Housing Development, all out of Corporate Plaza, Section 4, City and County of Midland, Texas. (Generally located on the east side of Edwards Street, approximately 870 feet north of East Wadley Avenue.) (DEVELOPMENT SERVICES) (First reading held April 9, 2013.)

ORDINANCE NO. 9129

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOTS 1-5, BLOCK 5, LOTS 10-14, BLOCK 6, LOTS 1-9, BLOCK 6, AND LOTS 1-9, BLOCK 7, CORPORATE PLAZA, SECTION 4, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED 2F, TWO-FAMILY DWELLING DISTRICT, IN PART, MF-1, MULTIPLE-FAMILY DWELLING DISTRICT, IN PART, O-1, OFFICE DISTRICT, IN PART, AND PD, PLANNED DISTRICT FOR AN OFFICE CENTER, IN PART, TO BE USED AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT (GENERALLY LOCATED ON THE NORTHEAST CORNER OF EDWARDS STREET AND SPRING PARK DRIVE); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

Deputy City Secretary Adriana Moreno read the caption of Ordinance No. 9129.

Council Member Sparks moved to approve the second and final reading of Ordinance No. 9129 in accordance with the Charter of the City of Midland; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

23. Consider an ordinance on second reading on a request by Charlie Nicholas for a zone change from MF-1, Multiple Family Dwelling District to PD, Planned District for a Housing Development on Lot 11A, Block 9, City and County of Midland, Texas. (Generally located on the northwest corner of the intersection of Briarwood Avenue and Mathis Street.) (DEVELOPMENT SERVICES) (First reading held April 9, 2013.)

ORDINANCE NO. 9130

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOT 11A, BLOCK 2, GREATHOUSE ADDITION, SECTION 9, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED MF-1, MULTIPLE-FAMILY DWELLING DISTRICT, TO BE USED AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT (GENERALLY LOCATED ON THE NORTHWEST CORNER OF THE INTERSECTION OF BRIARWOOD AVENUE AND MATHIS STREET); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

Deputy City Secretary Adriana Moreno read the caption of Ordinance No. 9130.

Council Member Sparks moved to approve the second and final reading of Ordinance No. 9130 in accordance with the Charter of the City of Midland; seconded by Council Member Morales. The motion carried by the following vote: AYE: Love, Morales, Trost,

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

24. Consider an ordinance on second reading on a request by Grace Partnership, LLC for a zone change from LR-2, Local Retail District to PD, Planned District for a Shopping Center, Lots 1 through 4, Block 3, Gateway Plaza, Section 3, City and County of Midland, Texas. (Generally located on the north side of Starboard Drive, west of South Loop 250 West.) (DEVELOPMENT SERVICES) (First reading held April 9, 2013.)

ORDINANCE NO. 9131

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOTS 1-4, BLOCK 3, GATEWAY PLAZA, SECTION 2, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED LR-2, LOCAL RETAIL DISTRICT, TO BE USED AS A PD, PLANNED DISTRICT FOR A SHOPPING CENTER (FOR A HOTEL DEVELOPMENT) (GENERALLY LOCATED ON THE NORTH SIDE OF STARBOARD DRIVE, WEST OF SOUTH LOOP 250 WEST); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

Deputy City Secretary Adriana Moreno read the caption of Ordinance No. 9131.

Council Member Love moved to approve the second and final reading of Ordinance No. 9131 in accordance with the Charter of the City of Midland; seconded by Council Member Morales. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

25. Consider an ordinance on second reading on a request by Ron Childress for zone change from PD, Planned District for a Shopping Center to an Amended Planned District on a 0.30-acre portion of Lot 19, Block 5, North Park, Section 15, City and County of Midland, Texas. (Generally located on the north side of West Loop 250 North, approximately 700 feet west of Whitman Drive.) (DEVELOPMENT SERVICES) (First reading held April 9, 2013.)

ORDINANCE NO. 9132

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 0.30-ACRE PORTION OF LOT 19, BLOCK 5, NORTH PARK, SECTION 15, CITY AND COUNTY OF MIDLAND, TEXAS, AND MORE SPECIFICALLY DESCRIBED IN SECTION ONE HEREOF, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A SHOPPING CENTER, TO BE USED AS AN AMENDED PLANNED DISTRICT (GENERALLY LOCATED ON THE NORTH SIDE OF LOOP 250, APPROXIMATELY 700 FEET WEST OF WHITMAN DRIVE); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

Deputy City Secretary Adriana Moreno read the caption of Ordinance No. 9132.

Council Member Love moved to approve the second and final reading of Ordinance No. 9132 in accordance with the Charter of the City of Midland; seconded by Council Member James. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

26. Consider an ordinance on second reading on a request by The Blue Door, LLC for a Specific Use Permit With Term for the sale of all alcoholic beverages, for on-premises consumption, in a bar, on a 2,108 square feet portion of Lot 1, Block 8, Polo Park Section III, City and County of Midland, Texas. (Generally located on the northeast corner of the intersection of North Garfield Street and W. Loop 250 North.) (DEVELOPMENT SERVICES) (First reading held April 9, 2013.)

RESOLUTION NO. 9133

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF THE PROPERTY DESCRIBED AS A 2,108 SQUARE FOOT PORTION OF LOT 1, BLOCK 8, POLO PARK SECTION III, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTHEAST CORNER OF THE INTERSECTION OF NORTH GARFIELD STREET AND WEST LOOP 250 NORTH), WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A SHOPPING CENTER, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT WITH TERM FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A LOUNGE FOR ON-PREMISES CONSUMPTION; MAKING SAID PERMIT SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

Deputy City Secretary Adriana Moreno read the caption of Ordinance No. 9133.

Council Member Sparks moved to approve the second and final reading of Ordinance No. 9133 in accordance with the Charter of the City of Midland; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Love, Morales, Trost, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Perry.

27. Consider an ordinance on second reading changing the Parade and Special Events Ordinance. (CITY MANAGER'S OFFICE) (First reading held April 9, 2013.)

ORDINANCE NO. 9135

AN ORDINANCE AMENDING TITLE X, "TRAFFIC REGULATIONS", CHAPTER 1, "GENERAL TRAFFIC REGULATIONS", SECTION 2, "PERMIT REQUIRED FOR PARADES AND PROCESSIONS", OF THE CITY CODE OF MIDLAND, TEXAS, SO AS TO CLARIFY THE PERMITTING PROCESS AND OTHER REGULATIONS RELATED TO SPECIAL EVENTS; CONTAINING A PROCESS FOR APPEALING THE DENIAL OF A PERMIT; CONTAINING A CUMULATIVE CLAUSE AND EXPRESSLY REPEALING ANY ORDINANCE OR PORTION THEREOF IN CONFLICT WITH THIS ORDINANCE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF FIVE HUNDRED DOLLARS (\$500.00) AND NOT REQUIRING A CULPABLE MENTAL STATE; ESTABLISHING AN EFFECTIVE DATE OF MAY 10, 2013; AND ORDERING PUBLICATION; AND THIS ORDINANCE

SHALL APPLY TO ALL PERMITS ISSUED ON OR AFTER MAY 10, 2013

Deputy City Secretary Adriana Moreno read the caption of Ordinance No. 9135.

Council Member Sparks moved to approve the second and final reading of Ordinance No. 9135 in accordance with the Charter of the City of Midland; seconded by Council Member Love.

Council Member Love asked what the phrase “not requiring a culpable mental state” meant. City Attorney Keith Stretcher reported it meant that the City would not have to prove intent.

Discussion ensued about recommending insurance. A suggestion was made to have a disclaimer on the permit noting that if they do not carry insurance they could be liable for any damages.

City Attorney Keith Stretcher noted there is no provision for insurance in the Ordinance.

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

28. Consider an ordinance on second reading prohibiting parking between 7:30 A.M. and 4:30 P.M. on school days only upon portions of certain streets in the vicinity of Henderson Elementary School; except to residents whose property abuts such streets and have obtained a valid parking permit. (ENGINEERING SERVICES) (First reading held April 9, 2013.)

ORDINANCE NO. 9136

AN ORDINANCE PROHIBITING PARKING BETWEEN 7:30 A.M. AND 4:30 P.M. ON SCHOOL DAYS ONLY UPON PORTIONS OF CERTAIN STREETS IN THE VICINITY OF HENDERSON ELEMENTARY SCHOOL DESCRIBED AS ON THE NORTH SIDE OF GRACELAND DRIVE FROM THE NORTH SOUTH ALLEY WEST OF BENTWOOD DRIVE CONTINUING EAST A DISTANCE OF 921 FEET TO THE NORTH SOUTH ALLEY OF ERIE DRIVE, AND FROM THE WEST SIDE OF BENTWOOD DRIVE FROM THE CENTERLINE OF GRACELAND DRIVE CONTINUING NORTH A DISTANCE OF 368 FEET, AND ON THE EAST SIDE OF BENTWOOD DRIVE FROM THE CENTERLINE OF GRACELAND DRIVE CONTINUING NORTH A DISTANCE OF 398 FEET, AND ON THE WEST SIDE OF WILSHIRE DRIVE FROM THE CENTERLINE OF GRACELAND DRIVE CONTINUING NORTH A DISTANCE OF 372 FEET, AND ON THE EAST SIDE OF WILSHIRE DRIVE FROM THE CENTERLINE OF GRACELAND DRIVE CONTINUING NORTH A DISTANCE OF 271 FEET, AND ON THE WEST SIDE OF ERIE DRIVE FROM THE CENTERLINE OF GRACELAND DRIVE CONTINUING NORTH A DISTANCE OF 238 FEET, AND ON THE EAST SIDE OF ERIE DRIVE FROM THE CENTERLINE OF GRACELAND DRIVE CONTINUING NORTH A DISTANCE OF 397 FEET EXCEPT TO RESIDENTS WHOSE PROPERTY ABUTS SUCH STREET AND HAVE OBTAINED A VALID PARKING PERMIT; AUTHORIZING AND DIRECTING THE TRAFFIC ENGINEER TO ERECT APPROPRIATE SIGNS; DECLARING ANY VEHICLE IN VIOLATION OF THE PROVISIONS OF THIS ORDINANCE A NUISANCE AND PROVIDING FOR THE REMOVAL OF SAME; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF

TWO HUNDRED DOLLARS (\$200.00); AND ORDERING PUBLICATION

Traffic Engineer Gary Saunders gave an overview of the item noting it was discussed at a prior meeting and reported that it would only affect addresses of those who signed the petition. He emphasized that staff did not make a recommendation.

Mark Torrence, 4719 Erie, spoke in support of the permit to prohibit parking due to increased traffic, people parking in their driveways, blocking their driveways, and leaving their cars unattended. He also reported problems with trash, people walking in their yards, speeding and talking on cell phones while in the school zone. He also addressed health issues noting ambulances would not be able to get to their homes in the event of an emergency.

Tomas Hernandez, 4736 Wilshire Drive, reported he is also having problems with people blocking his driveway, parking in his driveway and throwing cigarette butts in his yard. When he gets home, he would like to be able to pull in his driveway.

Ryder Warren, MISD Superintendent, reported he has an enrollment at Henderson Elementary of 630 students. An analysis of the 24 elementary schools found a 60/40 split meaning that of the children who are dropped off, 60 percent go through the car lane and drop their children off at the school and the other 40 percent park their cars in the area and walk the child to the school or crosswalk. At Henderson that means 200 cars are on the street who park to drop off their children. He expressed concern if cars are not allowed to park in the surrounding area. He asked that the school district be allowed to investigate different options noting he would make himself available to the surrounding homeowners to help address their issues and offered to educate the parents through any means possible that they are a guest of the neighborhood.

Council Member Love asked if there was anything the City could do to help design drop off areas for children. Mr. Warren responded that there were plans in place at some campuses to address parking issues and bus lanes. When asked about the jurisdiction of the school district police, Mr. Warren responded their jurisdiction is wide but asked that the school Police Chief work with the City Police Chief to understand the needs of the parents as well as the neighbors' needs.

Deputy City Secretary Adriana Moreno read the caption of Ordinance No. 9136.

It was noted that the conversations with the school district, Police Chief and others needed to include the neighborhood and that the solution could be found and implemented by the new school year in the fall.

Council Member Dufford moved to defer the item to the July 23, 2013 City Council Meeting; seconded by Council Member Trost. The motion to defer carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

29. Consider an ordinance on second reading amending Title III, "Departments", Chapter 1, "Water Department", Section 2, "Rates", Subsection (A), "Customers Inside of City Limits", of the City Code of Midland, Texas, so as to change the rates charged for water and sewer services; containing a cumulative clause; containing a savings and severability clause; and ordering publication; and the City Manager shall notify all

customers outside the City limits as required by state law. (UTILITIES) (First reading held April 9, 2013.)

ORDINANCE NO. 9137

AN ORDINANCE AMENDING TITLE III, "DEPARTMENTS", CHAPTER 1, "WATER DEPARTMENT", SECTION 2, "RATES," SUBSECTION (A), "CUSTOMERS INSIDE OF CITY LIMITS," SUB-SUBSECTION 1, "WATER RATES," OF THE CITY CODE OF MIDLAND, TEXAS, SO AS TO CHANGE THE RATES CHARGED FOR WATER SERVICES AND REQUIRE INSTALLATION OF SEPARATE WATER METERS FOR OUTSIDE IRRIGATION BY COMMERCIAL CUSTOMERS; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM FINE OR PENALTY OF FIVE HUNDRED (\$500.00) DOLLARS; AND ORDERING PUBLICATION; AND THE CITY MANAGER SHALL NOTIFY ALL CUSTOMERS OUTSIDE THE CITY LIMITS AS REQUIRED BY STATE LAW

Deputy City Secretary Adriana Moreno read the caption of Ordinance No. 9137.

Council Member Trost moved to approve the second and final reading of Ordinance No. 9137 in accordance with the Charter of the City of Midland; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

PUBLIC HEARINGS

30. At approximately 10:30 A.M. hold a public hearing and consider an ordinance on a request by D.R. Horton to establish the initial zoning of annexed land (Tract 1) as PD, Planned District for a Housing Development on a 104.5-acre tract of land out of Section 38, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas. (Generally located at the south extension of Avalon Drive, approximately 960 feet south of Deauville Boulevard.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9138

AN ORDINANCE ESTABLISHING THE ZONING CLASSIFICATION OF THE AREA INDICATED AS BEING A 104.50-ACRE TRACT OF LAND OUT OF SECTION 38, BLOCK 40, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS, AND BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS IN SECTION ONE HEREOF, AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT; SAID TRACT IS GENERALLY LOCATED ON THE WEST SIDE OF THE AVALON DRIVE EXTENSION, SOUTH OF STATE HIGHWAY 191; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

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

Senior Planner Ken VanDyne gave an overview of the item noting that the mineral owner had reviewed and was in favor of the plan and answered questions about location of flow lines.

Council Member Dufford reported he spoke with the oil and gas operator and confirmed

they had met with DR Horton and had approved the end product.

Mayor Pro Tem Sparks opened the public hearing at 11:53 a.m.

Eric West, 1700 West Wall, of Parkhill Smith and Cooper, reviewed the revised items including the buffer that was increased from 135 feet to 250 feet, giving the mineral owner direct access to the well site, eliminating the need to go through the neighborhood, and moving the flow lines. He answered questions about common areas and who would maintain those areas.

Don Allen, of DR Horton, Fort Worth, reported they had worked with the mineral owner to give them direct access to flow lines and wells noting the mineral owner would have their own roads separate from the home owners association. The gate and access driveways to the well sites would be maintained by the mineral rights owner and the landscaping would be maintained by the homeowners association.

There being no one else wishing to speak, the public hearing was closed at 12:02 p.m.

Deputy City Secretary Adriana Moreno read the caption of Ordinance No. 9138.

Council Member Love moved approval of the first of two readings of Ordinance No. 9138 in accordance with the Charter of the City of Midland; seconded by Council Member Trost. The motion carried by the following vote: AYE: Love, Morales, Trost, Dufford, James, Sparks. NAY: None. ABSTAIN: Perry. ABSENT: None.

31. At approximately 10:33 A.M. hold a public hearing and consider a resolution on a request by Our Lady of Guadalupe Catholic Church 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. (Generally located near the northeast corner of the intersection of Garden Lane and North Tyler Street.) (DEVELOPMENT SERVICES)

RESOLUTION NO. 2013 - 135

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

Senior Planner Ken VanDyne gave an overview of the item noting it was for a church fair picnic with no carnival rides or street closures. He reported no prior neighborhood complaints had been received and answered questions about restroom availability.

Mayor Perry opened the public hearing at 12:06 p.m. There being no one present wishing to speak, the public hearing was immediately closed.

Council Member Love moved to adopt Resolution No. 2013 - 135; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

32. At approximately 10:36 A.M. hold a public hearing and consider an ordinance on a

request by Arthur Zuniga for a zone change from FD, Future Development District to 1F-3, One-Family Dwelling District on a 38.60-acre tract of land out of Section 13, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas. (Generally located on the southwest corner of the intersection of Sherwood Drive and Sandstone Drive, approximately 1,000 feet west of Holiday Hill Road.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9139

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 38.60-ACRE TRACT OF LAND OUT OF SECTION 13, BLOCK 40, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED FD, FUTURE DEVELOPMENT DISTRICT, TO BE USED AS A 1F-3, ONE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE CORNER OF SHERWOOD DRIVE AND SANDSTONE DRIVE, APPROXIMATELY 1,000 FEET WEST OF HOLIDAY HILL ROAD); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

Senior Planner Ken VanDyne gave an overview of the item noting there were three existing oil wells on the site and that all well sites would remain 500 feet from structures and answered questions about the choice of zoning.

Mayor Perry opened the public hearing at 12:08 p.m.

Buck Benson, 6101 Holiday Hill Road, of Fasken Land and Minerals noted he was available to answer any questions.

There being no one else wishing to speak, the public hearing was closed at 12:09 p.m.

Deputy City Secretary Adriana Moreno read the caption of Ordinance No. 9139.

Council Member Love moved approval of the first of two readings of Ordinance No. 9139 in accordance with the Charter of the City of Midland; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

MISCELLANEOUS

33. Consider a motion on a request by Ranchland Hills Country Club for approval of a site plan for the demolition and reconstruction of the club house. (DEVELOPMENT SERVICES)

Building Official Steve Thorpe gave an overview of the item noting this would allow them to demolish the existing clubhouse and have it rebuilt and answered questions.

Council Member Sparks moved to approve a motion on a request by Ranchland Hills Country Club for approval of a site plan for the demolition and reconstruction of the club house. ; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

34. Consider an ordinance request for the vacation of a 0.632-acre right-of-way dedication contained within Lots 7-12, Block 93; Lots 1, 2, 5 and 6, the adjacent vacated 20 foot alley and the adjacent vacated right-of-way of W. Kentucky Avenue, Block 109, all out of Original Town, City and County, Midland Texas. (Generally located on the north side of W. Front Street between S. Marienfeld Street and S. Big Spring Street.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9140

AN ORDINANCE VACATING AND ABANDONING A 0.632-ACRE RIGHT-OF-WAY DEDICATION WITHIN LOTS 7-12, BLOCK 93, LOTS 1, 2, 5 AND 6, THE ADJACENT VACATED 20-FOOT ALLEY AND THE ADJACENT VACATED RIGHT-OF-WAY OF WEST KENTUCKY AVENUE, BLOCK 109, ALL OUT OF ORIGINAL TOWN, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTH SIDE OF WEST FRONT STREET BETWEEN SOUTH MARIENFELD STREET AND SOUTH BIG SPRING STREET); ADOPTING THE APPRAISAL BY THE CITY MANAGER OF \$38,267.00; WAIVING THE FEE FOR THE COST OF THE RIGHT-OF-WAY; AND ORDERING RECORDATION BY THE CITY SECRETARY

Senior Planner Ken VanDyne gave an overview of the item noting this would be the future location of Susie's South Forty and explained the history of the land.

Deputy City Secretary Adriana Moreno read the caption of Ordinance No. 9140.

Council Member Trost moved approval of the first of two readings of Ordinance No. 9140 in accordance with the Charter of the City of Midland; seconded by Council Member Love. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

35. Consider an ordinance annexing and adopting a service plan for certain areas adjoining the present City limits, being a 104.50-acre tract of land out of Section 38, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas, and being more specifically described by metes and bounds in Section One hereof (Generally located on the west side of the extension of Avalon Drive, south of SH 191). (DEVELOPMENT SERVICES)

ORDINANCE NO. 9141

AN ORDINANCE EXTENDING THE BOUNDARIES OF THE CITY OF MIDLAND, TEXAS, BY ADDING THERETO CERTAIN AREAS ADJOINING THE PRESENT CITY LIMITS, BEING A 104.50-ACRE TRACT OF LAND OUT OF SECTION 38, BLOCK 40, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS, AND BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS IN SECTION ONE HEREOF (GENERALLY LOCATED ON THE WEST SIDE OF THE AVALON DRIVE EXTENSION, SOUTH OF STATE HIGHWAY 191); AND APPROVING A PUBLIC SERVICE PLAN

Mayor Perry noted he would be abstaining on this item.

Senior Planner Ken VanDyne gave an overview of the item noting staff recommended approval of the item.

Deputy City Secretary Adriana Moreno read the caption of Ordinance No. 9141.

Council Member James moved approval of the first of two readings of Ordinance No. 9141 in accordance with the Charter of the City of Midland; seconded by Council Member Trost. The motion carried by the following vote: AYE: Love, Morales, Trost, Dufford, James, Sparks. NAY: None. ABSTAIN: Perry. ABSENT: None.

36. Continue consideration of an ordinance on a request by Richard Tatsch (Douglas Avenue) for a zone change from 1F-1, One-Family Dwelling District to PD, Planned District for Housing Development on Lots 1 through 6, Block 7, Langford-Weatherred Addition, City and County of Midland, Texas. (Generally located on the southeast corner of the intersection of North "A" Street and Douglas Avenue.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9134

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOTS 1-6, BLOCK 7, LANGFORDWEATHERRED ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED 1F-1, ONE-FAMILY DWELLING DISTRICT, TO BE USED AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT (GENERALLY LOCATED ON THE SOUTHEAST CORNER OF NORTH "A" STREET AND DOUGLAS AVENUE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

Senior Planner Ken VanDyne gave an overview of the item noting it was previously considered by Council and that the developer had met with the local community.

Andrew Mellon, Maverick Engineering, 1909 Wall Street, reported he met with Council Member James and several other neighbors. The main concern was traffic issues and reviewed the plan that was developed to address the neighborhood concerns.

Council Member James reported that it was a productive meeting and that the developer made concessions for the benefit of the neighborhood. He stated this was a good example of reasonable people meeting and getting to an agreement from both sides.

Richard Tatsch, 4717 Boulder Drive, reported that as the developer he was vested in the neighborhood.

Deputy City Secretary Adriana Moreno read the caption of Ordinance No. 9134.

Council Member Sparks moved approval of the first of two readings of Ordinance No. 9134 in accordance with the Charter of the City of Midland; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

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

Council Member Trost moved to confirm Midland College's appointment of Steve Castle to the Tax Increment Reinvestment Zone Board; seconded by Council Member Morales. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford,

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

EXECUTIVE SESSION

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

- a. Section 551.071, Consultation with the City Attorney
 - a.1. Discuss Section 36.121 of the Texas Water Code with the City Attorney.
- b. Section 551.071, Consultation with the City Attorney
 - b.1. Discuss with the City Attorney, litigation styled in Re: Heritage Consolidated, LLC, et al., Case No.10-36484-hdh, Chapter 11, Jointly Administered, in the United States Bankruptcy Court, Northern District of Texas, Dallas Division.
- c. Section 551.071, Consultation with the City Attorney
 - c.1. Discuss a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Chapter 551 of the Texas Government Code.

Mayor Perry recessed the meeting to Executive Session at 12:39 p.m. The Council met in Executive Session until 1:35 p.m.

All of the business at hand having been completed, the meeting adjourned at 1:35 p.m.

PASSED AND APPROVED the 14th day of May, 2013.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary



City Council Agenda

Approved for Agenda:
csharp
City Manager's Office

MEETING DATE: 5/14/2013

TO: City Council / City Manager

FROM: Bob McNaughton, Finance Director

SUBJECT: Receive for information and possibly discuss second quarter Fiscal Year 2012 - 2013 Investment Report

Purpose:

Compliance with the Public Funds Investment Act (PFIA) requires providing information on investments to governing body on a quarterly basis.

Recommended City Council Action

☐ Approve ☐ Deny ☒ Directional / Informational

Fiscal Impact:

None

Discussion:

Report indicates compliance with all PFIA requirements.

Results for second quarter FY 2013 indicate the yield on the portfolio for the quarter was .4705% as compared to the benchmark 3 month Treasury yield of .0877% and pool yields of .0992% to .1067%. The effective interest rate on the portfolio at March 31, 2013 was .5719%. Average maturity was 28.07 months at the end of the quarter.

The negative amounts in the Portfolio Summary associated with Unrealized Gains/Losses in Portfolio and Change in Unrealized Gains/(Losses) are an indicator of market movements to slightly higher rates. None of the unrealized losses will be realized during Fiscal Year 2013.

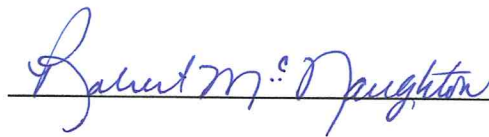
Unrealized losses in the portfolio attributable to market conditions at the end of the quarter were \$51,610. Unrealized gains or losses do not necessarily result in cash gains or losses, but do reflect changes in the market value of portfolio securities.

CITY OF MIDLAND
INVESTMENT PORTFOLIO REPORT
SECOND QUARTER FY2013
AS OF 3/31/2013

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

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

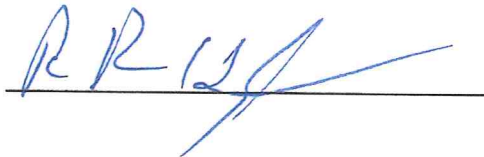
Robert McNaughton
Director of Finance

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

Tommy Howell
Comptroller

A handwritten signature in blue ink, appearing to read "Tommy Howell", written over a horizontal line.

Rolly Hughes
Asst. Treasurer

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

Portfolio Summary
2nd Quarter Fiscal 2013

Average Portfolio	2nd Quarter \$255,278,944	YTD \$247,701,915
Yield	0.4705%	0.5379%
Gains/Losses	0	0
Yield inc. G/L	0.4705%	0.5379%
Unrealized G/L	(51,610)	(51,610)
Change from Last Report	(58,170)	(80,830)
3mo T-Bill Yield	0.0877%	0.0915%
Texpool Yield	0.0992%	0.1293%
TexStar Yield	0.1067%	0.1397%

City of Midland
Listing of Investments
March 31, 2013

Investment Type	Maturity Date	Fund Owner-ship	Coupon Interest Rate	Principal	Beginning Market Value	Change in Position from Previous Quarter	Current Market Value	Accrued Interest to Date	Unrealized Profit/ Loss	Cumulative Unrealized Profit/ Loss
CASH	31-Mar-13	pooled	0.0000%	1,354,845.16	4,520,554.88	(3,165,709.72)	1,354,845.16	-	-	-
LOGIC	31-Mar-13	pooled	0.1540%	122,461.53	122,414.86	46.67	122,461.53	-	-	-
LOGIC	31-Mar-13	fund 365	0.1540%	29.10	29.10	-	29.10	-	-	-
LOGIC	31-Mar-13	fund 366	0.1540%	15,147.45	15,141.67	5.78	15,147.45	-	-	-
LOGIC	31-Mar-13	fund 389	0.1540%	1,418.22	1,417.47	0.75	1,418.22	-	-	-
LOGIC	31-Mar-13	fund 397	0.1540%	5,760.55	5,758.43	2.12	5,760.55	-	-	-
LOGIC	31-Mar-13	fund 501	0.1540%	13,703.98	13,698.78	5.20	13,703.98	-	-	-
LOGIC	31-Mar-13	fund 531	0.1540%	1,363.49	1,362.75	0.74	1,363.49	-	-	-
LOGIC	31-Mar-13	fund 532	0.1540%	5,593.58	5,591.54	2.04	5,593.58	-	-	-
TEXPOOL	31-Mar-13	pooled	0.0920%	46,513,069.11	47,856,816.28	(1,343,747.17)	46,513,069.11	-	-	-
TEXPOOL	31-Mar-13	fund 157	0.0920%	171,894.51	171,852.48	42.03	171,894.51	-	-	-
TEXPOOL	31-Mar-13	fund 158	0.0920%	2,553.84	2,553.01	0.83	2,553.84	-	-	-
TEXPOOL	31-Mar-13	fund 159	0.0920%	4,627.22	4,626.24	0.98	4,627.22	-	-	-
TEXPOOL	31-Mar-13	fund 165	0.0920%	90,593.87	90,571.73	22.14	90,593.87	-	-	-
TEXPOOL	31-Mar-13	fund 167	0.0920%	3,687.34	3,686.44	0.90	3,687.34	-	-	-
TEXPOOL	31-Mar-13	fund 168	0.0920%	4,704.05	4,703.07	0.98	4,704.05	-	-	-
TEXPOOL	31-Mar-13	fund 169	0.0920%	6,868.71	6,867.03	1.68	6,868.71	-	-	-
TEXPOOL	31-Mar-13	fund 185	0.0920%	8,163.21	8,161.19	2.02	8,163.21	-	-	-
TEXPOOL	31-Mar-13	fund 186	0.0920%	200,638.43	200,589.36	49.07	200,638.43	-	-	-
TEXPOOL	31-Mar-13	fund 187	0.0920%	20,813.26	20,808.18	5.08	20,813.26	-	-	-
TEXPOOL	31-Mar-13	fund 188	0.0920%	13,497.93	58,489.01	(44,991.08)	13,497.93	-	-	-
TEXPOOL	31-Mar-13	fund 189	0.0920%	84,233.01	84,212.45	20.56	84,233.01	-	-	-
TEXPOOL	31-Mar-13	fund 365	0.0920%	12,486.34	12,483.29	3.05	12,486.34	-	-	-
TEXPOOL	31-Mar-13	fund 375	0.0920%	485,490.07	485,371.48	118.59	485,490.07	-	-	-
TEXPOOL	31-Mar-13	fund 389	0.0920%	1,298,365.28	1,298,048.03	317.25	1,298,365.28	-	-	-
TEXPOOL	31-Mar-13	fund 397	0.0920%	1,525,100.04	1,524,727.46	372.58	1,525,100.04	-	-	-
TEXPOOL	31-Mar-13	fund 501	0.0920%	4,477,179.82	4,576,078.12	(98,898.30)	4,477,179.82	-	-	-
TEXPOOL	31-Mar-13	fund 531	0.0920%	200,945.91	200,896.82	49.09	200,945.91	-	-	-
TEXPOOL	31-Mar-13	fund 621	0.0920%	17,333,398.60	16,829,197.20	504,201.40	17,333,398.60	-	-	-
TEXPOOL	31-Mar-13	fund 641	0.0920%	7,719.30	7,717.49	1.81	7,719.30	-	-	-
TEXSTAR	31-Mar-13	pooled	0.1242%	64,825,160.17	89,197,172.59	(24,372,012.42)	64,825,160.17	-	-	-
TEXSTAR	31-Mar-13	fund 160	0.1242%	3,592,903.42	3,591,949.34	954.08	3,592,903.42	-	-	-
TEXSTAR	31-Mar-13	fund 161	0.1242%	4,009,941.73	4,008,876.92	1,064.81	4,009,941.73	-	-	-
TEXSTAR	31-Mar-13	fund 162	0.1242%	1,331,827.58	1,931,365.91	(599,538.33)	1,331,827.58	-	-	-
TEXSTAR	31-Mar-13	fund 163	0.1242%	2,503,702.49	2,503,037.62	664.87	2,503,702.49	-	-	-
TEXSTAR	31-Mar-13	fund 182	0.1242%	39,211.18	39,200.73	10.45	39,211.18	-	-	-
TEXSTAR	31-Mar-13	fund 184	0.1242%	387,542.55	387,439.60	102.95	387,542.55	-	-	-
TEXSTAR	31-Mar-13	fund 190	0.1242%	170,326.47	170,281.24	45.23	170,326.47	-	-	-
TEXSTAR	31-Mar-13	fund 191	0.1242%	295,856.49	405,768.35	(109,911.86)	295,856.49	-	-	-
TEXSTAR	31-Mar-13	fund 192	0.1242%	120,854.19	120,822.09	32.10	120,854.19	-	-	-
TEXSTAR	31-Mar-13	fund 193	0.1242%	26,247.95	26,241.02	6.93	26,247.95	-	-	-
TEXSTAR	31-Mar-13	fund 194	0.1242%	14,238.15	16,234.02	(1,995.87)	14,238.15	-	-	-
TEXSTAR	31-Mar-13	fund 195	0.1242%	4,766,636.85	4,765,371.06	1,265.79	4,766,636.85	-	-	-
TEXSTAR	31-Mar-13	fund 196	0.1242%	1,457,317.87	1,458,430.57	(1,112.70)	1,457,317.87	-	-	-
TEXSTAR	31-Mar-13	fund 380	0.1242%	554,375.06	554,227.81	147.25	554,375.06	-	-	-
TEXSTAR	31-Mar-13	fund 381	0.1242%	9,701,527.47	11,818,604.05	(2,117,076.58)	9,701,527.47	-	-	-
TEXSTAR	31-Mar-13	fund 621	0.1242%	574,886.19	574,733.52	152.67	574,886.19	-	-	-
TEXSTAR	31-Mar-13	fund 776	0.1242%	1,926,922.75	1,946,409.31	(19,486.56)	1,926,922.75	-	-	-

City of Midland
Listing of Investments
March 31, 2013

Investment Type	Maturity Date	Fund Owner- ship	Coupon Interest Rate	Principal	Beginning Market Value	Change in Position from Previous Quarter	Current Market Value	Accrued Interest to Date	Unrealized Profit/ Loss	Cumulative Unrealized Profit/ Loss
				170,285,831.47	201,650,591.59	(31,364,760.12)	170,285,831.47	-	-	-
FHLMC	03-Jan-18	pooled	0.8750%	10,000,000.00	-	9,934,520.00	9,934,520.00	2,397.26	(30,660.21)	(30,660.21)
FNMA	30-Jan-18	pooled	0.5000%	10,000,000.00	-	10,005,000.00	10,005,000.00	8,356.16	5,000.00	(25,660.21)
FNMA	28-Feb-18	pooled	0.8000%	10,000,000.00	-	10,018,470.00	10,018,470.00	7,013.70	18,470.00	(7,190.21)
FNMA	14-Dec-18	pooled	1.2500%	10,000,000.00	-	10,007,750.00	10,007,750.00	6,164.38	7,750.00	559.79
FHLB NOTE	08-Aug-22	pooled	2.2500%	30,000,000.00	30,004,920.00	(58,680.00)	29,946,240.00	96,164.38	(53,760.00)	(53,200.21)
FHLB NOTE	15-Aug-22	pooled	2.2000%	10,000,000.00	10,001,640.00	(50.00)	10,001,590.00	27,123.29	1,590.00	(51,610.21)
				80,000,000.00	40,006,560.00	39,907,010.00	79,913,570.00	147,219.18	(51,610.21)	
				<u>250,285,831.47</u>	<u>241,657,151.59</u>	<u>8,542,249.88</u>	<u>250,199,401.47</u>	<u>147,219.18</u>	<u>(51,610.21)</u>	

CITY OF MIDLAND
INTERNAL INVESTMENT PORTFOLIO
As of March 31, 2013

	Cum. % Maturing	% Maturing	Principal	Net Book Value	Effective Interest Rate	Market Value
AGING SCHEDULE - TOTAL PORTFOLIO:						
0 - 60 DAYS	68.0%	68.0%	\$ 170,285,831.47	\$ 170,285,831.47	0.1095%	\$ 170,285,831.47
61 - 120 DAYS	68.0%	0.0%	-	-	0.0000%	-
121 - 180 DAYS	68.0%	0.0%	-	-	0.0000%	-
181 - 365 DAYS	68.0%	0.0%	-	-	0.0000%	-
365 - 546 DAYS	68.0%	0.0%	-	-	0.0000%	-
547 - 730 DAYS	68.0%	0.0%	-	-	0.0000%	-
730 - 1095 DAYS	68.0%	0.0%	-	-	0.0000%	-
3 - 5 YEARS	80.0%	12.0%	30,000,000.00	29,965,180.21	0.7494%	29,957,990.00
5 - 7 YEARS	84.0%	4.0%	10,000,000.00	10,000,000.00	1.2500%	10,007,750.00
7 - 10 YEARS	100.0%	16.0%	40,000,000.00	40,000,000.00	2.2375%	39,947,830.00
OVER 10 YEARS	100.0%	0.0%	-	-	0.0000%	-
TOTAL		<u>100.0%</u>	<u>\$ 250,285,831.47</u>	<u>\$ 250,251,011.68</u>		<u>\$ 250,199,401.47</u>

TOTAL PORTFOLIO BY INVESTMENT TYPE:

CASH	0.5%	\$ 1,354,845.16	\$ 1,354,845.16	0.0000%	\$ 1,354,845.16
LOGIC	0.1%	165,477.90	165,477.90	0.1540%	165,477.90
TEXPOOL	29.0%	72,466,029.85	72,466,029.85	0.0920%	72,466,029.85
TEXSTAR	38.5%	96,299,478.56	96,299,478.56	0.0991%	96,299,478.56
FGIC	0.0%	-	-	0.0000%	-
C.D.'s	0.0%	-	-	0.0000%	-
T-BILL's	0.0%	-	-	0.0000%	-
SLMA's	0.0%	-	-	0.0000%	-
T-NOTE's	0.0%	-	-	0.0000%	-
FHLB NOTE	16.0%	40,000,000.00	40,000,000.00	0.0000%	39,947,830.00
FNMA	12.0%	30,000,000.00	30,000,000.00	0.8500%	30,031,220.00
FFCB	0.0%	-	-	0.0000%	-
FHLMC	4.0%	10,000,000.00	9,965,180.21	0.9481%	9,934,520.00
SLUG's	0.0%	-	-	0.0000%	-
	<u>100.0%</u>	<u>\$ 250,285,831.47</u>	<u>\$ 250,251,011.68</u>		<u>\$ 250,199,401.47</u>

EFFECTIVE INTEREST RATE FOR TOTAL PORTFOLIO:

\$250,285,831.47

@

0.5719%

AVERAGE MATURITY IN MONTHS

28.07

Transaction List Fiscal 2013

Bot/ Sold	Type Security	Rate	Trade Date	Settlement Date	Maturity Date	Broker	Face Amount	Price %	32's	Principal Amount
Q1 FISCAL 2013										
Sold	FHLB	2.250%	07-Nov-12	08-Nov-12	08-Aug-22	BOSC	20,000,000.00	100	0.0000	20,000,000.00

Q2 FISCAL 2012										
Bot	FNMA	0.500%	16-Jan-13	30-Jan-13	30-Jan-18	FTN	10,000,000.00	100	0.0000	10,000,000.00
Bot	FNMA	0.800%	04-Feb-13	28-Feb-13	28-Feb-18	BOSC	10,000,000.00	100	0.0000	10,000,000.00
Bot	FNMA	1.250%	05-Mar-13	14-Mar-13	14-Dec-18	BOSC	10,000,000.00	100	0.0000	10,000,000.00
Bot	FHLMC	0.875%	21-Mar-13	22-Mar-13	03-Jan-18	BOSC	10,000,000.00	99	0.6500	9,965,000.00



City Council Agenda

Approved for Agenda:
thudson
City Manager's Office

MEETING DATE: 5/14/2013

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution authorizing a professional services agreement for a Classification and Compensation Study for the Administrative Services Department.

Purpose:

Approval of a resolution authorizing a professional services agreement to perform a classification and compensation study for the Administrative Services Department.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Not to exceed \$90,000.00 General Fund

Discussion:

Please consider approval of a resolution authorizing the City Manager to execute a professional services agreement with Public Sector Personnel Consultants, Inc. Four firms responded to our advertisement for Request for Qualifications. The Administrative Services staff recommends entering into an agreement with Public Sector Personnel Consultants. The professional services expenditures shall not exceed \$90,000.

Therefore, please consider approval of a resolution authorizing the execution of a professional services agreement with Public Sector Personnel Consultants, Inc. of Dallas, Texas in an amount not to exceed \$90,000.00.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH PUBLIC SECTOR PERSONNEL CONSULTANTS, INCORPORATED, OF DALLAS, TEXAS, TO PERFORM A CLASSIFICATION AND COMPENSATION STUDY FOR THE ADMINISTRATIVE SERVICES DEPARTMENT; AND APPROPRIATING FUNDS

WHEREAS, the Request for Qualifications was advertised for firms to perform a classification and compensation study for the Administrative Services Department (“Professional Services”); and

WHEREAS, Public Sector Personnel Consultants, Inc., of Dallas, Texas, proposes to perform said Professional Services for an estimated \$64,000.00; and

WHEREAS, the Council finds Public Sector Personnel Consultants, Inc., to be the most highly qualified provider for such Professional Services based on demonstrated competence, knowledge, and qualifications; and

WHEREAS, the Council finds it to be in the public interest to select Public Sector Personnel Consultants, Inc., to provide said Professional Services; and

WHEREAS, the Council authorizes the City Manager to execute a professional services agreement with Public Sector Personnel Consultants, Inc., for the performance of said Professional Services;

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

SECTION ONE. That the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a professional services agreement with Public Sector Personnel Consultants, Inc., for performance of said Professional Services, said agreement being on file in the office of the City Secretary referenced by the date and number of this Resolution.

SECTION TWO. That the sum of \$90,000.00 is hereby appropriated from the General Fund (001) Unappropriated Fund Balance (5650) to the Classification and Compensation Study Project (9038).

SECTION THREE. That the City Treasurer is hereby authorized and directed to make payments to Public Sector Personnel Consultants, Inc., for Professional Services pursuant to the terms of said professional services agreement from funds appropriated herein upon receipt of proper invoice(s) approved by the City Manager.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, General Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

PROFESSIONAL SERVICES AGREEMENT
FOR CONSULTING SERVICES

THIS AGREEMENT is made and effective the 15th day of May 2013, by and between the CITY OF MIDLAND, TEXAS, a municipal corporation, hereinafter called "CITY," and, Public Sector Personnel Consultants, Inc. hereinafter referred to as "CONSULTANT."

ARTICLE I. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which CONSULTANT shall perform classification and compensation services for the City of Midland.

ARTICLE II. SERVICES TO BE PERFORMED

1. CONSULTANT shall provide those services described in Exhibit "A."
2. CONSULTANT shall perform all the services under this Agreement consistent with the same level of skill and care as other professionals in approximately the same region at approximately the same point in time and for the same types of projects. CONSULTANT represents that any employee who performs services under this Agreement shall be fully qualified and competent to perform the services described in Exhibit "A."

ARTICLE III. FINANCIAL CONSIDERATIONS

CITY agrees to pay CONSULTANT according to the schedule set forth in Exhibit "A" upon presentation of a monthly invoice. The invoice shall set out service fees for the month and those Additional Expenses and Reimbursable Expenses described in Exhibit "A" incurred during the previous month which have received advance written approval from the City Manager. The City Manager must approve all additional expenses and reimbursable expenses in advance. CONSULTANT shall perform professional services as outlined in the "Services to be Performed" for a fee of \$64,000 (breakdown of fees is located in Exhibit "A".) which fee for basic services shall in no event exceed \$64,000, excluding Additional Services and Reimbursable Expenses. Within 30 days of the date CONSULTANT's invoice is received by CITY, CITY shall pay the full amount of such invoice; provided, however, that if CITY objects to any portion of an invoice,

CITY shall notify CONSULTANT of CITY's objection and the grounds therefor within 15 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 May 15, 2013 until October 31, 2013, unless the project is completed sooner or the Agreement is terminated as provided below.

ARTICLE V. TERMINATION AT WILL

The CITY may terminate this Agreement at will for no or any reason upon giving at least sixty (60) days written notice to the Consultant. The parties to this Agreement understand and agree that it is in the CITY's sole discretion to cancel the Agreement during the term of the Agreement without penalty to the CITY. The Consultant has no expectation and has received no guarantees that this Agreement will not be terminated before the end of the Agreement term. The parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the term of the Agreement. All work and services under the Agreement shall be suspended upon termination of the Agreement becoming effective.

ARTICLE VI. ASSIGNMENT

Consultant shall not, either directly or indirectly, assign all or any part of this Agreement or any interest, right or privilege herein, without the prior written consent of the CITY. The issue on whether or not to grant consent to an assignment is in the sole discretion of the CITY.

ARTICLE VII. OWNERSHIP AND CONFIDENTIALITY OF DOCUMENTS AND OTHER WORK PRODUCT

All reports, information and other data ("instruments of service"), given to, prepared or assembled by CONSULTANT under this Agreement, and any other related documents or items shall become the sole property of CITY and shall be delivered to CITY, without restriction, except that CONSULTANT may make copies of any and all instruments of service for its files. The CITY shall not make any modification to the plans and specifications or make them available for

use by third parties without the prior written authorization of CONSULTANT, which consent shall not be unreasonably withheld.

ARTICLE VIII. INDEPENDENT CONTRACTOR

It is expressly understood and agreed that Consultant shall perform all work and services described herein as an independent Consultant and not as an officer, agent, servant or employee of the CITY; that Consultant 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 Consultant, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between CITY and Consultant. No person performing any of the work and services described hereunder by Consultant 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. Consultant 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 Consultant's work. Consultant shall assume exclusive responsibility for the work. Consultant is entirely free to do the work in its own way.

ARTICLE IX. INSURANCE

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

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

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

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

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

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

ARTICLE X. ATTORNEY FEES

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

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

THE CONSULTANT 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.

ARTICLE XI. 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.

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, CONSULTANT 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 CONSULTANT 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.

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

If to CITY: City Manager's Office
 P.O. Box 1152
 Midland, Texas 79702

If to CONSULTANT: Public Sector Personnel Consultants, Inc.
 Attn: Matthew Weatherly
 25 Highland Park Village #100-605
 Dallas, TX 75205

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

E. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.

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

G. Amendments, Modifications, Alterations. No amendment, modification, or alteration of the

terms of this Agreement shall be binding unless it is in writing, dated subsequent to the date of this Agreement, and duly executed by the parties to this Agreement.

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

I. 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 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.

J. 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, Consultant 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 Consultant will settle, the physical and mailing addresses of Consultant at the time and date the claim was presented and the physical and mailing addresses of Consultant for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Consultant 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 Consultant that Consultant'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, Consultant's failure to comply with the requirements herein shall perpetually bar Consultant'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. Consultant agrees that the requirements of this entire Agreement are reasonable.

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

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

CONSULTANT:

By: _____
Courtney B. Sharp, City Manager

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM

Keith Stretcher, City Attorney

ATTEST

Amy M. Turner, City Secretary

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared _____,
an officer of Public Sector Personnel Consultants, Inc., known to me to be the person and
official whose name is subscribed to the forgoing instrument, and acknowledged to me that he
executed the same as the act and deed of said corporation, for the purposes and consideration
therein expressed, and in the capacity therein stated.

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

Notary Public, State of Texas

SUMMARY OF SERVICES FOR THE CITY

PUBLIC SECTOR PERSONNEL CONSULTANTS (PSPC) proposes the following program of consulting services and implementation support to achieve all of the objectives requested by the City.

Project Planning and Communication – As Needed or Requested

1. Project planning and scheduling meeting with the City's Administrative Services Staff, project designee
2. Project briefing presentation for all employees and City's project leaders, as needed or requested *
3. Management and employee communication, progress reports throughout all project phases

Current Plans Review and FLSA Analysis

4. Occupational familiarization by review of City's current job descriptions and compensation plans
5. Organizational familiarization by review of City organization charts, budgets, and annual reports
6. Review of current procedures used for classifying and evaluating / scoring jobs ("PAQ process")
7. Validation of, or suggested improvements and modifications to, the current scoring / evaluation process
8. "Focus Group" discussion or overview of findings and recommendations with Admin Services / HR staff
9. Possible development of alternative tools, methods, and procedures for evaluating / scoring jobs
10. Review of FLSA exempt / non-exempt status of specific or requested positions (flexible, per-request)

Custom and Comprehensive Market Compensation Surveys

11. Confirmation of City's competitive employment areas for compensation surveys, for City approval
12. Confirmation of City occupations to utilize as survey benchmark job classifications – target ~100 titles
13. Solicitation of comparator employers and agencies for participation in external compensation survey
14. Extraction of data from public employer compensation plans, questionnaires, reliable published surveys
15. Calculation of prevailing rates by benchmark job classification for comparison to City plans / ranges
16. Consolidation of data from all sources and calculation of prevailing rates for benchmark jobs
17. Computation of extent City's compensation offerings vary from external prevailing rates and practices
18. Review of competitiveness analysis with Administrative Services, City Officials and project designees

Compensation Plan Development

19. Application of collected market data to any modifications to current band and zone placements, OR
20. Construction of optional salary range structures for review and selection by City's project leaders
21. Assignment of job classes to salary ranges by internal equity and external competitiveness
22. Assistance with identification of desired, affordable salary competitiveness policy
23. Fiscal impact estimates at various levels of external prevailing rates competitiveness policies
24. Review and critique of draft salary and implementation plans with Administrative Services, leaders

Communication of Results and Implementation Strategies

25. Preparation and presentation of a final project report for the City Council, staff, and City Officials
26. Development of a plan for the implementation of City's updated classification and compensation plan(s)
27. Uploading of **EZ COMP™** program files on Administrative Services Department computer, staff training
28. Development and provision of process for ongoing plan maintenance and subsequent plan updates
29. Assistance with communicating the City's updated plans for all City officials and employees
30. One year classification and compensation plan maintenance assistance **at no cost to the City**

* could be performed via podcast or webinar for space / time efficiency

PROJECT FEE OPTIONS

A. PROJECT COST ESTIMATE – FIXED COST

We estimate that the project's total cost, including all fees for professional services and reimbursement for out-of-pocket expenses, ***will not exceed*** the indicated amounts.

- Project Planning and Focus Group Discussions with Admin / HR *	\$ 1,500 *
- Review of Current: Job Evaluation Tools, Procedures, Plans and Discussion of Findings, Alternatives, and Recommendations	\$ 10,000
- Conduct of Base Pay Compensation Survey, Estimate 100 Benchmarks	\$ 30,000
- Add Benefits or "Total Compensation" to External Survey	\$ 5,000
- Compensation Plan Development, Alternatives, Fiscal Impact Calculations	\$ 10,000
- Final Reports and On-Site Presentation(s) of Findings & Recommendations	<u>\$ 7,500</u>
Total Not-to-Exceed:	\$ 64,000

B. OPTIONAL ADDITIONAL TASKS

- Worksite Desk Audits – Job Information Interviews (per 15)	\$ 1,500
- City-Wide Project Briefing and Intro Presentations for Employees (per day)	\$ 1,500

C. FLEXIBLE WORK PLAN, NEGOTIABLE TOTAL COST, TERMS

Our work plan is flexible and total project cost negotiable, and we will discuss, modify, add or delete, any work task to increase the project's responsiveness to the City's needs and financial resources. We will provide the City with monthly invoices for the professional services provided and out-of-pocket expenses incurred during the month. We request that the City pay the invoices within thirty (30) days of their receipt.

D. PROJECT TIMELINE

We estimate that a full review of the current tools and system, plus an external compensation survey, can be completed in 90-120 days from provision of all current materials and information, and authorization to proceed or from the date of the initial project planning meeting.

* planning could also be telephone / video conferencing for little or no cost



City Council Agenda

Approved for Agenda:
thudson
City Manager's Office

MEETING DATE: 5/14/2013

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving the purchase of 27 Panasonic CF-31 laptops including 3 years of Panasonic Protection Plus for police vehicles through Texas DIR Contract SDD-1365 from Visual Pro 360 for the Garage Division.

Purpose:

Approval of the purchase of computer laptops for Police vehicles.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$111,105.00 Garage Fund

Discussion:

We are requesting Council approval to purchase 27 computer laptops for police vehicles from Visual Pro 360.

The laptops and a 3 year service agreement (Panasonic Protection Plus) 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 27 computer laptops including 3 years of Panasonic Protection Plus from Visual Pro 360 LLC of Jefferson, Missouri in accordance with DIR Contract DIR-SDD-1365 for a total cost of \$111,105.00.

RESOLUTION NO. _____

**RESOLUTION APPROVING THE PURCHASE OF
TWENTY-SEVEN (27) PANASONIC CF-31 LAPTOP
COMPUTERS FOR USE IN POLICE VEHICLES,
INCLUDING A 3-YEAR PROTECTION PLAN,
THROUGH THE TEXAS DEPARTMENT OF
INFORMATION RESOURCES AT A TOTAL COST OF
\$111,105.00; 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 Twenty-Seven (27) Panasonic CF-31 laptop computers for use in police vehicles, including a 3-year “Panasonic Protection Plus” protection plan, at a total proposed cost to the City of \$111,105.00 through the DIR, as shown on the estimate attached hereto as Exhibit “A” and incorporated herein for all legal purposes; and

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

WHEREAS, the City Council finds it to be in the public interest to purchase said laptops 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 Panasonic CF-31 laptop computers for use in police vehicles, including a 3-year “Panasonic Protection Plus” protection plan, at a total proposed cost to the City of \$111,105.00.

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

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Sharlett Chowning, Chief Information Officer,
Information Systems

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



Jefferson City, MO 65109
501 Lakeview Heights

Estimate

Date	Estimate #
3/21/2013	2013-3063

Name / Address

City of Midland
PO Box 1152
Attn: Accounts Payable
Midland, TX 79701

P.O. No.	Sales Rep	Prepared By
	GG	Cheri

Item	Description	Quantity	Rate	Total
CF-31SBLCA1M	Panasonic CF-31, Win7, Intel Core i5-3320M 2.60GHz, vPro, 13.1" XGA Touch, 500GB(7200rpm), 4GB, Intel WiFi a/b/g/n, TPM, Bluetooth, Dual Pass (Upper:WWAN/Lower:Selectable), Gobi, Fingerprint, Emissive Backlit Keyboard, No Drive, Toughbook Preferred	27	3,898.00	105,246.00
CF-SVCLTNF3Y	Panasonic Protection Plus - Laptop (Years 1, 2 & 3)	27	217.00	5,859.00
CONTRACT - DIR	DIR CONTRACT PURCHASE TEXAS DIR #:SDD-1365		0.00	0.00
			Total	\$111,105.00

Signature _____



City Council Agenda

Approved for Agenda:
thudson
City Manager's Office

MEETING DATE: 5/14/2013

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution rescinding resolution 2013-065, rejecting all bids and ratifying re-advertisement for bids for Lamesa Road Pedestrian Access Improvements for the Engineering Services Department

Purpose:

Approval of a resolution rescinding resolution 2013-065, rejecting all bids and ratifying re-advertisement for bids for Lamesa Road Pedestrian Access Improvements for the Engineering Services Department.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Funding is not required at this time.

Discussion:

A contract for Lamesa Road pedestrian access improvements with Entrench, Inc. of Hobbs New Mexico was approved at the February 26, 2013 City Council meeting. Entrench, Inc. cannot comply with the terms of the contract.

Therefore, please consider a resolution rescinding Resolution 2013-065, rejecting all bids and ratifying re-advertisement for bids for Lamesa Road Pedestrian Access Improvements.

RESOLUTION NO. _____

RESOLUTION RESCINDING RESOLUTION NO. 2013-065; REJECTING ALL BIDS RECEIVED FOR BID NUMBER 6078-13 FOR THE LAMESA ROAD PEDESTRIAN ACCESS PROJECT; AND RATIFYING ALL ACTIONS TAKEN BY THE ENGINEERING SERVICES DEPARTMENT AND THE GENERAL SERVICES DEPARTMENT REGARDING THE RE-BID OF THE LAMESA ROAD PEDESTRIAN ACCESS PROJECT

WHEREAS, the City Council awarded the contract for the Lamesa Road Pedestrian Access Project to Entrench, Inc., on February 26, 2013, via Resolution No. 2013-065; and

WHEREAS, Entrench, Inc, subsequently advised that it cannot comply with the terms of the contract; and

WHEREAS, the City Council finds it to be in the public interest to rescind Resolution No. 2013-065, reject all bids received on Request No. 6078-13, and ratify and approve all actions taken by the Engineering Services Department and the General Services Department regarding the re-bid of the Lamesa Road Pedestrian Access Project;

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

SECTION ONE. The recitals stated above are hereby adopted.

SECTION TWO. That Resolution No. 2013-065 is hereby rescinded.

SECTION THREE. That the bids received on Bid Number 6078-13 for the Lamesa Road Pedestrian Access Project, as shown on the bid tabulation attached hereto as Exhibit “A” and incorporated herein for all legal purposes, are hereby rejected.

SECTION FOUR. That all actions taken by the Engineering Services Department and the General Services Department regarding the re-bid of the Lamesa Road Pedestrian Access Project are hereby ratified and approved.

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

the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, General Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

Project # P13-02-8880 (Lamesa Rd. Pedestrian Access Improvments - Bid 6078-13)
--

Project # P13-02-8880 (Lamesa Rd. Pedestrian Access Improvmnts)				ENTRENCH UTILITY		ONYX CONTRACTORS		TI-ZACK CONCRETE	
		Quantity	Unit	Unit Price	Total	Unit Price	Total	Unit Price	Amount
Base Bid									
Item	Description								
1	Roadway Excavation	8266	SY	\$9.00	\$74,394.00	\$3.00	\$24,798.00	\$4.00	\$33,064.00
2	4" Concrete Sidewalks	4432	SY	\$50.00	\$221,600.00	\$45.00	\$199,440.00	\$50.00	\$221,600.00
3	Removal & Disposal of Existing Concrete Sidewalk	468	SY	\$10.00	\$4,680.00	\$35.00	\$16,380.00	\$15.00	\$7,020.00
4	24" Curb & Gutter (Type A)	2596	LF	\$18.00	\$46,728.00	\$21.00	\$54,516.00	\$36.00	\$93,456.00
5	24" Layodwn Curb	444	LF	\$19.00	\$8,436.00	\$25.25	\$11,211.00	\$32.00	\$14,208.00
6	Removal & Disposal of Existing Curb & Gutter	5564	LF	\$7.00	\$38,948.00	\$10.70	\$59,534.80	\$5.00	\$27,820.00
7	Concrete Handicap Access Ramp	6324	SF	\$6.25	\$39,525.00	\$26.50	\$167,586.00	\$14.00	\$88,536.00
8	6" Concrete Residential Driveway	836	SY	\$55.00	\$45,980.00	\$75.00	\$62,700.00	\$75.00	\$62,700.00
9	8" Concrete Commercial Driveway	726	SY	\$60.00	\$43,560.00	\$88.00	\$63,888.00	\$95.00	\$68,970.00
10	Removal & Disposal of Existing Concrete Driveway	577	SY	\$10.00	\$5,770.00	\$42.00	\$24,234.00	\$18.00	\$10,386.00
11	8" Concrete Alley Approach	1215	SY	\$60.00	\$72,900.00	\$88.00	\$106,920.00	\$95.00	\$115,425.00
12	6" Concrete Valley Gutter and Fillets	1621	SY	\$57.00	\$92,397.00	\$101.00	\$163,721.00	\$77.00	\$124,817.00
13	Concrete Steps	2	EA	\$2,500.00	\$5,000.00	\$3,500.00	\$7,000.00	\$1,500.00	\$3,000.00
14	Concrete Block Retaining Wall	1780	SF	\$10.00	\$17,800.00	\$25.00	\$44,500.00	\$30.00	\$53,400.00
15	Parking Lot Pavement Repair	461	SY	\$25.00	\$11,525.00	\$21.60	\$9,957.60	\$65.00	\$29,965.00
16	Adjust Water Valve Boxes	23	EA	\$575.00	\$13,225.00	\$200.00	\$4,600.00	\$300.00	\$6,900.00
17	Adjust Water Meter Boxes	2	EA	\$700.00	\$1,400.00	\$300.00	\$600.00	\$300.00	\$600.00
18	Remove & Replace Mailboxes	9	EA	\$400.00	\$3,600.00	\$300.00	\$2,700.00	\$250.00	\$2,250.00
19	Remove & Replace Street Sign Posts	32	EA	\$400.00	\$12,800.00	\$300.00	\$9,600.00	\$300.00	\$9,600.00
20	Jobsite Safety and Traffic Control	1	LS	\$20,000.00	\$20,000.00	\$15,000.00	\$15,000.00	\$65,000.00	\$65,000.00
21	Erosion Control	1	LS	\$15,000.00	\$15,000.00	\$3,000.00	\$3,000.00	\$35,000.00	\$35,000.00
		TOTAL BASE BID		\$795,268.00		\$1,051,886.40		\$1,073,717.00	



M E M O

TO: Regina Stephenson; City of Midland, Purchasing Manager
FR: David D. Beard, P.E.; City of Midland, City Engineer
DA: May 2, 2013
RE: Lamesa Rd. – Pedestrian Access Improvements
Bid # 6078-13 (8946)
Recommend Rescind award, Reject all bids and Re-advertise for bids

Regina --

Entrench, Inc. was awarded the Lamesa Rd. – Pedestrian Access Improvements project on February 26, 2013. However, they have been unable to supply the required Performance Bond and Payment Bond. City staff notified Entrench, Inc. (Alberto Caballero) of their intent to rescind the award if the appropriate bonds could not be obtained. Mr. Caballero acknowledged (email - attached) that he received the notice and would be unable to obtain the necessary bonds. Based on these events, engineering staff recommends rescinding the award of the Lamesa Rd. – Pedestrian Access Improvements project, rejecting all bids, and authorizing staff to re-advertise for bids.

City of Midland

David D. Beard, P.E.
City Engineer

David Beard

From: Alberto Caballero [alberto@entrenchinc.com]
Sent: Tuesday, April 30, 2013 12:25 PM
To: David Beard
Subject: Re: Lamesa Rd - Pedestrian Access Improvements

David,

I did receive your letter regarding the Lamesa Road Pedestrian Access Improvements. I truly regret that we were not able to obtain the Performance and Payment Bond for the project and understand the City's need to rescind the awarding of this project to Entrench.

I am working diligently on finding another bonding company and I hope this does not disqualify us from bidding or working on any future City of Midland projects.

Thank you.

Alberto Caballero
Entrench, Inc.
3311 N. Grimes St.
Hobbs, NM 88240
PH: 575-492-1914
Fax: 575-392-4492

----- Original Message -----

From: [David Beard](#)
To: [Alberto Caballero](#)
Cc: [Jose Ortiz](#)
Sent: Wednesday, April 24, 2013 9:38 AM
Subject: Lamesa Rd - Pedestrian Access Improvements

Alberto,

Attached is the letter we discussed regarding the bonds for the Lamesa Rd – Pedestrian Access Improvements project. I sent a copy of this letter by Certified Mail earlier today.

David D. Beard, P.E.
City Engineer
300 N. Loraine / P.O. Box 1152
Midland, Tx 79702
(432) 685-7286
(432) 683-1786 fax
dbeard@midlandtexas.gov



City Council Agenda

Approved for Agenda:
thudson
City Manager's Office

MEETING DATE: 5/14/2013

TO: City Council / City Manager

FROM: Marv Esterly, Director of Airports

SUBJECT: Consider a resolution authorizing the execution of First Amendment to the Lease Agreement for Hangar Facility between COG Realty LLC, a Texas Limited Liability Company and the City of Midland, Texas.

Purpose:

Consider a resolution authorizing the execution of First Amendment to the Lease Agreement for Hangar Facility between COG Realty LLC, a Texas Limited Liability Company and the City of Midland, Texas.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Discussion:

On July 10, 2012, City Council approved and executed the Lease Agreement for Hangar Facility between COG Realty LLC and the City of Midland. COG Realty experienced several delays which caused them to miss the construction time schedules dictated in the Agreement. Due to this delay, the affected schedules for completion and commencement dates are changed in this First Amendment. Final Plans states: "within one hundred twenty (120) days after the Commencement Date of the Agreement" set forth in Article 8.B. of the Agreement is hereby superseded and replaced with "on or prior to June 30, 2013". Termination states: "the date that is two hundred seventy (270) days following the Commencement Date" set forth in Article 8.D. of the Agreement is hereby superseded and replaced with "November 30, 2013".

Also, pursuant to Article 8.F. of the Lease, the City approves Western LLC as the contractor to construct the Lessee Improvements.

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE EXECUTION OF A
FIRST AMENDMENT TO THE LEASE AGREEMENT
BETWEEN COG REALTY LLC AND THE CITY OF
MIDLAND REGARDING AN AIRPORT HANGAR
FACILITY AT MIDLAND INTERNATIONAL AIRPORT**

WHEREAS, the City Council previously approved the execution of a lease agreement with COG Realty LLC pursuant to which COG Realty LLC will construct a private hangar on a 1.35 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, Texas; and

WHEREAS, the parties desire to enter into a First Amendment to Lease Agreement for Airport Hangar Facility in order to provide COG Realty LLC additional time to submit plans and commence construction of the facility; and

WHEREAS, said amendment also sets forth the City's approval of Lone Western Star Development, LLC as the contractor to construct the lease improvements; and

WHEREAS, the City Council finds it to be in the public interest to authorize the execution of said First Amendment to Lease Agreement for Airport Hangar Facility for said purposes;

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

THAT the City Manager is hereby authorized and directed to execute, on behalf of the City of Midland, a First Amendment to Lease Agreement for Airport Hangar Facility with COG Realty LLC in a form substantially similar to that of Exhibit "A", which is 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., 2013, by the following vote:

Council members voting "AYE":

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Marv Esterly, Director of Airports

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

**FIRST AMENDMENT TO LEASE AGREEMENT
FOR AIRPORT HANGAR FACILITY**

THIS FIRST AMENDMENT TO LEASE AGREEMENT FOR AIRPORT HANGAR FACILITY (this “First Amendment”), is made and entered into this ____ day of May, 2013 (the “Effective Date”), by and between the **CITY OF MIDLAND, TEXAS**, a municipal corporation (the “City”), and **COG REALTY LLC**, a Texas limited liability company (“Lessee”).

WITNESSETH:

WHEREAS, the City and Lessee entered into that certain Lease Agreement for Airport Hangar Facility dated effective as of July 25, 2012 (the “Agreement”), whereby the City leased to Lessee that certain real property located at the Midland International Airport, as such real property is more particularly described in the Agreement (the “Property”), for the use of certain aeronautical activities and operations in connection therewith;

WHEREAS, certain critical dates regarding construction of the Lessee Improvements as set forth in Section 8 of the Agreement have expired; and

WHEREAS, the City and Lessee desire to amend the Agreement to provide for an extension of such dates.

NOW, THEREFORE, in consideration of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Final Plans. The phrase “Within one hundred twenty (120) days after the Commencement Date of this Agreement” set forth Article 8.B. of the Agreement is hereby superseded and replaced with “On or prior to June 30, 2013”.

2. Termination. The phrase “the date that is two hundred seventy (270) days following the Commencement Date” set forth in Article 8.D. of the Agreement is hereby superseded and replaced with “November 30, 2013”.

3. Approval of Contractor. Pursuant to Article 8.G of the Lease, the City approves Lone Western Star Development, LLC, as the contractor to construct the Lessee Improvements.

4. Miscellaneous.

(a) Amendment to Agreement. The parties acknowledge and agree that the Agreement has not been amended or modified in any respect, other than by this First Amendment, and there are no other agreements of any kind currently in force and effect between the parties with respect to the Property. The term “Agreement” shall mean the Agreement as so amended, unless the context requires otherwise.

(b) Counterparts. For the convenience of the parties any number of counterparts hereof may be executed, and each such executed counterpart shall be deemed an original, and all such counterparts together shall constitute one and the same instrument. Facsimile or .PDF transmission of an executed counterpart of this First Amendment shall be deemed to constitute due and sufficient delivery of such counterpart, and such facsimile or .PDF signatures shall be deemed original signatures for purposes of enforcement and construction of this First Amendment.

(c) Entire Agreement. This First Amendment sets forth all covenants, agreements and understandings among the parties with respect to the subject matter hereof and there are no other covenants, conditions or understandings, either written or oral, between the parties hereto except as set forth in this First Amendment.

(d) Full Force and Effect. Except as expressly amended hereby, all other items and provisions of the Agreement, as amended, remain unchanged and continue to be in full force and effect.

(e) Conflicts. The terms of this First Amendment shall control over any conflicts between the terms of the Agreement and the terms of this First Amendment.

(f) Capitalized Terms. Capitalized terms not defined herein shall have the same meanings attached to such terms under the Agreement.

(g) Successors and Assigns. This First Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

(h) Governing Law. This First Amendment shall be governed by, and construed in accordance with, the laws of the State of Texas.

[Signature Page Follows]

IN WITNESS WHEREOF, executed by each party hereto to be effective as of the Effective Date.

“City”

CITY OF MIDLAND, TEXAS, a municipal corporation

By: _____
Courtney Sharp, City Manager

“Lessee”

COG REALTY LLC, a Texas limited liability company

By: COG Operating LLC, a Delaware limited liability company, its sole member

By: _____
Kyle G. Rose,
Vice President, Administration



City Council Agenda

Approved for Agenda:
thudson
City Manager's Office

MEETING DATE: 5/14/2013

TO: City Council / City Manager

FROM: Marv Esterly, Director of Airports

SUBJECT: Consider a resolution authorizing the execution of a Memorandum of Lease Agreement for Airport Hangar Facility between COG Realty LLC, a Texas Limited Liability Company and the City of Midland, Texas.

Purpose:

Consider a resolution authorizing the execution of a Memorandum of Lease Agreement for Airport Hangar Facility between COG Realty LLC, a Texas Limited Liability Company and the City of Midland, Texas.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Discussion:

On July 10, 2012, City Council approved and executed the Lease Agreement between COG Realty LLC and the City of Midland, Texas. This Memorandum is prepared for the purpose of recordation only, and it in no ways modifies the provision of the Agreement. In the event of any inconsistency between the provision of this Memorandum and the Agreement, the provisions of the Agreement shall prevail.

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE EXECUTION OF A
MEMORANDUM OF LEASE AGREEMENT FOR
AIRPORT HANGAR FACILITY BETWEEN COG
REALTY LLC AND THE CITY OF MIDLAND; AND
ORDERING RECORDATION BY THE CITY
SECRETARY**

WHEREAS, the City Council previously approved the execution of a lease agreement with COG Realty LLC for the purpose of constructing a private hangar on a 1.35 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, Texas; and

WHEREAS, Fidelity National Title Insurance Company, as the title insurance underwriter is requiring a Memorandum of Lease Agreement for Airport Hangar Facility be executed and filed of record in order to give the general public notice of the Lease; and

WHEREAS, the City Council finds it to be in the public interest to authorize the execution of a Memorandum of Lease Agreement for said purpose;

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

SECTION ONE. That the City Manager is hereby authorized and directed to execute, on behalf of the City of Midland, a Memorandum of Lease Agreement for Airport Hangar Facility with COG Realty LLC, in a form substantially similar to the form shown in Exhibit “A”, attached hereto and made a part hereof for all legal purposes.

SECTION TWO. That the City Secretary is hereby authorized and directed to file the Memorandum of Lease Agreement in the office of the County Clerk of Midland County Texas.

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

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Marv Esterly, Director of Airports

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

After recording return to:

Andrews Kurth LLP
600 Travis Street
Suite 4200
Houston, Texas 77002
Attn: Christopher T. Boehler

MEMORANDUM OF LEASE AGREEMENT FOR AIRPORT HANGAR FACILITY

THIS MEMORANDUM OF LEASE AGREEMENT FOR AIRPORT HANGAR FACILITY (this “**Memorandum**”), is made and entered into this ____ day of April, 2013 (the “**Effective Date**”), by and between the **CITY OF MIDLAND, TEXAS**, a municipal corporation (the “**City**”), and **COG REALTY LLC**, a Texas limited liability company (“**Lessee**”).

1. **Grant of Lease; Term.**

(a) Pursuant to that certain Lease Agreement for Airport Hangar Facility (the “**Agreement**”) between the City, as lessor, and Lessee, as lessee, dated effective as of July 25, 2012, the City leased to Lessee, and Lessee leased from the City, that certain premises more particularly described on **Exhibit A** attached hereto and incorporated herein for a term expiring on the day that is forty (40) years from the Rent Commencement Date (as defined in the Agreement). The provisions of the Agreement are incorporated herein by this reference.

(b) The Agreement grants Lessee certain other rights on the terms set forth therein.

2. **Purpose.** This Memorandum is prepared for the purpose of recordation only, and it in no way modifies the provisions of the Agreement. In the event of any inconsistency between the provisions of this Memorandum and the Agreement, the provisions of the Agreement shall prevail.

3. **Miscellaneous.** The parties have executed this Memorandum as of the date first set forth above on the dates and at the places indicated in their acknowledgments below. This Memorandum may be executed in multiple counterparts, each of which constitutes an original instrument, but all of which constitute one and the same agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, executed by each party hereto to be effective as of the Effective Date.

“City”

CITY OF MIDLAND, TEXAS, a municipal corporation

By: _____
Courtney Sharp, City Manager

“Lessee”

COG REALTY LLC, a Texas limited liability company

By: COG Operating LLC, a Delaware limited liability company, its sole member

By: _____
Kyle G. Rose,
Vice President, Administration

[Acknowledgment Page Follows]

[Signature Page to Memorandum of Lease Agreement
for Airport Hangar Facility]

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

This instrument was acknowledged before me on the ____ day of _____, 2013, by Courtney Sharp, City Manager of the City of Midland, Texas, a municipal corporation, on behalf of said municipal corporation.

Notary Public in and for the State of Texas

My Commission Expires: _____

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

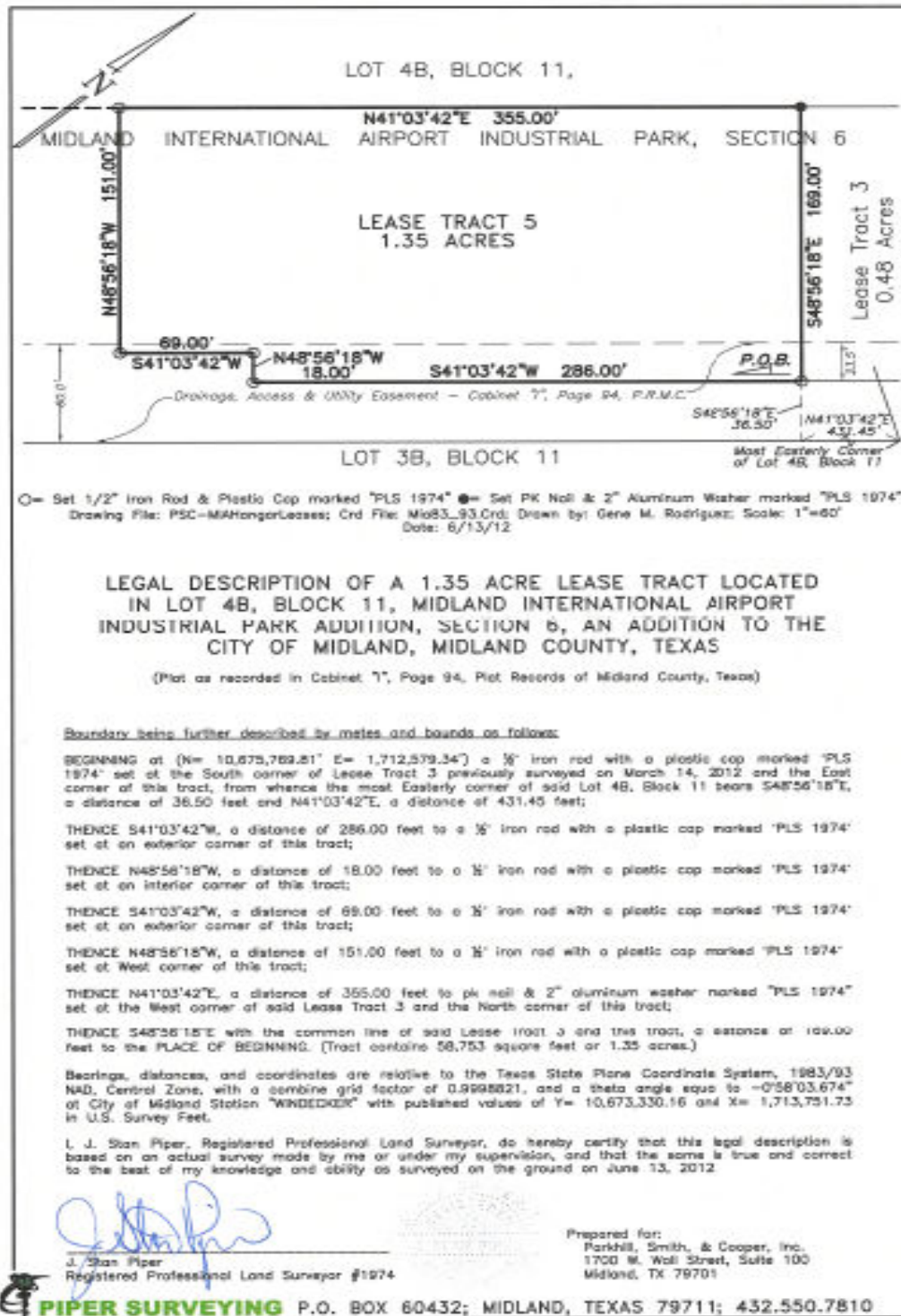
This instrument was acknowledged before me on the ____ day of _____, 2013, by Kyle G. Rose, Vice President, Administration of COG Operating LLC, a Delaware limited liability company, the sole member of COG Realty LLC, a Texas limited liability company, on behalf of said limited liability company.

Notary Public in and for the State of Texas

My Commission Expires: _____

EXHIBIT A

Property Description





City Council Agenda

Approved for Agenda:
thudson
City Manager's Office

MEETING DATE: 5/14/2013

TO: City Council / City Manager

FROM: Marv Esterly, Director of Airports

SUBJECT: Consider a resolution authorizing the execution of an Affidavits and Indemnity as to Debts, Liens and Possession Amendment with reference to the Lease Agreement for Hangar Facility between COG Realty LLC, a Texas Limited Liability Company and the City of Midland, Texas.

Purpose:

Consider a resolution authorizing the execution of an Affidavits and Indemnity as to Debts, Liens and Possession Amendment with reference to the Lease Agreement for Hangar Facility between COG Realty LLC, a Texas Limited Liability Company and the City of Midland, Texas.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Discussion:

On July 10, 2012, City Council approved and executed the Lease Agreement between COG Realty LLC and the City of Midland, Texas. This attached Affidavit states that since the acquisition of this property (Midland International Airport Industrial Park Addition, Section 6, Block 11, Lot 4B, Midland County, Texas) no proceedings in bankruptcy or receivership have been instituted by or against COG Realty, LLC. Also that no unpaid debts, loans, unpaid judgments or liens, no unpaid government taxes, charges or assessments are associated with COG Realty. And that all labor and materials used in the construction of improvements on the above property have been paid for and there are presently no labor or material claims against the improvements or the property.

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE EXECUTION OF
AN AFFIDAVITS AND INDEMNITY AS TO DEBTS,
LIENS AND POSSESSION REGARDING THE AIRPORT
HANGAR FACILITY LEASE AGREEMENT BETWEEN
COG REALTY LLC AND THE CITY OF MIDLAND**

WHEREAS, the City Council previously approved the execution of a lease agreement with COG Realty LLC for the purpose of constructing a private hangar on a 1.35 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, Texas; and

WHEREAS, Fidelity National Title Insurance Company, as the title insurance underwriter is requiring Affidavits and Indemnity as to Debts, Liens and Possession in order to ensure without limitation that there are no encumbrances on the leased premises; and

WHEREAS, the City Council finds it to be in the public interest to authorize the execution of an Affidavits and Indemnity as to Debts, Liens and Possession for said purpose;

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

THAT the City Manager is hereby authorized and directed to execute, on behalf of the City of Midland, an Affidavits and Indemnity as to Debts, Liens and Possession regarding the airport hangar facility lease agreement with COG Realty LLC. Said document shall be in a form substantially similar to that of Exhibit "A", which is 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., 2013, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Marv Esterly, Director of Airports

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

AFFIDAVITS AND INDEMNITY AS TO DEBTS, LIENS AND POSSESSION
(TO BE FILLED IN PERSONALLY BY SELLER OR BORROWER IN HIS/HER OWN HANDWRITING)

GF# **1206034-JO**
SUBJECT PROPERTY: **Midland International Airport Industrial Park Addt. Section 6, Block 11, Lot 4B, Midland County**

STATE OF **TEXAS**
COUNTY OF **MIDLAND**

BEFORE ME, the undersigned authority, on this day personally appeared the undersigned (hereinafter called the Affiant), personally known to me to be the person whose name is subscribed hereto and upon his/her oath deposes and says that no proceedings in bankruptcy or receivership have been instituted by or against him/her and that the marital status of Affiant has not changed since the day of acquisition of said property and represents to the purchaser and/or Lender in this transaction that there are:

1. No unpaid debts for lighting and plumbing fixtures, water heaters, floor furnaces, air conditioners, built-in fireplace screens, installed outdoor cooling equipment, swimming pool equipment, built-in cleaning equipment, built-in kitchen equipment, satellite dish, radio or television antennae, garage door openers, carpeting, rugs, lawn sprinkling systems, venetian blinds, curtains and rods, window shades, draperies and rods, valances, screens, shutters, awnings, mirrors, ceiling fans, attic fans, mail boxes, security and fire alarm detection equipment, water softener, electric appliances, fences, street paving, or any personal property or fixtures that are located on the subject property described above, and that no such items have been purchased on time payment contracts, and there are no security interests on such property secured by financing statement, security agreement or otherwise except the following:

Creditor

Approximate Amount

2. No loans, unpaid judgments, or liens (including Federal or State Liens or Judgment Liens) and no unpaid association or governmental taxes, charges or assessments of any kind on such property except the following:

Creditor

Approximate Amount

3. All labor and materials used in the construction of improvements on the above-described property have been paid for and there are now no unpaid labor or material claims against the improvements or the property upon which same are situated, and I hereby declare that all sums of money due for the construction of improvements have been fully paid and satisfied, except the following:

4. No leases, contracts to sell the land, or parties in possession other than the Affiant, except as follows:

Lease to COG Realty LLC _____

I realize that the Purchaser and Lender and title companies in this transaction are relying on the representations contained herein in purchasing same or lending money thereon and issuing title policies and would not purchase same or lend money or issue a title policy thereon unless said representations were made. If Seller or Borrower is an entity, I have authority to sign on its behalf.

City of Midland, Texas, a municipal corporation

By: _____
Name: _____
Title: _____

Sworn and subscribed before me this _____ day of _____, 2013.

Notary Public, State of Texas



City of Midland
Office Memorandum

DATE: 5/14/2013

TO: The Honorable Mayor and City Council Members

FROM: Amy Turner, City Secretary

SUBJECT: Resolution Accepting Preclearance from the U.S. Department of Justice Regarding Annexations Effective April 26, 2013

The resolution will accept preclearance granted by the Justice Department in connection with annexations by Ordinances Nos. 9077, 9078, 9079, and 9080 effective November, 2012.

Section 5 of the Voting Rights Act requires that the City seek Preclearance by the U.S. Department of Justice for every annexation.

RESOLUTION NO. _____

**RESOLUTION ACCEPTING PRECLEARANCE FROM
THE UNITED STATES DEPARTMENT OF JUSTICE
REGARDING ANNEXATIONS BY ORDINANCE NOS.
9077, 9078, 9079 AND 9080 EFFECTIVE IN 2012;
PRECLEARANCE BEING EFFECTIVE APRIL 26, 2013**

WHEREAS, the City of Midland has recently annexed property into the City limits by Ordinance Nos. 9077, 9078, 9079 and 9080 effective in 2012; and

WHEREAS, the United States Department of Justice, Civil Rights Division, has granted the City of Midland preclearance under the Federal Voting Rights Act on the recent annexations, which preclearance was effective April 26, 2013;

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

THAT the letter attached hereto and marked as Exhibit "A", and incorporated herein for all legal purposes, which grants the City of Midland preclearance under the Federal Voting Rights Act is hereby accepted.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



U.S. Department of Justice

Civil Rights Division

TCH:RSB:JR:LSQ:maf
DJ 166-012-3
2013-0679

*Voting Section - NWB
950 Pennsylvania Avenue, NW
Washington, DC 20530*

April 26, 2013

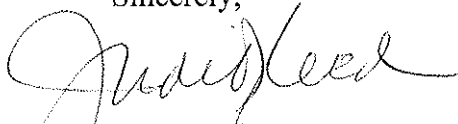
Ms. Amy M. Turner
City Secretary
P.O. Box 1152
Midland, Texas 79702

Dear Ms. Turner:

This refers to four annexations (Ordinance Nos. 9077, 9078, 9079, and 9080 (2012)) to the City of Midland in Midland County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. We received your submission on March 5, 2013.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, 28 C.F.R. 51.41.

Sincerely,



T. Christian Herren, Jr.
Chief, Voting Section



City Council Agenda

Approved for Agenda:
jnichols
City Manager's Office

MEETING DATE: 5/14/2013

TO: City Council / City Manager

FROM: Sylvester Cantu, Community Development Manager

SUBJECT: Accept \$20,000.00 grant from Community National Bank

Purpose:

Consider a resolution authorizing the acceptance of a \$20,000.00 grant award from Community National Bank for the owner occupied housing assistance program; and appropriating funds.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Increased property valuation

Discussion:

Community National Bank has awarded \$20,000.00 grant to the City for use on the owner occupied housing assistance program. The funds are intended for used on reconstruction project costs of the owner occupied housing assistance program. Four low-income home owners living in CDBG eligible areas will be assisted. The CNB donation helps meet their Community Reinvestment Act requirements.

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE ACCEPTANCE OF
A GRANT AWARD FROM COMMUNITY NATIONAL
BANK FOR THE OWNER OCCUPIED HOUSING
ASSISTANCE PROGRAM; THE GRANT AWARD IS IN
THE AMOUNT OF 20,000.00; THE AWARD WILL BE
UTILIZED FOR RECONSTRUCTION PROJECT COSTS
FOR THE CITY'S OWNER OCCUPIED HOUSING
ASSISTANCE PROGRAM; AUTHORIZING THE
EXECUTION OF ACCEPTANCE DOCUMENTS; AND
APPROPRIATING GRANT FUNDS THEREFOR**

WHEREAS, the City of Midland Community Development Division has been awarded a grant in the amount of \$20,000.00 to assist with reconstruction project costs pursuant to the City's Owner Occupied Housing Assistance Program; and

WHEREAS, the City Council finds it to be in the public interest to accept said grant award and to appropriate the grant funds;

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

SECTION ONE. That the City of Midland, acting through its Mayor and City Council, hereby accepts the grant award of \$20,000.00 made by Community National Bank pursuant to the City's Owner Occupied Housing Assistance Program.

SECTION TWO. That the City Manager, or his designee, is hereby authorized and directed to evidence the City of Midland's acceptance by executing all necessary documents in order to accept the grant award.

SECTION THREE. That the sum of \$20,000.00 is hereby appropriated from the General Fund (001) Unappropriated Fund Balance (5650) to the CNB OHAP Project (7110).

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

Robert McNaughton, Director of Finance

APPROVED AS TO CONTENT
AND COMPLETENESS:

Sylvester Cantu, Community Development
Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:
jnichols
City Manager's Office

MEETING DATE: 5/14/2013

TO: City Council / City Manager

FROM: Gary Saunders, Transportation Manager

SUBJECT: Consider a resolution authorizing the execution of a Right-of-Way License Agreement between the City of Midland and Rust Oil Company for the purpose of placement, operation and maintenance of a four (4) inch poly gas pipeline contained within a thirteen and three/eighths (13 3/8) inch diameter steel casing pipe, in a portion of Garfield Street right-of-way and a portion of the Midland Draw Floodway, Section 9, Block "X", H.P. Hilliard Survey, City of Midland, Midland County, Texas.

Purpose:

Consider a resolution authorizing the execution of a Right-of-Way License Agreement between the City of Midland and Rust Oil Company for the purpose of placement, operation and maintenance of a four (4) inch poly gas pipeline contained within a thirteen and three/eighths (13 3/8) inch diameter steel casing pipe, in a portion of Garfield Street right-of-way and a portion of the Midland Draw Floodway, Section 9, Block "X", H.P. Hilliard Survey, City of Midland, Midland County, Texas.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

The City of Midland shall receive payment of \$400.00 annually for the duration of the Right-of-Way License Agreement.

Discussion:

The Legal Department has prepared a resolution authorizing the execution of a Right-of-Way License Agreement between the City of Midland and Rust Oil Company for the purpose of Placement, operation and maintenance of a four (4) inch poly gas pipeline contained within a thirteen and three/eighths (13 3/8) inch diameter steel casing, in a portion of Garfield Street right-of-way and a portion of the Midland Draw Floodway, Section 9, Block "X", H.P. Hilliard Survey, City of Midland, Midland County, Texas.

This pipeline shall be installed at a minimum depth of seven (7) feet below the existing surface of the Garfield Street right-of-way and at a minimum depth of ten (10) feet below the existing surface of the Midland Draw Floodway.

This Agreement shall be for a term of twenty-five (25) years and shall renew at the end of the initial Agreement term for one (1) additional twenty-five (25) year term.

Attached are maps indicating location of the proposed pipeline.

Staff recommends approval of this resolution.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING A RIGHT-OF-WAY LICENSE BETWEEN THE CITY OF MIDLAND, TEXAS AND RUST OIL CORPORATION; SAID RIGHT-OF-WAY LICENSE IS FOR THE PURPOSE OF ENTERING THE CITY OF MIDLAND'S RIGHT-OF-WAY FOR THE PURPOSE OF PLACEMENT, OPERATION AND MAINTENANCE OF A FOUR (4) INCH POLY GAS PIPELINE CONTAINED WITHIN A THIRTEEN AND THREE/EIGHTS (13 3/8) INCH DIAMETER STEEL CASING PIPE, IN A PORTION OF GARFIELD STREET RIGHT-OF-WAY AND A PORTION OF THE MIDLAND DRAW FLOODWAY; THE PIPELINE IS LOCATED WITHIN THE CITY OF MIDLAND RIGHT-OF-WAY, SECTION 9, BLOCK "X", H.P. HILLIARD 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 Rust Oil Corporation, located within the City of Midland Right-of-Way, Section 9, Block "X", H.P. Hilliard 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 Rust Oil Corporation, said license being substantially in the form attached hereto as Exhibit "A" and incorporated herein for all purposes.

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

Council members voting "AYE":

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Gary Saunders, Transportation Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

RIGHT-OF-WAY LICENSE

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

THIS RIGHT-OF-WAY LICENSE ("AGREEMENT"), effective this 15th day of May, 2013, by and between THE CITY OF MIDLAND, TEXAS, a home rule municipal corporation, hereinafter called "Licensor", and RUST OIL CORPORATION, 401 W. Texas, Suite 801, 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 four (4) inch poly gas pipeline contained within a thirteen and three/eights (13 3/8) inch diameter steel casing pipe, in a portion of Garfield Street right-of-way and a portion of the Midland Draw Floodway.

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 Licensors 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 Licensors Transportation Manager. Said fee shall revert to the Licensors 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 Licensors and Licensee shall negotiate in good faith to agree to an adjustment of the License Fee. If the Licensors and Licensee are unable to reach an agreement regarding an adjustment to the License Fee, then the License Fee shall be determined by Licensors 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 Licensors 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. Licensors 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 four (4) inch poly gas pipeline contained within a thirteen

and three/eights (13 3/8) inch diameter steel casing pipe 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 gas pipelines at a depth of at least seven (7) feet below the existing surface of the Garfield Street right-of-way, and at a minimum depth of ten (10) feet below the existing surface of the Midland Draw Floodway to comply with the requirements of the Licensor’s Transportation Department.

6. Before the Licensee seeks bids on any phase of the repair of public streets, alleys, water lines, sewer lines or any other public utilities, the specifications shall be approved by the Licensor’s Transportation Manager.

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

Licensor reserves the right to lay and permit to be laid, sewer, gas, water, and

other pipelines or cables and conduits, and to do and permit to be done, any improvement that may be deemed necessary or proper by the governing body of the Licensor, in, across, along, over or under any public property occupied by Licensee. In permitting such work to be done, the Licensor shall not be liable to the Licensee for any damage so caused to the Licensee's pipelines, **NOR SHALL THE LICENSOR BE LIABLE TO THE LICENSEE FOR ANY DAMAGES TO THE LICENSEE'S PIPELINES, ARISING OUT OF THE NEGLIGENCE BY THE LICENSOR, ITS EMPLOYEES, OFFICERS OR AGENTS, OR LICENSOR'S CONTRACTORS OR SUBCONTRACTORS.** If the Licensor requires the Licensee to remove, alter, change, adapt, or conform its facilities because of changes in the grade of a street or in the location or manner of constructing a water pipe, sewer pipe, or other surface, underground or aboveground structure owned by the Licensor, the Licensee shall make the alterations or changes as soon as practicable, and in no event longer than one hundred eighty (180) days, when ordered in writing by the Licensor, without claim for reimbursement for the cost of the relocation or for damages against the Licensor. If these requirements impose a financial hardship upon the Licensee, the Licensee shall have the right to present alternative proposals for the Licensor's consideration.

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

9. It is especially provided, however, that as an express condition of this Agreement, and not as a mere covenant, in the event Licensee abandons any equipment or appurtenances to the undertakings contemplated by this License, or the premises covered

hereby cease to be used for the purposes enumerated herein for any period of twelve (12) consecutive months, or longer, other than the time elapsing between the date hereof and construction, and upon giving Licensee one hundred and twenty days (120) notice, then and in that event, this license shall automatically revert to the Licensor, its successors or assigns, free and clear of any right, title, or interest in the Licensee, or any re-entry by the Licensee.

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

11. The Licensor reserves the right to use the surface, subsurface or airspace above the land covered by this Agreement for any public purpose allowed by law and deemed necessary by the Licensor and to do and permit to be done, any work in connection therewith which may be deemed necessary or proper by the Licensor on, across, along, under or over said right of way occupied by the Licensee. In the event of such work in connection with said public purposes it shall be deemed necessary by the Licensor, at Licensor's sole discretion, to alter, change, adapt, conform or relocate any pipelines or casing pipe of Licensee, such alteration, change or relocation shall be commenced and

completed by the Licensee within one hundred eighty (180) days after being ordered in writing by the Licensor pursuant to directions from the Licensor's City Council without any claim for reimbursement for the cost of the relocation or damages against the Licensor. The relocation or alteration shall be at the sole cost of Licensee. Provided, however, that Licensee shall at all times be entitled to receive from appropriate governmental bodies, excluding the Licensor, payment for alteration or relocation of its pipelines to which it may be lawfully entitled to under applicable Federal or State laws with respect to relocation payments.

IV. Standard General Conditions

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

Commercial General Liability (including Contractual liability):

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

-Property Damage: \$100,000.00 per occurrence

Business Automobile Liability: \$1,000,000.00 combined single limit -
Personal Injury and Property Damage

Worker's Compensation:	Statutory limits
• Medical Expenses: • Reasonable and necessary costs of medical services, including hospitalization, surgery, and rehabilitation. • No specific dollar limit. • Disability Benefits: • Temporary Total Disability (TTD): Up to 70% of the worker's average weekly wage (AWW). • Permanent Total Disability (PTD): Up to 70% of the worker's AWW. • Partial Disability: Up to 70% of the worker's AWW. • Death Benefits: • Funeral Expenses: Up to \$10,000. • Survivor's Benefits: Up to 70% of the worker's AWW.	• Medical Expenses: No specific dollar limit. • Disability Benefits: • Temporary Total Disability (TTD): Up to 70% of the worker's average weekly wage (AWW). • Permanent Total Disability (PTD): Up to 70% of the worker's AWW. • Partial Disability: Up to 70% of the worker's AWW. • Death Benefits: • Funeral Expenses: Up to \$10,000. • Survivor's Benefits: Up to 70% of the worker's AWW.

Employers' Liability: \$1,000,000.00 per accident or occurrence

Umbrella Liability: \$5,000,000.00 each occurrence and aggregate

<u>Pollution Liability:</u>	\$1,000,000.00 each incident
	\$2,000,000.00 aggregate

Control of Well: \$10,000,000.00

Care Custody & Control Limit: \$500,000.00

This insurance, except Worker's Compensation, shall name the Licensor as an additional insured and all insurance shall waive subrogation in favor of the Licensor.

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

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

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

The parties agree that, prior to the execution of the Agreement, Licensee shall provide one or more certificates of insurance showing that the requirements of this article have been met. This decision shall be in Licensor's sole discretion.

Licensor shall be provided the notice by Licensee's insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage. Licensor shall not be required to provide any insurance whatsoever pursuant to this Agreement.

Licensee shall contractually require all contractors, subcontractors, and sub-subcontractors that work on any portion of the work that is the subject of this Agreement to obtain insurance coverage that meets or exceeds the policy requirements and minimum amounts as required by Licensee, and name the City of Midland as an additional insured.

Licensee certifies that the one or more certificates of insurance provided as required herein complies with the requirements of Senate Bill 425, passed during the 82nd regular session of the Texas Legislature, and effective January 1, 2012.

2. **INDEMNITY** - THE LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND THE LICENSOR AND ALL OF LICENSOR'S OFFICERS, AGENTS, AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, LOSSES, ATTORNEY'S FEES AND EXPENSES OF ANY CHARACTER WHATSOEVER, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON, PERSONS OR PROPERTY, ON ACCOUNT OF ANY ACT OF THE LICENSEE, Licensee's contractor or subcontractor, their agents or employees, arising directly or indirectly or in any way connected with the placement, construction, operations, repair, maintenance, replacement or removal of any part of the Licensee's pipelines in the Licensor's rights of way. The Licensee will be required to pay any judgment with costs which may be obtained against the Licensor or any of its officers, agents, or employees including attorney's fees.

THE LICENSEE AGREES THAT LICENSEE WILL INDEMNIFY AND SAVE THE LICENSOR HARMLESS FROM ALL CLAIMS GROWING OUT OF

ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, ALL SUPPLIES, INCLUDING COMMISSARY INCURRED IN THE FURTHERANCE OF THE PLACEMENT, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF THE PIPELINES DESCRIBED HEREIN.

THE LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND THE LICENSOR, AND ALL OF LICENSOR'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES AND EXPENSE OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY ON ACCOUNT OF ANY NEGLIGENT ACT OF LICENSOR, LICENSOR'S OFFICERS, AGENTS, AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH LICENSEE OR LICENSEE'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT INCLUDING SUCH NEGLIGENT ACTS ARISING FROM OR IN ANY WAY CONNECTED WITH

THE PLACEMENT, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF ANY PART OF THE LICENSEE'S PIPELINES IN THE LICENSOR'S RIGHT OF WAY. THE LICENSEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST THE LICENSOR OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

3. **Assignment** - The rights granted by this Agreement inure to the benefit of the Licensee. The rights and privileges shall not be assignable by Licensee, with the exception of an assignment by Licensee to an affiliated entity, without the express written consent of the governing body of the Licensor. Any required consent is to be evidenced by an ordinance or resolution of the governing body of the Licensor that fully recites the terms and conditions, if any, upon which consent is given. The granting of consent is in the sole discretion of Licensor.

4. **Independent Contractor** - It is expressly understood and agreed that Licensee shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of the Licensor; that Licensee shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of respondeat superior shall not apply as between Licensor and Licensee, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise

between Licenser and Licensee. No person performing any of the work and services described hereunder shall be considered an officer, agent, servant or employee of the Licenser. 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. Licenser does not have the power to direct the order in which the work is done. Licenser 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: RUST OIL CORPORATION, C. B. Rust, President, 401 W. Texas, Suite 801, 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:

RUST OIL CORPORATION

C. B. Rust, President

THE STATE OF TEXAS

§

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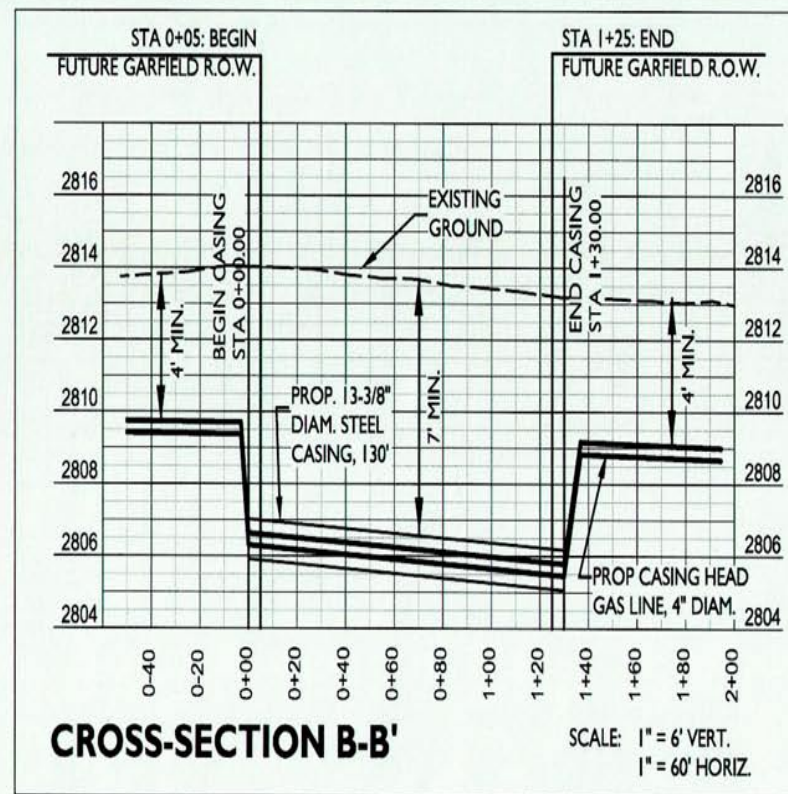
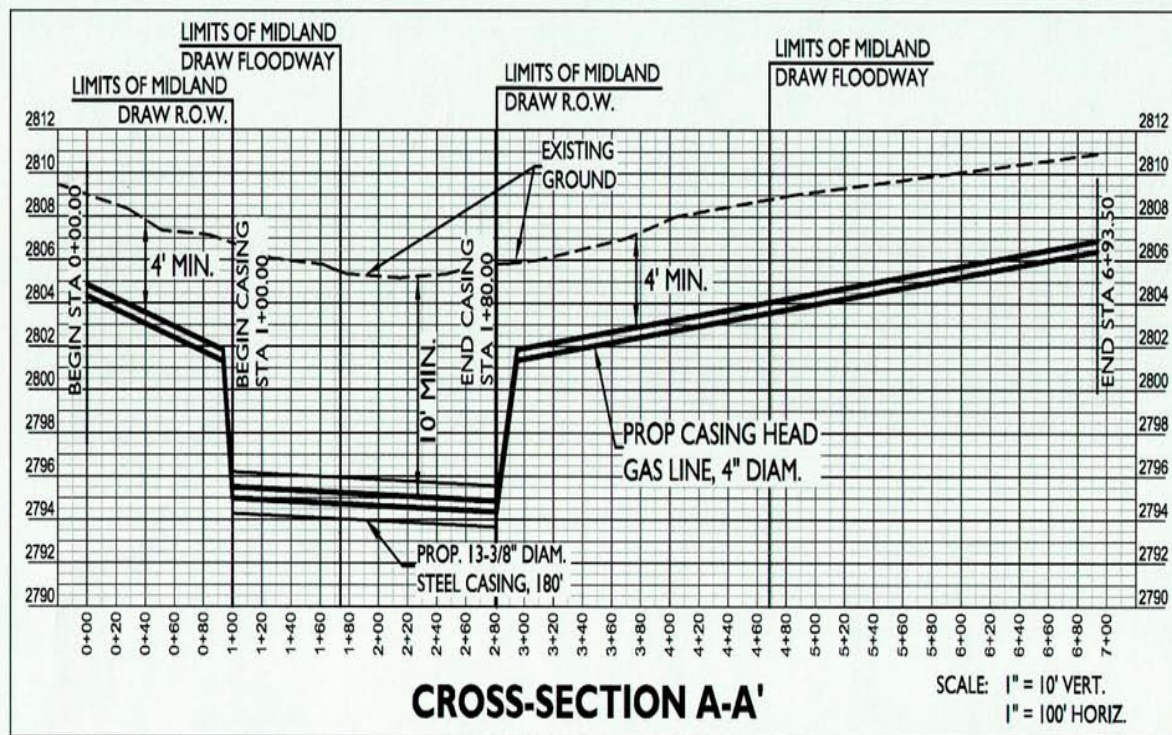
COUNTY OF _____

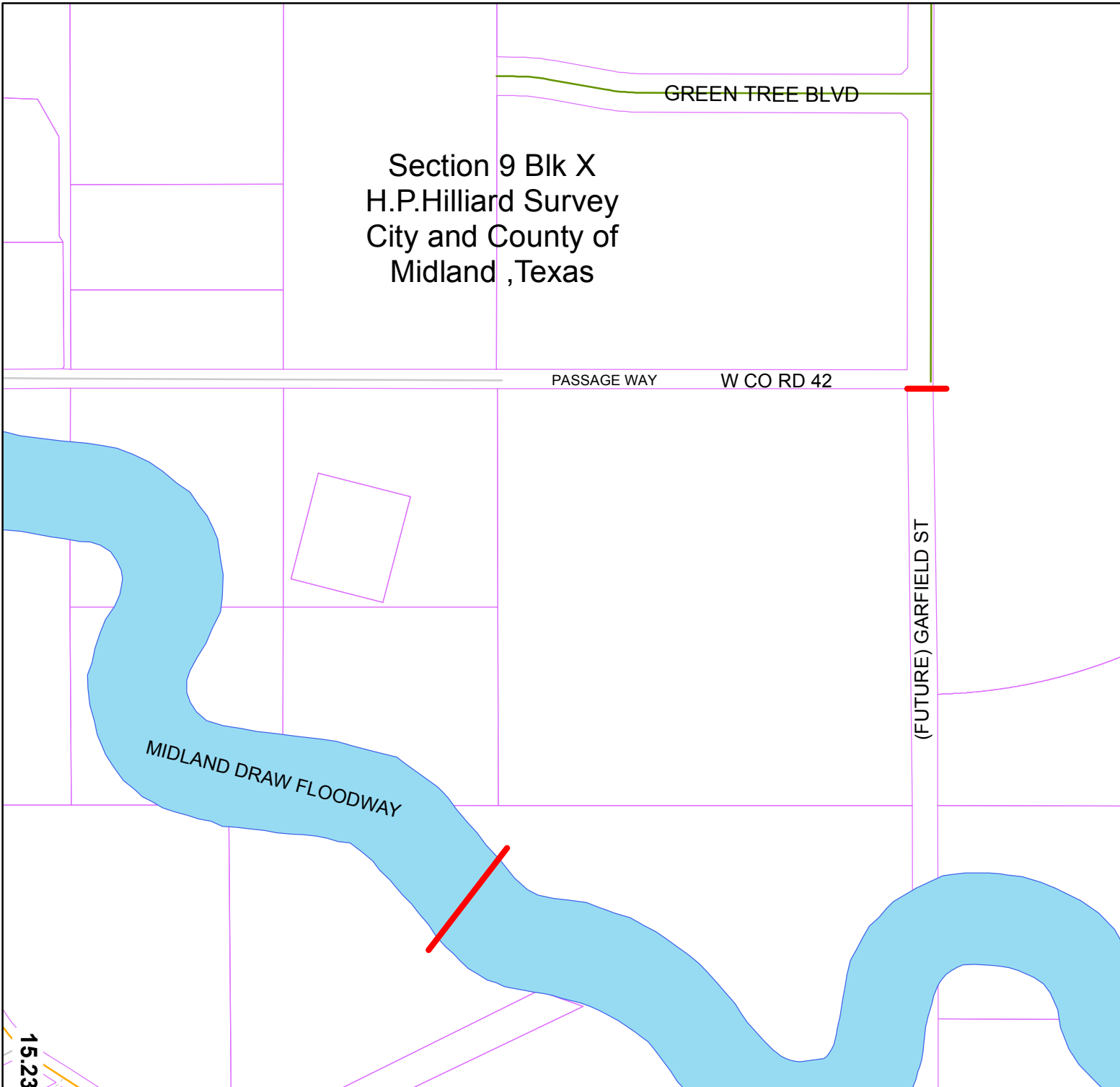
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**BEFORE ME, the undersigned authority, on this day personally appeared
C. B. Rust, an officer of RUST OIL CORPORATION, known to me to be the person
and official whose name is subscribed to the foregoing instrument, and
acknowledged to me that he executed the same as the act and deed of said entity, for
the purposes and consideration therein expressed, and in the capacity therein stated.**

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

Notary Public, State of Texas

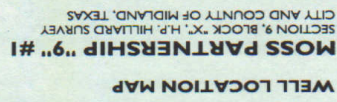




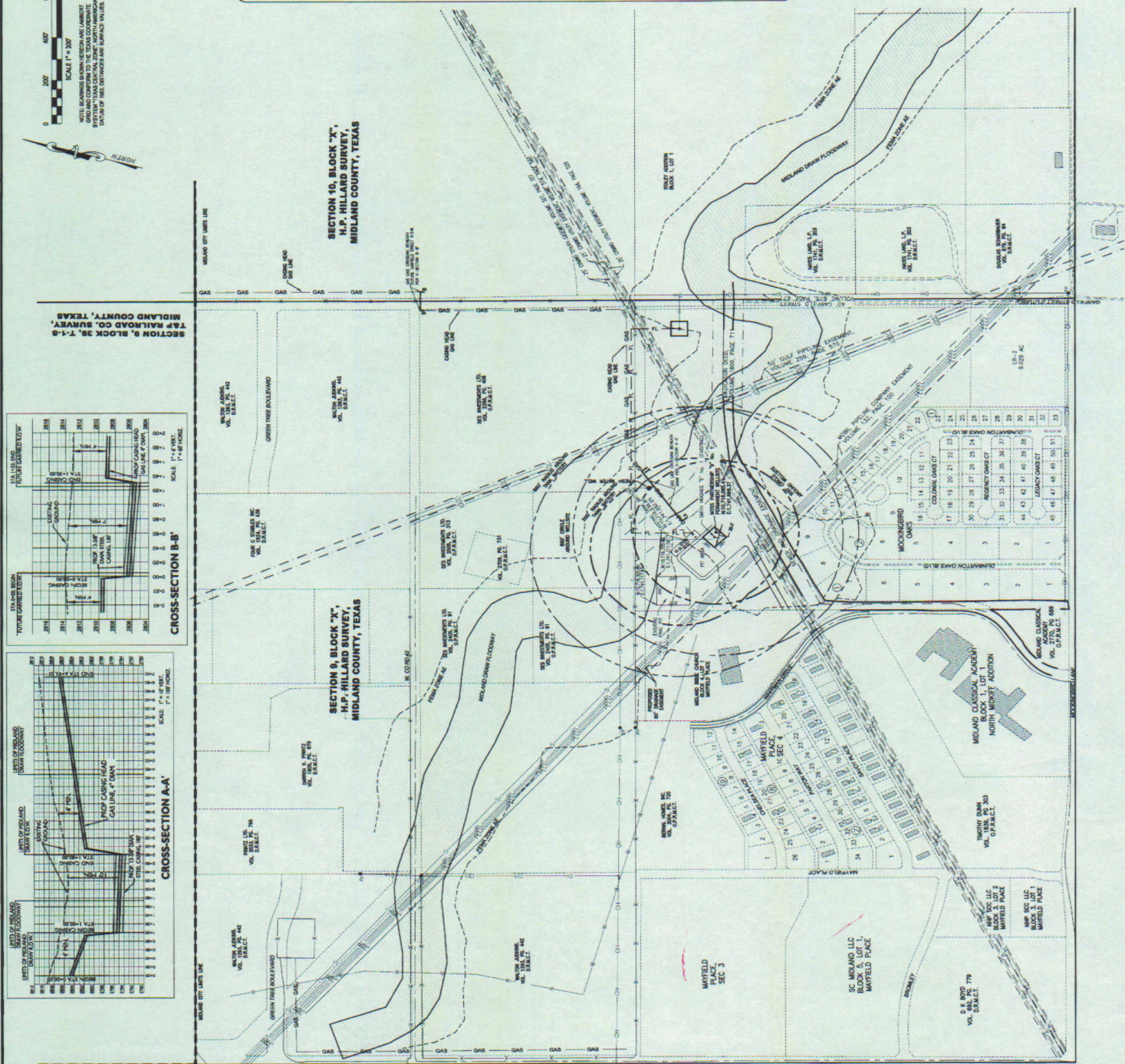
Rust Oil Company

Proposed Gas
Line Crossing





SECTION 9, BLOCK "X", H.P. HILLIARD SURVEY
CITY AND COUNTY OF MIDLAND, TEXAS





City Council Agenda

Approved for Agenda:
jnichols
City Manager's Office

MEETING DATE: 5/14/2013

TO: City Council / City Manager

FROM: David Beard,

SUBJECT: Consider a motion on a request by Landgraf, Crutcher & Associates for the Lost Mountain Addition – Section 3, to approve items requested for deferral, and to waive the associated public improvement guarantee. The subject property is located between Midkiff Rd. and Garfield St. along the extension of Greentree Blvd. (District #1 - Sparks)

Purpose:

Consider a motion on a request by Landgraf, Crutcher & Associates for the Lost Mountain Addition – Section 2, to approve items requested for deferral, and to waive the associated public improvement guarantee.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Water Distribution	(\$45,000 x 50%)	\$22,500.00
Wastewater Collection		\$0.00
Paving	(\$13,000 x 50%)	\$6,500.00
Sidewalk		\$0.00
Drainage		\$0.00
Total value of deferral (recommended items)		\$29,000.00
Cash deposit or other acceptable security		\$29,000.00

Discussion:

Lost Mountain Addition - Section 3 is located between Midkiff Rd. and Garfield St. along the extension of Greentree Blvd.

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

1. Water Distribution: The applicant is requesting deferral of water distribution improvements.
 - The nearest connection to the City of Midland's water distribution system is over ½ mile in Midkiff Rd. at the north edge of the Mayfield subdivision.
 - The likelihood of infrastructure construction based on the distance from the existing distribution facilities provides for 50% reduction in cash deposit or other acceptable security.
 - Required security (\$45,000 x 50% = \$22,500)
2. Wastewater Collection: The applicant is requesting a deferral of wastewater collection improvements and is proposing on-site septic for each lot.
 - The nearest connection to the City of Midland's wastewater collection system is adjacent to the development.
 - The likelihood of infrastructure construction based on the distance from the existing distribution facilities provides for no reduction in cash deposit or other acceptable security.
 - The intention of the developer is to split the property into large lots where wastewater service will be provided by on-site septic. In consideration of the low density of the development, lack of need to extend service based on the location and topography of the site, and potential for significant maintenance expense, staff concurs with the Engineer's argument regarding the installation of wastewater improvements, including a 100% reduction in cash deposit.
3. Paving: The applicant is requesting deferral of paving improvement and construction the streets to the County standard.
 - The nearest connection to the City of Midlands street system that is constructed with curb and gutter is greater than ½ mile at the end of Midkiff Rd. along the north edge of the Mayfield subdivision.
 - The existing roadway section is currently a combination of caliche and millings that provides access to local residents only.
 - Due to the low density of the development, the Engineer is proposing to provide security for a county road pavement section,
 - Based on the low density of the development potential significant maintenance costs, staff concurs with the Engineer's argument regarding the installation of pavement to the county road standard.

- The likelihood of infrastructure construction based on the distance from the existing street system results in a 50% reduction in cash deposit or other acceptable security.
 - Required security ($\$13,000 \times 50\% = \$6,500$)
4. Drainage: A drainage study will need to be approved to confirm compliance with the Master Drainage Plan at the time of development.
- The Owner has agreed to plat a Right-of-Way reservation across the southwest corner of the property (approximately 200' wide) for the future channel alignment of the Midland Draw.
5. Sidewalk: The applicant is requesting deferral of sidewalks.
- Sidewalk construction is typically addressed during the building permit phase (builder constructs the sidewalk). Currently, there are no sidewalks adjacent to the property. Sidewalk construction will be addressed when a building permit application is submitted.

Staff supports this deferral request. Attached is a location map, along with a deferral justification from LCA.



ENVIRONMENTAL • CIVIL ENGINEERING • LAND SURVEYING

FIRM # 001363

521 NORTH TEXAS • ODESSA, TEXAS 79761

(432) 332-5058 or 580-8812 • FAX (432) 332-8812

7 May 2013

David Beard, P.E.
City Engineer - City of Midland
P.O. Box 1152
Midland, Texas 79702

RE: Lost Mountain Section 3

Dear Mr. Beard:

The owner of Lost Mountain Section 3 proposes to plat four large rural lots for residential development. The lots all exceed two acres in size, with two lots exceeding 10 acres. In keeping with the existing development practices in this area, we respectfully request deferral of public improvements and a waiver of the associated public improvements guarantee on some of the improvements. We feel that the deferral and waiver are appropriate for the following reasons:

Sewer:

Sewer is adjacent to the site, however, the tracts are being developed as large estate lots and it is not economically feasible to extend sewer for the limited number of taps that it would provide. The developer does not intend to connect to City sewer and plans to install on-site sewage facilities. In evaluating the master plan of this general area, there are properties to the east and west that may develop at a higher density, but this general vicinity will likely always be large estate size residential tracts that would not want City sewer. In addition to the initial installation costs being prohibitive, the City would have to take on maintenance of the sewer line. The limited number of customers that would connect to the line do not warrant the cost of maintenance that would be incurred by the City. It is requested that the sewer be deferred and the associated public guarantee be waived. The value of the sewer deferral and waiver is calculated as:

1125' Sewer Line	\$45.00 per foot	\$50,625.00
4 City of Midland manholes	5,000 each	<u>20,000.00</u>
Total sewer		\$70,625.00

Water:

Water is not available in the general area for extension to this development, with the nearest water being over ½ mile away in Midkiff Road. The likelihood of water construction here, based on the distance from the existing water infrastructure provides for a reduction in the amount of the guarantee. Therefore, we are requesting that water construction be deferred and that the cost of the guarantee be reduced by 50%. The value of the water deferral is:

1125' Water Line	\$40.00 per foot	\$45,000.00
Total water		<u>\$45,000.00</u>

Based on this value, it is requested that the deposit be reduced to \$22,500.00

Paving, Curb & Gutter:

The subject property borders Passage Way to the South. Passage Way is constructed as a county road and has never been maintained by the City. This development borders a large tract to the East and a drainage draw to the West. The nearest connection to the City of Midland street system built to City standards is greater than ½ mile away. In evaluating how the street infrastructure for this part of Midland will develop in the future, it is unlikely that Passage Way would be used for anything other than local access, as it's now being used. For Passage Way to be improved and connect to the City street infrastructure, a large drainage structure would have to be built, which is not economically feasible or justified. We are requesting that Passage Way be considered as a county road section and development costs be calculated accordingly. This would be a 30' wide street with no curb and gutter and 2 course surface treatment pavement. The distance from the existing City infrastructure provides for a reduction in the amount of the guarantee. Therefore, we are requesting that street construction be deferred and that the cost of the guarantee be reduced by 50%. The value of the street deferral is calculated as:

3714 S.Y. pavement	\$3.50 per square yard	<u>13,000.00</u>
Total pavement		\$13,000.00

Based on this value, it is requested that the deposit be reduced to \$6,500.00

Sidewalk:

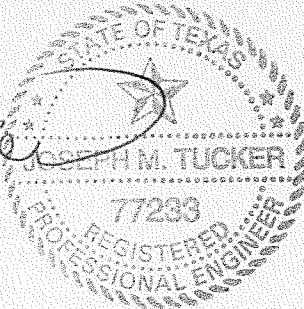
Sidewalks are not proposed in this development. Sidewalks are typically discussed during the building permit process. We request that sidewalks be deferred and waived at this time.

In summary, we are respectfully requesting that the applicant be allowed to develop and plat the subject property with the deferrals mentioned above and a public guarantee of \$22,500 for water construction plus \$6,500 for street construction. This adds up to a total guarantee required of \$29,000.00

Sincerely,



Joseph M. Tucker P.E.
LCA



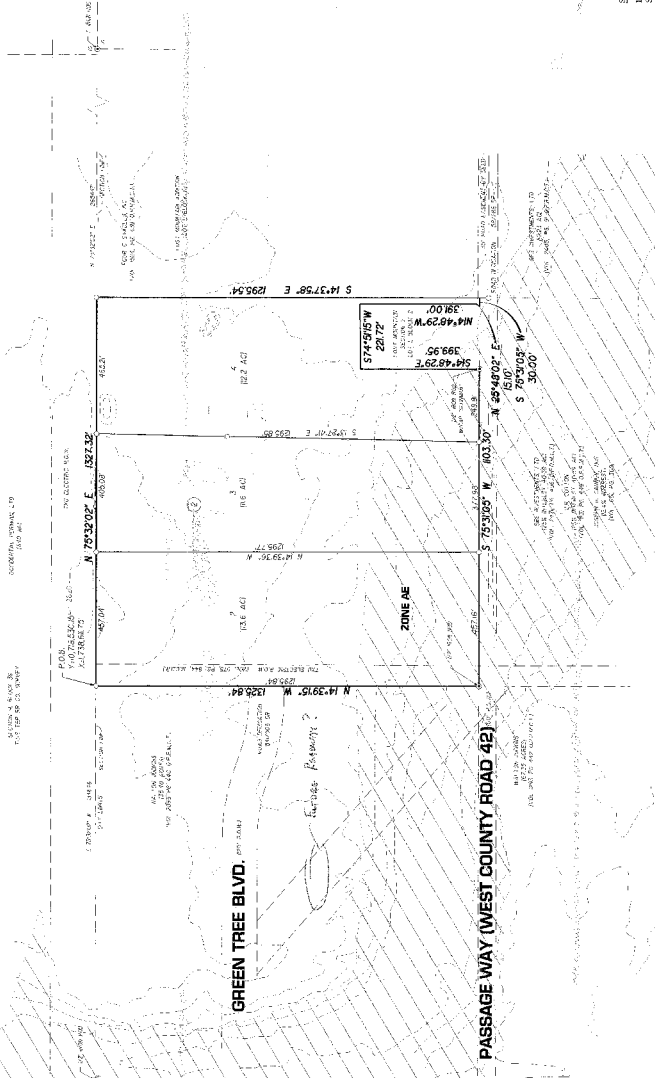
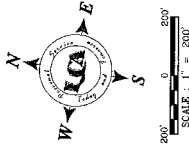
LOST MOUNTAIN ADDITION SECTION 3

PRELIMINARY PLAT

BEING 37.40 ACRES OF LAND
LOCATED IN SECTION 9, BLOCK X, H.P. HILLARD SURVEY
MIDLAND, COUNTY OF MIDLAND, TEXAS

LEGEND

- 8' WIDE SIDEWALK
- 10' WIDE SIDEWALK
- 12' WIDE SIDEWALK
- 14' WIDE SIDEWALK
- 16' WIDE SIDEWALK
- 18' WIDE SIDEWALK
- 20' WIDE SIDEWALK
- 22' WIDE SIDEWALK
- 24' WIDE SIDEWALK
- 26' WIDE SIDEWALK
- 28' WIDE SIDEWALK
- 30' WIDE SIDEWALK
- 32' WIDE SIDEWALK
- 34' WIDE SIDEWALK
- 36' WIDE SIDEWALK
- 38' WIDE SIDEWALK
- 40' WIDE SIDEWALK
- 42' WIDE SIDEWALK
- 44' WIDE SIDEWALK
- 46' WIDE SIDEWALK
- 48' WIDE SIDEWALK
- 50' WIDE SIDEWALK
- 52' WIDE SIDEWALK
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- 62' WIDE SIDEWALK
- 64' WIDE SIDEWALK
- 66' WIDE SIDEWALK
- 68' WIDE SIDEWALK
- 70' WIDE SIDEWALK
- 72' WIDE SIDEWALK
- 74' WIDE SIDEWALK
- 76' WIDE SIDEWALK
- 78' WIDE SIDEWALK
- 80' WIDE SIDEWALK
- 82' WIDE SIDEWALK
- 84' WIDE SIDEWALK
- 86' WIDE SIDEWALK
- 88' WIDE SIDEWALK
- 90' WIDE SIDEWALK
- 92' WIDE SIDEWALK
- 94' WIDE SIDEWALK
- 96' WIDE SIDEWALK
- 98' WIDE SIDEWALK
- 100' WIDE SIDEWALK



STATE OF TEXAS
COUNTY OF MIDLAND

Whereas, Duane K. Price, herein the record owner of 0.3740 acre tract of land situated in Section 9, Block X, H.P. Hillard Survey, Midland County, Texas

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS,

That Duane K. Price, do hereby certify that the above described property is, in addition to Midland County, Texas, and do hereby declare in the public use, for the streets, alley and easement shown thereon for the purpose and collection, and location and measurement of such easements, and easement and location of said easements and easement shown thereon, and do hereby certify that the location of said easements shown thereon have been located and approved by the Director of Utilities.

WITNESS our hand and seal of office this _____ day of _____, 2012.

Duane K. Price
OWNER

THIS STATE OF TEXAS
COUNTY OF MIDLAND

I, _____, County Clerk of the County of Midland, Texas, do hereby certify that the above described property is, in addition to Midland County, Texas, and do hereby declare in the public use, for the streets, alley and easement shown thereon for the purpose and collection, and location and measurement of such easements, and easement and location of said easements and easement shown thereon, and do hereby certify that the location of said easements shown thereon have been located and approved by the Director of Utilities.

Given under my hand and seal of office this _____ day of _____, 2012.

My commission expires _____

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

OWNER: DUANE K. PRICE
2800 PASSAGE WAY
MIDLAND, TEXAS 79707

ENGINEER: LCA
531 NORTH TEXAS
MIDLAND, TEXAS 79701-5439
PHONE: (409) 708-0400

RECEIVED
OCT 26 2012

PLAY FILED FOR RECORD
MIDLAND COUNTY, TEXAS
No. _____ CABINET _____
DATE _____ PAGE _____

LOST MOUNTAIN ADDITION SECTION 2

ENVIRONMENTAL • CIVIL ENGINEERING • LAND SURVEYING
Phone # (432) 332-5058 E-Mail: lca@lcausa.com F001363
Copyright 2012 LCA
521 North Texas, Odessa TX 79761

LCA

CERTIFICATION OF APPROVAL

For approval by the Commission:
This is to certify that the above and foregoing Plat of Lost Mountain Addition, Section 3, Block X, H.P. Hillard Survey, Midland County, Texas, is in conformity with the City Planning and Zoning Commission of the City of Midland, Texas on this _____ day of _____, 2012.

SIGNED: _____
CITY CLERK OF PLANNING & ZONING
BILLY FERGUSON

SIGNED: _____
SECRETARY OF PLANNING & ZONING
CAMERON WALKER

THE UTILITY COMPANIES CERTIFICATE

This plat has been checked for accuracy of utilities

UTILITY COMPANY: STANT TITUTION

UTILITY COMPANY: STANT TITUTION

UTILITY COMPANY: STANT TITUTION

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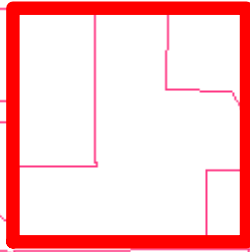
UTILITY COMPANY: STANT TITUTION

UTILITY COMPANY: STANT TITUTION

UTILITY COMPANY: STANT TITUTION

SH 191

**Lost Mountain Addition
(Section 3)**



Midkiff Rd.

Garfield ST.

Mockingbird Ln.

16.7

ENGINEERING DIVISION

Lost Mountain Addition (Section 3)

Deferral of Public Improvements



Map by DDB 04/01/2013



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: May 14, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Ken Van Dyne, Acting Planning Division Manager

SUBJECT: Consider an ordinance on second reading for annexing and adopting a service plan for Tract 1, being a 104.5-acre tract of land out of Section 38, Block 40, T-1-S, T&P RR. Co. Survey, Midland County, Texas. (Generally located on the west side of the extension of Avalon Drive, south of SH 191)

Purpose: Consider an ordinance on second reading for annexing and adopting a service plan for Tract 1, being a 104.5-acre tract of land out of Section 38, Block 40, T-1-S, T&P RR. Co. Survey, Midland County, Texas. (Generally located on the west side of the extension of Avalon Drive, south of SH 191)

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to process the annexation of this property.

Discussion:

Public hearings were held on March 26th and March 27th, 2013. The Council to approved the first reading for an ordinance annexing and adopting a service plan for this approximate 105-acre tract on April 23, 2013. As a reminder, this is a voluntary annexation and a development plan is anticipated in the near future.

Attachments:

Map
Proposed Ordinance
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 104.50-ACRE TRACT OF LAND OUT OF SECTION 38, BLOCK 40, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS, AND BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS IN SECTION ONE HEREOF (GENERALLY LOCATED ON THE WEST SIDE OF THE AVALON DRIVE EXTENSION, SOUTH OF STATE HIGHWAY 191); AND APPROVING A PUBLIC SERVICE PLAN

WHEREAS, public hearings before the City Council of the City of Midland, Texas, a home rule municipal corporation, where all interested persons were provided an opportunity to be heard on the proposed annexation of the hereinafter described territory, were held in the City Council Chambers on March 26, 2013 and March 27, 2013; and

WHEREAS, notice of such public hearings was published in a newspaper having general circulation in the City of Midland, Texas, and in the below described territory, on March 8, 2013;

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

SECTION ONE. That the following described property adjoining the present boundary lines of the City of Midland, Texas, be and the same is hereby annexed to and incorporated within the boundary of the City of Midland, Texas:

Being a 104.50-acre tract of land out of Section 38, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas, and being more fully described by metes and bounds attached hereto as Exhibit "A" and incorporated herein by reference for all legal purposes.

SECTION TWO. That the service plan, attached hereto as Exhibit "B", which provides for the extension of municipal services into the area described above in Section One, is hereby approved.

SECTION THREE. That this ordinance be published in the official newspaper in the City of Midland, Texas, and the same shall not be effective until after the publication

thereof.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2013; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2013, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2013.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

**Legal Description of a 104.50 Acre Tract located in
Section 38, Block 40, T-1-S, T & P. RR. Co. Survey,
Midland County, Texas.**

RECEIVED

DEC 28 2012

CITY OF MIDLAND
PLANNING DIVISION OFFICE

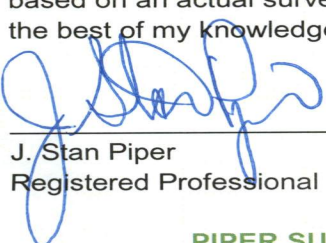
Boundary being further described by metes and bounds as follows:

BEGINNING at (N= 10,691,755.69' and E= 1,727,695.28') a ½" iron rod with a plastic cap marked "RPLS 4413" found at the Northwest corner of a 108.712 Acre Tract described in Midland County Official Public Records Instrument 2009-19786, being the most Easterly Northeast corner of this tract, from whence the Northeast corner of said Section 38 also being the Northwest corner of Section 37, Block 40, T-1-S, bears N14°25'48"W a distance of 2028.40 feet;

1. THENCE S14°25'48"E with the common line of said Sections 37 and 38, a distance of 2078.51 feet to a ½" iron rod with a plastic cap marked "PLS 1974" set at the Southeast corner of this tract;
2. THENCE S75°34'28"W, at 60.00 feet pass a ½" iron rod with a plastic cap marked "PLS 1974" set at the proposed West ROW line of Avalon, continuing for a total a total distance of 650.80 feet to a point of curvature of this tract;
3. THENCE around a curve to the left with a radius of 140.00 feet, a delta angle of 21°28'13", an arc length of 52.46 feet, and a chord length of 52.16 feet, which bears S64°50'22"W to a ½" iron rod with a plastic cap marked "PLS 1974" set at a point of tangency of this tract;
4. THENCE S54°06'15"W, a distance of 102.85 feet to a ½" iron rod with a plastic cap marked "PLS 1974" set at a point of curvature of this tract;
5. THENCE with a curve to the right with a radius of 475.00 feet, a delta angle of 21°28'13", an arc length of 178.00 feet, and a chord length of 176.96 feet, which bears S64°50'22"W to a ½" iron rod and plastic cap marked "PLS 1974" set at a point of tangency of this tract;
6. THENCE S75°34'28"W, a distance of 1133.35 feet to a ½" iron rod with a plastic cap marked "PLS 1974" set at the Southwest corner of this tract;
7. THENCE N14°25'32"W, a distance of 2041.85 feet to a ½" iron rod with a plastic cap marked "PLS 1974" set at the most Westerly Northwest corner of this tract;
8. THENCE N75°34'28"E a distance of 201.39 feet to a ½" iron rod with a plastic cap marked "PLS 1974" set at an interior corner of this tract;
9. THENCE N14°25'32"W a distance of 168.30 feet to a ½" iron rod with a plastic cap marked "PLS 1974" set at the most Northerly Northwest corner of this tract;
10. THENCE N75°34'28"E a distance of 1844.26 feet to a ½" iron rod with a plastic cap marked "PLS 1974" set at the most Northerly Northeast corner of this tract;
11. THENCE around a curve to the left along the proposed ROW line of said Avalon being the West boundary line of a previously surveyed 0.40 Acre Tract with a radius of 1560.00 feet, a delta angle of 01°53'07", an arc length of 51.33 feet, and a chord length of 51.33 feet, which bears S13°29'14"E to a ½" iron rod with a plastic cap marked "PLS 1974" found at a point of tangency of the said proposed ROW line for an interior corner of this tract, being the Southwest of said previously surveyed 0.40 Acre Tract;
12. THENCE N75°34'12"E with the South boundary line of said 0.40 Acre Tract, a distance of 60.00 feet the **POINT OF BEGINNING**, having an area of 4,552,091 square feet or 104.50 Acres of Land.

Bearings, distances, and coordinates are relative to the Texas State Plane Coordinate System, NAD 1983/86, Central Zone, with a combined grid factor of 0.9998958, and a theta angle equal to -0°54'48.39" at U.S.C. & G. station "MIDLAND" with published values of Y= 10,690,154.70 and X= 1,746,696.78 in U.S. Survey Feet.

I, J. Stan Piper, Registered Professional Land Surveyor, do hereby certify that this legal description is based on an actual survey made by me or under my supervision, and that the same is true and correct to the best of my knowledge and ability as surveyed on the ground September 8, 2012.


J. Stan Piper
Registered Professional Land Surveyor #1974

Prepared for:
Parkhill, Smith, and Cooper, Inc.
1700 West Wall St. Suite 100
Midland, TX 79701

EXHIBIT B
SERVICE PLAN FOR
Tract 1

Being a 104.50-acre tract of land out of Section 38, Block 40, T-1-S, T&P RR. Co. Survey, Midland County, Texas. (Generally located on the west side of the Avalon Drive extension, south of SH 191)

DEVELOPMENT SERVICES

Existing Services: Public access is not currently available to Tract 1 since this vacant property is pending development.

- A. Type of service to be provided upon annexation: Tract 1 is adjacent to the extension of a major city arterial street; Avalon Drive. Maintenance of this road and other roads and public improvements will become the City's responsibility following construction by the developer(s) and acceptance by the City. Engineering services, platting, traffic studies and controls will be provided as warranted. Development and utility extension plans, right-of-ways, easements, and other typical development matters are anticipated on this tract.
- B. Capital improvements to begin within 2 1/2 years: None

UTILITIES

Existing Services: Water and sewer services are located within the vicinity of Tract 1, but water and sewer mains will need to be extended to serve any development in accordance with City regulations.

- A. Type of service to be provided upon annexation: None.
- B. Capital improvements to begin within 2 1/2 years: None

POLICE

Existing Services: None

- A. Type of service to be provided upon annexation: emergency and routine call response.
- B. Capital improvements to begin within 2 1/2 years: No improvements anticipated.

FIRE

Existing Services: Fire and emergency response provided through agreement with Midland County

- A. Fire and EMS Service to be provided upon the effective date of annexation: All services are currently available and will continue following annexation.
- B. Capital improvements to begin within 2 1/2 years: None anticipated.

COMMUNITY SERVICES

Existing Services: Health and Senior Services
throughout Midland County including on site
septic system permitting

- A. Type of service to be provided upon annexation: Animal Control services including pick up, impoundment, records maintenance, adoption and education will be immediately available.
- B. Capital improvements to begin within 2 1/2 years: None anticipated.

SEC 35, BLK 40, T-1-S

SEC 36, BLK 40, T-1-S

ST HWY 191

ANDREWS HWY

SEC 38, BLK 40, T-1-S

SEC 37,
BLK 40,
T-1-S

PROPOSED ANNEXATION MAP

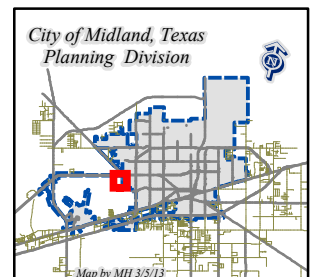
M - 13 - 001

Scale: 1" = 700'

Consider a request for the annexation of a 104.50-acre tract of land out of Section 38, Block 40, T-1-S, T & P RR Co. Survey, Midland County, Texas.

LEGEND

-  ANNEXATION BOUNDARY
-  CITY LIMITS
-  SURVEY SECTION
-  COUNTY PARCEL
-  CITY PARCEL
-  PRIVATE BLDGS
-  ACCESSORY BLDGS



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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.



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: May 14, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Ken Van Dyne, Acting Planning Division Manager

SUBJECT: Consider an ordinance on second reading on a request by D. R. Horton to establish the initial zoning on annexed land as PD, Planned District for a Housing Development subject to 1F-3 regulations on a 104.5-acre tract out of Section 38, Block 40, T-1-S, T&P RR Company Survey, Midland County, Texas (Generally located on the west side of Avalon Drive, south of SH 191)

Purpose:

Consider an ordinance on second reading on a request by D. R. Horton to establish the initial zoning on annexed land as PD, Planned District for a Housing Development subject to 1F-3 regulations on a 104.5-acre tract out of Section 38, Block 40, T-1-S, T&P RR Company Survey, Midland County, Texas (Generally located on the west side of Avalon Drive, south of SH 191)

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to process this application.

Discussion:

D. R. Horton wishes to construct a residential neighborhood on this property. The applicant is requesting a planned district due to the orientation lots in a backing condition toward Avalon Drive. Under this condition, a decorative screening fence is required to visually shield the lots from the traveling public. The City Council approved this ordinance on first reading on April 23, 2013. The ordinance to complete the annexation is scheduled for the May 14th agenda. Therefore, it is also appropriate to consider this ordinance on second and final reading.

ORDINANCE NO.

AN ORDINANCE ESTABLISHING THE ZONING CLASSIFICATION OF THE AREA INDICATED AS BEING A 104.50-ACRE TRACT OF LAND OUT OF SECTION 38, BLOCK 40, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS, AND BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS IN SECTION ONE HEREOF, AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT; SAID TRACT IS GENERALLY LOCATED ON THE WEST SIDE OF THE AVALON DRIVE EXTENSION, SOUTH OF STATE HIGHWAY 191; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, notice has been given to all parties in interest and citizens by publication in the official newspaper and otherwise, of a hearing to be held before the City Council on April 23, 2013, to consider amendments to the zoning regulations and map establishing the zoning classification of the property described in Section One hereof as a PD, Planned District for a Housing Development as set out in Section 11-1-6 of the City Code of Midland, Texas; and

WHEREAS, such a public hearing was held in the Council Chambers beginning at 10:30 a.m. on said April 23, 2013, as advertised; and

WHEREAS, after a full hearing, at which all parties in interest and citizens were given an opportunity to be heard; and after receiving and considering the recommendations of the Planning and Zoning Commission; and after considering among other things, the character of the property involved and the surrounding area and its peculiar suitability for particular uses; and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality, the Council finds it to be in the best interest of the health, safety, morals and general welfare of the City of Midland to amend the zoning regulations accordingly;

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

SECTION ONE. That the zoning classification of the area indicated as Tract 1 on Exhibit “A”, attached hereto and incorporated herein by reference, is hereby established as a PD, Planned District for a Housing Development.

Tract 1 shall be subject to the following special conditions and restrictions:

1. That this planned district shall be subject to the use and development regulations of the 1F-3, One-Family Dwelling District.
2. That a screening fence shall be constructed adjacent to the west side of Avalon Drive at all locations where either a public alley or a rear residential lot line abuts Avalon Drive. Said screening fence shall conform to Exhibit “B”, which is attached hereto and incorporated herein.
3. That oil and gas well access and distances between oil and gas wells and adjacent residential lots shall conform to the conditions contained in Exhibit “C”, which is attached hereto and incorporated herein.
4. That flow line locations shall conform to the conditions contained in Exhibit “D”, which is attached hereto and incorporated herein.

SECTION TWO. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION THREE. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FOUR. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION FIVE. The City Secretary is hereby authorized and directed to publish

the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2013; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2013, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2013.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

Tract 1

Legal Description of a 104.50 Acre Tract located in Section 38, Block 40, T-1-S, T & P. RR. Co. Survey, Midland County, Texas.

RECEIVED

DEC 28 2012

CITY OF MIDLAND
PLANNING DIVISION OFFICE

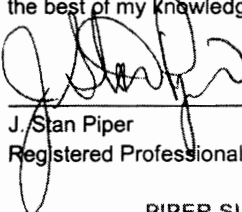
Boundary being further described by metes and bounds as follows:

BEGINNING at (N= 10,691,755.69' and E= 1,727,695.28') a ½" iron rod with a plastic cap marked "RPLS 4413" found at the Northwest corner of a 108.712 Acre Tract described in Midland County Official Public Records Instrument 2009-19786, being the most Easterly Northeast corner of this tract, from whence the Northeast corner of said Section 38 also being the Northwest corner of Section 37, Block 40, T-1-S, bears N14°25'48"W a distance of 2028.40 feet;

1. THENCE S14°25'48"E with the common line of said Sections 37 and 38, a distance of 2078.51 feet to a ½" iron rod with a plastic cap marked "PLS 1974" set at the Southeast corner of this tract;
2. THENCE S75°34'28"W, at 60.00 feet pass a ½" iron rod with a plastic cap marked "PLS 1974" set at the proposed West ROW line of Avalon, continuing for a total a total distance of 650.80 feet to a point of curvature of this tract;
3. THENCE around a curve to the left with a radius of 140.00 feet, a delta angle of 21°28'13", an arc length of 52.46 feet, and a chord length of 52.16 feet, which bears S64°50'22"W to a ½" iron rod with a plastic cap marked "PLS 1974" set at a point of tangency of this tract;
4. THENCE S54°06'15"W, a distance of 102.85 feet to a ½" iron rod with a plastic cap marked "PLS 1974" set at a point of curvature of this tract;
5. THENCE with a curve to the right with a radius of 475.00 feet, a delta angle of 21°28'13", an arc length of 178.00 feet, and a chord length of 176.96 feet, which bears S64°50'22"W to a ½" iron rod and plastic cap marked "PLS 1974" set at a point of tangency of this tract;
6. THENCE S75°34'28"W, a distance of 1133.35 feet to a ½" iron rod with a plastic cap marked "PLS 1974" set at the Southwest corner of this tract;
7. THENCE N14°25'32"W, a distance of 2041.85 feet to a ½" iron rod with a plastic cap marked "PLS 1974" set at the most Westerly Northwest corner of this tract;
8. THENCE N75°34'28"E a distance of 201.39 feet to a ½" iron rod with a plastic cap marked "PLS 1974" set at an interior corner of this tract;
9. THENCE N14°25'32"W a distance of 168.30 feet to a ½" iron rod with a plastic cap marked "PLS 1974" set at the most Northerly Northwest corner of this tract;
10. THENCE N75°34'28"E a distance of 1844.26 feet to a ½" iron rod with a plastic cap marked "PLS 1974" set at the most Northerly Northeast corner of this tract;
11. THENCE around a curve to the left along the proposed ROW line of said Avalon being the West boundary line of a previously surveyed 0.40 Acre Tract with a radius of 1560.00 feet, a delta angle of 01°53'07", an arc length of 51.33 feet, and a chord length of 51.33 feet, which bears S13°29'14"E to a ½" iron rod with a plastic cap marked "PLS 1974" found at a point of tangency of the said proposed ROW line for an interior corner of this tract, being the Southwest of said previously surveyed 0.40 Acre Tract;
12. THENCE N75°34'12"E with the South boundary line of said 0.40 Acre Tract, a distance of 60.00 feet the **POINT OF BEGINNING**, having an area of 4,552,091 square feet or 104.50 Acres of Land.

Bearings, distances, and coordinates are relative to the Texas State Plane Coordinate System, NAD 1983/86, Central Zone, with a combined grid factor of 0.9998958, and a theta angle equal to -0°54'48.39" at U.S.C. & G. station "MIDLAND" with published values of Y= 10,690,154.70 and X= 1,746,696.78 in U.S. Survey Feet.

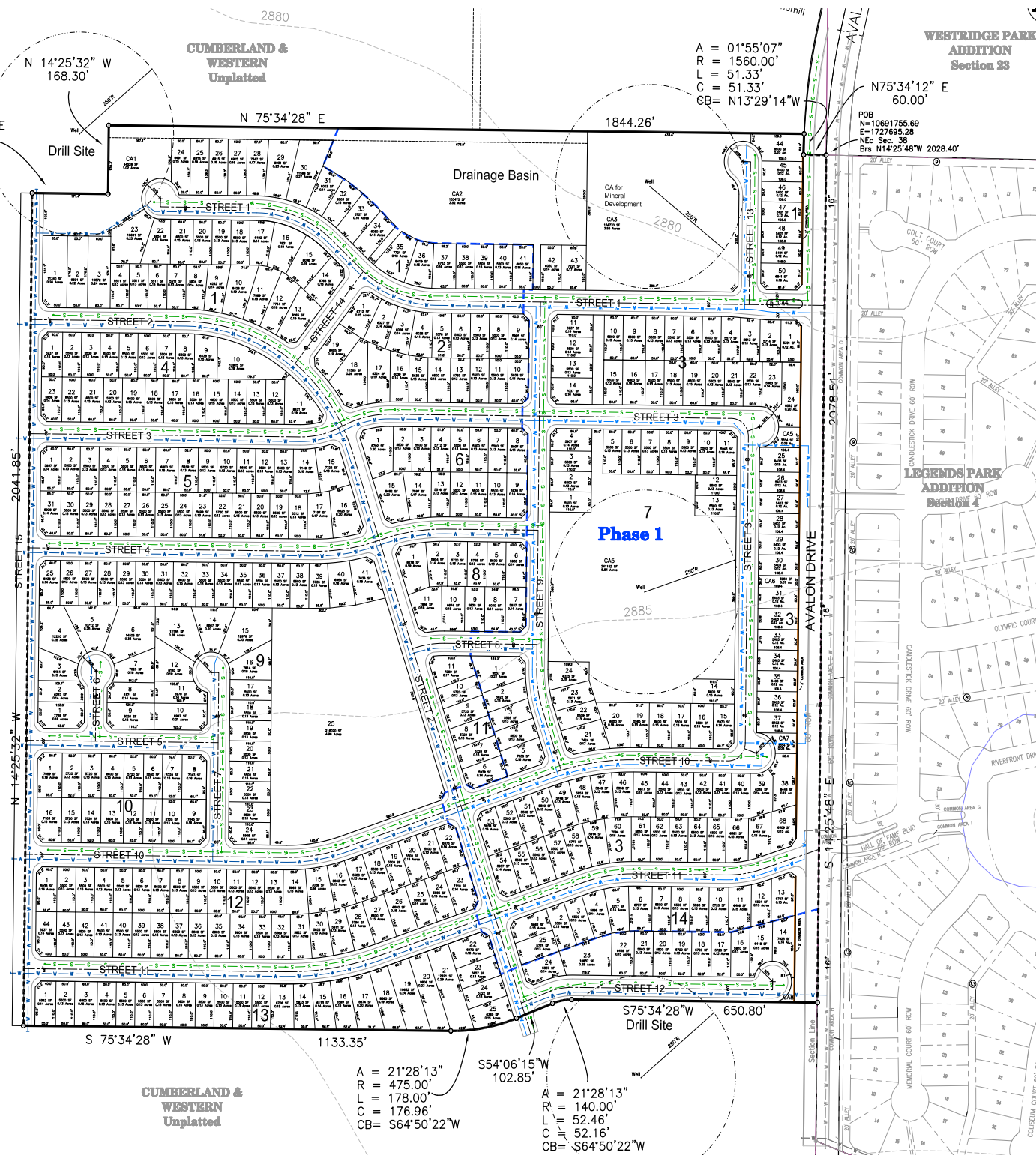
I, J. Stan Piper, Registered Professional Land Surveyor, do hereby certify that this legal description is based on an actual survey made by me or under my supervision, and that the same is true and correct to the best of my knowledge and ability as surveyed on the ground September 8, 2012.


J. Stan Piper
Registered Professional Land Surveyor #1974

Prepared for:
Parkhill, Smith, and Cooper, Inc.
1700 West Wall St. Suite 100
Midland, TX 79701

Exhibit "A"

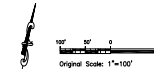
CUMBERLAND &
WESTERN
Unplatted



Preliminary Plat

LEGACY ADDITION

Being 104.50 Ac.
Located in Section 38, Block 40,
T-1-S, T&P RR CO. Survey,
Midland County, Texas



Sketch Plat Submitted to P&Z
on November 7, 2012

Preliminary Plat Submitted to P&Z
on December 28, 2012

Added Activity Center Common Area
on February 1, 2013

Preliminary Plat re-submitted to P&Z
on April 12, 2013

LEGEND

- PROPOSED PLAT LIMITS
- PROPOSED STREET ROW
- PROPOSED PLATTED LOTS & STREET R/W
- PROPOSED EASEMENTS
- PROPOSED SCREEN WALL
- PROPOSED WATER LINE
- PROPOSED SEWER LINE & MANHOLE
- EXISTING PLATTED LOTS & STREET R/W
- EXISTING EASEMENTS
- EXISTING WATER LINE
- EXISTING SEWER LINE & MANHOLE
- EXISTING FENCE
- EXISTING ELEVATION CONTOURS
- PHASING BOUNDARY

LOCATION MAP



LEGACY
ADDITION

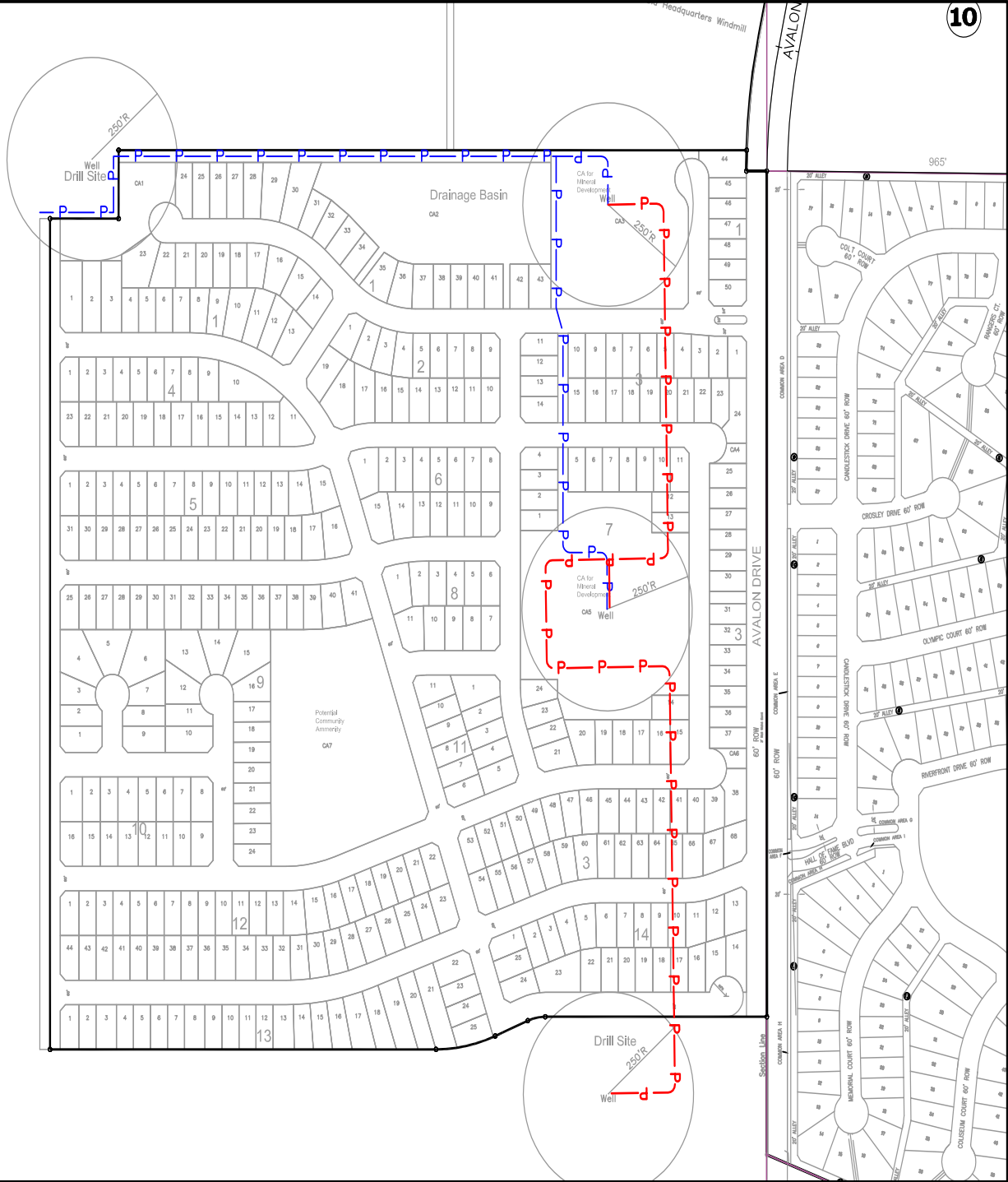
OWNER & DEVELOPER:

D.R. HORTON, INC.
6751 N. FREEWAY
FORT WORTH, TEXAS 76131
Contact: DON ALLEN (817) 230-0800

ENGINEER:

Parkhill, Smith & Cooper, Inc.
1700 W. Wall St., #100
Midland, Texas 79701
Contact: Eric West, P.E. (432) 697-1447

LEGACY ADDITION

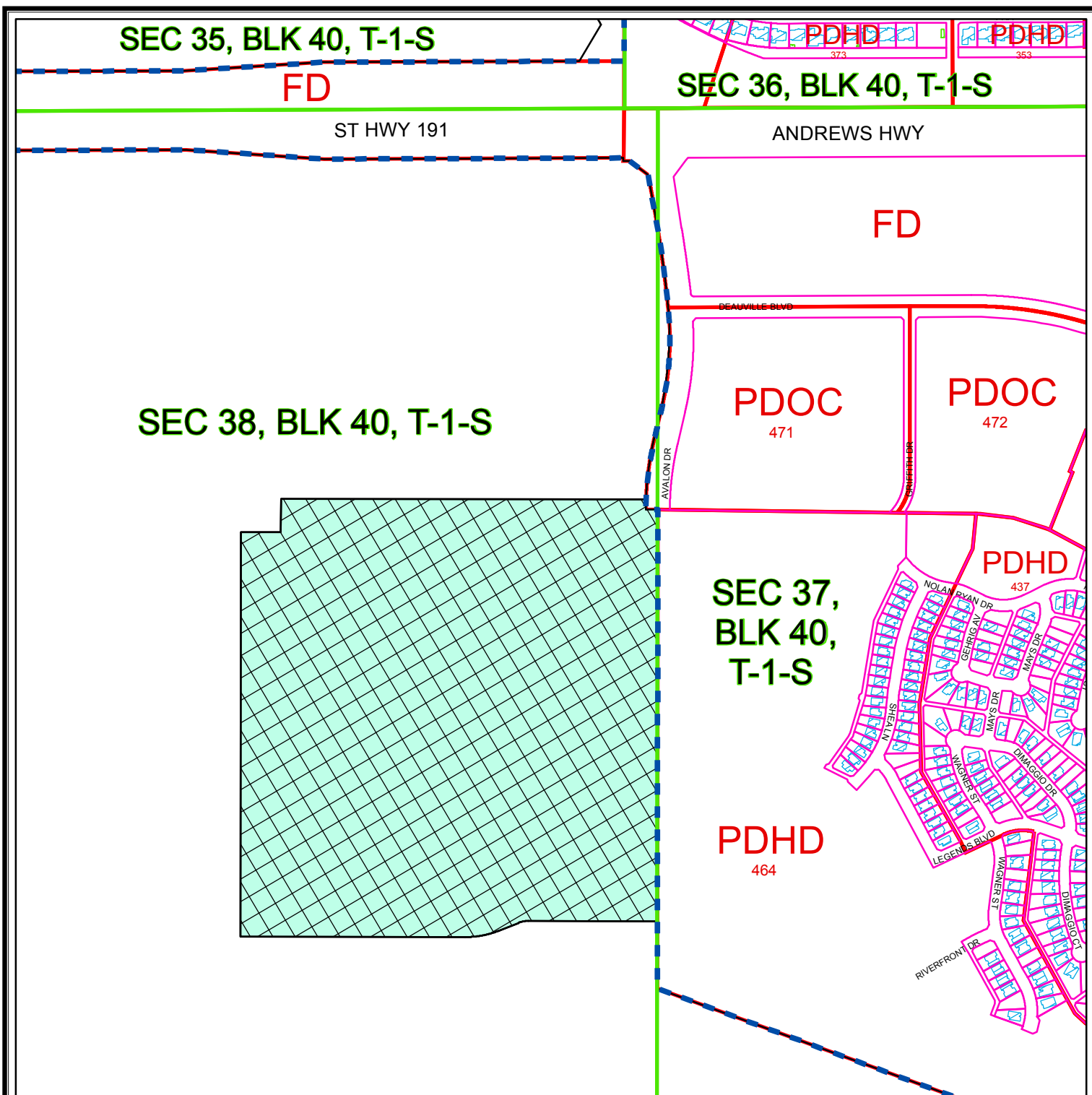


Legend

- P— New Buried Gathering Lines
(Approx. 3150 LF x 3 Lines)
- P— Remove Existing
Unburied Gathering Lines
(Approx. 3320 LF x 3 Lines)

Midland, Texas
Legacy Addition

Oil Well Infrastructure
GATHERING LINES



LOCATION & ZONING MAP

Z - 13 - 015

Scale: 1" = 700'

Consider the initial zoning of annexed land to PD, Planned District of a Housing Development on a 104.50-acre tract of land out of Section 38, Block 40, T-1-S, T & P RR Co. Survey, Midland County, Texas.

LEGEND

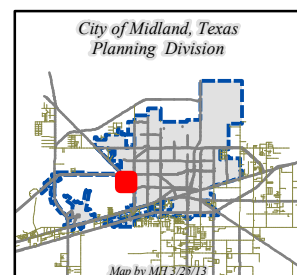
- CITY LIMITS
- CITY PARCEL
- COUNTY PARCEL
- ZONING
- SURVEY SECTION

ZONING DISTRICTS:

FD - FUTURE DEVELOPMENT

PD - PLANNED DISTRICT FOR AN OFFICE CENTER

PD - PLANNED DISTRICT FOR A HOUSING DEVELOPMENT



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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 PLANNING TOOL IN PERMITTING, SETTING OR OTHER DECISIONS SOLELY ON THE INFORMATION CONTAINED HEREIN.



E. G. L. Resources, Inc. 508 West Wall, Suite 1250 P.O Box 10886 Midland, Texas 79702 432.687.6560 telephone 432.682.5852 facsimile

Mr. Eric West
Parkhill, Smith and Cooper
1700 West Wall, Suite 100
Midland, TX 79701

**RE: Legacy Addition Plat
Section 38, Block 40
TWP-1-S, T & P RR Co Survey
Midland County, Texas**

Dear Eric:

We are in receipt of your proposed plat covering the residential subdivision located on a 104.50 acre tract within Section 38. After review of the preliminary plat EGL Resource, Inc. is satisfied with the changes to the original plat and accepts this plat as satisfactory.

If you have need of discussing this matter in more detail please call me at my direct line (432) 686-4352 with any additional questions. Thank you for help, I am,

Yours truly,
EGL Resources, Inc.

Michael Newman
Vice President, EGL Resources, Inc



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: May 14, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Ken Van Dyne, Acting Planning Division Manager

SUBJECT: Consider an ordinance on second reading on a request by Arthur Zuniga for a zone change from FD, Future Development District to 1F-3, One-Family Dwelling District on a 38.60-acre tract out of Section 13, Block 40, T-1-S, T&P RR Company Survey, Midland County, Texas (Generally located at the southwest corner of Sherwood and Sandstone)

Purpose:

Consider an ordinance on second reading on a request by Arthur Zuniga for a zone change from FD, Future Development District to 1F-3, One-Family Dwelling District on a 38.60-acre tract out of Section 13, Block 40, T-1-S, T&P RR Company Survey, Midland County, Texas (Generally located at the southwest corner of Sherwood and Sandstone.)

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to process this application.

Discussion:

Fasken Oil and Ranch is engaged in negotiations to convey this tract to MISD for the construction of a new school. When the land was annexed in 2007, it was zoned FD District. While schools are allowed in any district, Fasken has requested a 1F-3 District, which would be consistent with its master plan for this area in the event the MISD were to choose another site. The City Council approved this ordinance on first reading on April 23, 2013. It is now ready for consideration on second and final reading.

ORDINANCE NO. _____

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 38.60-ACRE TRACT OF LAND OUT OF SECTION 13, BLOCK 40, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED FD, FUTURE DEVELOPMENT DISTRICT, TO BE USED AS A 1F-3, ONE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE CORNER OF SHERWOOD DRIVE AND SANDSTONE DRIVE, APPROXIMATELY 1,000 FEET WEST OF HOLIDAY HILL ROAD); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter and the State law with reference to the creation of Districts under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by the creation of a 1F-3, One-Family Dwelling District, as set out hereinafter;

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

SECTION ONE. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned FD, Future Development District, and it shall be used as a 1F-3, One-Family Dwelling District, said property being described as follows:

A 38.60-acre tract of land out of Section 13, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas, said tract being more specifically described by metes and bounds in Exhibit "A", which is attached hereto and incorporated herein.

SECTION TWO. That the definitions given in the zoning regulations contained in

the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2013; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2013, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2013.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

THE VINEYARD ADDITION

Zoning Exhibit, 1-F3 zoning area

LEGAL DESCRIPTION

Legal Description of a 38.6 acre tract out of that certain tract of land as recorded in the Warranty Deed Recorded in Volume 1364, Page 591, Deed Records, Midland County, Texas located in Section 13, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas, and being more particularly described by metes and bounds below.

The bearings, distances, coordinates and areas shown hereon are based upon the Texas Coordinate System (NAD83), Texas Central Zone.

BEGINNING at (N: 10,712,580.12, E: 1,726,681.99) the intersection of proposed Sandstone Drive and proposed Sherwood Drive, being the most Northeasterly Northeast corner of the herein described tract;

THENCE South 14°23'33" East a distance of 844.61 feet with the center line of proposed Sandstone Drive to the point of curvature to the right;

THENCE Southwesterly with said curve to the right with the center line of proposed Sandstone Drive, said curve having a radius of 250.00 feet, a delta angle of 49°25'45", a chord length of 209.05 feet and a chord bearing of South 10°19'17" West, an arc length of 215.68 feet to a point of tangency;

THENCE South 35°02'07" West a distance of 338.23 feet with the center line of proposed Sandstone Drive to the point of curvature to the left;

THENCE Southwesterly with said curve to the left with the center line of proposed Sandstone Drive, said curve having a radius of 285.00 feet, a delta angle of 35°29'47", a chord length of 173.76 feet and a chord bearing of South 17°17'13" West, an arc length of 176.57 feet to the intersection of the center line of proposed Sandstone Drive and the center line of an unnamed proposed street, for a corner of this tract;

THENCE South 83°46'37" West a distance of 152.10 feet with the center line of said unnamed proposed street to the point of curvature to the right;

THENCE Northwesterly with said curve to the right with the center line of said unnamed proposed street, said curve having a radius of 180.00 feet, a delta angle of 38°19'22", a chord length of 118.16 feet and a chord bearing of North 77°03'42" West, an arc length of 120.39 feet to a point for a corner of this tract;

THENCE South 57°05'21" West a distance of 45.29 feet to a point for a corner of this tract;

THENCE South 14°24'40" East a distance of 83.24 feet to a point for a corner of this tract;

THENCE South 75°34'22" West a distance of 816.46 feet to a point in the East line of a tract of land as described in the deed to Texas Electric Service Company by instrument filed of record in Volume 765, Page 70, Midland County Deed Records, being the Southwest corner of the herein described tract;

THENCE North 14°24'40" West a distance of 1,010.75 feet with the East line of said Texas Electric Service Company tract to a point in the center line of proposed Sherwood Drive to the Northwest corner of this tract;

THENCE North 75°34'22" East a distance of 529.31 feet with the center line of proposed Sherwood Drive to the point of curvature to the left;

THENCE Northeasterly with said curve to the left with the center line of proposed Sherwood Drive, said curve having a radius of 500.00 feet, a delta angle of 44°58'59", a chord length of 382.55 feet and a chord bearing of North 53°04'53" East, an arc length of 392.55 feet to the point of tangency;

THENCE North 30°35'23" East a distance of 170.13 feet with the center line of proposed Sherwood Drive to the point of curvature to the right;

THENCE Northeasterly with said curve to the right with the center line of proposed Sherwood Drive, said curve having a radius of 500.00 feet, a delta angle of 45°01'05", a chord length of 382.83 feet and a chord bearing of North 53°05'55" East, an arc length of 392.86 feet to the point of tangency;

THENCE North 75°36'27" East a distance of 194.09 feet with the center line of proposed Sherwood Drive to the POINT OF BEGINNING.

© COPYRIGHT 2013 WEST COMPANY OF MIDLAND

WEST COMPANY



OF MIDLAND, INC.

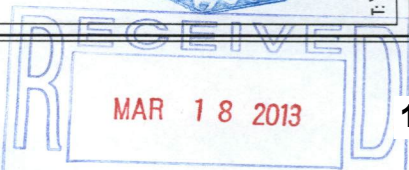
ENGINEERS - PLANNERS - SURVEYORS
REGISTRATION: FIRM 2184
110 W. LOUISIANA AVE., SUITE 110
MIDLAND, TEXAS 79701
(432) 687-0865 - FAX (432) 687-0868

THIS LEGAL DESCRIPTION IS FOR ZONING PURPOSES ONLY
AND IS NOT TO BE USED FOR ANY OTHER TRANSACTIONS.

Marcus L. Hostas, R.P.L.S.
Registration Number 5643



T:\CIVIL DRAWINGS\2013\ZONING TRACTS\2013-0352 FASKEN ZONING TRACTS.DWG



PLANNING AND ZONING COMMISSION

April 15, 2013

CASE: Z-13-016.

REQUEST: Hold a public hearing and consider a request for a zone change from FD, Future Development District to 1F-3, One-Family Dwelling District.

APPLICANT/OWNER: Fasken Oil and Ranch.

REPRESENTATIVE: West Company of Midland.

LEGAL DESCRIPTION: A 38.6-acre tract out of Section 13, Block 40, T-1-S, T&P RR Company Survey, Midland County, Texas.

LOCATION: Southwest corner of Sherwood and Sandstone.

DETAILS OF REQUEST:

1. Fasken Oil and Ranch is negotiating with MISD to sell the subject property for use as a school site. When this area was annexed in 2007, there was no zoning pattern in place; consequently, the area was zoned FD District at that time. However, a preliminary plat has since been approved on the entire 300 acres that were annexed, and a school tract was laid out. While public schools are a permitted use in any zoning district, the owner indicates a preference for the 1F-3 District.

SURROUNDING ZONING AND LAND USE:

2. The land surrounding this school site is vacant except for existing oil wells. To the east is an area zoned Planned District for a Housing Development. Construction is scheduled to begin soon on an apartment development on this tract. While the surrounding areas remain zoned FD District, the developer indicates that the abutting land is intended to be used for a park site and single-family development.

ANALYSIS:

3. The Comprehensive Plan recommends that public school sites be located toward the geographic center of a neighborhood. Such locations are preferable because

they reduce the number of school crossing zones on arterial streets, which provides convenience for drivers and safety for students; it places the school near the residences that it will serve; it ensures that there will be no nearby business uses that generate traffic; and it provides an opportunity to locate a public park adjacent to the school site so that certain facilities, such as parking, can be shared. This site meets the recommended location requirements. MISD has indicated that it will be able to place school buildings on this property so that they exceed a 500-foot distance from the wells. Further, the associated plat indicates that there will be three collector streets converging at the school site, which provides convenient access to the site. In the event MISD chooses a different site for the school and the site is developed with residences, the 1F-3 District zoning will not overload the street system shown on the preliminary plat. We find this to be a reasonable zone change request.

STAFF RECOMMENDATION:

We recommend approval of this request for a zone change from FD, Future Development District to 1F-3, One-Family Dwelling District.



Ken Van Dyne
Acting Planning Division Manager
Department of Development Services

For Jim Compton, Senior Planner
Department of Development Services

Attachments:

Application
Maps

Case Number: Z-13-016

CITY OF MIDLAND
Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

ARTHUR ZUNIGA 210-724-4158 arthurz@forl.com
Applicant Name (Phone/e-mail)
6101 HOLIDAY HILL RD. MIDLAND, TX 79707
Address Zip Code
EASKEN LAND & MINERALS LTD. SAME AS ABOVE
Property Owner Name (Phone/e-mail)
SAME AS ABOVE
Address Zip Code
ARTHUR ZUNIGA SAME AS ABOVE
Representative Name (Phone/e-mail)
SAME AS ABOVE
Address Zip Code

Street address and Legal Description of property (complete Lot, Block, and Subdivision Name or if unplatted, attach a Metes and Bounds description with surveyor's seal). Each district must be described separately.

SEE ATTACHED LEGAL DESCRIPTION OF
A 38.6 ACRE TRACT

PRESENT ZONE: FD REQUESTED ZONE: IF3
(List by tracts if more than one district is requested)

Reason for Zone Change Request: PROPOSED DEVELOPMENT

Present Use of Property: VACANT

Proposed Use of Property: SCHOOL (ELEM.) AND RESIDENTIAL
LOTS.

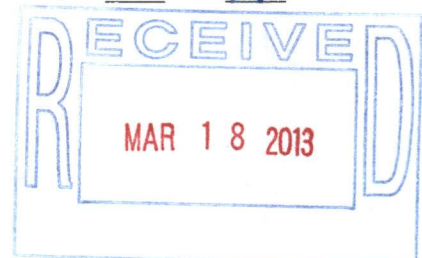
How will zone change affect the public health, safety and welfare? WILL NOT
ADVERSELY AFFECT

Describe how conditions affecting the property have changed since present zoning designation:

DEMAND FOR NEW HOUSING HAS INCREASED,
ALONG WITH INCREASE IN SCHOOL POPULATION

Is a Specific Use Permit with Term for alcoholic beverages sales needed? Yes ☒ No

Fee already paid.
J. C.



APPLICATION FEES:

- Single, standard zone change: **\$400**. Multiple, standard zone change: add **\$100** per additional district.
- Single PD, Planned District zone change: **\$550**. Multiple PD proposal: add **\$100** per district.
- If a Traffic Impact Analysis is required, a fee of up to \$500.00 will be assessed.

SITE PLAN SUBMITTALS (if applicable):

16 copies (FOLDED) of the PD site plan: _____

Site Plan in digital format .pdf and .jpg: _____

SIGNATURE (by property owner only - authorized agent must sign affidavit below)

Property Owner (signature): _____

[Handwritten Signature]

Date: _____

3/15/13

If an Agent is authorized by the property owner to file and execute the application on behalf of the property owner, the Agent must complete the affidavit below.

STATE of TEXAS

COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared

_____ who, being by me duly sworn, upon oath says: That (s)he is authorized by _____, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

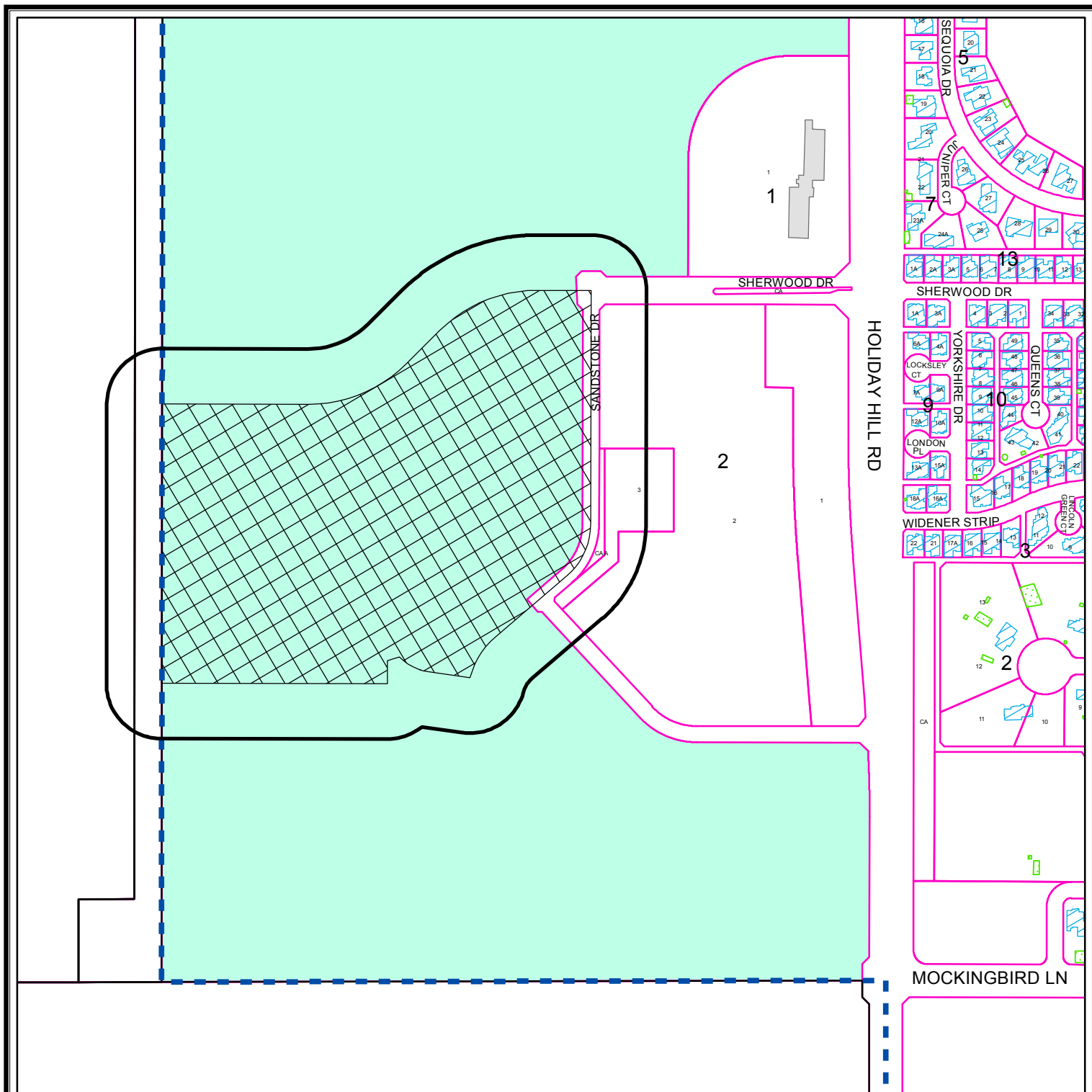
Authorized Agent (signature)

Subscribed and sworn to before me, this _____ day of _____, 20 __, to certify which witness my hand and seal of office.

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: <u>JC</u>	Date: <u>3-18-13</u>
Assigned: <u>JC</u>	
For: <u>Ad 2</u>	On: <u>4-1-13</u>

****Application will not be considered for scheduling until reviewed by a planner.****



OWNER NOTIFICATION WITHIN CITY LIMITS ONLY

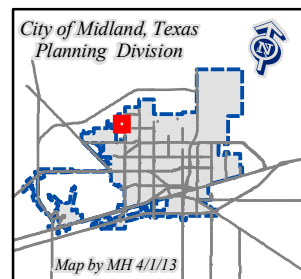
Z - 13 - 016

Scale: 1" = 500'

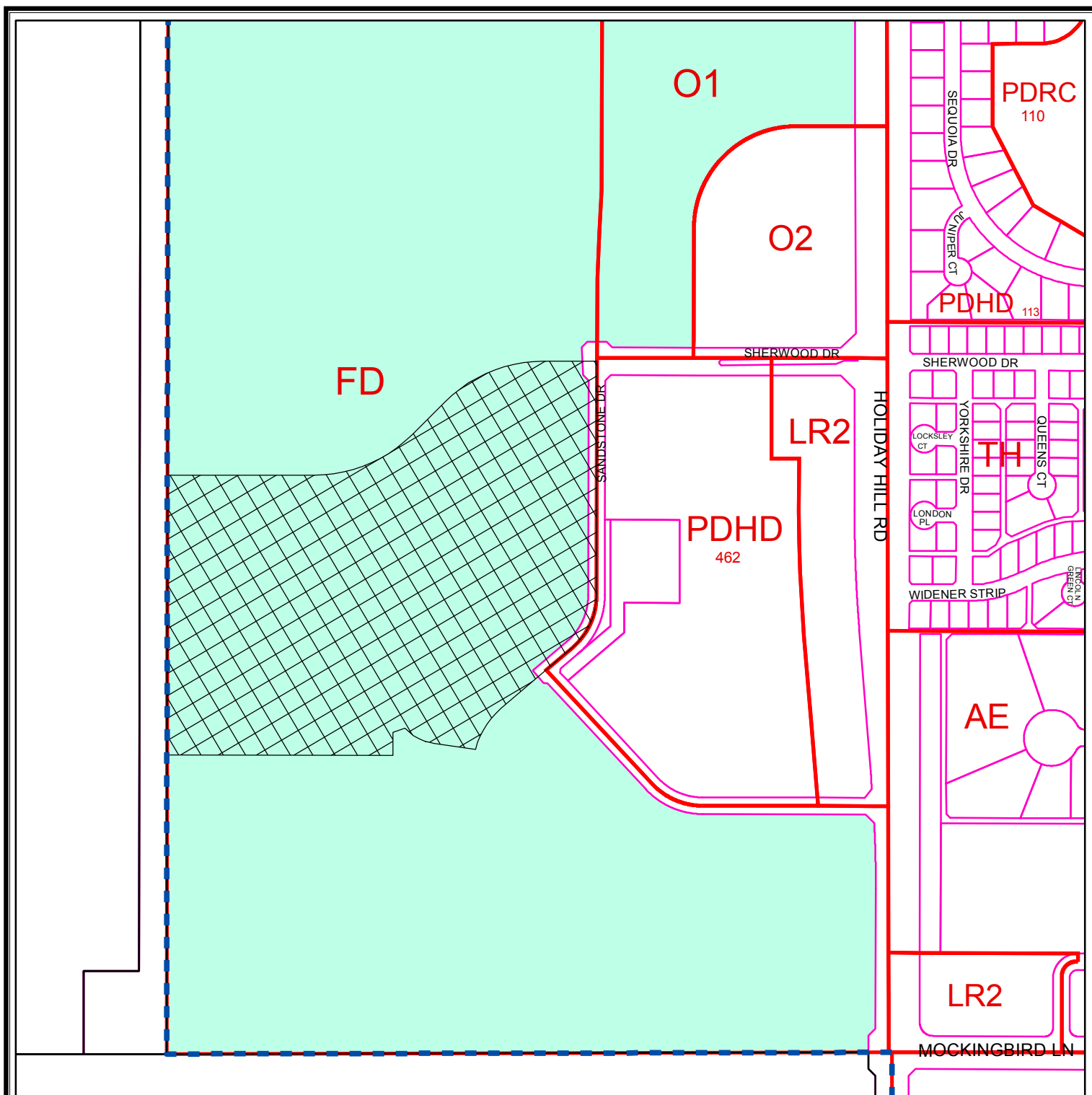
Consider a request for a zone change from FD, Future Development District, to 1F-3, One Family Dwelling District on a 38.60-acre tract of land out of Section 13, Block 40, T-1-S, T & P RR Co. Survey, Midland County, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- CITY PARCEL
- COUNTY PARCEL
- PRIVATE BLDGS
- ACCESSORY BLDGS



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ZONING MAP

Z - 13 - 016

Scale: 1" = 500'

Consider a request for a zone change from FD, Future Development District, to 1F-3, One Family Dwelling District on a 38.60-acre tract of land out of Section 13, Block 40, T-1-S, T & P RR Co. Survey, Midland County, Texas.

LEGEND

- | | |
|---|---|
| ZONING | CITY PARCELS |
| CITY LIMITS | COUNTY PARCELS |

ZONING DISTRICTS:

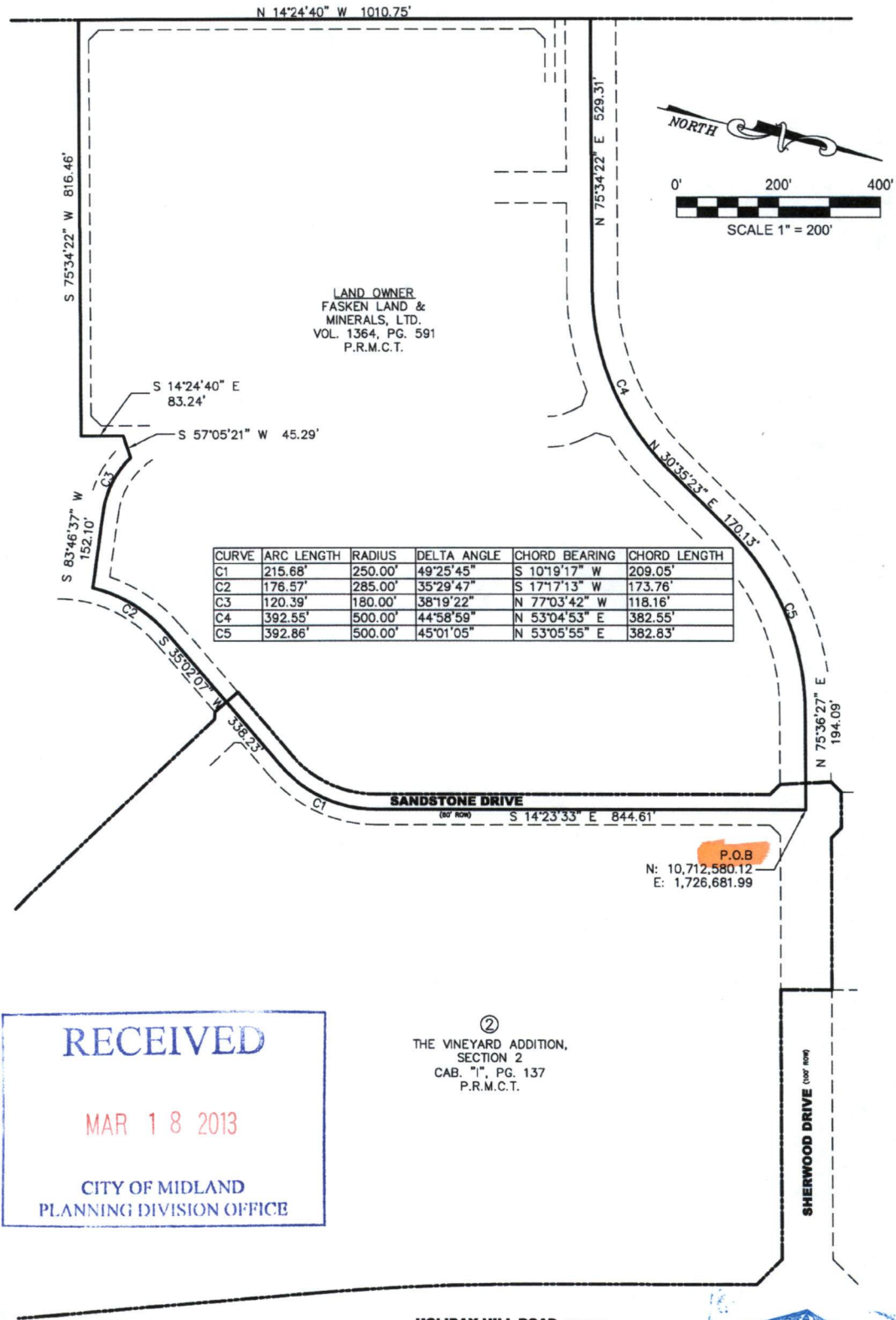
FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	O1, O2	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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THE VINEYARD ADDITION

Zoning Exhibit, 1-F3 zoning area



RECEIVED

MAR 18 2013

CITY OF MIDLAND
PLANNING DIVISION OFFICE

②
THE VINEYARD ADDITION,
SECTION 2
CAB. "I", PG. 137
P.R.M.C.T.

WEST COMPANY



ENGINEERS - PLANNERS - SURVEYORS
REGISTRATION: FIRM 2184
110 W. LOUISIANA AVE., SUITE 110
MIDLAND, TEXAS 79701
(432) 687-0865 - FAX (432) 687-0868

THIS LEGAL DESCRIPTION IS FOR ZONING PURPOSES ONLY
AND IS NOT TO BE USED FOR ANY OTHER TRANSACTIONS

Marcus L. Hostas, R.P.L.S.
Registration Number 5643



© COPYRIGHT 2013 WEST COMPANY OF MIDLAND

T:\CIVIL DRAWINGS\2013\2013-0352\ZONING TRACTS\2013-0352 FASKEN ZONING TRACTS.DWG



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: May 14, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Ken Van Dyne, Acting Planning Division Manager

SUBJECT: Consider an ordinance request on second reading for the vacation of a 0.632-acre right-of-way dedication contained within Lots 7-12, Block 93; Lots 1, 2, 5 and 6, the adjacent vacated 20 foot alley and the adjacent vacated right-of-way of W. Kentucky Avenue, Block 109, all out of Original Town, City and County, Midland Texas. Generally located on the north side of W. Front Street between S. Marienfeld Street and S. Big Spring Street.

Purpose: Consider an ordinance request on second reading for the vacation of a 0.632-acre right-of-way dedication contained within Lots 7-12, Block 93; Lots 1, 2, 5 and 6, the adjacent vacated 20 foot alley and the adjacent vacated right-of-way of W. Kentucky Avenue, Block 109, all out of Original Town, City and County, Midland Texas.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

There is no cost to the City of Midland for this application due to the circumstances outlined from the first reading of this ordinance request from the April 23rd Council meeting. The assessed Right-of-Way fee is being waived for the applicant.

Discussion:

The first reading for this 0.632-acre Right-of-Way dedication occurred on the April 23rd Council meeting. The applicant's request was approved on first reading, and the standard assessed fee was waived based off of information provided by the applicant. No changes have occurred since the first reading, and staff recommends approval of this request.

Attachments: None.

ORDINANCE NO.

AN ORDINANCE VACATING AND ABANDONING A 0.632-ACRE RIGHT-OF-WAY DEDICATION WITHIN LOTS 7-12, BLOCK 93, LOTS 1, 2, 5 AND 6, THE ADJACENT VACATED 20-FOOT ALLEY AND THE ADJACENT VACATED RIGHT-OF-WAY OF WEST KENTUCKY AVENUE, BLOCK 109, ALL OUT OF ORIGINAL TOWN, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTH SIDE OF WEST FRONT STREET BETWEEN SOUTH MARIENFELD STREET AND SOUTH BIG SPRING STREET); ADOPTING THE APPRAISAL BY THE CITY MANAGER OF \$38,267.00; WAIVING THE FEE FOR THE COST OF THE RIGHT-OF-WAY; AND ORDERING RECORDATION BY THE CITY SECRETARY

WHEREAS, it has been determined by the Midland City Council that a 0.632-acre right-of-way dedication within Lots 7-12, Block 93, Lots 1, 2, 5 and 6, the adjacent vacated 20-foot alley and the adjacent vacated right-of-way of West Kentucky Avenue, Block 109, all out of Original Town, City and County of Midland, Texas, is no longer needed for public use; and

WHEREAS, Section 272.001 of the Texas Local Government Code provides that a political subdivision may not convey, sell, or exchange its interest in land without observing notice and bid requirements, unless the conveyance is to one or more abutting property owners; and

WHEREAS, an application for vacating the right-of-way has been received by the City from the abutting property owner; and

WHEREAS, the City Manager has appraised the value of the City's property interest in the right-of-way at \$38,267.00, as shown in Exhibit "B" attached hereto and incorporated herein by reference; and

WHEREAS, the Council finds it to be in the public interest to waive the fee for the cost of the right-of-way in light of the abutting property owner having a reversionary interest in the right-of-way, the abutting property owner possessing the underlying fee simple interest, and the City having never utilized the right-of-way; and

WHEREAS, the Council finds it to be in the public interest to abandon and vacate

the right-of-way described herein;

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

SECTION ONE. That the 0.632-acre right-of-way dedication within Lots 7-12, Block 93, Lots 1, 2, 5 and 6, the adjacent vacated 20-foot alley and the adjacent vacated right-of-way of West Kentucky Avenue, Block 109, all out of Original Town, City and County of Midland, Texas, as described in Exhibit "A" attached hereto and made a part hereof for all legal purposes, is hereby vacated and abandoned for all public purposes. Provided, however, that the City is hereby only abandoning the public interest in said property and this ordinance in no way affects any private easement or access easement which abutting property owners may have in said right-of-way.

SECTION TWO. That the fee for the cost of the right-of-way vacated and abandoned herein to the adjoining property owner is hereby waived.

SECTION THREE. That the City Secretary is hereby authorized and directed to file a certified copy of this Ordinance with the County Clerk of Midland County, Texas, for purposes of recording in the Official Records of Midland County, Texas.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the ____ day of _____, A.D., 2013; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the ____ day of _____, A.D., 2013, at a regular

meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS ____ day of _____, A.D., 2013.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

VACATED RIGHT OF WAY EXHIBIT 0.632 ACRE TRACT

INDIANA AVE. (80' ROW)

RECEIVED

APR - 9 2013

CITY OF MIDLAND
PLANNING DIVISION OFFICE



P.O.B.
N: 10,693,681.54
E: 1,755,346.91

S 89°36'11" W
30.00'

MARIENFELD ST (80' ROW)

S 00°23'49" E 477.00'

0.632 Ac; VOL. 763, PG. 528; D.R.M.C.T.

N 00°23'49" W 415.00'

ORIGINAL TOWN
VOL. 3, PG. 232
D.R.M.C.T.

20' ALLEY

BIG SPRING ST. (80' ROW)

60' WIDE VACATED RIGHT-OF-WAY
OF KENTUCKY ST.

N 61°42'42" W
25.00'

S 26°02'15" W
30.77'

S 53°10'45" W
80.00'

S 89°36'11" W 140.00'

ORIGINAL TOWN

20' ALLEY

N 00°23'49" W 85.00'

N 89°36'11" E 205.10'

W. FRONT ST. (VARIABLE R.O.W.)

CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C1	5690.08'	76.27'	76.27'	N 57°55'22" E	0°46'05"

NOTICE:

- COORDINATES, BEARINGS, DISTANCES AND AREAS SHOWN HEREON ARE LAMBERT GRID AND CONFORM TO THE "TEXAS COORDINATE SYSTEM", TEXAS CENTRAL ZONE, NORTH AMERICAN DATUM 1983.

WEST COMPANY

OF MIDLAND, INC.

ENGINEERS - PLANNERS -
SURVEYORS
REGISTRATION: FIRM 2184
110 W. LOUISIANA AVE.,
SUITE 110
MIDLAND, TEXAS 79701
(432) 687-0865 - FAX
(432) 687-0868

0' 60' 120'



SCALE 1" = 60'

I HEREBY CERTIFY THAT THIS PLAT WAS MADE FROM
NOTES TAKEN IN THE FIELD IN A BONA FIDE SURVEY MADE
UNDER MY SUPERVISION.

MARCUS L. HOSTAS TEXAS R.P.L.S. No. 5643
DATE SURVEYED JANUARY 25, 2013





April 15, 2013

Midland City Council
City of Midland, Texas

RE: Request for vacation of a 0.632-acre right-of-way dedication within Lots 7-12, Block 93, Lots 1, 2, 5 and 6, the adjacent vacated 20-foot alley and the adjacent vacated right-of-way of West Kentucky Avenue, Block 109, all out of Original Town Addition, City and County of Midland, Texas

Dear Members of the City Council:

The above-referenced property has been appraised in accordance with Chapter 272 of the Texas Local Government Code. The fair market value of the property is \$38,267.00.

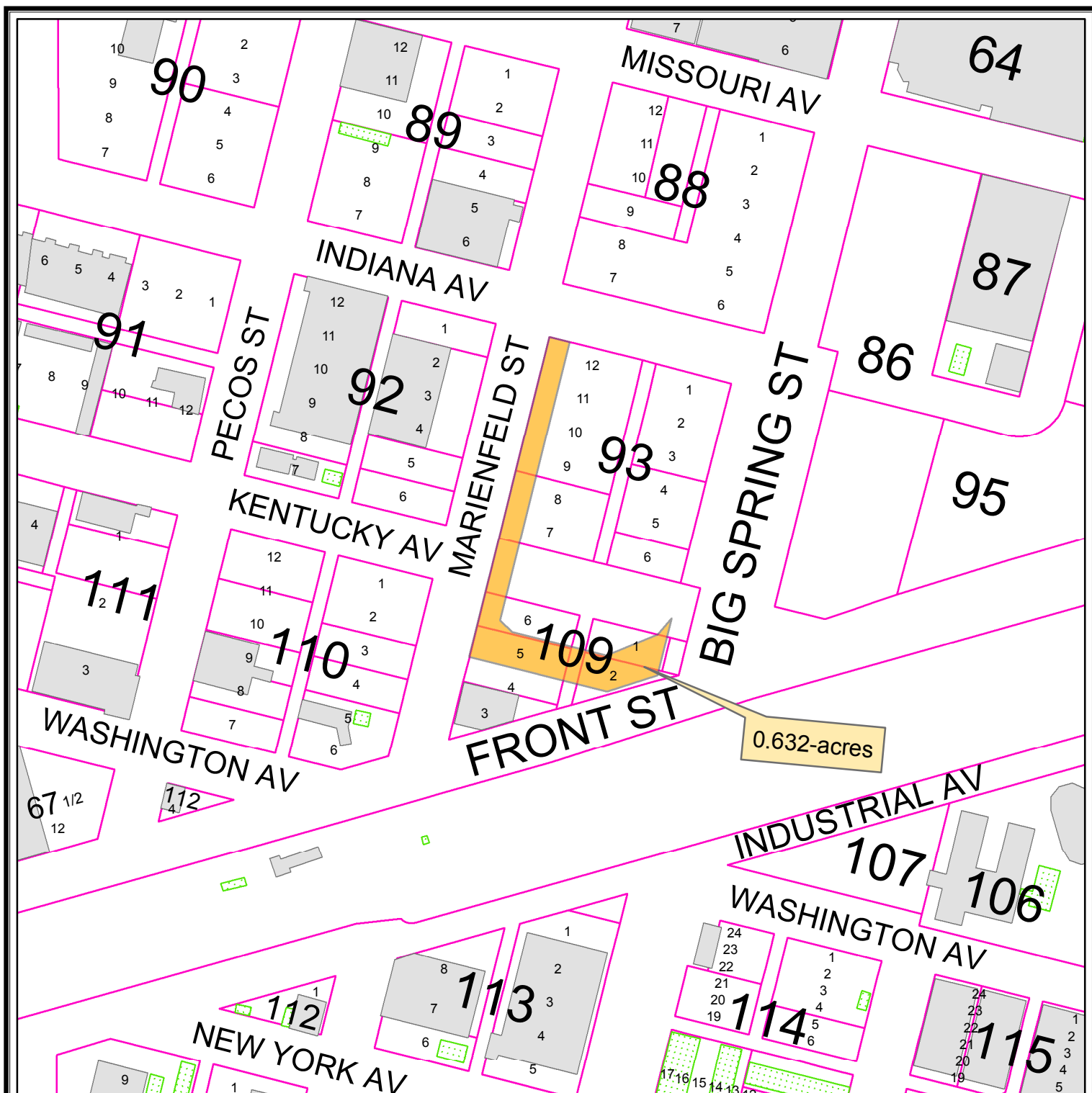
Very truly yours,

A handwritten signature in black ink that reads "Courtney Sharp". The signature is written in a cursive, flowing style.

Courtney Sharp
City Manager

Exhibit "B"

L:\Ordinances\Planning\Vacate & Abandon\2013\Original Town Addition Appraisal Letter.wpd



LOCATION MAP

P - 13 - 031

Scale: 1" = 200'

Consider a request for the vacation of a 0.632-acre right-of-way dedication contained within Lots 7 – 12, Block 93; Lots 1, 2, 5 and 6, the adjacent vacated 20 foot alley and the adjacent vacated right-of-way of W. Kentucky Avenue, Block 109, all out of Original Town, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- PARCEL
- PUBLIC BLDGS
- ACCESSORY BLDGS



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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: April 23, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Ken Van Dyne, Acting Planning Division Manager

SUBJECT: Consider an ordinance on second reading on a request by Richard Tatsch for a zone change from 1F-1, One-Family Dwelling District to PD, Planned District for a Housing Development. (Generally located at the southeast corner of N. "A" Street and Douglas Avenue.)

Purpose:

Consider an ordinance on second reading on a request by Richard Tatsch for a zone change from 1F-1, One-Family Dwelling District to PD, Planned District for a Housing Development. (Generally located at the southeast corner of N. "A" Street and Douglas Avenue.)

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to process this application.

Discussion:

Richard Tatsch wishes to construct 16 townhouses on this block. Generally, this would require a zone change to a TH District. However, given the size and shape of this land, the lot sizes will be 460 square feet below the minimum specified area. Further, the applicant desires to have rear entry garages exclusively. Both of these conditions are contained in the proposed ordinance. A preliminary plat has already received approval, conditioned upon approval of this rezoning request. Following a unanimous recommendation for approval by the Planning and Zoning Commission, the City Council approved this ordinance during a public hearing on April 9, 2013. This ordinance is now ready for consideration on second and final reading.

ORDINANCE NO. _____

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOTS 1-6, BLOCK 7, LANGFORD-WEATHERRED ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED 1F-1, ONE-FAMILY DWELLING DISTRICT, TO BE USED AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT (GENERALLY LOCATED ON THE SOUTHEAST CORNER OF NORTH “A” STREET AND DOUGLAS AVENUE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter and the State law with reference to the creation of “Planned Districts” under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by the creation of a PD, Planned District for a Housing Development, set out hereinafter and subject to the conditions and restrictions set out hereinafter;

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

SECTION ONE. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned 1F-1, One-Family Dwelling District, and it shall be used as a PD, Planned District for a Housing Development, said property being described as follows:

Lots 1-6, Block 7, Langford-Weatherred Addition, City and County of Midland, Texas.

SECTION TWO. That said property shall be subject to the following special

conditions and restrictions:

1. That the development of this property shall conform to the conditions of the TH, Townhouse District, except as otherwise stated below.
2. That the development of this property shall conform to the conditions shown on Exhibit "A", which is attached hereto and incorporated herein.
3. That the minimum lot width shall be 32 feet, the minimum lot depth shall be 95 feet, and the minimum lot area shall be 3,040 square feet. The minimum front yard setback shall be 10 feet.
4. That no driveway access shall be allowed from North "A" Street, Douglas Avenue or Club Drive. All driveway access shall be from the north/south alley.

SECTION THREE. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION FOUR. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FIVE. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION SIX. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SEVEN. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed

by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2013; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2013, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2013.

W. Wesley Perry, Mayor

ATTEST:

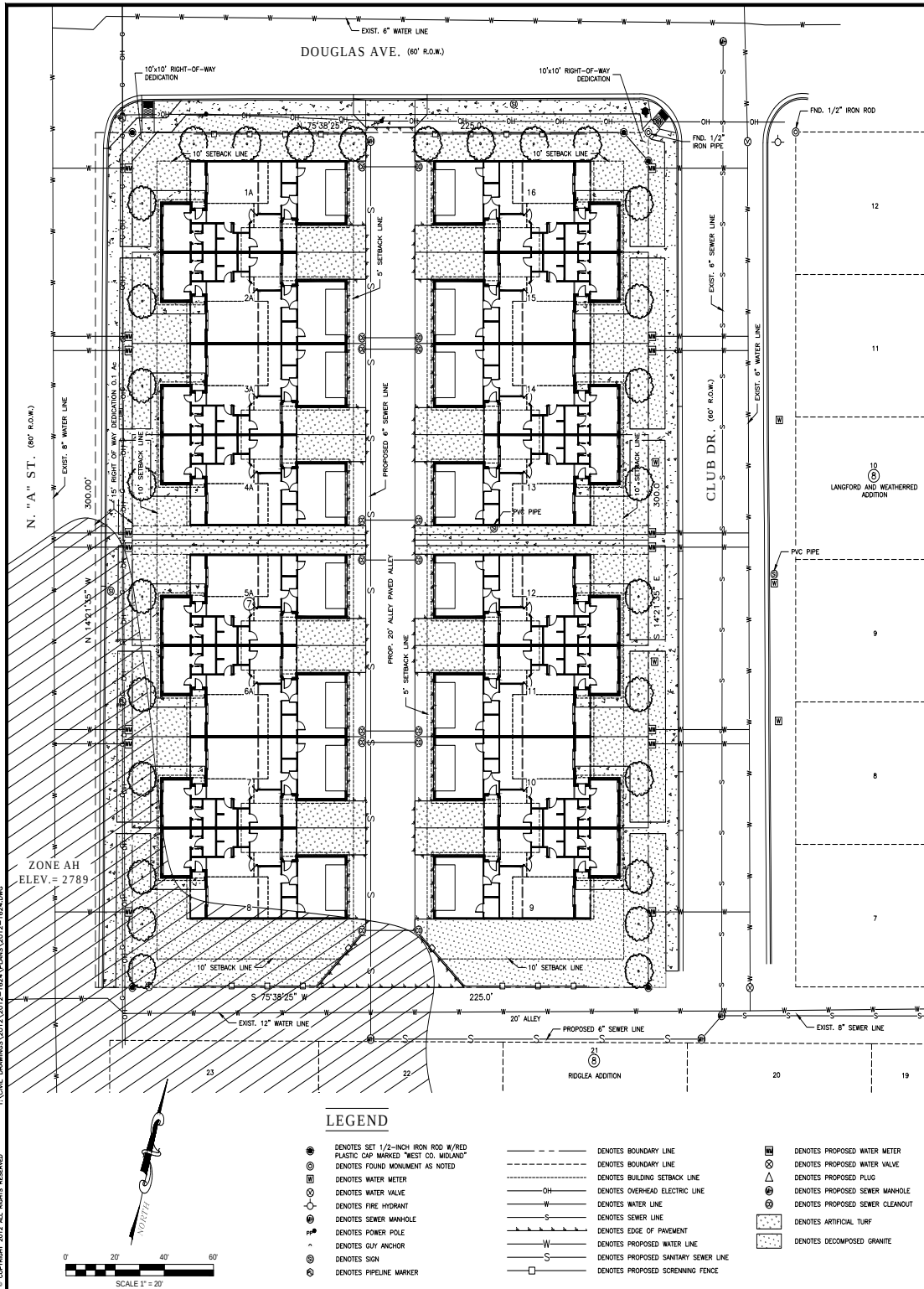
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



INGRESS & EGRESS

GARAGES AND DRIVEWAYS WILL BE AT THE REAR OF THE UNITS WITH ACCESS ONTO A 20' PAVED ALLEY CONNECTED TO DOUGLAS AVE.

LANDSCAPE PER LOT

- LOT AREA = 3,940 SF
- STRUCTURE FOOT PRINT AREA = 2,070 SF
- PROVIDED LANDSCAPE AREA = 655 SF

FIRE PROTECTION

AN EXISTING FIRE HYDRANT IS LOCATED AT THE SOUTHEAST CORNER OF DOUGLAS AVE. AND CLUB DR. INTERSECTION. CITY OF MIDLAND AND FIRE DEPARTMENT MAY REQUIRE ADDITIONAL FIRE HYDRANTS.

BUILDING SETBACKS

- 10 FEET BUILDING SETBACK DISTANCES FROM THE PROPERTY LINE WILL BE OBSERVED ALONG N. "A" ST., DOUGLAS AVE., CLUB DR., AND THE 20' ALLEY SOUTH OF THE SITE.
- 5 FEET BUILDING SETBACK DISTANCES FROM THE 20' ALLEY RIGHT-OF-WAY RUNNING NORTH AND SOUTH WITHIN THE SITE.

PARKING SPACES

- REQUIRED
- PER THE CITY OF MIDLAND'S PARKING REQUIREMENTS: 2 SPACES FOR EACH DWELLING UNIT.

- PROVIDED
- TWO-CAR GARAGE PER DWELLING UNIT.

PROPOSED SCREENING FENCE

A SCREENING SIX-FOOT TALL WOOD FENCE IS TO BE CONSTRUCTED BETWEEN THE TOWN HOUSES AND DOUGLAS AVE., AND IN THE NORTH SIDE OF THE SOUTH PROPERTY LINE.

DRAINAGE

ONSITE DETENTION WILL BE PROVIDED BY TWO PROPOSED BASINS AT THE SOUTH END OF THE SITE. DESIGNED IN COMPLIANCE WITH THE CITY OF MIDLAND STORM DRAINAGE DESIGN MANUAL.

SITE UTILITIES

NECESSARY UTILITIES ARE CURRENTLY IN PLACE.

SIDEWALKS

- FIVE-FOOT WIDE SIDEWALKS WILL BE CONSTRUCTED BEHIND EXISTING BACK OF CURB ALONG N. "A" ST., DOUGLAS AVE., AND CLUB DR. PROPERTY FRONTAGE.
- SHARED FOUR-FOOT WIDE SIDEWALKS WILL BE CONSTRUCTED TO ACCESS THE FRONTAGE OF TOWNHOUSES.

BUILDING HEIGHTS

A MAXIMUM BUILDING HEIGHT OF 38 FEET WILL BE OBSERVED.

TREE REQUIREMENTS

- 1 TREE FOR EVERY 30 L.F. STREET FRONTAGE
- 825 L.F. STREET FRONTAGE = 28 TREES
- PROVIDED = 28 TREES

FEMA FIRM INFORMATION

COMMUNITY NUMBER	PANEL NUMBER	SUFFIX	DATE OF FIRM	FIRM ZONE	BASE FLOOD ELEVATION
485477	BB	F	9/16/2005	X	n/a

FEMA FIRM ZONE AH

FLOOD DEPTHS OF 1 TO 3 FEET (USUALLY AREAS OF PONDING); BASE FLOOD ELEVATIONS DETERMINED

PLANNING AND ZONING COMMISSION

February 19, 2013

CASE: Z-13-004.

REQUEST: Hold a public hearing and consider a request for a zone change from 1F-1, One-Family Dwelling District to PD, Planned District for a Shopping Center.

APPLICANT/OWNER: Richard Tatsch.

REPRESENTATIVE: West Company of Midland.

LEGAL DESCRIPTION: Lots 1-6, Block 7, Langford-Weatherred.

LOCATION: Southeast corner of N. "A" Street and Douglass Avenue.

ASSOCIATED CASE: P-12-089.

DETAILS OF REQUEST:

1. The original Langford-Weatherred subdivision was approved in 1946, and established these six lots in a "double-fronting" condition; that is, there are streets on both ends of the lot. This lot design is no longer allowed. The applicant wishes to develop this vacant land with townhouses. He has submitted a preliminary plat that will dedicate a north-south alley and create two rows of lots, one facing N. "A" Street and one facing Club Drive. Before this development can be carried out, a zone change is needed. Based on the constraints of the size and shape of this property, the applicant has submitted a site plan, Exhibit A, with lots that are 32 feet wide and 95 feet deep, and contain 3,040 square feet. The TH District specifies a minimum lot width of 32 feet, a minimum lot depth of 100 feet and a minimum area of 3,500 square feet. The Subdivision Code allows the Planning and Zoning Commission to approve plats with lots that meet at least 90 percent of the minimum lot width, but the minimum lot width and area requirements must still be met. The lots in this planned district are 460 square feet smaller than the minimum area requirement.

SURROUNDING ZONING AND LAND USE:

2. This property is abuts N. "A" Street, which is classified as an arterial street. Bowie Elementary School is located west across N. "A" Street. The block to the north has six residential lots, but is developed with only one house. Farther north is the Fairview Cemetery. The land to the east is zoned 1F-2 District and is about 75 percent developed with single-family homes.

ANALYSIS:

3. There is no evidence of prior development on this property, such as old foundations, curb cuts or other debris. Since the proposed lots do not have 40 feet of frontage along the two abutting streets, rear entry garages are mandated by the Zoning Code. Removing potential driveways from N. "A" Street will enhance traffic safety, and minimize impacts to those homeowners on the east side of Club Drive.

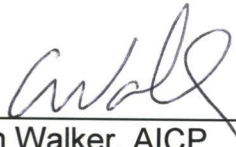
The attached Exhibit A illustrates the manner in which this property is planned to be developed. A total of 16 lots are planned, with a 10-foot public access easement located in mid-block. The applicant is proposing a 10-foot front yard setback, a 10-foot setback from the alley on the south property line, and a five-foot rear yard setback from the new north/south alley. The only proposed setback that conflicts with the TH District regulations is the front yard setback, which is a minimum of 20 feet. However, given the special circumstances of the unique size and shape of this property and the short block length, we find this proposal to be reasonable. As stated above, these lots are 460 square feet smaller than the minimum lot area. However, the associated plat is dedicating an additional 15 feet of right-of-way for N. "A" Street. If not for this dedication, the lots would meet the minimum area requirement. And without the additional right-of-way, public sidewalks could not be installed in N. "A" Street. Therefore, the staff has no objection to the slightly smaller lot sizes. A maximum building height of 38 feet is proposed, which is the maximum building height of all single-family residential districts. In conclusion, the staff finds that this is an innovative plan that allows the development of this unique property.

STAFF RECOMMENDATION:

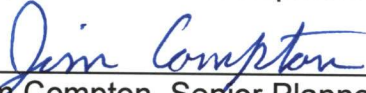
We recommend approval of this request for a zone change to PD, Planned District for a Housing Development, subject to the following conditions:

- A. That the development of this property shall conform to the conditions of the TH, Townhouse District, except as otherwise stated below.
- B. The development of this property shall conform to the conditions shown on the attached Exhibit A in all respects.

- C. That the minimum lot width shall be 32 feet, the minimum lot depth shall be 95 feet, and the minimum lot area shall be 3,400 square feet. The minimum front yard setback shall be 10 feet.
- D. No driveway access shall be allowed from N. "A" Street, Douglas Avenue or Club Drive. All driveway access shall be from the north/south alley.



Cameron Walker, AICP
Planning Division Manager
Department of Development Services



Jim Compton, Senior Planner
Department of Development Services

Attachments:

Application
Maps
Exhibit A

PLANNING AND ZONING COMMISSION MINUTES

February 19, 2013

3:30 p.m.

Z-13-004 - Hold a public hearing and consider a request by **Richard Tatsch** (Douglas Avenue) for a *zone change* from 1F-1, One-Family Dwelling District to PD, Planned District for Housing Development on Lots 1 through 6, Block 7, Langford-Weatherred Addition, City and County of Midland, Texas. (Generally located on the southeast corner of the intersection of N. "A" Street and Douglas Avenue.)

Andrew Mellen, 110 West Louisiana Ave, Midland, Texas, representing the applicant stated this would be a two story town home development across from Bowie Elementary. The homes would be connected with the capability of being two stories.

Jim Compton gave an overview of the request for zone change noting two letters of objection. Staff recommended approval subject to conditions A through D.

Chairman Watkins opened the public hearing.

Linda Wood, 1508 Club Dr., Midland, stated she strongly objected to the request as it would be her front yard and would hinder her entire life. She has lived there for eight years and there are a lot of school children who enter and walk through the alleys to get to where they live. She did not want to see two story housing and that there were going to be sixteen really shocked her as there were only three houses on the lots before. She stated she would hate to see this come into her area. She felt it was a real small area, a cul-de-sac that they were comfortable in. She strongly objected.

Marinda Diehl, 1505 Ridglea, Midland, stated she was not mailed a letter because she was out of the yard requirements. She stated there was no other way for the children to walk home from school and expressed concern on where they were going to put the vehicles. She felt the traffic would double and it would not be a good idea to fit sixteen houses across the street from Bowie Elementary. Ms. Diehl expressed concern about the safety of the children and she did not feel people were given adequate notice and the issue needed to be reconsidered. The parents at Bowie Elementary did not receive a letter because they were not within the yard zone and the notice was facing Douglas Street as opposed to facing A Street. She felt they need to be single family homes and it was a bad idea.

Blake Mendez 110 Rigma, stated he felt it was great something was happening in the lot but that he had concerns about the drainage issue due to it already flooding.

Douglas Page, 611 W. Estes, Midland stated traffic down Cemetery Road should be planned for a development like this because people were going to use it more. He stated the property was owned by Earl Rae West according to the City. It was his understanding the person who owned the property was the only person who could apply for zone change and perhaps the City was incorrect. According to the Midland Central Appraisal web site T&S Builders were the owners. He stated the developers were seriously interested in the neighborhood and that he was curious as to who owned the property and if it was being done correctly.

Mr. Walker stated the application was signed by Andrew Mellen who was authorized to represent the applicant. This was a legitimate application and was notarized.

Megan Morris, who stated she did not live in the area but that her niece attended Bowie Elementary and that she picked her up from school every day. She stated she saw many people cutting through an open lot going crazy. She felt people do not respect the property they rented and expressed concern about the kids cutting across to the dirt road which is not paved and has no sign. She felt it was going to be worse when they build and that there was no safety in the neighborhood.

Michelle Mayberry, 106 Dormard, Midland stated she understood what they were trying to say about the property but that according to the state of the economy, Midland was supposed to get 80,000 plus more people and that regardless one way or another there was going to be an increase in traffic. She felt there was a huge difference between a duplex and an apartment complex. She felt Midland was in dire need of apartments and housing period. She stated she understood children safety but that this was where you would speak to MISD. She felt this was a great project and was for all the housing we could get.

Marinda Diehl stated the Commission should go to the lot and look at the neighborhood to see where they felt they were going to fit sixteen homes. She felt you could look at duplexes differently but they depreciate the value of the neighborhood. She wondered if it was in fact the plan to push them out and sell the property to the cemetery.

Susan Vasques, 706 Douglas, Midland, stated she lived on a gravel road and there was a lot of traffic as people pick up their kids and turn onto her street. Every day she hears cars screeching from going too fast through the school zone. She felt with the traffic from these apartments there would be even more traffic. She agreed with single family dwellings and understood the need for more

housing for people but did not feel it would be safe for the kids or for the neighborhood and opposed it.

With no one else wishing to speak, Chairman Watkins closed the public hearing.

Richard Tatsch, 4717 Boulder Dr., Midland stated town homes are single home residences and that he was building them for sale not for rent. The bottom floor would have two bedrooms and two baths and would be priced at approximately \$169,000. He stated the same townhome under the existing roof line could add an upstairs. That second story would stack under the roof which would not change and all would be under the roofline. The townhomes would all have enclosed two car garages. He felt this would be an improvement as they would install a public access walkway. Mr. Tatsch stated he saw nothing but improvement and was not trying to reinvent the wheel.

With no one else wishing to speak, Chairman Watkins closed the public hearing.

After further discussion a motion for approval for the request for zone change subject to conditions A through D was made by Commissioner Ivey; seconded by Commissioner Gatten. The motion carried by the following vote: AYE: Watkins, Norris, Hotchkiss, Wolf, Lanning, Ivey and Gatten. NAY: None. ABSTAIN: None. ABSENT: Wilton and York

Case Number: 2-13-004

CITY OF MIDLAND
Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

ANDREW MELLEN, P.E. (432) 682-0588 - andrew@team-west.com
Applicant Name (Phone/e-mail)

110 W. LOUISIANA AVENUE, STE 250, MIDLAND, TX 79701
Address Zip Code

RICHARD TATSCH (432) 853-5573 tatschr@gmail.com
Property Owner Name (Phone/e-mail)

1308 S. MIDKIFF, STE. 137, MIDLAND, TX 79701
Address Zip Code

ANDREW MELLEN, P.E. SAME AS ABOVE
Representative Name (Phone/e-mail)

SAME AS ABOVE
Address Zip Code

Street address and Legal Description of property (complete Lot, Block, and Subdivision Name or if unplatted, attach a Metes and Bounds description with surveyor's seal). Each district must be described separately. LANGFORD AND WEATHERED ADDITION, SECTION 2, AND LESS THE WEST 0.1 ACRE, LANGFORD AND WEATHERED ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS

PRESENT ZONE: 1F1 REQUESTED ZONE: PDHD

(List by tracts if more than one district is requested)

Reason for Zone Change Request: PROPOSED ATTACHED TOWNHOMES WITH 32' WIDE LOTS. LOT DEPTH IS LESS THAN 100', AND LOT SQUARE FOOTAGE IS LESS THAN 3,500 SF.

Present Use of Property: VACANT

Proposed Use of Property: ATTACHED TOWNHOMES

How will zone change affect the public health, safety and welfare? PROPOSED TOWNHOMES WILL HELP RELIEVE THE CURRENT HIGH DEMAND FOR AFFORDABLE FAMILY HOUSING.

Describe how conditions affecting the property have changed since present zoning designation:
N/A

Is a Specific Use Permit with Term for alcoholic beverages sales needed? Yes X No

APPLICATION FEES:

- Single, standard zone change: **\$400**. Multiple, standard zone change: add **\$100** per additional district.
- Single PD, Planned District zone change: **\$550** Multiple PD proposal: add **\$100** per district.
- If a Traffic Impact Analysis is required, a fee of up to \$500.00 will be assessed.

SITE PLAN SUBMITTALS (if applicable):

16 copies (FOLDED) of the PD site plan:

X

Site Plan in digital format .pdf and .jpg:

X

SIGNATURE (by property owner only - authorized agent must sign affidavit below)

Property Owner (signature): _____ Date: _____

If an Agent is authorized by the property owner to file and execute the application on behalf of the property owner, the Agent must complete the affidavit below.

STATE of TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared

Andrew L. Mellen who, being by me duly sworn, upon oath says: That (s)he is authorized by Richard Tatsch, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

[Signature]

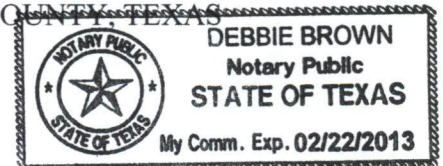
Authorized Agent (signature)

Subscribed and sworn to before me, this 14th day of January, 20 13, to certify which witness my hand and seal of office.

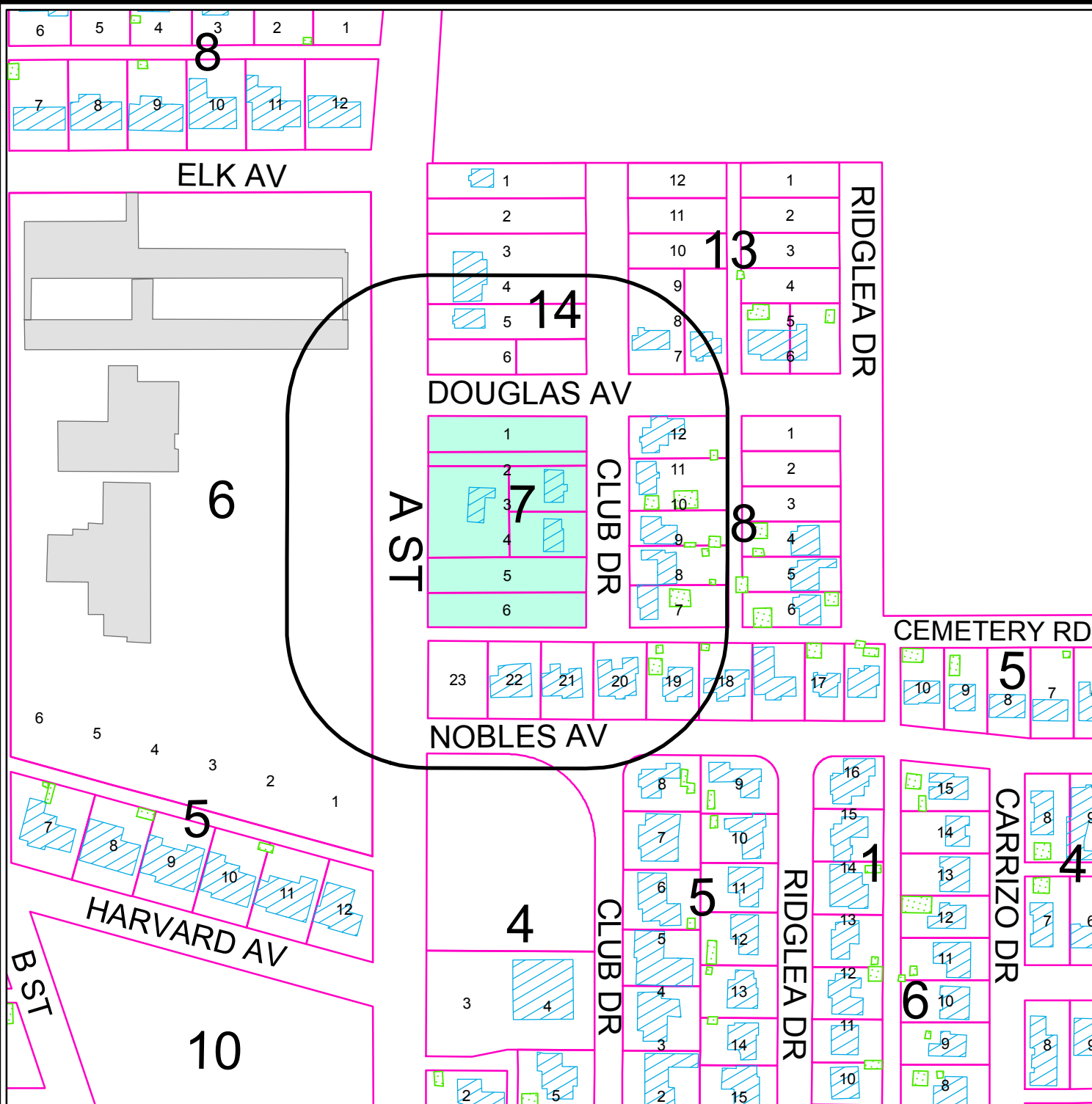
[Signature]

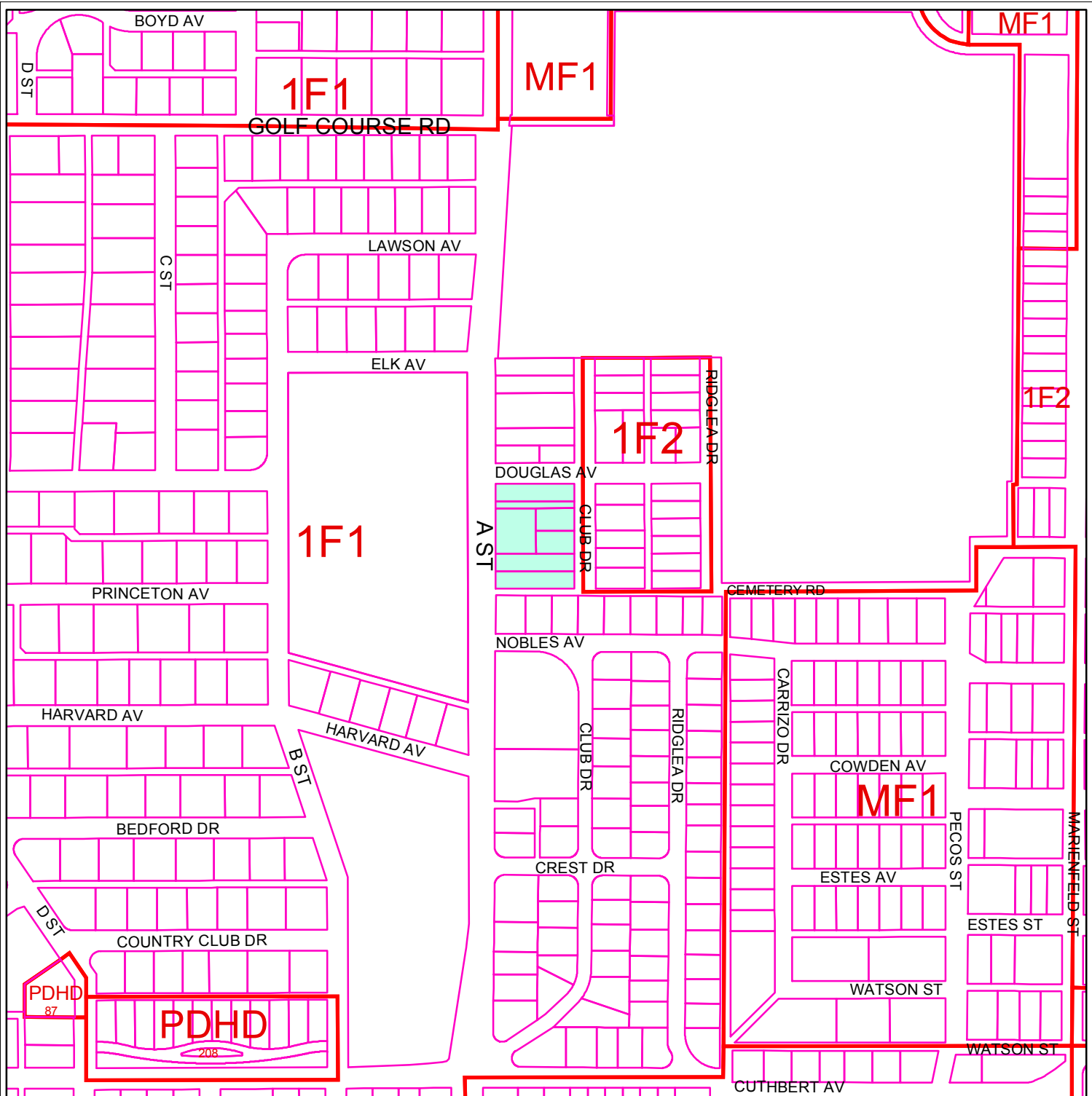
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: <u>RS</u>	Date: <u>1/14/13</u>
Assigned: <u>JC</u>	
For: <u>Pt2</u>	On: <u>2/19/13</u>



****Application will not be considered for scheduling until reviewed by a planner.****





ZONING MAP

Z - 13 - 004

Scale: 1" = 400'

Consider a request for a zone change from 1F-1, One Family Dwelling District to PD, Planned District for Housing Development on Lots 1 thru 6, Block 7, Langford-Weatherred Addition, City and County of Midland, Texas.

LEGEND

ZONING PARCELS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 02	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: May 14, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Ken VanDyne, Acting Planning Division Manager

SUBJECT: Hold a public hearing at approximately 10:30 a.m. and consider an ordinance on a request by Michael Postar for a zone change from LR-1, Local Retail District, and MF-1, Multi Family Dwelling District to a PD, Planned District for a Shopping Center. (Generally located on the southwest corner of the intersection of E. Scharbauer Drive and N. Fairgrounds Road.)

Purpose: Hold a public hearing at approximately 10:30 a.m. and consider an ordinance on a request by Michael Postar for a zone change from LR-1, Local Retail District, and MF-1, Multi Family Dwelling District to a PD, Planned District for a Shopping Center.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to process this request.

Discussion:

This property is presently zoned MF-1, Multi-Family Dwelling District, and LR-1, Local Retail District. The applicant wishes to develop a storage unit facility located off of Scharbauer Drive and Fairgrounds Road, and is requesting a zone change to a PD, Planned District for a Shopping Center. The underlying zoning for the PD would become LR-2, Local Retail District. Storage unit facilities are not allowed in the LR-2 District by right, and would require the use of a planned district and the adoption of a site plan. The purpose of this application is to rezone the property to a Planned District, to permit the use of a storage unit facility, and adopt a site plan. Staff recommends approval of this request for a zone change from MF-1, Multi-Family Dwelling District, and LR-1, Local Retail District to PD, Planned District for a Shopping Center.

Attachments: Exhibits A, B, and C

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOT 1, BLOCK 10, LOT 15, BLOCK 11, AND THE ADJACENT VACATED 0.23-ACRE ALLEY RIGHT-OF-WAY, ALL OUT OF TRUELAND ADDITION, SECTION 2, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED LR-1, LOCAL RETAIL DISTRICT, IN PART, AND MF-1, MULTIPLE-FAMILY DWELLING DISTRICT, IN PART, TO BE USED AS A PD, PLANNED DISTRICT FOR A SHOPPING CENTER (GENERALLY LOCATED ON THE SOUTHWEST CORNER OF THE INTERSECTION OF EAST SCHARBAUER DRIVE AND NORTH FAIRGROUNDS ROAD); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter and the State law with reference to the creation of “Planned Districts” under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by the creation of a Planned District for a Shopping Center, set out hereinafter and subject to the conditions and restrictions set out hereinafter;

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

SECTION ONE. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned LR-1, Local Retail District, in part, and MF-1, Multiple-Family Dwelling District, in part, and it shall be used

as a Planned District for a Shopping Center, subject to the special conditions and restrictions hereinafter set out, said property being described as follows:

Lot 1, Block 10, Lot 15, Block 11, and the adjacent vacated 0.23-acre alley right-of-way, all out of Trueland 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 this planned district shall be subject to the regulations of the LR-2, Local Retail District.
2. That a storage unit facility shall be a permitted use within this planned district.
3. That the development of this planned district shall conform to Exhibits "A", "B" and "C", which are attached hereto and incorporated herein.
4. That the site plan shall meet all requirements of the Fire Marshal.
5. That the development of this planned district shall conform to all applicable Midland City Code regulations, including but not limited to building, landscaping and signage regulations.
6. That any future change(s) to this planned district shall be in the same manner as that required for an amended planned district.

SECTION THREE. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION FOUR. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FIVE. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more

sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION SIX. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SEVEN. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the ____ day of _____, A.D., 2013; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the ____ day of _____, A.D., 2013, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS ____ day of _____, A.D., 2013.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney





PLANNING AND ZONING COMMISSION

April 15, 2013

CASE: Z-12-032

REQUEST: Hold a public hearing and consider a request for a zone change from MF-1, Multi-Family District, and a LR-1, Local Retail District to a PD, Planned District for a Shopping Center.

APPLICANT/OWNER: Michael Postar.

LEGAL DESCRIPTION: Lot 1, Block 10 and Lot 15 Block 11, and the to be vacated 0.23 acre alley right-of-way, all out of Trueland Addition, Section 2, City and County of Midland, Texas.

LOCATION: Generally located on the southwest corner of the intersection of E. Scharbauer Drive and N. Fairgrounds Road.

CURRENT ZONING: MF-1, Multi-Family Dwelling District, LR-1, Local Retail District.

ASSOCIATED CASE: P-12-067.

DETAILS OF REQUEST:

1. The applicant plans to develop a storage unit facility on the above described tract of land. The property is currently zoned MF-1, Multi-Family Dwelling District, and LR-1, Local Retail District. The applicant is requesting to rezone this property to a Planned District for a Shopping Center, with an underlying zoning of LR-2, Local Retail District. The use of a Planned District satisfies the code's requirement for site plan approval and architectural control as required by the Midland City Code.

SURROUNDING ZONING AND LAND USE:

2. This property has frontage along Scharbauer Drive and Fairgrounds Road. Immediately north and west of this property is a large 2F, Two Family Dwelling District, and to the south of this property is a large 1F-2, Single Family Dwelling District. East of this property is a large LR-1, Local Retail District, and to the southeast is a large MF-1, Multi-Family Dwelling District.

ANALYSIS:

3. The applicant's request to rezone this property is to allow for the future development of storage units. The 2F zoned district to the north of this property is separated from this property by approximately 120 feet of right-of-way, and the 1F-2 zone district to the south is separated from this property by Scharbauer Draw (approximately 220 feet of right-of-way). Staff finds the amount of right-of-way buffering the proposed use from the surrounding residential use to be acceptable. The applicant's Exhibit A illustrates a solid wood screen fence on the rear of the property. A 30 foot freestanding sign is also located along Fairgrounds Road. The screening

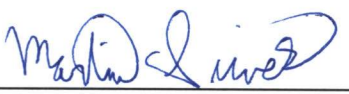
wall along Scharbauer Drive will completely consist of brick finish. Entry and access to the property will be from both Scharbauer Drive and Fairgrounds Road. Landscaping will comply with the City's landscape ordinance.

STAFF RECOMMENDATION:

Staff recommends approval of this request for a zone change from MF-1, Multi-Family Dwelling District and LR-1, Local Retail District, to a PDSC, Planned District for a Shopping Center subject to the below conditions.

1. The Planned District will be subject to regulations of the LR-2 District, except as stated below.
2. That storage units shall be a permitted use with this district
3. That the proposed development significantly conforms to the attached exhibits A, B, and C.
4. That the proposed site plan meet all requirements by the Fire Marshall's Office.
5. The proposed development must meet all building code requirements.
6. The proposed development will meet the requirements of the City of Midland Landscape code.


Ken VanDyne
Acting Planning Division Manager
Department of Development Services


Martin Siwek, City Planner
Department of Development Services

Attachments:

Application
Maps
Exhibits A, B, and C

Case Number: Z-12-032

CITY OF MIDLAND
Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

Michael POSTAR 806-789-6087 POSTAR@DOR.NET
Applicant Name (Phone/e-mail)
3110 FRANK FORD AVE LUBBOCK TX 79407
Address Zip Code
Michael POSTAR - 11 Sand 11 POSTAR@DOR.NET
Property Owner Name (Phone/e-mail)
3110 - FRANK FORD AVE LUBBOCK TX 79407
Address Zip Code
Michael POSTAR 11 Sand 11
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. 2107 N. FAIRGROVES ROAD
TRINIDAD ADDITION SECTION 3
LOT 1, Block 16 and LOT 15 Block 11.

PRESENT ZONE: LR-1 MF-1 REQUESTED ZONE: PD
(List by tracts if more than one district is requested)
Reason for Zone Change Request: Zones for a self storage

Present Use of Property: VACANT LAND

Proposed Use of Property: Self Storage

How will zone change affect the public health, safety and welfare? IT WILL CLEAN UP AND WILL IMPROVE THE NEIGHBORHOOD.

Describe how conditions affecting the property have changed since present zoning designation: THE CURRENT LAND HAS HOMELESS PEOPLE & VAGRANTS ON THE LAND. IT WILL HAVE A SECURE STORAGE THAT LOOKS GREAT.

Is a Specific Use Permit with Term for alcoholic beverages sales needed? Yes ☒ No

Already Paid (an that has changes is that we are the current owners.)

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): Amelinda [Signature] Date: 3/3/13

If an Agent is authorized by the property owner to file and execute the application on behalf of the property owner, the Agent must complete the affidavit below.

STATE of TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared

_____ who, being by me duly sworn, upon oath says: That (s)he is authorized by _____, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

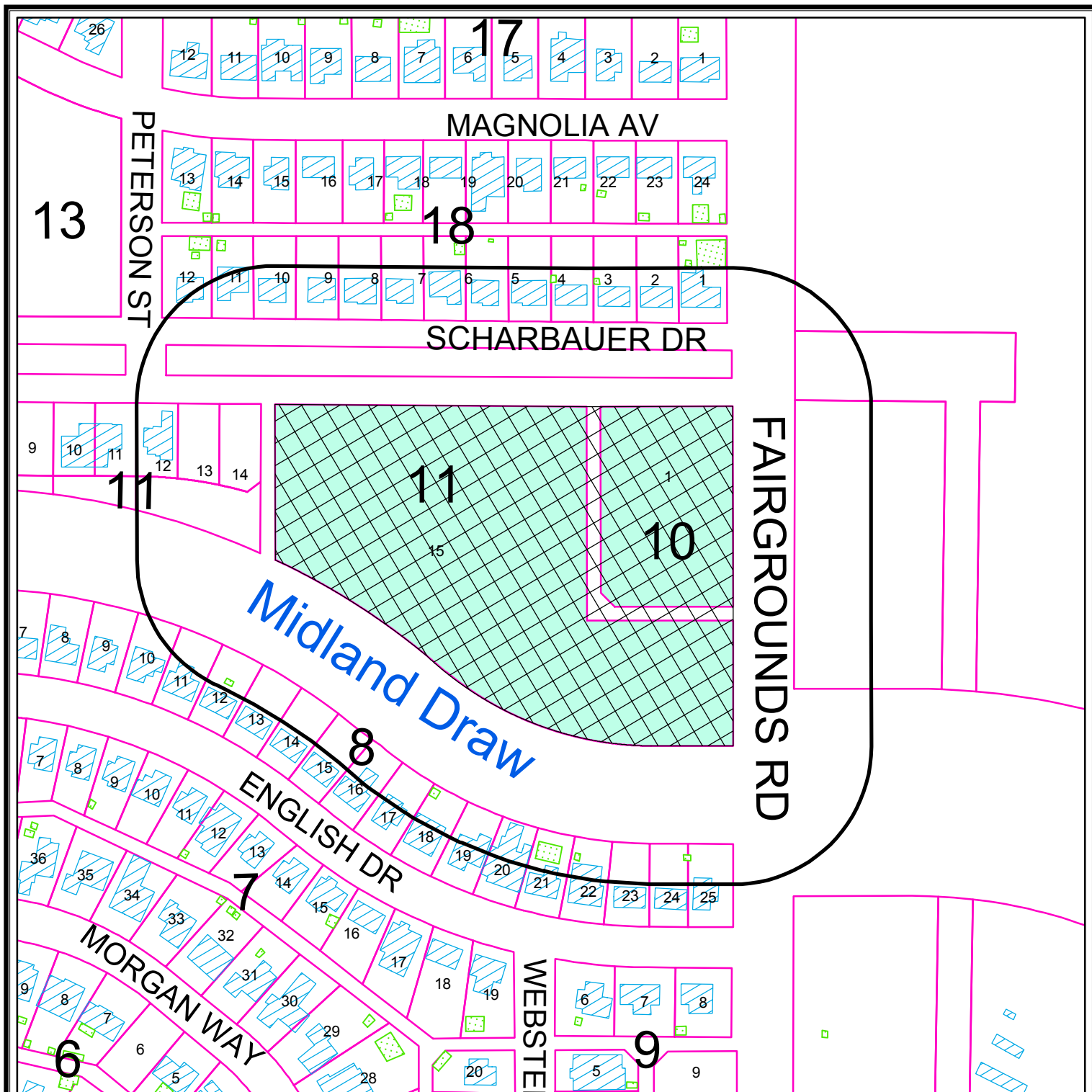
Authorized Agent (signature)

Subscribed and sworn to before me, this _____ day of _____, 20 __, to certify which witness my hand and seal of office.

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: <u>[Signature]</u>	Date: <u>3/5/13</u>
Assigned: <u>MS</u>	
For: <u>4/15/13</u>	On: <u>PRZ</u>

****Application will not be considered for scheduling until reviewed by a planner.****



PROPERTY OWNER NOTIFICATION MAP

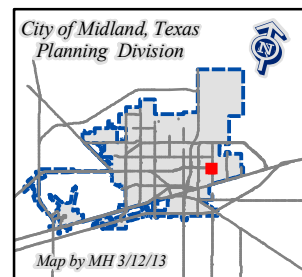
Z - 12 - 032

Scale: 1" = 200'

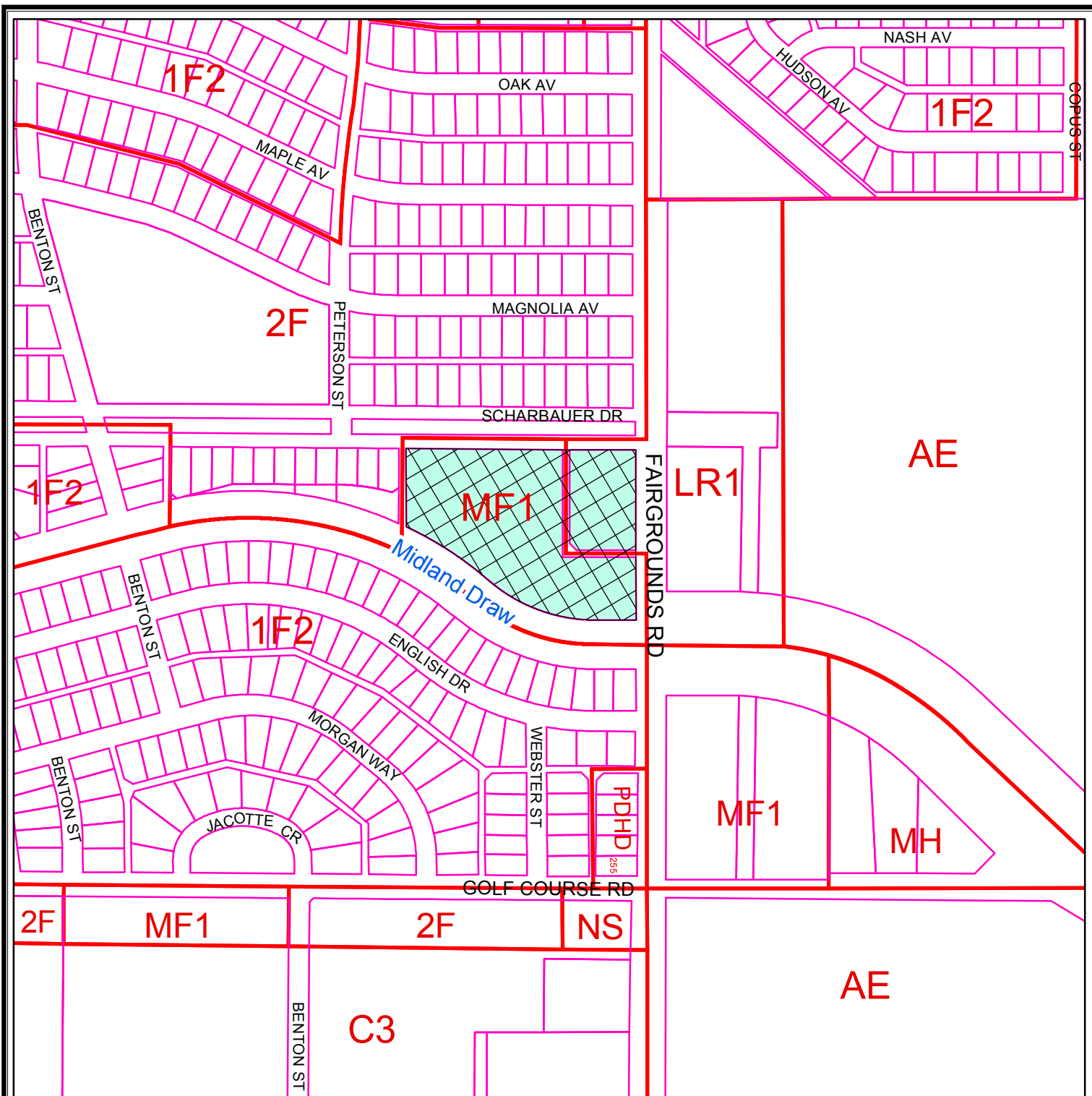
Consider a request for a zone change from LR-1, Local Retail District on Lot 1, Block 10 and from MF-1, Multiple Family Dwelling District on Lot 15, Block 11, and the to be vacated 0.23-acre alley right-of-way, to PD, Planned District for a Shopping Center, all out of Trueland Addition, Section 2, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- PARCEL
- PRIVATE BLDGS
- ACCESSORY BLDGS



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ZONING MAP

Z - 12 - 032

Scale: 1" = 400'

Consider a request for a zone change from LR-1, Local Retail District on Lot 1, Block 10 and from MF-1, Multiple Family Dwelling District on Lot 15, Block 11, and the to be vacated 0.23-acre alley right-of-way, to PD, Planned District for a Shopping Center, all out of Trueland 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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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: May 14, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Ken VanDyne, Acting Planning Division Manager

SUBJECT: Hold a public hearing at approximately 10:33 a.m. and consider an resolution approving a variance from the Subdivision Code pertaining to the requirement for the paving of an alley for rear entry access for a property owner. (Generally located on the north side of Country Club Drive, approximately 270 feet west of N. "G" Street.

Purpose: Hold a public hearing at approximately 10:33 a.m. and consider an resolution approving a variance from the Subdivision Code pertaining to the requirement for the paving of an alley for rear entry access for a property owner.

Recommended City Council Action

☐ Approve

☒ Deny

☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to process this application.

Discussion:

The applicant is requesting a variance from Chapter 11-2-5 of the Subdivision Code pertaining to the requirement to pave an alley to allow for rear entry access to their property. The Subdivision Code denotes that a list of conditions must be met in each of their entirety to approve a variance. The applicant's request failed to prove any hardship as required in Condition B

B) Because of the particular physical surroundings, shape or topographical nature of the land, the conditions upon which the request for a variance is based are unique to the property for which the variance is sought and are neither applicable generally to other property nor are created by the owner. Because of these unique circumstances, strict application of these regulations would result in a particular hardship to the owner, as distinguished from mere inconvenience, conflict with the owner's preference, or interference with ability to maximize profits.

Staff had recommended the denial of the applicant's request to the P&Z Commission as it violates the paving provision of the City's Subdivision Regulations. Despite any potential neighborhood acceptance the nature of a variance is to make a request to be exempt from an established code. Planning staff cautions that approval runs the risk of setting precedence in other neighborhoods. Further, the request does not satisfy all conditions per the Subdivision Chapter Regulations to grant the variance. However, P&Z did approve this variance a split 5-4 vote on April 15, 2013.

RESOLUTION NO. _____

**RESOLUTION GRANTING A VARIANCE FOR THE
EAST 1/3 OF LOT 9, ALL OF LOT 10 AND THE WEST
2/5 OF LOT 11, BLOCK 14, NORTH PARK HILL
ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS
(GENERALLY LOCATED ON THE NORTH SIDE OF
COUNTRY CLUB DRIVE, APPROXIMATELY 270 FEET
WEST OF NORTH "G" STREET), BY PERMITTING
ACCESS TO SAID PROPERTY FROM AN UNPAVED
ALLEY WHICH DOES NOT CONFORM TO CITY OF
MIDLAND STANDARD SPECIFICATIONS**

WHEREAS, the owner of the property described herein has applied for a variance to allow for access from an unpaved alley that does not conform to City of Midland standard specifications; and

WHEREAS, the City Council finds the granting of the variance will not be detrimental to the public safety, health, or welfare or injurious to other property; and

WHEREAS, the City Council finds because of the particular physical surroundings, shape or topographical nature of the land, the conditions upon which the request for the variance is based are unique to the property for which the variance is sought and are neither applicable generally to other property nor are created by the owner; because of these unique circumstances, strict application of these regulations would result in a particular hardship to the owner, as distinguished from mere inconvenience, conflict with the owner's preference, or interfere with the ability to maximize profits; and

WHEREAS, the City Council finds the variance will not in any manner vary the provisions of Title XI, Chapter 1 of the Midland City Code, as amended, or the comprehensive plan, except that those documents may be amended in the manner prescribed by law; and

WHEREAS, the City Council finds the variance will not have the effect of preventing the orderly subdivision of other land in the area in accordance with the provisions of this Title XII, Chapter 2 of the Midland City Code;

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

THAT a variance is hereby granted for the property described as the east 1/3 of Lot 9, all of Lot 10 and the west 2/5 of Lot 11, Block 14, North Park Hill Addition, City and County of Midland, Texas. Said variance shall allow for access from an unpaved alley that does not conform to City of Midland standard specifications.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

CASE #: E-13-001

CITY OF MIDLAND

Planning Division

SPECIAL EXCEPTION APPLICATION

Kathrine & Clint Williamson 1410 County Club Dr. 79701
 NAME OF APPLICANT ADDRESS ZIP PHONE 432-247-1519

same
 OWNER OF PROPERTY ADDRESS ZIP PHONE

NOTE: ATTACH SITE PLAN (FOLDED) ☒ APPLICATION FEE: \$400.00 ☒

ADDRESS AND LEGAL DESCRIPTION OF PROPERTY FOR WHICH APPLICATION IS MADE: (COMPLETE LOT AND BLOCK DESCRIPTION OR IF NOT A LOT IN A RECORDED PLAT, ATTACH A METES AND BOUNDS DESCRIPTION)

attached

ZONING OF PROPERTY: _____

THE PROPERTY QUALIFIES AS AN EXCEPTION TO THE CITY CODE BECAUSE:

- ☐ a. IT IS AN EXPANSION OF A NONCONFORMING USE
☒ b. EXISTENCE OF NONCONFORMING STRUCTURES IN AREA
☒ c. ARCHITECTURAL OR OTHER PROJECTIONS OF A MINOR EXTENT

Kathrine Williamson 3/12/13
 PROPERTY OWNER DATE BY: _____
 (IF APPLICABLE-SEE NOTE)

NOTE: IF PROPERTY OWNER IS TO BE REPRESENTED BY AUTHORIZED AGENT, THE AGENT SHOULD SIGN THE PROPERTY OWNER AND HIS OWN NAME ON THE LINE PROVIDED ABOVE AND COMPLETE THE AFFIDAVIT BELOW.

State of Texas)
 County of Midland)

Before me, the undersigned authority, on this day personally appeared _____ who, being duly sworn, upon oath says: That he is authorized by _____, the owner of the above described property, to fully represent him in this application and that he has the legal right, power and authority to sign said owner's name hereto as his attorney in fact.

Signature of Affiant

Subscribed and sworn to before me, by the said _____ this _____ day of _____, 20____, to certify which witness my hand and seal of office.

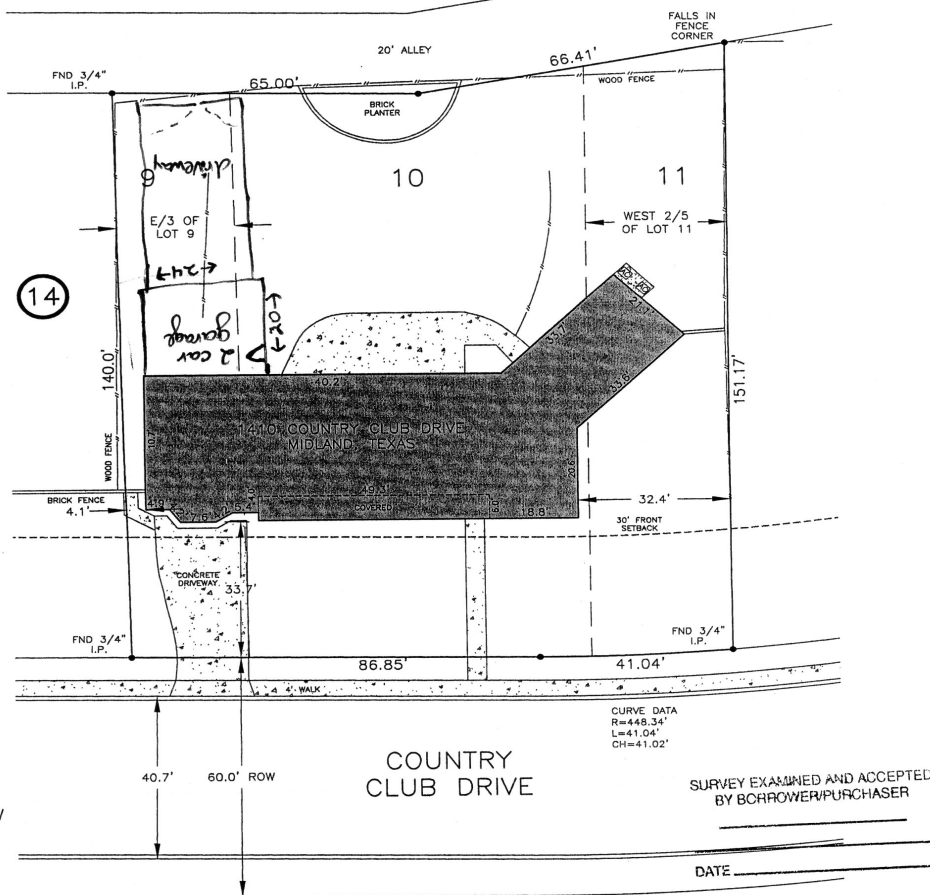
 Notary Public, Midland County, Texas

****Application will not be considered for scheduling until reviewed by a planner.****

FOR OFFICE USE ONLY

Rec'd By: PS Date: 3/13/13
 Assigned: MS
 For: P+Z On: 4/15/13

(revised 5/2/11)

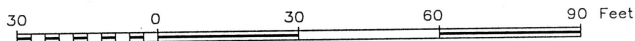


SURVEY EXAMINED AND ACCEPTED
BY BORROWER/PURCHASER

DATE _____

PLAT OF

THE WEST 2/5 OF LOT ELEVEN (11),
ALL OF LOT TEN (10) AND
THE EAST 1/3 OF LOT NINE (9),
BLOCK FOURTEEN (14), NORTH PARK HILL ADDITION,
AN ADDITION TO THE CITY OF MIDLAND,
MIDLAND COUNTY, TEXAS



SURVEY PLAT FOR: SANTA ANA, LLC
TO LIEN HOLDER ISSUING THE INSURANCE UNDERWRITER
THIS SURVEY PLAT IS PROVIDED SOLELY FOR THIS TRANSACTION
PLAT IS COPYRIGHTED AND SHALL NOT BE USED FOR ANY OTHER
TRANSACTION.

FILED IN CABINET D, PAGE 179, PLAT RECORDS, MIDLAND COUNTY, TEXAS.
THIS PROPERTY LIES WITHIN ZONE "X" AS SHOWN BY THE FEDERAL EMERGENCY
MANAGEMENT AGENCY FEDERAL INSURANCE ADMINISTRATION MAP COMMUNITY PANEL
48329C0088 F. DATED SEPTEMBER 16, 2005.

THE UNDERSIGNED HEREBY CERTIFIES THAT THIS SURVEY
WAS MADE ON THE GROUND OF THE PROPERTY LEGALLY
DESCRIBED HEREON AND IS CORRECT, AND THAT THERE
ARE NO VISIBLE DISCREPANCIES, CONFLICTS, SHORTAGES
IN AREA BOUNDARY LINE CONFLICTS, ENCROACHMENTS,
OVERLAPPING OF IMPROVEMENTS, VISIBLE EASEMENTS OR
RIGHTS OF WAY, EXCEPT AS SHOWN HEREON, AND THIS
SAID PROPERTY HAS ACCESS TO AND FROM A DEDICATED
ROADWAY AS SHOWN.



Michael L. McBrayer
REGISTERED PROFESSIONAL LAND SURVEYOR

Stored: 12112263

BRADSHAW AND ASSOCIATES, INC.
CONSULTING ENGINEERS
REGISTERED PROFESSIONAL LAND SURVEYORS
4400 N. BIG SPRING SUITE A-8
MIDLAND, TEXAS 79705
(432) 682-4400 FAX (432) 682-7997

	Drawn	Chkd	Surveyed
By	DEH/DS	MLM	NB/LD
Date	11-19-12	11-19-12	11-13-12

CASE NO. E-13001

PLANNING AND ZONING COMMISSION

April 15, 2013

CASE: E-13-001

REQUEST: Special Exception to the Subdivision Code concerning a variance for the required paving of an alley.

APPLICANT/OWNER: Katherine Williamson & Clint Williamson

LEGAL DESCRIPTION: East 1/3 of Lot 9, all of lot 10 and the west 2/5 of Lot 11, Block 14, North Park Hill Addition, City and County of Midland, Texas.

LOCATION: Generally located on the north side of Country Club Drive, approximately 270 feet west of N. G Street.

CURRENT ZONING: 1F-1, Single Family Dwelling District.

DETAILS OF REQUEST:

1. The applicant is requesting a special exception from the subdivision code concerning a variance for the paving requirement of an alley for rear entry access. The applicant's property currently has front entry to their home, and wishes to add rear entry access. Chapter 11-2-5 of the City's subdivision code states "Alleys shall be improved according to the City of Midland standard specifications. An alley shall not provide access to vehicle garages, carports, or parking areas or business loading areas unless it has been constructed with a paved surface, conforming to said standard specifications, to an appropriate point of access to the street system as determined by the City engineer..."

SURROUNDING ZONING AND LAND USE:

2. The property is currently located in a large 1F-1, Single Family Dwelling District at 1410 Country Club Dr. This property is located within the North Park Hill Addition subdivision.

ANALYSIS:

3. The applicant is requesting rear entry access to their property from an alley without satisfying the paving requirement of the City's subdivision regulations. In order to approve this request the City's Subdivision Regulations state that the Planning and Zoning Commission shall not approve variances unless it shall make findings based upon the evidence presented to it in each specific case that:

- a. The granting of the variance will not be detrimental to the public safety, health, or welfare or injurious to other property.
- b. Because of the particular physical surroundings, shape or topographical nature of the land, the conditions upon which the request for a variance is based are unique to the property for which the variance is sought and are neither applicable generally to other property nor are created by the owner. Because of these unique circumstances, strict application of these regulations would result in a particular hardship to the owner, as distinguished from mere inconvenience, conflict with the owner's preference, or interference with ability to maximize profits.
- c. The variance will not in any manner vary the provisions of Title XI, Chapter 1 of the Midland City Code, as amended, or comprehensive plan, except that those documents may be amended in the manner prescribed by law.
- d. The variance will not have the effect of preventing the orderly subdivision of other land in the area in accordance with the provisions of this Chapter.

STAFF RECOMMENDATION:

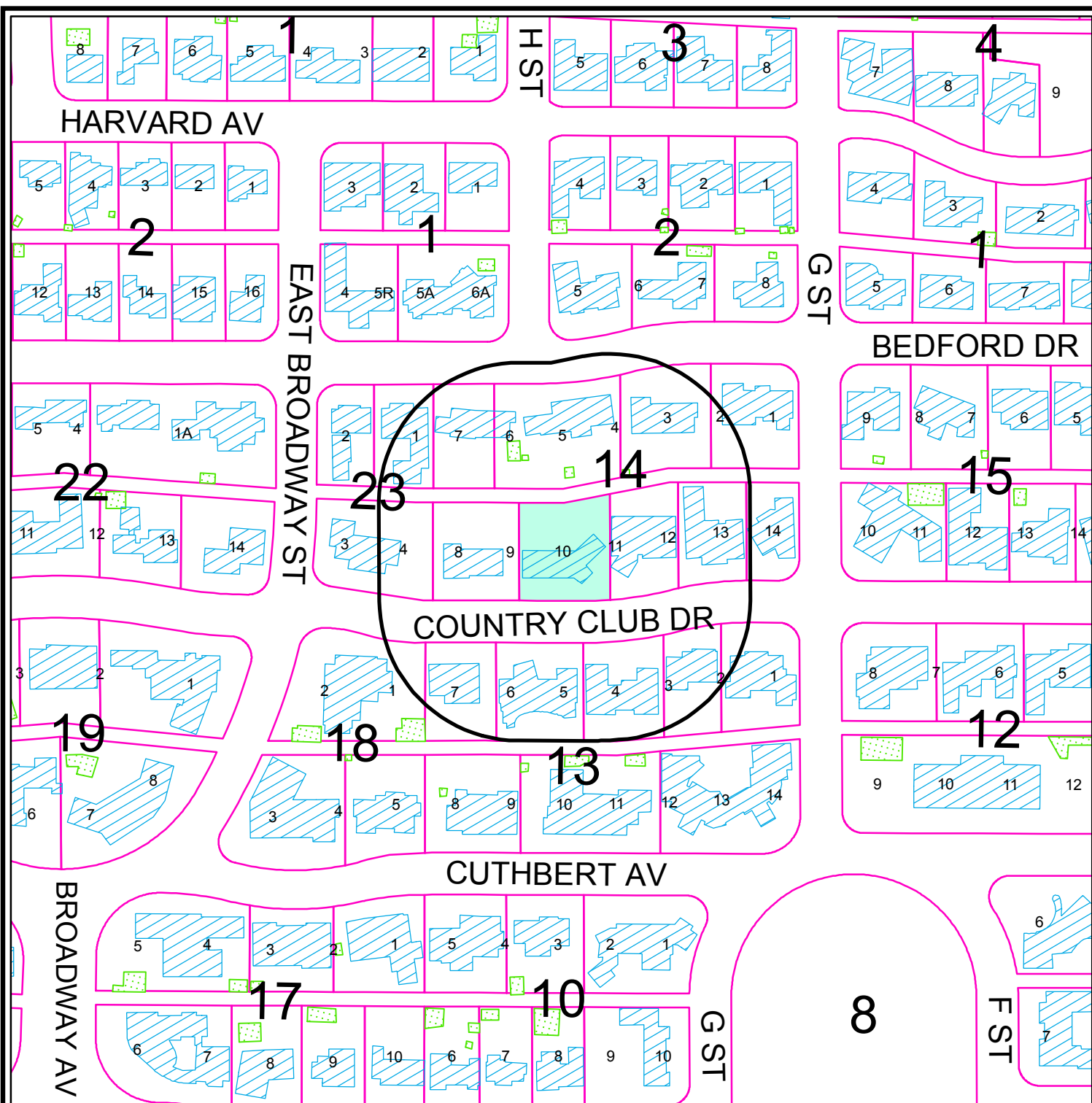
Staff is recommending denial of the applicant's request as it violates the paving provision of the City's Subdivision Regulations. Despite any potential neighborhood acceptance the nature of a variance is to make a request to be exempt from an established code. This runs the risk of setting precedence in other neighborhoods. Further, the request does not satisfy condition b listed under the Analysis paragraph, and per the Subdivision Chapter Regulations, the Commission must approve each finding to grant the variance.


Ken VanDyne
Acting Planning Division Manager
Department of Development Services


Martin Siwek, City Planner
Department of Development Services

Attachments:

Application
Maps
Exhibits A



PROPERTY OWNER NOTIFICATION MAP

E - 13 - 001

Scale: 1" = 200'

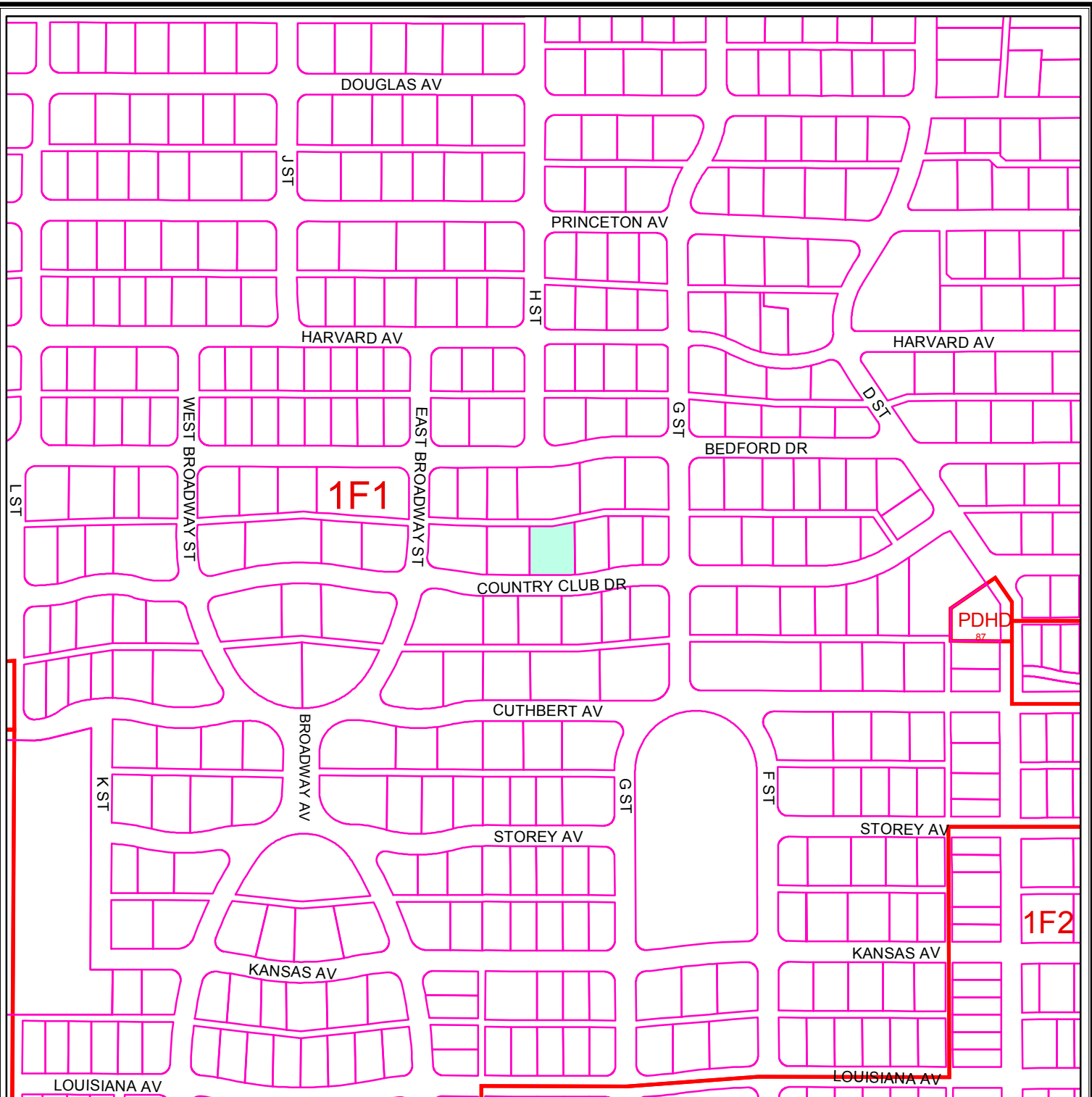
Consider a request for a Special Exception to the Subdivision Code concerning a variance for the required paving for an alley for rear entry access on the east 1/3 of Lot 9, all of Lot 10 and the west 2/5 of Lot 11, Block 14, North Park Hill Addition, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- PARCEL
- PRIVATE BLDGS
- ACCESSORY BLDGS



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ZONING MAP

E - 13 - 001

Scale: 1" = 400'

Consider a request for a Special Exception to the Subdivision Code concerning a variance for the required paving for an alley for rear entry access on the east 1/3 of Lot 9, all of Lot 10 and the west 2/5 of Lot 11, Block 14, North Park Hill Addition, City and County of Midland, Texas.

LEGEND

ZONING PARCELS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 02	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: May 14, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Ron Jenkins, Oil & Gas Compliance Coordinator

SUBJECT: Hold a public hearing at approximately 10:36 a.m. regarding a proposed oil and gas permit to Petroplex Energy, Inc. (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (Western-T 8 #3) located 467 feet from the north line and 2,058 feet from the west line located in Section 8, Block 39, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. (Generally located on the east side of the extension of North Midland Drive, approximately 1 mile north of the Green Tree Boulevard.)

Purpose:

At approximately 10:36 a.m. hold a public hearing on a request from Petroplex Energy, Inc. (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (Western-T 8 #3) located 467 feet from the north line and 2,058 feet from the west line located in Section 8, Block 39, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. This is an opportunity for the Council to receive public comment. Council may consider this permit following a 30-day public comment period and at a regularly scheduled meeting. No letters of objection have been received.

Recommended City Council Action

Approve Deny X Direction/Informational

Fiscal Impact:

There is no cost to the City to process this application.

Discussion:

The Oil and Gas Advisory Committee has reviewed this well site in detail and recommends application with updated tax certificate. Petroplex Energy, Inc. has addressed these recommendations and updated the application. The Committee is recommending the requested landscaping and irrigation variance until property changes ownership and at that time be reviewed by City Council. In addition Petroplex Energy is requesting a waiver for a road repair agreement since no city streets will be used.

Attachments: Application; Location map; Exhibit - Drill site map, Exhibit – Flow Line Location.



APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information		
Date 12/31/12	Operator Name (must match W-1) Petroplex Energy, Inc.	Operator Address 110 N. Marienfeld Midland, TX 79702
Representative Name Don Hale	Representative Address (within Midland City Limits) 3011 Garden City Hwy	Rep. Tele. 432-687-2222 Rep. Fax 432-687-2231
Fee: \$4,000.00 Rec'd Yes ☒ No ☐	NOTE: All attachments need to bound and put in a binder before submitting.	Pages 1-4
Permit Compliance Contact (Choose 1): Option A: Don Hale 24/7 Answering Services - No. 1 (Tele.): 432-687-2222 No. 2 (Tele.): 432-687-2231 Option B: Attached as Exhibit A Company Compliance Representative (Name, Address, Local Telephone) (ATTACH STATEMENT AS EXHIBIT A): Emergency Contact Representative (Name, Address, 24-Hour Tele. No.): Jim McCright 432-853-7900 Other Permitted Wells in City (ATTACH EXHIBIT B [see § J(26)]).		
II. Mineral Ownership Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease): 1. Petroplex Energy, Inc. P.O. Box 3082, Midland, TX 79702 2. The Jeffrey Family Trust 14812 W. Ravenswood Drive Sun City West, AZ 85375 3. ATTACHED AS EXHIBIT C is (a Title Opinion by John Collins, a licensed Texas Attorney/Title Commitment by Abstract Company/a Take-off from, a Certified Petroleum Landman/an opinion letter from, a licensed Texas Attorney) indicating that [Operator] has a legal right to develop the mineral estate that is the subject of this Application. [See § J(5)].		
III. Surface Ownership & Use General Description of Current Surface Use (within 860 feet of proposed surface location): Ranch/Farm		RECEIVED FEB 13 2013 CITY OF MIDLAND PLANNING DIVISION OFFICE
ATTACHED AS EXHIBIT D is (a Title Opinion by John Collins, a licensed Texas Attorney/a Take-off from, a Certified Petroleum Landman/Current Tax Roll from Midland Central Appraisal District), which lists the name(s) and address(es) of all surface owners within 860 feet of the surface well location. [See § J(7)].		

ATTACHED AS EXHIBIT E is a (map/p lat/satellite/aerial photo) depicting all Residences, commercial structures, public buildings, all publicly dedicated Streets and alleys, Rights of Way, and permanent accessory structures surrounding the proposed Drill Site. The (map/p lat/satellite/aerial photo) includes two circles, as required by the Ordinance—one depicting a 500 foot radius and one depicting an 860 foot radius from the proposed well's surface location. [See § J(10)].

ATTACHED AS EXHIBIT F is a copy of the notification letter(s) sent to 100 percent of the surface owners, Certified Mail, Return Receipt Requested. [See § J(36)].

IV. Well & Operations Information

Proposed Well Name: Western-T 8 #3

Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary)[See § J(11) and § L(4)]:

See Attached Exhibit V

Legal Description of Proposed Well Site:

467' FNL & 2058' FWL, Sec. 8, Blk. 39, T-1-S, T&P RR Survey

ATTACHED AS EXHIBIT G is the Location Site Plan [See § J(9)].

ATTACHED AS EXHIBIT H is the Map with the proposed transportation route(s) and road(s) for equipment, chemicals, or refuse products used or produced in the proposed oil and gas operations. [See § J(12)].

ATTACHED AS EXHIBIT I is a copy of the approved Texas Railroad Commission permit to drill (Form W-1), together with all attachments (also file copy of W-1 with City Secretary before commencement of drilling operations). [See § J(16) and (20)].

ATTACHED AS EXHIBIT J is a copy of the required TCEQ report as to depth of usable quality ground water. [See § J(17)].

ATTACHED AS EXHIBIT K (if applicable) is the list of alternative locations developed in consultation with the Oil & Gas Advisory Committee. [See § J(27)].

ATTACHED AS EXHIBIT L is the Fencing and Irrigation Plan. [See § J(30)].

ATTACHED AS EXHIBIT M is the Road Repair Agreement and Letter of Credit/Certificate of Deposit/Surety Bond in the amount of at least \$25,000. Option (if applicable): Applicant would further state that no City-owned streets or alleys will be used by the Operator in connection with its oil and gas operations and as a result, requests a waiver from the Council of this requirement. Option B (if applicable): Because Applicant has three Road Repair Agreements in effect that have been approved by the Council, Applicant requests that the Council consolidate all agreements into one and is filing the necessary \$75,000 letter of credit/certificate of deposit/surety bond in conjunction with this request. [See § J(31)].

(No City Streets Will Be Used)

ATTACHED AS EXHIBIT N is the Concept Plan depicting the proposed Operations Site (which includes tanks, roads, power lines, and pipeline routes). [See § J(32)].

Description of Public Utilities required during (1) drilling and (2) operations:

(1) Drilling: None

(2) Operations: Sharyland

Description of water source to be used during Drilling: Western-T water wells located in S/2 of Sec. 8, Blk. 39, T-1-S, T&P RR Survey

Description of all electric lines to production facilities (reference exhibits as necessary) [See § L(10)]:

Overhead electric lines

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]:

See Exhibit O

V. Additional Required Exhibits

ATTACHED AS EXHIBIT P is the *Letter of Credit/Certificate of Deposit* in accordance with Subsection (K)(2). [See § J(18)].

ATTACHED AS EXHIBIT Q are Tax certificates from Midland Central Appraisal District to be submitted indicating that all taxes on personal and real property, including minerals, owned by Applicant are current. [See § J(29)].

ATTACHED AS EXHIBIT R is the required Insurance Certificate. [See § J(19) and § K(3)].

ATTACHED AS EXHIBIT S (if applicable) is the Drainage Plan approved by the City Engineer relating to Applicant's proposed operations. [See § J(21)].

ATTACHED AS EXHIBIT T is Applicant's Emergency Action Response Plan. [See § J(22)].

ATTACHED AS EXHIBIT U is Applicant's Hazardous Materials Management Plan, a copy of which has been submitted and is on file with the Midland Fire Department. [See § J(23)].

Petroplex Energy, Inc.
[NAME OF COMPANY]

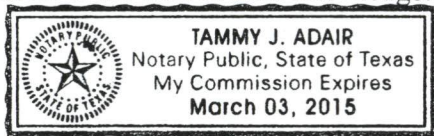
Don Hale

By Don Hale
Its Director of Special Projects

State of Texas)

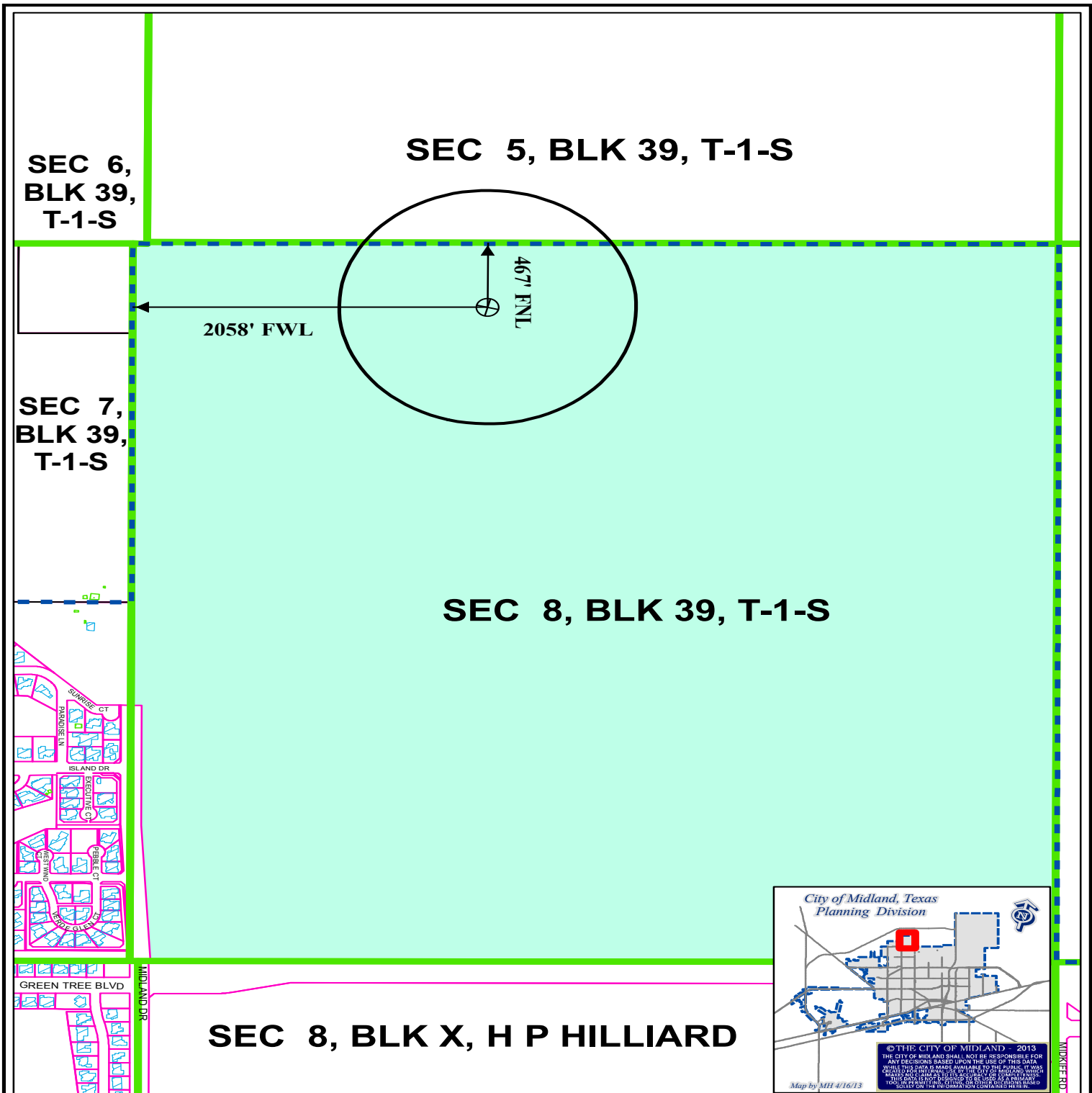
County of Midland)

, personally appeared before me, and being first duly sworn declared he/she signed the application in the capacity designated, if any, and further states that he/she has read the above application and attached exhibits and the statements therein are true and correct to the best of their knowledge.



Tammy J. Adair
Notary Public, State of Texas

[SEAL]



LOCATION AND ZONING MAP

O - 13 - 004

Scale: 1" = 800'

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 467' FNL and 2058' FWL, Section 8, Block 39, T-1-S, T & P RR Co. Survey, Midland County, Texas.

Western-T 8 #3

LEGEND

	CITY PARCELS		PUBLIC BLDGS		CITY LIMITS
	COUNTY PARCELS		PRIVATE BLDGS		860 FT. BUFFER
	ZONING		ACCESSORY BLDGS		SURVEY SEC.

ZONING DISTRICTS:

FD
PD
AE
1F1, 1F2, 1F3
MH
TH
2F
MF1, MF2

FUTURE DEVELOPMENT
PLANNED DISTRICT
AGRICULTURE ESTATE
ONE-FAMILY DWELLING
MOBILE HOME DWELLING
TOWNHOUSE DWELLING
TWO-FAMILY DWELLING
MULTIPLE FAMILY DWELLING

BP
P
01, 02
NS
LR1, LR2, LR3
C1, C2, C3
IP, JP1, IP2, IP3
LI
HI

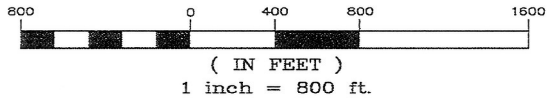
BUSINESS PARK
PARKING
OFFICE
NEIGHBORHOOD SERVICE
LOCAL RETAIL
COMMERCIAL
INDUSTRIAL PARK
LIGHT INDUSTRY
HEAVY INDUSTRY

RECEIVED

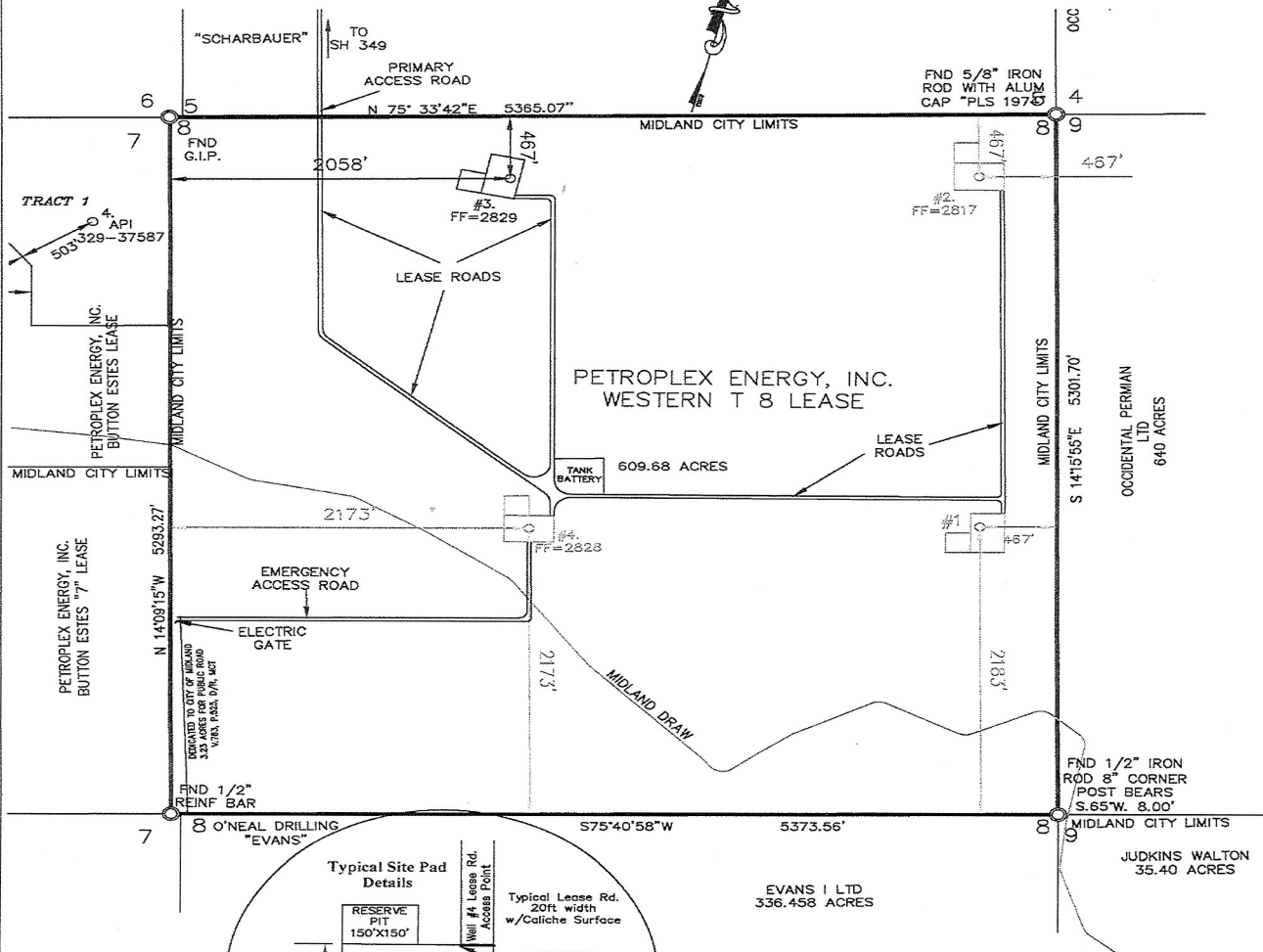
FEB 21 2013

EXHIBIT "G"

GRAPHIC SCALE



CITY OF MIDLAND
PLANNING DIVISION OFFICE



NOTES:

COURSES, DISTANCES AND COORDINATES SHOWN HEREON ARE LAMBERT GRID AND CONFORM TO THE "TEXAS COORDINATE SYSTEM", TEXAS CENTRAL ZONE, NORTH AMERICAN DATUM OF 1983. ALL DISTANCES AND COORDINATES ARE SHOWN IN GRID FEET.

THE UNDERSIGNED DOES HEREBY CERTIFY THAT THIS LOCATION WAS THIS DAY MADE ON THE GROUND BY ME OR UNDER MY SUPERVISION AND THAT THIS PLAT IS A CORRECT REPRESENTATION THEREOF.

DATED THIS 14TH DAY OF NOVEMBER, 2012

RJ DAUM
TEXAS RPLS 4826



revised lease name 10-25-2012

SCHUMANN ENGINEERING CO., INC.

REGISTERED PROFESSIONAL LAND SURVEYORS
LICENSED STATE LAND SURVEYORS

REGISTERED PROFESSIONAL CIVIL ENGINEERS
TEXAS and NEW MEXICO

Civil Engineering ~ Land Surveying

408 N. PECOS STREET - P. O. BOX 504
MIDLAND, TEXAS 79702-0504

Office (432) 684-5548
Fax (432) 684-6973

SITE PLAN

PETROPLEX ENERGY, INC.
WELL #3
WESTERN T8 LEASE

WELL NO. 3 [467 ft/NL, 2058 ft/WL]

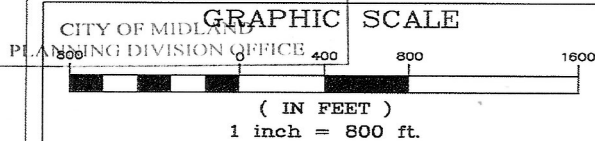
SECTION 8, ABSTRACT 719,
BLOCK 39, T-1-S, T&P RR CO SURVEY,
MIDLAND COUNTY, TEXAS

QUAD: NORTHWEST MIDLAND
SCALE: 1" = 800'

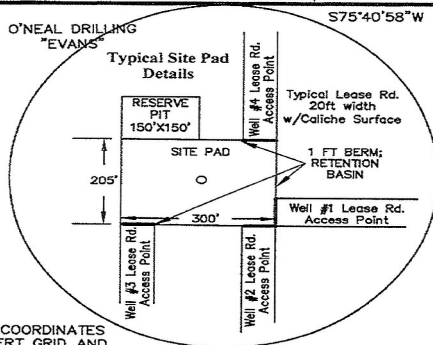
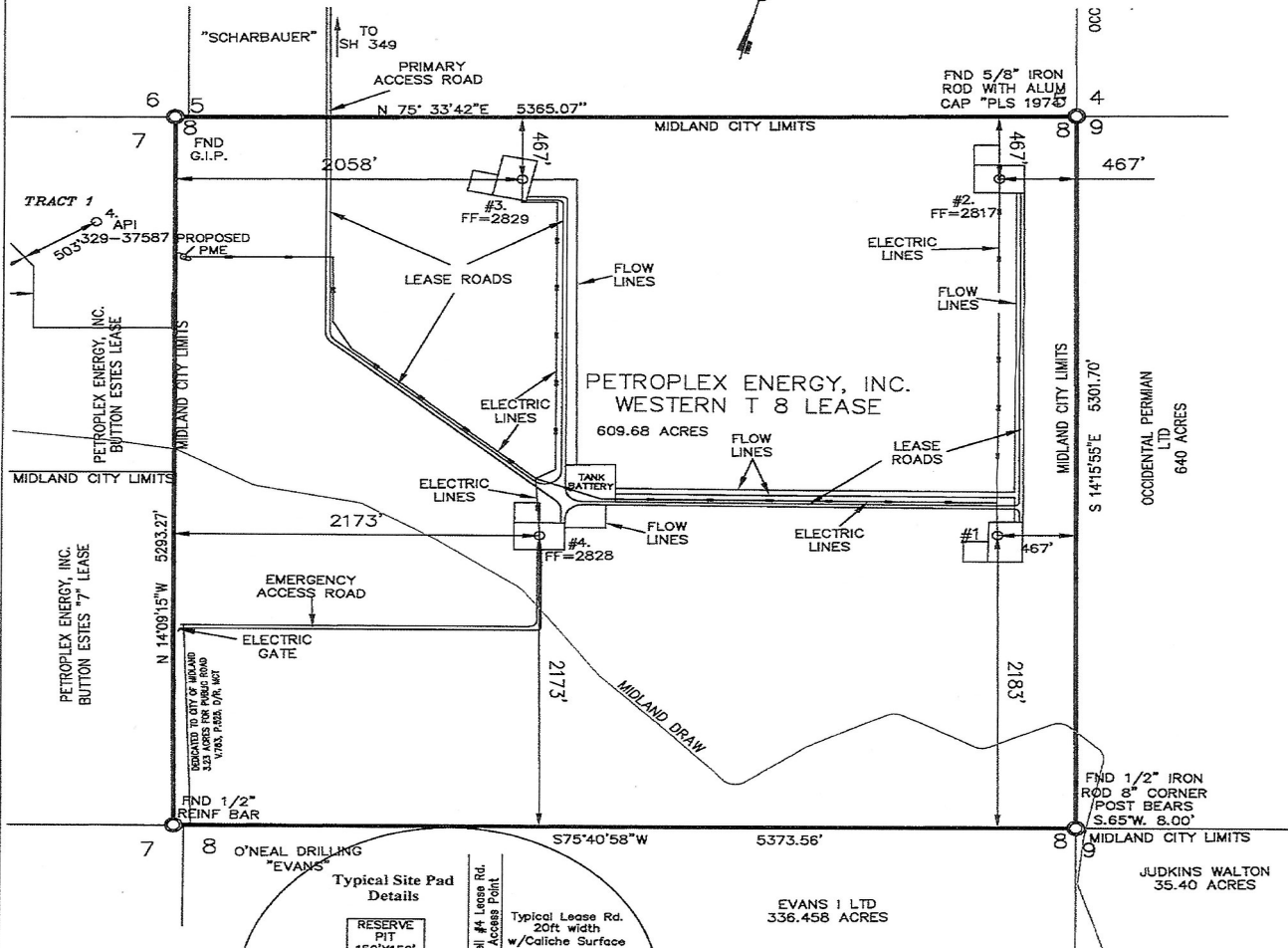
PROJECT: 73423PEI
JOB NO: 73,423

RECEIVED

FEB 21 2013



ATTACHMENT "G-4"



NOTES:

COURSES, DISTANCES AND COORDINATES SHOWN HEREON ARE LAMBERT GRID AND CONFORM TO THE "TEXAS COORDINATE SYSTEM", TEXAS CENTRAL ZONE, NORTH AMERICAN DATUM OF 1983. ALL DISTANCES AND COORDINATES ARE SHOWN IN GRID FEET.

THE UNDERSIGNED DOES HEREBY CERTIFY THAT THIS LOCATION WAS THIS DAY MADE ON THE GROUND BY ME OR UNDER MY SUPERVISION AND THAT THIS PLAT IS A CORRECT REPRESENTATION THEREOF.

DATED THIS 14TH DAY OF NOVEMBER, 2012

RJ DAUM
TEXAS RPLS 4826

revised lease name 10-25-2012



SCHUMANN ENGINEERING CO., INC.

REGISTERED PROFESSIONAL LAND SURVEYORS
LICENSED STATE LAND SURVEYORS

REGISTERED PROFESSIONAL CIVIL ENGINEERS
TEXAS and NEW MEXICO

Civil Engineering ~ Land Surveying

408 N. PECOS STREET - P. O. BOX 504
MIDLAND, TEXAS 79702-0504

Office (432) 684-5548
Fax (432) 684-6973

SITE PLAN

PETROPLEX ENERGY, INC.
WELLS 1, 2, 3 & 4
WESTERN T8 LEASE

WELL NO. 1 [2183 ft/SL, 467 ft/EL]

WELL NO. 2 [467 ft/NL, 467 ft/EL]

WELL NO. 3 [467 ft/NL, 2058 ft/WL]

WELL NO. 4 [2173 ft/SL, 2173 ft/WL]

SECTION 8, ABSTRACT 719,
BLOCK 39, T-1-S, T&P RR CO SURVEY,
MIDLAND COUNTY, TEXAS

QUAD: NORTHWEST MIDLAND
SCALE: 1" = 800'

PROJECT: 73423PEI
JOB NO: 73,423



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 5/14/2013

TO: City Council / City Manager

FROM: Sylvester Cantu, Community Development Manager

SUBJECT: Hold a Public Hearing on the 2013-2014 Community Development Block Grant Program

Purpose:

Hold a Public Hearing as part of the process of developing the 2012/13 Action Plan to the 2010-2014 Consolidated Plan for Community Development and Housing Funds.

Recommended City Council Action

☐ Approve ☐ Deny ☒ Directional / Informational

Fiscal Impact:

There is no fiscal impact to the City. All costs associated with acceptance and allocation of CDBG funds will be addressed using existing City resources.

Discussion:

The U.S. Department of Housing and Urban Development (HUD) has not yet determined the City's Community Development Block Grant (CDBG) allocation for the upcoming program year. Our current grant amount is \$699,035. The 2013/14 program year begins on October 1, 2013. I also expect to receive \$120,000 in program income due to principal and interest payments on loans through the Owner Housing Assistance Program.

This public hearing allows us to inform the public of past usage of CDBG funds. The attached flyer entitled "Community Development Program – Changing Communities, Changing Lives" and CDBG Performance Profile is used for this purpose. We are also making available the annual assessment letter (attached) from HUD. Hearing from the public about which community development and housing concerns could be addressed with the CDBG grant is another purpose of the meeting. The attached "2010-2014

Consolidated Plan” table shows the objectives that should be supported with CDBG funds. A summary of comments received at earlier community meetings is attached.

The meeting is also the opportunity to present applications and proposals for the use of 2013/14 CDBG funds. Attached is a list of the applications received. We have prepared evaluative reports on the applications and those are attached as well. Complete applications are on file with the Community Development Office. The attached CDBG Project Eligibility Criteria sheet is a basic guide of the factors we consider in our analysis.

The next step is for the Council CDBG Committee to make a recommendation on distributing the CDBG funds. The Committee’s recommendation will be presented at a public hearing on June 11, 2013. CD staff will then prepare the draft Fourth Year Action Plan and have it available for a thirty day public review period. Final approval of the Plan is scheduled on July 23, 2013. The completed Plan must be submitted and received by HUD by August 15, 2013.

No action is required at this public hearing.



City of Midland

Community Development Program

"Changing Communities, Changing Lives"

The federal Housing and Community Development Act of 1974 created the Community Development Block Grant (CDBG) program, which is administered by the U.S. Department of Housing and Urban Development (HUD). The primary objective of the CDBG program is to develop viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income.

As a city over 50,000 in population, the City of Midland is entitled to an annual grant. The amount is based on a formula that takes into account a city's population, poverty level and the number of people living in overcrowded housing. For Fiscal 2012-2013, the City received \$699,035 in CDBG funds. The allocation for fiscal 2013-2014 is yet to be determined.

To obtain the CDBG funds, the City has to submit an action plan and certifications of compliance with various requirements plus have a current local Consolidated Plan for Community Development and Housing Funds. CDBG funds may be used on a variety of activities as long as they conform to statutory standards and program regulations. Generally, the following types of projects can be funded: acquiring property, improving or developing public facilities and infrastructure, housing rehabilitation and preservation, home buyer assistance, code enforcement, clearance, economic development, neighborhood revitalization, and public services.

Each CDBG project must also address a CDBG National Objective: benefit low- and moderate-income persons (51% or more of beneficiaries must be low- and moderate-income persons), or aid in preventing or eliminating slum or blight. The City must allocate at least 70% of its CDBG funds for projects that benefit low- and moderate-income persons. Additionally, funding for public services is limited to 15% of the City's annual grant amount. Program administration cannot be more than 20% of the annual grant.

PAST USE OF CDBG FUNDS

Historically, housing programs account for almost a third of all CDBG expenditures, over \$37.2 million since 1974. The programs include assistance for low-income homeowners in addressing substandard housing conditions and for homebuyer assistance activity including purchase of land for development of affordable homes. Accounting for almost 29% of total expenditures, infrastructure such as street paving has always been a large part of the CDBG program. Sidewalks and drainage improvements such as curb and gutters are also infrastructure expenditures.

The CDBG program has supported a variety of capital improvements at City parks and other public facilities operated by non-profit groups. Public services include senior programs and child care assistance among others. City slum and blight

CDBG Schedule for fiscal 2013/14

Public Hearing, May 14, 2013, 7:00 PM
Public Hearing, June 11, 2013, 10:30 AM
Final Approval, July 23, 2013, 10:00 AM

**All meetings will take place in the
Midland City Council Chambers,
City Hall, 300 N Lorraine**



programs such as demolition and removal of dilapidated structures, clearing of unsightly weedy lots, and code enforcement have also been funded. City employees that administer the CDBG program are also supported by the CDBG fund.

Accomplishments of the CDBG program over the last three years can be seen in the annual CDBG Performance Profile. The following was achieved during fiscal 2011-2012:

- 3 owner occupied home were reconstructed
- 38 minor repairs provided to homeowners
- 14 first time homebuyers assisted
- 3 homes built on CDBG acquired land became occupied by low income households
- Water and sewer mains were installed on 5 blocks in the Sparks Park target area
- Playground, picnic and other improvements completed at Washington Park
- 363 seniors and 62 children received public services
- Lot clearance activity on 167 properties
- Removal of dilapidated structures on 5 properties

The budget for fiscal 2012-2013 provides for reconstruction projects, minor repairs, homebuyer assistance, the SE Center meals program, Casa de Amigos' home cleaning program and clearing and mowing on unsightly properties as well as program administration.

APPLYING FOR CDBG FUNDS

Generally, the City begins its process of identifying and selecting projects to receive CDBG assistance in January. A public notification is made and training is made available to prospective applicant groups. CDBG funded programs and projects can be conducted by the City or a subrecipient such as a nonprofit agency. Individuals do not apply for CDBG funds directly; rather, they apply for benefits at agencies or city departments that operate CDBG funded programs.

Groups interested in applying for CDBG funds should contact the CD Office. This year applications are due by April 18, 2013. CD staff will review the various applications for CDBG eligibility. The City Council will conduct two public hearings (See schedule on reverse side) and then make a final decision on which projects are to be funded as part of the annual Action Plan.

After the City approves the annual Action Plan, the Action Plan is sent to HUD. HUD will then approve the Plan and the CDBG grant year begins October 1. Finally, a CDBG funded project may begin once administrative and contracting details are completed. Funds are provided on a reimbursement basis.

The community development program is principally carried out by the **Community Development (CD) Office**, a division of the Development Services Department. The CD Office is located in Room 410, City Hall, 300 N Loraine. Its mailing address is:

Community Development
PO Box 1152
Midland, Texas, 79702

The fax number is 432-686-1609 and the City's web site is www.midlandtexas.gov.

Sylvester Cantu
Community Development Administrator
432-685-7408, scantu@midlandtexas.gov

Wanda Valles,
Program Coordinator
432-685-7472, wvalles@midlandtexas.gov

CITIZEN ACTION CENTER
432-685-7474

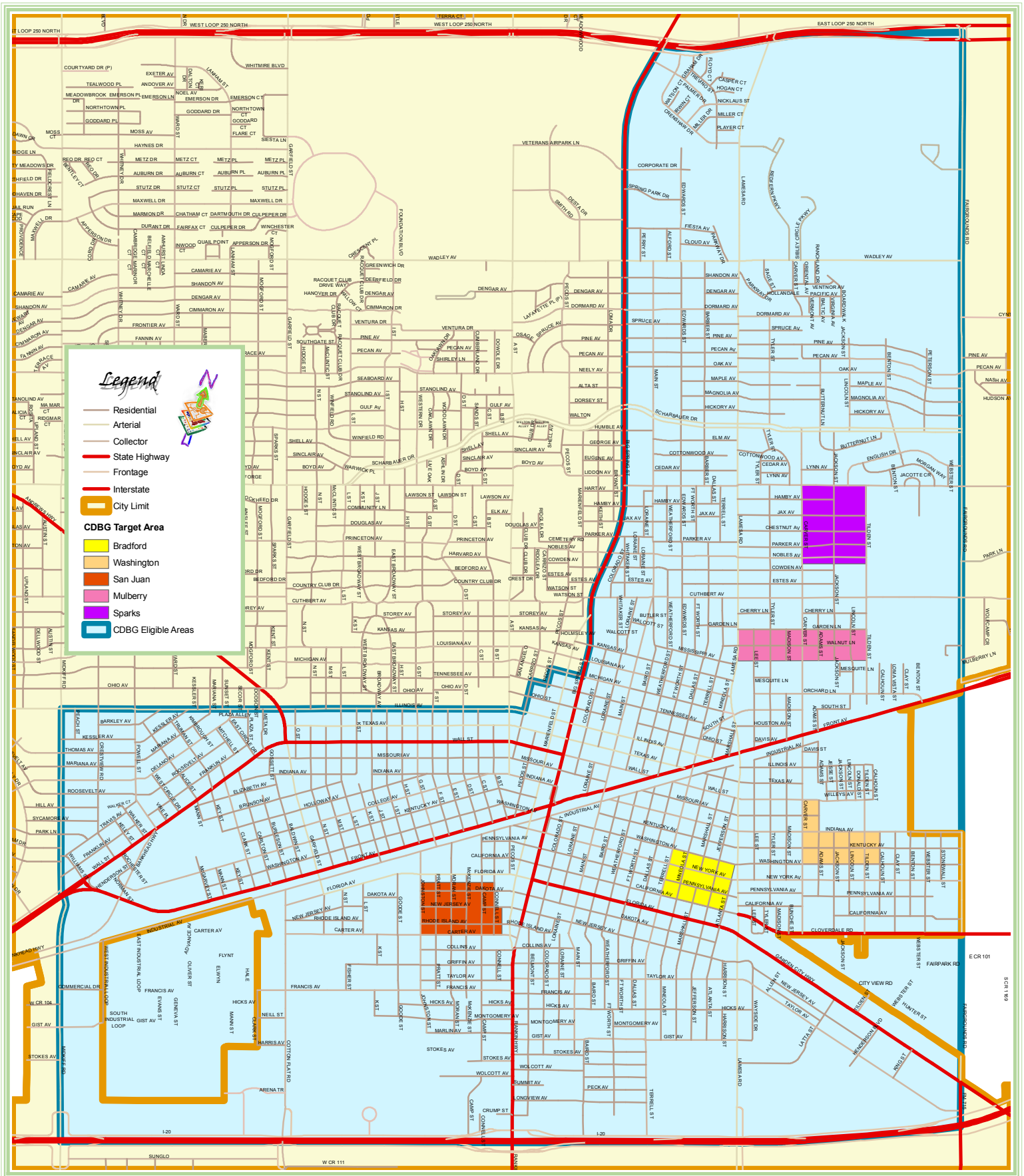
Fair Housing – it's the Law.

The Federal Fair Housing Act prohibits discrimination in housing because of race, color, national origin, religion, sex, handicap or familial status. If you have been a victim of housing discrimination please call 1-800-669-9777 toll free or go to www.hud.gov on the internet.

CITY OF MIDLAND
CDBG Performance Profile
As of Fiscal Year ended September 30, 2012

	<u>2011/12</u>	<u>2010/11</u>	<u>2009/10</u>
CDBG Grant *	\$830,012	\$991,086	\$913,081
Program Income	\$136,142	\$150,221	\$175,933
Available Funds as of beginning of each year (includes prior grants' unspent amounts)	\$2,208,531	\$1,961,470	\$2,130,888
Expenditures	\$1,298,483	\$670,783	\$1,359,786
% By Major Category (2011/12 actual)			
Housing (\$589,334)	45.4%	28.7%	49.5%
Public Infrastructure (\$335,548)	25.8%	25.1%	27.1%
Public Facility (\$99,931)	7.7%	0.0%	0.0%
Public Services (\$100,000\)	7.7%	14.7%	7.3%
Other (\$41,755)	3.2%	4.0%	4.8%
Administrative (\$131,915)	10.2%	27.4%	11.3%
% in Local Target Areas			69.6%
Accomplishments			
Homebuyers Assisted	14	6	7
Homes Reconstructed	3	1	2
Housing Minor Repairs	38	30	51
Streets Paved - # of Blocks	0	12	0
Sidewalks Improved - # of Blocks	4	0	0
Public Facility Improved	1	0	0
Public Service Beneficiaries	425	528	545
Parcels Purchased	0	1	37
Lots Cleared	167	443	373
Structures Demolished	5	0	11
Direct Beneficiaries by Race	482	576	617
White	53.7%	58.7%	51.9%
Black	45.2%	40.1%	48.1%
Other or Multi-Race	1.0%	1.2%	0.0%
Direct Beneficiaries - Hispanic	25.3%	32.8%	25.1%
Direct Beneficiaries by Income	482	555	617
Under 30% of City Median	70.1%	61.8%	67.2%
30% - 50% of City Median	20.5%	21.0%	26.9%
50% - 80% of City Median	9.3%	15.6%	5.9%

“*” the CDBG Grant figure for each year includes re-allocated funds.



CDBG Map



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
Fort Worth Regional Office, Region VI
Office of Community Planning and Development
801 Cherry Street, Unit #45, Ste. 2500
Fort Worth, TX 76102
www.hud.gov

01 FEB 2013

Courtney Sharp, City Manager
City of Midland
PO Box 1152
Midland, TX 79702

Dear Mr. Sharp:

Subject: Annual Community Assessment for the 2011 Program Year

HUD is required to conduct an annual review of performance by grant recipients according to the provisions of the Housing and Community Development Act and the National Affordable Housing Act. We must determine that each recipient is in compliance with the statutes and has the continuing capacity to implement and administer the programs for which assistance is received. This is to report the results of our review of the City of Midland's performance under the Community Development Block Grant (CDBG) program.

Report

Our review is based on an evaluation of your consolidated planning process and progress in carrying out the program, the management of funds by the city and its subrecipients, information provided in the Consolidated Annual Performance and Evaluation Report (CAPER) and the Integrated Disbursement and Information System (IDIS), and the city's achievement of program objectives.

- The city expended CDBG funds in a timely manner during PY 2011. For the CDBG program, a grantee should not have more than 1.5 years of grant funds in its line of credit 60 days before the end of its program year. As of August 2, 2012, the city had 1.42 years of funds in its line of credit, which is below the maximum.

The city is reminded that the next CDBG timeliness test is August 2, 2013, at which time the city's CDBG balance cannot exceed \$1,048,552.50. The city's current CDBG balance is \$1,313,025. The city is also reminded of the need to keep the status of activities up-to-date in IDIS and to process drawdowns in a timely manner.

- During PY 2011 the city completed improvements to the San Juan target area, as the last three single-family homes constructed on lots acquired with CDBG funds were sold to low- and moderate-income households. The Sparks Park target area activities continue, with an infrastructure project and the development of single-family housing underway. The city is reminded that land acquired with CDBG funds must meet a national objective within five years.

In addition to its target area activities, the city completed the reconstruction of three housing units, made minor repairs to 37 housing units, and provided homebuyer assistance to 14 households. The city also completed one public facility improvement, demolished five unsafe structures, and cleared 167 lots of debris and weeds. Public services were provided to 425 people.

- According to information in the CAPER, the City of Midland expended approximately 96.4 percent of its CDBG funds on activities that principally benefit low and moderate income persons, exceeding the 70 percent minimum. The city is also in compliance with the CDBG program standards related to public service and planning and administration obligations. During the program year the city obligated 11.2 percent of its CDBG funds for public service activities and 13.7 percent for planning and administration activities, which are within the caps of 15 and 20 percent, respectively.

Conclusion

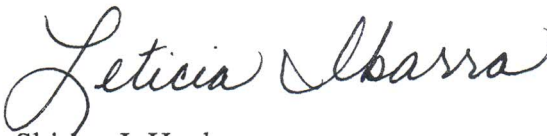
As a result of our evaluation we have determined that the City of Midland has carried out its program substantially as described in its Consolidated Action Plan; the city has the continuing capacity to carry out its approved program in a timely manner; and the Consolidated Action Plan as implemented complies with the requirements of the Housing and Community Development Act and other applicable laws and regulations.

We are providing the city with thirty days from the date of this letter to comment on this report. Should the city wish to comment or request changes to it we will take them into consideration and provide a written response. If no comments are received within the period allowed, this report will be considered to be in final form. Once it is in final form, it will be made available to the public upon request.

This report is intended to be shared with the public. You may provide copies to interested persons such as the news media, members of local advisory committees, and citizens attending public hearings. We request that you provide a copy of this letter to the Independent Public Accountant who performs the single audit of the city in accordance with OMB Circular A-133.

If there are any questions or comments about this report, please contact Ellen Melendez, Senior Community Planning and Development Representative, at 817-978-5958.

Sincerely,


for Shirley J. Henley
Director

cc:
Sylvester Cantu ✓

SUMMARY
COMMENTS FROM 02/28/2013 CDBG COMMUNITY MEETING
at SE Community Center

City representatives in attendance – John B. Love, Sylvester Cantu and Wanda Valles

Needs Identified

Comment that expanded housing repair programs especially for the elderly is a need.

Comment that affordable rental housing for the elderly is a need.

Comment that affordable housing in general is needed.

Comment that support of SE meals program was needed and appreciated.

Other

Questioned about upcoming CDBG Amendment.

Questioned about funding opportunities and application processes for non-profit organizations.

Questioned about the performance measurements for the CDBG housing programs.

SUMMARY
COMMENTS FROM 03/07/2013 CDBG COMMUNITY MEETING
at Casa de Amigos

City representatives in attendance – John B. Love, Sylvester Cantu and Wanda Valles

Needs Identified

Comment that more street improvements with curb/gutter are needed in SE Midland. Also, Tilden from Cuthbert to Mulberry needs to be upgraded to encourage housing development to the east.

Comment that homebuyer assistance is a need.

Housing rental assistance is a need as rents keep increasing.

Public services (parenting classes, counseling, etc.) are needed for families in crises due to growth impacts.

Comment that housing in particular affordable housing is needed.

Comment that previous successful selected target area strategy should be resumed.

Other

Questioned about how activities benefit low/moderate income population.

Questioned if CDBG could be used to expand the SE Community Center.

Questioned about application process for non-profit organizations.

Commented that EZ-Rider is often behind schedule and service ends too early causing work related trip problems.

2010-2014 Consolidated Plan Specific Community Development Objectives

#	Objective	Outcome
DH1.1	Purchase of land for affordable housing development by the City in target areas.	100 parcels
DH1.2	Construction of affordable rental units under Low Income Housing Tax Credit Program by private developers at appropriate citywide locations.	200 units
DH1.3	Construction of affordable rental housing for low-income elderly households through HUD 202 funding by non-profit sponsor at appropriate citywide location.	100 units
DH1.4	Rehabilitation or reconstruction of homes occupied by low-income homeowners. This is the City's major projects loan program available to ICT residents.	30 units
DH1.5	Minor repair services to low-income homeowners by City and other non-profits.	1,750 units
DH1.6	Increase the number of emergency shelter beds for individuals.	5 beds
DH1.7	Increase the transitional housing capacity for individuals.	8 beds
DH1.8	Increase the number of emergency shelter units for intact families.	5 units
DH1.9	Increase the transitional housing capacity for intact families.	10 units
DH1.10	Develop a 60 unit affordable housing assisted living facility for frail elderly.	60 units
DH1.11	Develop a 60 unit affordable housing assisted living facility for near frail elderly.	60 units
DH2.1	Financial assistance by non-profit entities and the City from CDBG, HOME and other sources to low-income homebuyers.	130 units
SL1.1	Infrastructure – City Streets – Paving construction with curb and gutter in low-income areas.	8 blocks per year
SL1.2	Public Facility – City Parks – Upgrade neighborhood parks that are deteriorating. Located in low-income areas.	5 parks
SL1.3	Public Facility - Community Facility/Youth Center - an indoor/outdoor multi-purpose facility. Developer and owner operator are needed.	1 facility
SL1.4	Public Services – Senior services – support senior citizen center meal program and home cleaning program.	1,500 persons
SL1.5	Infrastructure – City Sidewalks – Sidewalk construction in low-income areas.	8 blocks per year
SL2.1	Public Services – Childcare – support local match childcare program for working families.	50 children
SL3.1	Demolition of dilapidated structures by the City in slum/blighted areas.	100 structures
SL3.2	Clearing of unsightly properties by the City in slum/blighted areas.	2,000 properties

Amended July 2011

PROJECT ELIGIBILITY CRITERIA AND OTHER STAFF REVIEW FACTORS

- Does HUD list the activity as **eligible** for CDBG funding?
- Will the activity address a **CDBG national objective**?
 - **benefit low and moderate income persons,**
 - **prevent or eliminate slums or blight, or**
 - urgent community development need due to a serious and immediate threat
- How will the activity affect the ability to comply with the following requirements?
 - No less than 70% of funds shall be for activities which benefit low and moderate income persons
 - No more than 20% of funds shall be expended for planning and administrative costs
 - No more than 15% of funds shall be expended for public service projects?
- Will the activity be **consistent with the City's Consolidated Plan for Housing and Community Development Funds**? It is desirable that **high priority needs** be addressed before medium and low priority concerns are funded.
- Will the activity's proposed costs be able to meet federal **cost necessary and reasonable** standards, and be in accord with local criteria? Are there budget items that are not generally supported by the City's program?
- Will the activity have any concerns with regulations on environmental review, residential anti-displacement and intergovernmental review?
- On an outside group's ongoing program, has the operator sought replacement funding or developed a plan to do?
- If any citizen comments have been made that related to an activity's area of concern?
- Is the activity located in a low-income area of the City or primarily serving such residents?

LIST OF APPLICATIONS FOR 2013/14 CDBG FUNDS

Proposed Project/Program	Administering Agency	Amount Requested
Owner Occupied Housing Major Projects	City	\$331,000
Owner Occupied Housing Minor Repairs	City	\$100,000
Homebuyer Assistance Program	City	\$90,000
SE Senior Nutrition Program	Community & Senior Services	\$45,000 *
Home Cleaning Program	Casa de Amigos	\$30,000 *
Lot Clearing Program	City	\$50,000 *
Demolition Program	City	\$65,000
Washington Park Improvements	City	\$175,000
CDBG Administration	City	\$140,000 #
TOTAL		\$1,026,000

As of 05/02/2013 we had not received notice of grant amount. However, we estimate it will be around \$720,000.

*** Project is a public service. Maximum allowed for public services is 15% of the grant.

CDBG administration is limited to 20% of the grant.

REPORTS ON APPLICATIONS
RECEIVED FOR 2013/14
CDBG FUNDING

STAFF EVALUATION OF 2013 CDBG REQUEST

NAME: Owner-Occupied Housing Major Projects

Request: \$331,000

APPLICANT: City of Midland Community Development

Description. The City of Midland Community Development (CD) Office proposes to continue the major projects component of the City's Owner-Occupied Housing Assistance Program (OHAP). The OHAP helps low-income homeowners address substandard housing conditions by providing a combination loan with a low-interest payable portion and a deferred forgivable portion for reconstruction projects. Reconstruction means demolishing a substandard home and building a new replacement home.

Budget. The requested funds plus program income would make a \$420,000 budget. Four reconstruction projects would be funded with such funding. The CD Office expects that \$120,000 in program income (monthly payments by previously assisted homeowners) will be received in 2013/14. Administrative costs of the Community Development Office to conduct the OHAP would also be paid by the requested funding.

Eligibility. Per 24 CFR 570.202(a), housing improvements and rehabilitation of single-family owner-occupied homes is an eligible activity. Program administrative services qualify as part of the OHAP. To meet the low and moderate-income benefit CDBG Objective, only homes occupied by low and moderate-income households will be CDBG aided.

Consolidated Plan. The Consolidated Plan for Community Development and Housing Funds includes low income owner households as high priority housing needs. The OHAP will specifically address Housing Objective DH1.4.

CITY OF MIDLAND OFFICE MEMORANDUM

DATE: April 12, 2013

TO: Honorable Mayor and City Council

FROM: Sylvester Cantu, Community Development Administrator

SUBJECT: 2013/14 CDBG Proposal Owner Occupied Housing Major Projects (\$331,000)

The Community Development (CD) Office proposes continuation of the Owner-Occupied Housing Assistance Program (OHAP) **major projects activity**. Through the OHAP, low-income homeowners can address their substandard housing conditions by reconstructing their homes. Reconstruction means demolishing an existing substandard structure and building a new home. Assistance is provided in the form of a combination loan with a low-interest payable portion and a deferred forgivable portion.

Loans are based on a sliding scale where the higher one's income is, the greater the payable portion of the loan. Liens are filed for the amount of the assistance. Basic qualifications include being credit worthy, able to handle an affordable loan and a homeowner of at least two years. Only homes occupied by elderly or disabled households and those recommended on an emergency basis will be eligible. Regardless, homes must be located within CDBG areas.

Project costs include the construction contract, demolition and closing costs. **Program income of \$120,000.00** from the monthly payments by previously assisted homeowners will also be used. The above requested funds and the program income for a total of **\$451,000.00** will fund the completion of a current project plus three new projects (**\$415,000.00 in project costs**) and pay for **staff time (\$36,000.00)** of the CD Office to administer the program including ongoing loan servicing.

Administrative tasks include marketing, application intake, property inspections, developing plans and specifications, builder procurement, underwriting, loan closing, project oversight, progress payments, project completion, and loan servicing. Loan servicing includes monitoring compliance with requirements as well as managing the loan portfolio. The City's CD Office is the only agency in Midland that does housing reconstruction for existing homeowners.

The City's 2010 Consolidated Plan for Community Development and Housing Funds identifies reconstruction assistance for low-income home owners as a priority objective. An impact of the OHAP is property valuation increases as reconstruction projects will triple their property valuation. But the more important impact is that the homes will last many years into the future; thereby reducing worry and maintenance costs to our clients.

xc: Jim Nichols

STAFF EVALUATION OF 2013 CDBG REQUEST

NAME: Owner Housing Minor Repair Program

Request: \$100,000

APPLICANT: City of Midland Community Development

Description. The City of Midland Community Development (CD) Office proposes to continue the Minor Repair Program (MRP) of the Owner-Occupied Housing Program (OHAP) which provides grant assistance for certain repair items; however, the homeowner pays, in advance, a portion of the cost. Up to \$5,000 assistance can be provided to a household during the year.

Budget. The CD Office expects that \$12,000 in program fees will be received in 2013/14. Using the requested funds plus the program fees, 38 MRP cases would be performed next year. Administrative costs of the Community Development Office to conduct the MRP would also be paid by the requested funding.

Eligibility. Per 24 CFR 570.202(a), housing improvements and rehabilitation of single family owner-occupied homes is an eligible activity. Program administrative services qualify as part of the OHAP. To meet the low and moderate-income benefit CDBG Objective, only homes occupied by low and moderate-income households will be CDBG aided. The MRP would be available within low income Census Tracts.

Consolidated Plan. The Consolidated Plan for Community Development and Housing Funds includes low income owner households as high priority housing needs. The OHAP will specifically address Housing Objective DH1.5.

CITY OF MIDLAND OFFICE MEMORANDUM

DATE: April 12, 2013

TO: Honorable Mayor and City Council

FROM: Sylvester Cantu, Community Development Administrator

SUBJECT: **2013/14 CDBG Proposal – Minor Repair Program (\$100,000)**

The Community Development (CD) Office proposes continuation of the **minor repair program (MRP)** to help low-income homeowners address substandard housing conditions. The MRP provides grant assistance for major plumbing, heating/air conditioning, electrical and roof needs. Up to \$5,000 assistance can be provided during the year; however, the homeowner pays, in advance, a portion of the cost based on a sliding scale.

Basic qualifications for the MRP include being a homeowner of at least two years and residing within CDBG eligible areas. With the \$100,000 of requested funds and an estimated **\$12,000** in client payments for a total of **\$112,000**, we expect to assist **38 homeowners** during the year and pay for program **administrative expenses**.

Half way through our current program year, the MRP has had almost \$53,000 in expenditures on 16 projects which includes \$9,119 in program fees. The prior year, we completed 40 projects for a total of \$103,730 including \$11,723 in fees collected.

The program will continue to be carried out by the CD staff. Administrative tasks include application intake, verifying requested repairs, contractor procurement, verifying completion and contractor payment.

The City's 2010 Consolidated Plan for Community Development and Housing Funds identifies financial assistance to low-income home owners for minor repairs as a priority objective. The MRP is coordinated with Christmas in Action, West Texas Opportunities, Community and Senior Services and others.

xc: Jim Nichols

STAFF EVALUATION OF 2013 CDBG REQUEST

NAME: Homebuyer Assistance Program

Request: \$90,000

APPLICANT: City of Midland Community Development

Description. The City's Community Development Office proposes to continue the City's Homebuyer Assistance Program (HAP). Through the HAP, low income first time homebuyers receive financial assistance to help purchase decent homes anywhere in the City. Depending on income, up to \$5,000 assistance would be provided to a homebuyer as a zero interest, deferred forgivable loan.

Budget. The requested funds plus an estimated \$30,000 of carryover CDBG funds for total of \$120,000 would assist 22 households during the year and pay for administrative costs. The CD office staff will accept and verify applications, inspect the homes, coordinate the closings and process payments.

Eligibility. Per 24 CFR 570.201(n), homeownership assistance is a basic CDBG eligible activity. In order to meet the CDBG Objective of benefit to low and moderate income persons, the City must document that each assisted household meets the low and moderate-income criteria.

Consolidated Plan. The Consolidated Plan for Community Development and Housing Funds includes low income first-time homebuyers as high priority housing needs. The HAP will address Housing Objective DH2.1.

CITY OF MIDLAND OFFICE MEMORANDUM

DATE: April 12, 2013

TO: Honorable Mayor and City Council

FROM: Sylvester Cantu, Community Development Administrator

SUBJECT: **2013/14 CDBG Proposal - Homebuyer Assistance (\$90,000)**

The City's Community Development (CD) Office proposes continuation funding for the Homebuyer Assistance Program (HAP). Through the HAP low income, first time homebuyers will be assisted financially with the purchase of decent, safe and sanitary homes. Only households with incomes at or below 80% of median family income are eligible for the HAP. Prospective homebuyers must be able to obtain a mortgage to purchase their home. Assisted homebuyers will receive \$4,000 in the form of a zero interest, deferred forgivable loan to help with down payment and closing costs. Households under 60% of median family income would receive \$5,000.00.

Currently, only conventional homes built since 1978 and located in the city can be purchased. Based on a recent understanding with the City Council CDBG Committee, we are also allowing townhomes. By October 2013, we will also begin helping with homes built prior to 1978. In FY12, we assisted on fourteen homes. We expect to help on ten homes in FY 13. However, the above two changes will expand the base of potential clients.

The requested funds plus an estimated **\$30,000 of carryover funds** from FY13 for a total of \$120,000 can assist **22 households** during the year and pay for program **administrative expenses**. The CD Office staff will accept and verify applications, inspect the homes, coordinate the closings and process the payments.

A key objective of the City's 2010 Consolidated Plan for Community Development and Housing Funds is to provide financial assistance to low income households to enable them to purchase homes. We will depend on the efforts of local lenders and realtors as well as housing non-profits (e.g. Midland Community Development Corporation) to identify buyers for the program. Funds will be made available on a first come first serve basis.

xc: Jim Nichols

STAFF EVALUATION OF 2013 CDBG REQUEST

NAME: Home Cleaning Program

Request: \$30,000

APPLICANT: Casa de Amigos

Description. Casa de Amigos requests funds to support its Citywide Community Services' Home Cleaning Program. The program's objective is to maintain safe and sanitary living conditions for indigent senior citizens (60+ years of age) and disabled individuals. Services include an initial deep cleaning and subsequent routine weekly cleaning. It is expected that 200 clients will be assisted during the year.

Budget. The requested funds would be used to pay for wages of the Program's homemakers. These CDBG funds are proposed to be 19% of the total Citywide Community Services budget. The Citywide Community Services budget for the next year will be \$163,518. Casa is requesting an increase in CDBG funds compared to its current allocation of \$25,000.

Eligibility. Per 24 CFR 570.201(e), public services are eligible for CDBG funding. A public service for senior citizens and disabled persons is considered by HUD as a presumed benefit to low and moderate income activity under its limited clientele provisions. This request will be subject to the 15% limitation on funds allocated for public services.

Consolidated Plan. The Consolidated Plan for Community Development and Housing Funds includes senior services as a high priority need. This program will specifically address Community Development Objective SL1.4.

Other Comments. As an ongoing program, this request is subject to the potential need for the operator to secure replacement funding. The home cleaning service has been continuously CDBG supported since 1991.

COVER SHEET for

2013 COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS

APPLICATION

ORGANIZATION NAME:	Casa de Amigos of Midland, Texas Inc.		
PROJECT TITLE:	Citywide Community Services		
Total Project Costs:	\$ 163,518	Amount of CDBG Request	\$30,000
Type of Project:	☒ Operational ☐ Capital/Equipment ☐ Special		
Project Address:	1101 E Garden Lane, Midland, TX 79701		
Project Summary (50 words or less):	Citywide Community Services provides home cleaning for low-income elderly or low-income disabled persons unable to maintain safe and sanitary living conditions on their own. It allows individuals to age in place; removing client financial and emotional burden of institutionalization and relieving partial caregiver work load.		
Organization's Mailing Address:	1101 E Garden Lane, Midland, TX 79701		
Application Contact Person:	Victor Peña		
Title of Contact Person	Executive Director		
Phone No:	(432) 682-9701	Fax No.:	(432) 682-3817
Email Address:	vpena@casadeamigosmidland.org		

NARRATIVE SECTION: Project Description & Implementation and Schedule

1. PROJECT DESCRIPTION

Citywide Community Services began as a local agency 30 years ago and merged with Casa de Amigos in 1991. Citywide Community Services helps hundreds of local disadvantaged elderly and disabled adults each year by providing safe and sanitary living conditions through home cleaning. It allows individuals to age in place; removing client financial and emotional burden of institutionalization and relieves partial caregiver work load. Program beneficiaries are low income elderly or low-income disabled citizens.

Low income elderly and disabled citizens face a variety of special problems and obstacles to healthy living that can lead to isolation and even neglect. These problems include language barriers, neglected health issues, limited mobility, sudden loss of ability to care for themselves and their homes, and the absence of an extended family. Institutionalization is undesirable for many reasons including the financial and emotional burden that comes with it. Allowing seniors and disabled citizens the opportunity to age in place improves quality of life, helps low income individuals financially and partially relieves caregiver burden. Extended families of low-income elderly and disabled persons usually carry the entire burden of care to keep their loved one healthy. When home cleaning is taken care of, the caregiver has more time to focus on other things such as grocery shopping and healthcare appointments for their loved ones.

The Citywide Community Services program addresses Specific Community Development Objective SL1.4 outlined in the city's Consolidated Plan for Community Development and Housing Funds 2010-2015, "Public Services-Senior Services: to support senior citizen center meal and home cleaning program." The Citywide Community Services program is located within and provides service to individuals living within the CDBG target area as well as throughout all of Midland County however, all clients must fall within the moderate to low income HUD guidelines plus be either a senior citizen (over the age of 60) or disabled.

2. IMPLEMENTATION AND SCHEDULE

Citywide Community Services is overseen by the Agency's Program Manager from offices located at Casa de Amigos. With each new client the staff conducts a complete client analysis by way of home visit which includes completion of the attached Client Information form, a Safe & Sanitary Assessment and an in-depth Biopsychosocial Assessment to determine qualification as well as to form an individualized service plan and schedule. This process exposes other needs affecting a Citywide client's ability to live independently and allows the staff to refer the client to necessary resources.

Once a qualified applicant is confirmed, their plan is implemented by staff. Altogether, the Citywide Community Services staff has over 24 years of experience working in partnership with the City's CDBG program.

An initial deep cleaning of the client's home is conducted on an as needed basis. Thereafter, regular cleaning is scheduled either weekly, bi-weekly, or monthly. Staff provides the following cleaning services for rooms of the home according to client need: vacuum, dust, mop, sweep or change bed sheets. In the kitchen, staff cleans the inside and outside of the refrigerator, stove, sink and wash dishes. Staff also cleans bathrooms including the shower, bathtub, sink and commode as well as remove trash from the household. Again these are done on an as needed basis. After each visit, the client and staff complete the Cleaning form to track needs and client progress.

In January of 2013, the schedule was completely redone to become more geographically strategic in order to make the program more fiscally responsible. As of date, the more efficient scheduling changes have already resulted in more clients being served and has shortened the client waiting list. It can be understood that demand for Citywide Community Services will only increase as the elderly population continues to grow significantly each year, 1 in 5 Americans has a disability (U.S. Census Bureau) and the median income for the elderly is a meager \$18, 819 (The Administration on Aging). CDBG funds are requested to cover the costs associated to keep this valuable program serving the low income elderly and disabled citizens in our community who are unable to help themselves. Funds would be used toward salary, wages, benefits and the reimbursement of supplies used by the home cleaning staff each day.

PROJECT WORKSHEET to 2013 CDBG Application

Agency:	Casa de Amigos of Midland, Texas Inc.	Project:	Citywide Community Services	
PROJECT DURATION	Anticipated Start Date	Mid-Point Date and Expected Status		Estimated Completion Date
1 year	October 1, 2013	April 30, 2014		September 30, 2014
PERFORMANCE MEASUREMENTS		Previous FY Actual	Current FY Projected	Proposed FY
Number of Beneficiaries		156	250	200
% Low/Mod Income Beneficiaries		100%	90%	100%
Outcome 1: Participants maintain a safe and sanitary environment.		156	200	200
Outcome 2:				
BUDGET				
EXPENSE CATEGORY	Previous FY Actual	Current FY Projected	Proposed FY	CDBG Amount Requested
1. Program Salaries & Benefits	84,800	88,520	90,920	30,000
2. Occupancy	11,898	12,113	10,386	
3. Operations	11,822	9,565	10,386	
4. Travel & Meetings	5,231	3,687	3,871	
5. Client Assistance	1,964	2,225	2,448	
Program/Project Subtotal	\$ 115,715	\$ 116,110	\$ 119,593	\$ 30,000
Administrative	12,802	42,646	43,925	
Other (Explain)				
TOTAL EXPENSES	\$ 128,517	\$ 158,756	\$ 163,518	\$ 30,000
FUNDING SOURCES				
1. City of Midland CDBG	25,000	25,000	30,000	30,000
2. United Way of Midland	35,000	50,000	50,000	
3. Conoco Phillips	6,000	5,500	5,500	
4. PBAF	20,000	20,000	20,000	
5. Donations			58,018	
TOTAL REVENUE / FUNDING	\$ 86,000	\$ 100,500	\$ 163,518	\$ 30,000

STAFF EVALUATION OF 2013 CDBG REQUEST

NAME: SE Senior Center Nutrition Program

Request: \$45,000

APPLICANT: Community and Senior Services of Midland, Inc.

Description. Community and Senior Services of Midland, Inc. (CSSM) requests continuation funding for the nutrition program at the Southeast Senior Citizen Center (1803 E Indiana). Approximately 175 seniors are expected to benefit from the lunch time meal program, as well as other activities at the center during the program year. However, only the meals program is included in this application. Meals are prepared daily at the CSSM central kitchen located at 3301 Sinclair.

Budget. CDBG funds would be used to pay for an average 34 meals per day for the October 2013 to September 2014 period. The estimated \$6.26 cost per meal includes all costs in providing the meals: personnel, supplies, transportation, food, equipment and administrative overhead.

Eligibility. Per 24 CFR 570.201(e), a public service for senior citizens is considered by HUD as a presumed benefit to low and moderate-income person's activity under its limited clientele provisions. This request will be subject to the 15% limitation on funds allocated for public services.

Consolidated Plan. The Consolidated Plan for Community Development and Housing Funds includes senior services as a high priority need. This program will specifically address Community Development Objective SL1.4.

Other Comments. As an ongoing program, this request is subject to the potential need for the operator to secure replacement funding. CDBG assistance has been provided continuously for senior citizen programming in southeast Midland since 1986. CSSM has administered CDBG funds for the SE Nutrition Program since 1988.

COVER SHEET for

2013 COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS

APPLICATION

ORGANIZATION NAME:	Community and Senior Services of Midland, Inc.		
PROJECT TITLE:	Southeast Senior Center Elderly Nutrition Program		
Total Project Costs:	\$52,271.00	Amount of CDBG Request	\$45,000.00
Type of Project:	☒ Operational ☐ Capital/Equipment ☐ Special		
Project Address:	1803 E. Indiana		
Project Summary (50 words or less):	CDBG funds will be used to provide a hot, nutritionally balanced noon time meal to low to moderate income seniors		
Organization's Mailing Address:	3301 Sinclair, Midland TX 79707		
Application Contact Person:	Jody Sneed		
Title of Contact Person	Executive Director		
Phone No:	432-689-6693	Fax No.:	432-689-6699
Email Address:	director@cssmidland.org		

COMMUNITY & SENIOR SERVICES OF MIDLAND, INC. **CDBG APPLICATION 2013/2014**

PROJECT DESCRIPTION

The objective of the Southeast Community Senior Nutrition program is to promote better mental and physical health for older persons through nutritious meals and socialization. The nutrition program will be provided each weekday in coordination with recreational, educational, prevention/health maintenance and special interest programs of the senior center. Many elderly people experience food insecurity – forced to make trade-offs between purchasing food or buying medicines or paying rent and utilities. As a result, their health suffers either from a lack of nutrition or the lack of medicine. By providing a nutritionally balanced meal, the seniors are provided that food security.

The City's Consolidated Plan identifies Senior Services as a high priority need area.

By receiving daily meals at the center, seniors will maintain or improve their health, and prevent becoming homebound or premature institutionalization. A Client Nutritional Risk Assessment is completed once a year. These assessments will be compared to determine improvement or maintenance of their nutritional risk. Also, yearly surveys are completed to provide client input and satisfaction.

A total of 175 unduplicated seniors, aged 60 and older may be expected to benefit from the program. Primarily, participants are expected to be residents of southeast Midland, with all being low to moderate-income level. Daily attendance is expected to average 36 persons. It is estimated that 8,350 meals will be provided at the Southeast Community Senior Center between October 1, 2013 and September 30, 2014.

IMPLEMENTATION AND SCHEDULE

Community & Senior Services of Midland, Inc. (CSS), with main offices at 3301 Sinclair, will carry out the nutrition program. The program will be provided each day, Monday-Friday (except holidays) at 11:30am, at Southeast Community Senior Center facilities at 1803 E. Indiana. CSS, through its central kitchen at 3301 Sinclair, will provide meals which meet the nutritional guidelines for older persons as set by the Texas Department on Aging and the Department of Aging and Disabilities. CSS also provides the meals for the Meals-on-Wheels program and two other senior center programs, Midland Senior Center and Casa de Amigos.

Two key staff involved in implementing the program have 30 years of nonprofit experience and have been on staff at CSS for a total of four years. Jody Sneed, Executive Director of CSS, is responsible for grant administration and certification of payment requests. DeAnna Bowers is the on-site administrator of the Southeast Community Senior Center and oversees the day-to-day operation of the program. Guadalupe Sanchez is the Food Service Manager responsible for selection of menus

and preparation of meals and has been employed as the Head Cook since 1991, recently promoted to Food Service Manager. See attached job descriptions and resumes.

FINANCIAL

Meals for Southeast Community Senior Center

8,350 Meals @ \$6.26/meal \$52,271

CDBG to provide \$45,000 in funding.

This figure includes all cost in preparing meals – personnel, supplies, food, transportation, and administration.

PROJECT WORKSHEET to 2013 CDBG Application

Agency:	Community & Senior Services	Project:	Southeast Senior Center Elderly Nutrition Program	
PROJECT DURATION	Anticipated Start Date	Mid-Point Date and Expected Status		Estimated Completion Date
On-going	10/1/13	On-going		09/30/14
PERFORMANCE MEASUREMENTS		Previous FY Actual	Current FY Projected	Proposed FY
Number of Beneficiaries		144	175	175
% Low/Mod Income Beneficiaries		99%	99%	99%
Outcome 1: clients will maintain or improve their score on the 'Determine Your Nutritional Risk' form		60%	60%	75%
Outcome 2:				
BUDGET				
EXPENSE CATEGORY	Previous FY Actual	Current FY Projected	Proposed FY	CDBG Amount Requested
1. Program Salaries & Benefits	18065	20000	22571	
2. Food/Supplies	27744	28000	24900	
3. Office	500	500	1400	
4. Occupancy	2659	2590	2300	
5. Auto	465	650	2300	
Program/Project Subtotal	\$49433	\$ 51740	\$52271	\$45000
Administrative				
Other (Explain)				
TOTAL EXPENSES	\$49433	\$51740	\$52271	\$45000
FUNDING SOURCES				
1. City of Midland CDBG	44031	45000	45000	45000
2. Community & Senior Services	5402	6740	7271	
3.				
TOTAL REVENUE / FUNDING	\$49433	51740	52271	\$45000

STAFF EVALUATION OF 2013 CDBG REQUEST

NAME: Lot Clearing Program

Request: \$50,000

APPLICANT: City of Midland Code Administration Division

Description. The City's Code Administration Division proposes funding for the lot clearing program. The lot clearing program includes the removal and disposal of debris and mowing of properties violating City Code. The program is conducted on a lien basis (i.e., up-front costs are paid by CDBG funds and then liens are placed on subject properties if costs are not paid by owners).

Budget. An estimated 417 lot clearing cases would be funded with the requested funds. CDBG funds would be used to pay contractors to accomplish the projects.

Eligibility. The lot clearing activity is classified as a public service per 24 CFR 570.201(e) and any CDBG allocation to it will be subject to the 15% limitation on funds allocated to public services. Projects that directly address one or more of the conditions, which contributed to the decline or deterioration of slum/blight areas, meet the CDBG Objective of preventing or eliminating slums or blight. The program is proposed to occur within the City's slum and blighted areas. The Consolidated Plan identifies census tracts with substandard housing 150% greater than the city average to be "slum/blighted" areas. This geographic area corresponds to the current low income census tracts.

Consolidated Plan. The Consolidated Plan for Community Development and Housing Funds includes lot clearing as a high priority need. This program will specifically address Community Development Objective SL3.2.

CITY OF MIDLAND OFFICE MEMORANDUM

DATE: April 15, 2013
TO: The Honorable Mayor and City Council
FROM: Steve Thorpe, Building Official
SUBJECT: Proposal for 2013-2014 CDBG Funds
Lot Mowing and Cleaning (\$50,000.00)

City of Midland Code Administration Office Lot Mowing and Cleaning

As part of its ongoing effort to improve the appearance of the City and to promote safe and clean surroundings for its citizens, it is the Code Administration's objective to continue the lot mowing and cleaning program. The lot mowing and cleaning program allows a more timely relief for homeowners who live next door to an undeveloped lot or abandoned property where its owners do not respond to City notices to mow and clean their property.

The basic reason for enforcing the accumulation of weeds and debris is based on the police power to protect the health, safety and welfare of citizens. Tall weeds and grass, piles of rubbish and fallen trees can become a fire hazard and harbor rodents. Children are forced to walk in streets in areas without sidewalks where tall weeds extend to the curb line of properties. In certain parts of the City where new development has not been apparent for many years, there is more evidence of abandonment and neglect. The lot mowing program is crucial to provide all areas of the City with the resources to eliminate the hazards caused by poorly maintained properties.

The City of Midland Code Administration Office employs six (6) Code Enforcement Officers and one Supervisor who are responsible for enforcing certain City Codes, one of which pertains to the accumulation of weeds, brush, and debris on lots. The Code Enforcement Office has managed the lot-mowing program since 1985.

When a Code Enforcement Officer finds a property to be in violation of the weedy lot ordinance, notice is sent to the owner of record. If the owner does not respond to the notice by mowing and cleaning the lot, or refuses to so, a contractor hired by the City of Midland performs the work. After completion, the contractor is paid for his/her work and an invoice is sent to the property owner. If the invoice is not paid after thirty days, a lien is placed against the property. When the property sells, the liens are collected and put back into the lot-mowing program to be used again.

The lot mowing and clearing program is essential to maintaining good public relations with citizens as well as other entities whose common goal is to revitalize neighborhoods. High growth of grass and weeds are a concern that is voiced at most neighborhood meetings. It is crucial to have the necessary funds available to rid neighborhood properties of weeds and debris when its property owners fail to do so.

During the 2012-2013 budget year, a total of 177 properties have been mowed and cleaned through the lot mowing and cleaning program in the CDBG Target areas. The total fund used was \$20,803.43. This amount included fees for mowing, the removal of debris, disposal of fallen trees and tires, and special projects. The areas involved included vacant houses, abandoned commercial properties, vacant lots located adjacent to occupied dwellings, and large tracts of undeveloped properties. When property owners fail to mow and clean their property themselves, they are faced not only with a mowing and debris charge, but also and administrative fee of \$50.00. Often times, this billing encourages property owners to maintain their property in the future to avoid this additional charge.

For fiscal year 2013-2014 CDBG, Code Administration Office is proposing the following:

Proposed Lot Mowing and Cleaning: 417 lots
\$50,000.00 - CDBG Amount Requested

With the requested funds and lien income generated by the lot mowing and cleaning program, combined with budgeted General Fund money and funds from the Litter Abatement Program, the Code Enforcement Office could continue to take care of properties belonging to individuals who do not respond to City notices of violation. The current lot mowing and cleaning program includes the removal and disposal of debris; the removal of fallen trees; the disposal of tires; special projects; and mowing of properties. At an average cost of \$120.00 per lot, it can be expected that 417 lot clearing invoices can be funded with \$50,000.

STAFF EVALUATION OF 2013 CDBG REQUEST

NAME: Demolition Program

Request: \$65,000

APPLICANT: City of Midland Code Administration Division

Description. The City's Code Administration Division proposes CDBG funding for demolition activity in CDBG areas. The Demolition Program consists of the demolition of and removal of unoccupied dangerous and dilapidated structures. The program is conducted on a lien basis (i.e., up-front costs are paid by CDBG funds and then liens are placed on subject properties if costs are not paid by owners).

Budget. Ten structures would be demolished with the requested funds. Funds would be used to pay contractors to accomplish the projects.

Eligibility. Per 24 CFR 570.201(d), demolition and removal of a structure are eligible activities. Projects that directly address one or more of the conditions, which contributed to the decline or deterioration of slum/blight areas, meet the CDBG Objective of preventing or eliminating slums or blight. The program is proposed to occur within the City's slum and blighted areas. The Consolidated Plan identifies census tracts with substandard housing 150% greater than the city average to be "slum/blighted" areas. This geographic area corresponds to the current low income census tracts.

Consolidated Plan. The Consolidated Plan for Community Development and Housing Funds includes demolition as a high priority need. This program will specifically address Community Development Objective SL3.1.

**CITY OF MIDLAND
OFFICE MEMORANDUM**

DATE: April 15, 2013
TO: The Honorable Mayor and City Council
FROM: Steve Thorpe, Building Official
SUBJECT: Proposal for 2012/2014 CDBG Funds
Demolition Program (\$65,000)

**City of Midland Code Administration Office
Demolition Program**

The City of Midland Code Administration Office proposes to continue the demolition program to accomplish the removal of dangerous and dilapidated structures throughout the City. Community Development Block Grant (CDBG) funds are allocated for removal of slum and blight in certain targeted neighborhoods. General Fund dollars are used in both the CDBG areas as well as those areas of the city outside the target areas.

Structures that have been abandoned and are in disrepair where doors and windows are open or missing cause unsafe conditions for neighborhoods as well as contribute to the neglected appearance of the area. A dilapidated structure not only attracts vagrants and provides a hiding place for drug dealers and criminals. It also has the tendency to reducing the value of the property and the surrounding neighborhoods. Children tend to enter unsecured buildings and often use them as play areas, not realizing the potential hazards. School officials are concerned when open or dangerous buildings exist close to school grounds fearing that someone may lure a child into the building. The availability of funding for the removal of these structures is essential for the safety and welfare of all citizens.

The City of Midland Code Administration Office employs six (6) Code Enforcement Officers and one Supervisor who are responsible for enforcing certain City Codes, one of which pertains to unsafe and dilapidated structures. With the addition of the Supervisor, more demolitions of dangerous buildings are expected. The Code Enforcement Office has managed the demolition program since 1985.

When a Code Enforcement Officer finds a property with a dilapidated and unsafe structure or structures, or a complaint is received from citizens, police officers, fire inspectors, and other City personnel, notice is sent to the owner of record. The owner has to make repairs to make the structure in a livable condition or can remove/demolish the building/s. If the owner does not respond to the notice by repairing the building or be removing the structure/s, or refuses to do so, and if the building is deemed uninhabitable, a contractor hired by the City of Midland will perform demolition work. After completion, the contractor is paid for his work, and an invoice is sent to the property owner. If the invoice is not paid after thirty days, a lien is placed against the property. When the property sells, the liens are collected and put back into the demolition program.

The City's Consolidated Plan lists the Demolition Program as a **high priority** Community Development service need since it is a program aimed at eliminating and preventing slum and blight in the city. Citizens express the need to continue this program at many of the neighborhood meetings.

The demolition program is essential to maintaining good public relations with citizens as well as other entities whose common goal is to revitalize neighborhoods. It is crucial to have the necessary funds available to rid neighborhood properties of unsafe buildings when the property owners fail to do so. Buildings that have been abandoned are dangerous when not secured. The demolition program allows the City to have funding available removing such structures to avoid potential hazards and rid criminal activity.

For fiscal year 2013-2014 CDBG, Code Administration Office is proposing the following:

Proposed Demolitions: 10 structures
\$65,000.00 - CDBG Amount Requested

During the 2012-2013 budget year, a total of eight (8) structures were removed through the demolition program using CDBG funds. Total CDBG funds used was \$55,802.79. When demolition is performed, dead and fallen trees are included in the cleanup of the property along with unsightly debris and tires. The removal of dilapidated structures provides a more permanent impact on the neighborhood. It lessens the occurrences of vandalism, graffiti, drug use and crime.

With the requested funds and lien income generated by the demolition program, the Code Enforcement Office could continue to take care of properties belonging to individuals who do not respond to City notices of violation. Dangerous conditions around schools and churches and low-income neighborhoods could be corrected. The removal of dangerous and unsafe structures is very important to the economic development of our community.

The demolition program includes the removal of unsafe and dilapidated structures, which are in violation of City Codes. With the average cost of \$6,500.00 per property, approximately ten (10) structures can be removed with the \$65,000 requested funding. And with the funds generated by lien income, an additional number of dilapidated structures can be removed.

STAFF EVALUATION OF 2013 CDBG REQUEST

NAME: Washington Park Improvements

Request: \$175,000

APPLICANT: City of Midland Parks and Recreation Division

Description. The Parks and Recreation Division proposes CDBG funding for various improvements to Washington Park, located at 1803 E Indiana. The following improvements are proposed: replace pavilion structure, resurface tennis court, add shade structures, and replace health and wellness equipment.

Budget. The requested funds would be used to pay vendors for products and services. Work contracts of more than \$2,000 will require compliance with federal labor standards.

Eligibility. Per 24 CFR 570.201 (c), construction, renovation or installations of public facilities are CDBG eligible activities. A public facility that has a service area with a population that is 51% low and moderate income or greater will satisfy the CDBG Objective of benefiting a low and moderate-income area. Generally, Washington Park serves Census Tract 15 which has a 73% low/moderate population percentage.

Other Comments. CDBG funds cannot be used for repairing, operating or maintaining public facilities or improvements. Therefore only new or replacement facilities are CDBG eligible.

Consolidated Plan. The Consolidated Plan for Community Development and Housing Funds includes park and recreational facilities as a high priority need. Community Development Objective SL1.2 specifically identifies that low-income area neighborhood parks that are deteriorating should be upgraded.

ORGANIZATION NAME	City of Midland Parks and Recreation Division		
PROJECT TITLE:	Washington Park Renovation		
Amount of CDBG Request		\$175,000	
Contact Person:	Laurie M. Williams		
Title of Contact Person	Parks and Recreation Manager		
Phone No:	(432) 685-7370	Fax No.:	(432)685-7380
Email Address:	lwilliams@midlandtexas.gov		

The City of Midland Parks and Recreation Division is working to provide improved recreation opportunities to all citizens of Midland. As identified in the 2010-2015 Consolidated Plan, improvements to deteriorating neighborhood parks located in low-income areas are a high priority objective as a Community Development need. Because of the deteriorating condition of Washington Park's amenities, upgrading the facilities at this neighborhood park is a priority. The playground equipment was replaced with CDBG funds in 2011. The Washington pool was also renovated that year with City of Midland funding. Costs of those improvements were approximately \$180,000.

The pavilion structure at Washington Park is over 25 years old. Due to rusted structural support members, the replacement of the structure is a high priority for safety reasons. The cost to remove and replace the structure and install new tables, trash receptacles and grills is estimated at \$70,000.

The tennis courts at Washington Park are not in useable condition. Few of Midland's parks have tennis courts. Bringing the two tennis courts back into working condition would provide an excellent recreational opportunity for the residents of this neighborhood. The existing surface will be removed and replaced with a durable, low maintenance tennis surface. Lighting will also be restored. The cost of the renovation of the tennis courts is estimated at \$60,000.

The lack of shade structures at Washington Park in the pool and playground areas makes the facility less than inviting during the hot West Texas days. The updated 2012 Parks and Open Space Master Plan identified covered basketball courts as a requested need in neighborhood parks. The cost to add shade structures in Washington Park for these areas is approximately \$30,000.

The health and wellness exercise equipment located in other parks throughout Midland is heavily utilized by citizens. The Parks and Recreation Division has received many requests to replace the existing broken and outdated equipment at Washington Park. The cost for removing and replacing the health and wellness equipment is approximately \$15,000.

The City of Midland has been making efforts to upgrade the recreational amenities offered to the residents in the Washington Park area. With the requested \$175,000 in CDBG funding, low-income families in the surrounding neighborhoods will be offered an exceptional level of recreational opportunities for years to come.

PROJECT WORKSHEET to 2013 CDBG Application

Agency:	City of Midland	Project:	Washington Park Renovation	
PROJECT DURATION	Anticipated Start Date	Mid-Point Date and Expected Status		Estimated Completion Date
8 months	10-1-13	2-1-13 Contract in place for construction of new pavilion and tennis courts.		6-1-14
PERFORMANCE MEASUREMENTS		Previous FY Actual	Current FY Projected	Proposed FY
Number of Beneficiaries				
% Low/Mod Income Beneficiaries				
Outcome 1: remove and replace pavilion				\$70,000
Outcome 2: install 2 new tennis courts				\$60,000
Outcome 3: construct shade structures at basketball courts, pool, and playground				\$30,000
Outcome 4: remove and replace health/wellness equipment				\$15,000
BUDGET				
EXPENSE CATEGORY	Previous FY Actual	Current FY Projected	Proposed FY	CDBG Amount Requested
1. Remove and replace existing pavilion/furnishings			\$70,000	\$70,000
2. Renovate 2 Tennis Courts			\$60,000	\$60,000
3. Install shade structures			\$30,000	\$30,000
4. Remove and replace health/wellness equipment			\$15,000	\$15,000
Program/Project Subtotal			\$ 175,000	\$175,000
Administrative				
Other (Explain)				
TOTAL EXPENSES			\$ 175,000	\$175,000
FUNDING SOURCES				
1. City of Midland CDBG				\$175,000
2. City of Midland				
TOTAL REVENUE/FUNDING				\$175,000

STAFF EVALUATION OF 2013 CDBG REQUEST

NAME: CDBG Administration

Request: \$140,000

APPLICANT: City of Midland Community Development

Description. The Community Development Division (CD) of the Development Services Department is responsible for a variety of federal requirements on a general basis and on project-specific situations. These duties as well as CDBG program management, oversight and coordination are assigned to the CD Office. The CD Office is also responsible for fair housing programming. Additionally, the CD Office implements the City's housing programs - the Owner-Occupied Housing Assistance Programs (OHAP) and the Homebuyer Assistance Program (HAP).

Budget. The following proposed budget for the entire CD Office is based on preliminary personnel cost:

Personnel	\$196,967
Operating Expenses	\$ 20,903
Audit	\$ _____ 0
Total	\$217,870

Of the above, \$140,000 (or 65% of the above) would be paid by funds allocated for CDBG Administration; the remaining \$77,870 would be paid from funds allocated to the CDBG housing programs and the General Fund.

Eligibility. Up to 20% of the CDBG grant may be used for administrative activities including fair housing services and planning projects. These activities have no effect on the requirement that 70% of funds be used on low and moderate-income benefit projects. HUD encourages CDBG Entitlement cities to use all (up to the 20% cap) necessary CDBG funds for proper administration of the CDBG program. Housing program administrative services qualify as part of the specific housing program and are not included in the 20% CDBG administrative cap.

**CITY OF MIDLAND
OFFICE MEMORANDUM**

DATE: April 12, 2013

TO: Honorable Mayor and City Council

FROM: Sylvester Cantu, Community Development Administrator

SUBJECT: **2013/14 CDBG Proposal - CDBG Administration (\$145,000)**

This request for CDBG funding is to pay for **general administration** of the CDBG grant as performed by the Community Development (CD) Division of the City. The Division prepares the annual application for CDBG funds, maintains the Consolidated Plan for Community Development and Housing funds, contracts with subrecipient agencies, conducts fair housing and citizen participation programming and addresses a variety of federal requirements on a general basis and for project specific situations. Implementation of the Consolidated Plan requires participation in groups such as Midland Affordable Housing Alliance, Homeless Coalition, United Way, etc. Additionally, the CD staff is called upon to perform tasks on non-CDBG related housing and community development matters.

The proposed FY14 budget for the CD Division will pay for two staff positions and operating expenses such as supplies, advertising, a vehicle and training. Summaries of prior budgets and the proposed budget are shown below:

	Actual <u>2009/10</u>	Actual <u>2010/11</u>	Actual <u>2011/12</u>	Budget <u>2012/13</u>	Proposed <u>2012/13</u>
Personnel	\$186,083	\$183,963	\$199,803	\$204,464	\$196,967
Operating Expenses	<u>13,964</u>	<u>12,953</u>	<u>11,894</u>	<u>15,503</u>	<u>20,903</u>
Total CD Office	\$200,047	\$196,916	\$211,697	\$219,967	\$217,870
 Amount CDBG Admin:	 \$159,559	 \$160,059	 \$131,915	 \$160,000	 \$145,000
Amount Housing Admin:	\$40,488	\$36,857	\$79,782	\$59,967	\$71,000

Notes: The above has not been reviewed by Management.
The above does not include independent audit costs (has ranged from \$47,000 to \$53,000).

An allocation for CDBG administration will only pay for part of the CD Division. CD Staff also perform the **two owner occupied housing assistance** programs and the **homebuyer assistance** program. CDBG funds allocated to those programs and the General Fund will fund the remainder of the CD Division cost.

xc: Jim Nichols



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: May 14, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Ron Jenkins, Oil & Gas Compliance Coordinator

SUBJECT: Consider a resolution approving the issuance of a permit to Callon Petroleum Operating Company (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (Pecan Acres 22C #2) located 467 feet from the east line and 467 feet from the south line located in Section 22, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. (Generally located approximately 430 feet north of Briarwood Avenue, north of N. County Road 1250.)

Purpose:

To consider a resolution approving the issuance of a permit to Callon Petroleum Operating Company (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (Pecan Acres 22C #2) located 467 feet from the east line and 467 feet from the south line located in Section 22, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. The required 30-day public comment has passed and the Council may consider this request. No letters of objection received.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to process this application.

Discussion:

The Oil and Gas Advisory Committee has reviewed this well site in detail and recommends application with updated mineral opinion to include addresses and include updated tax certificate; however, by a vote of 2-2, the Committee did not recommend the requested temporary landscaping and irrigation variance. Callon Petroleum Operating Company has addressed these recommendations and updated the application. Road repair can be consolidated with existing agreement.

Attachments: Application; Location map; Exhibit - Drill site map, Exhibit – Flow Line Location and Exhibit – Residence Distance.

RESOLUTION NO. _____

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 467 FEET FROM THE EAST LINE AND 467 FEET FROM THE SOUTH LINE, SECTION 22, BLOCK 40, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED APPROXIMATELY 430 FEET NORTH OF BRIARWOOD AVENUE, NORTH OF NORTH COUNTY ROAD 1250); AND PROVIDING THAT SAID PERMIT DOES NOT REQUIRE A NEW ROAD REPAIR AGREEMENT BUT SHALL BE CONSOLIDATED UNDER AN EXISTING ROAD REPAIR AGREEMENT

WHEREAS, on December 8, 2009, the City Council of the City of Midland duly approved Ordinance No. 8769 which amended Title VI, “Police Regulations,” Chapter 1, “General Offenses,” of the City Code of Midland, Texas, so as to establish Section 23, “Oil and Gas Well Permits issued on or after January 1, 2010,” which governs the granting or rejecting of Oil and Gas Well Permits; and

WHEREAS, the purpose of said section is to establish reasonable and uniform limitations, safeguards, and regulations for present and future operations related to the exploring, drilling, developing, producing, transporting and storing of oil or gas or other substances produced in association with oil and gas within the City of Midland to protect the health, safety, and general welfare of the public and the orderly development of the City of Midland; abate or prevent potential public nuisances; minimize the potential adverse impact to surface and mineral owners, protect the quality of the environment and encourage the orderly production of available mineral resources; and

WHEREAS, Section 6-1-23(C) of the City Code of Midland, Texas, makes it an offense to knowingly drill or participate in the drilling of any well or to re-enter any well within the corporate limits of the City of Midland without a permit having first been issued by the authority of the City Council; and

WHEREAS, Operator has submitted an application to the City of Midland to drill an

oil and gas well on the property described in Section Two hereof; and

WHEREAS, notice of the public hearing on this matter was provided in accordance with Section 6-1-23(H)(1) and a public hearing was held on April 9, 2013; and

WHEREAS, subsequent to said public hearing, and in accordance with Section 6-1-23(H)(1), the City Council allowed the public and Operator thirty (30) days to submit written input to the City Manager regarding Operator's application to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, the City Council has considered those issues set forth in Section 6-1-23(I) in determining whether to grant or deny a permit to Operator to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, the City Council finds it to be in the public interest to approve the issuance of a permit to Operator to drill an oil and gas well on the property described in Section Two hereof;

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

SECTION ONE. That the above recitals are hereby adopted and approved by the City Council of the City of Midland.

SECTION TWO. That the Mayor is hereby authorized and directed to execute a permit, on behalf of the City of Midland, that will allow Operator to drill an oil and gas well within the City limits located 467 feet from the east line and 467 feet from the south line, Section 22, 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.

SECTION THREE. That said permit does not require a new road repair agreement but shall be consolidated under the existing road repair agreement between Operator and the City of Midland for Operator's wells located on the property described in Section Two hereof.

On motion of Council member _____, seconded by Council member

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on May 14, 2013, considered the application of Callon Petroleum Operating Company, dated January 3, 2013, 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 Callon Petroleum Operating Company, dated January 3, 2013, and filed with the Oil & Gas Compliance Officer and incorporated herein for all legal purposes.

The location of Callon Petroleum Operating Company, Pecan Acres 22C #2 oil and gas well shall be 467 feet from the east line and 467 feet from the south line, Section 22, Blk 40, T-1-S, T&P RR Co. Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in that application of Callon Petroleum Operating Company, 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 May 14, 2013, through May 14, 2014, and so long thereafter as oil or gas is produced or until such time as the permittee has permanently abandoned the operations of the well or facility for which this permit is issued.

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

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts the permittee from its responsibilities or obligations as to third parties. The issuance of this permit only means that the permittee has, at this time, complied with Ordinance No. 8769 and that the Midland City Council, as a regulatory body, will allow the permittee to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize the recipient to act with impunity as to third parties, nor does it insulate the permittee from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize the permit holder from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a "negative pronouncement" that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. The permittee has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield the permittee from third party tort liability stemming from the consequences of the permitted activity.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, utility and drainage rights-of-way.

This permit shall constitute a written contract for purposes of insurance requirements.

Landscaping is not required at this time but will be required within two years from May 14, 2013. Operator shall notify the City Manager within 180 days (November 14, 2014) in writing if the landscaping is not to be completed prior to expiration of the two year period. If landscaping is not completed prior to the two year period this permit shall automatically terminate without any action of the City Council required.

In addition to the requirements of the Midland City Code, Ordinance 8769, and the requirements of this permit, including the General and Specific Conditions incorporated herein, Callon Petroleum Operating Company shall develop, maintain and operate the well described herein in accordance with the conditions, limitations and safeguards contained in Callon Petroleum Operating Company application for said well. Callon Petroleum Operating Company application for said well is incorporated herein by reference for all legal purposes.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS ____ day of May, 2013.

CITY OF MIDLAND, TEXAS

BY: _____

W. Wesley Perry, Mayor

UNDERSTOOD AND AGREE THIS ____ day of May, 2013.

Callon Petroleum Operating Company

By: _____

Jimmy Baggett, Operations Manager

OIL AND GAS PERMIT: ORDINANCE 8769 GENERAL CONDITIONS- EXHIBIT "A"

(K)

General Conditions of all Oil and Gas Well Permits.

1.

General Obligations of Operator.

The Operator shall be required to:

a.

Comply with the terms and conditions of this Section, the Midland City Code, the rules and regulations of the Railroad Commission, and any other state or federal agency that enforces land use, mineral use, or environmental protection regulations.

b.

Promptly clear Drill and Operation sites of litter, trash, refuse and other substances used, allowed, or occurring in the operations, and after abandonment or completion, grade, level, and restore such property to the same surface conditions as nearly as practicable as existed before operations.

c.

Indemnify and hold harmless the City of Midland, the City's officers, agents and employees, from any and all claims, losses, damages, causes of action, suits, and liability of any kind, including all expenses of litigation, court costs, and attorney's fees, for injury to or death of any Person, or for damage to any property arising out of or in connection with the work done by Operator under an Oil and Gas well permit: where such injuries, death or damages are caused by Operator's sole negligence or the joint negligence of the Operator and any other Person or entity.

d.

Promptly pay all fines, penalties and other assessments imposed due to breach of any of the conditions herein. If the Operator does not agree that a breach has occurred, the Operator may file a written objection with the City Manager within ten (10) days of being notified of the alleged breach. The City Manager shall review the objections and give the Operator the opportunity to be heard and present facts that the Operator deems relevant.

e.

Promptly restore to its former condition any public property damaged by the oil and gas operation.

f.

Except as permitted by Subsection U, hereof, Operator shall not, either directly or indirectly, assign all or any part of an Oil and Gas Well Permit.

g.

If required by the Permit, Operator shall execute a "Road Repair Agreement" between itself and the City of Midland and submit all necessary information and insurance and guarantees to the City prior to the issuance of any Oil and Gas Well Permit under this Section.

2.

Irrevocable Letter of Credit, Certificate of Deposit, or Surety Bond.

Prior to the issuance of an Oil and Gas well permit, the Operator shall provide the City Attorney with a guarantee in the form of an irrevocable letter of credit, certificate of deposit, or surety bond in the name of the City. The Applicant shall be entitled to receive the interest earned if the certificate of deposit reaches maturity. The letter of credit, certificate of deposit, or surety bond must satisfy the following:

a.

The letter of credit, certificate of deposit or surety bond shall be issued by a reliable bank or insurance carrier authorized to do business in the State of Texas;

b.

The letter of credit, certificate of deposit or surety bond shall be effective starting on or before the effective date of the Oil and Gas Well Permit;

c.

The letter of credit, certificate of deposit or surety bond shall be in the amount of twenty-five thousand dollars (\$25,000.00);

d.

The letter of credit, certificate of deposit or surety bond shall remain in full force and effect for a period of three years; and

e.

The letter of credit, certificate of deposit or surety bond shall authorize the City of Midland to draw upon such credit in the event the City Manager, or his designee, determines said credit is needed to remedy any violation of this Section.

If the well is still producing or if the well has not been abandoned or plugged, the Operator must renew the letter of credit, certificate of deposit or surety bond on or before one hundred twenty (120) days prior to the expiration of the letter of credit, certificate of deposit or surety bond.

The City of Midland may draw upon the letter of credit, certificate of deposit or surety bond to recover costs of repairs, modifications, or construction to remedy any violations by the Operator under this Section. The City may make partial or full draws of the letter of credit, certificate of deposit or surety bond. The City may draw upon the letter of credit, certificate of deposit or surety bond in the event the City has not received a new letter of credit, certificate of deposit or surety bond within the one hundred twenty (120) day renewal time period required above.

The Operator shall maintain the principal amount of \$25,000.00 in the form of a letter of credit, certificate of deposit or surety bond at all times throughout the term of the permit. In the event such letter of credit, certificate of deposit or surety bond is not restored to \$25,000.00 within ten (10) days after the date of the reduction of the letter of credit, certificate of deposit or surety bond, the City may draw and receive the remaining balance of the letter of credit, certificate of deposit or surety bond, and the Oil and Gas Well Permit shall be suspended on such date and the Operator's right to operate under Oil and Gas Well Permit shall immediately cease until the Operator files the required letter of credit, or certificate of deposit or surety bond.

If an operator has three (3) or more Oil and Gas Well Permits in effect which have been approved by the City Council, the Operator may petition the Council to consolidate the letter of credits, certificate of deposits or surety bonds into one letter of credit, certificate of deposit or surety bond that would cover all Oil and Gas Wells in the City limits. The consolidated letter of credit, certificate of deposit or surety bond shall be in an amount determined by the City Council as sufficient to cover the costs of repairs, modifications, construction or to remedy violations by the Operator but in no event shall the amount be less than \$75,000.00.

3.

Insurance.

In addition to the letter of credit, certificate of deposit or surety bond required above, the Operator shall carry a policy or policies of insurance issued by an admitted insurer or eligible surplus lines insurer authorized to do business in the State of Texas. In the event such insurance policy or policies are cancelled, any Oil and Gas Well Permit issued under this Section shall be suspended on such date of cancellation and the Operator's right to operate under such Oil and Gas Well Permit shall immediately cease until the Operator files additional insurance as required herein.

- a. General requirements applicable to all policies.
 - i. The City, the City's officials, employees, agents and officers shall be endorsed as an "Additional Insured" on all policies, except under Operator's Workers Compensation Policy.
 - ii. All policies shall be written on an occurrence basis, except for Environmental Pollution Liability (Seepage and Pollution coverage) and Excess and Umbrella Liability, which may be on a claims-made basis.
 - iii. All policies shall be written by an admitted insurer or eligible surplus lines insurer authorized to do business in the State of Texas.
 - iv. Deductibles shall be listed on the Certificate of Insurance and shall be on a "per occurrence" basis unless otherwise stipulated herein.
 - v. Certificates of Insurance shall be delivered to the City of Midland, P.O. Box 1152, Midland, Texas 79702, Attn: City Attorney's Office, evidencing all the required coverages, including endorsements, prior to the issuance of an Oil and Gas Well Permit under this Section.
 - vi. All policies shall be endorsed with a waiver of subrogation providing rights of recovery in favor of the City.
 - vii. Any failure on the part of the City to request required insurance documentation shall not constitute a waiver of the insurance requirements specified herein.
 - viii. Each policy shall be endorsed to provide the City a minimum thirty (30) day notice of cancellation, non-renewal, and/or material change in policy terms or coverage. A ten (10) day notice shall be acceptable in the event of non-payment of premium.
 - ix. During the term of any Oil and Gas Well Permit issued hereunder, the Operator shall report, in writing, within thirty (30) days of the occurrence, to the City Manager, any known

loss occurrence which could give rise to a liability claim or lawsuit or which could result in a property loss.

x.

Upon request, certified copies of all insurance policies shall be furnished to the City.

xi.

Operator shall have the right to maintain a qualified, self-insurance plan and/or maintain prudent levels of self-insured retentions for insurance coverage required in this section; however, Operator shall remain financially obligated for all self-insured retention amounts and deductibles. To the extent of the liabilities assumed by the Operator, Operator's insurance shall be primary coverage as to any liabilities of the City.

b.

Standard Commercial General Liability Policy.

This coverage must include premises, operations, blowout or explosion, products, completed operations, sudden and accidental pollution, blanket contractual liability, underground resources damage, broad form property damage, independent contractors protective liability, accidental death and personal injury. This coverage shall be a minimum Combined Single Limit of \$1,000,000.00 per occurrence for Bodily Injury, Accidental Death, and Property Injury.

c.

Excess or Umbrella Liability.

\$1,000,000	Excess, if the Operator has a stand-alone Environmental Pollution Liability (EPL) policy.
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\$10,000,000	Excess, if the Operator does not have a stand-alone EPL policy. Coverage must include an endorsement for sudden or accidental pollution. If Seepage and Pollution coverage is written on a "claims made" basis, the Operator must maintain continuous coverage and purchase Extended Coverage Period when necessary.
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d.

Environmental Pollution Liability Coverage.

Operator shall purchase and maintain in force for the duration of any Oil and Gas Well Permit issued hereunder, insurance for environmental pollution liability applicable to bodily injury, property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense or settlement of claims; all in connection with any loss arising from the insured site.

Coverage shall be maintained in an amount of at least \$1,000,000 per loss, with an annual aggregate of at least \$10,000,000.

Coverage shall apply to sudden and accidental pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids or gases, refuse material or other irritants, contaminants or pollutants.

e.

Workers Compensation and Employers Liability Insurance.

i.

Workers Compensation benefits shall be Texas Statutory Limits.

ii.

Employers Liability shall be a minimum of \$1,000,000.00 per accident.

iii.

Such coverage shall include a waiver of subrogation in favor of the City of Midland and provide coverage in accordance with applicable State and Federal laws.

f.

Automobile Liability Insurance.

i.

Combined single limit of \$1,000,000.00 per occurrence for bodily injury and property damage.

ii.

Coverage must include all owned, hired and not-owned automobiles.

g.

Certificates of Insurance.

i.

The company must be licensed or authorized to do business in the State of Texas.

ii.

The insurance set forth by the insurance company must be underwritten on forms that have been approved by the Texas State Board of Insurance or ISO or an equivalent policy form acceptable to the City, with the exception of environmental pollution liability and control of well coverage.

iii.

Set forth all endorsements and insurance coverage according to requirements and instructions contained herein.

iv.

Shall specifically set forth the notice of cancellation, termination, or change in coverage provisions to the City. All policies shall be endorsed to read "THIS POLICY WILL NOT BE CANCELLED OR NON-RENEWED WITHOUT THIRTY (30) DAYS ADVANCE WRITTEN NOTICE TO THE OWNER AND THE CITY, EXCEPT WHEN THIS POLICY IS BEING CANCELLED FOR NONPAYMENT OF PREMIUM, IN WHICH CASE, TEN (10) DAYS ADVANCE WRITTEN NOTICE IS REQUIRED".

v.

Original endorsements affecting coverage required by this section shall be furnished with the certificates of insurance.

vi.

At the request of an Operator, the Council may grant a variance to insurance requirements if the Council determines that the insurance procured by the Operator is sufficient to protect the City. A variance of this type may be required because of a change in underwriting policies of admitted insurance carriers.

Indemnification.

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

Notice.

The notices provided in this permit may be served in person or by registered or certified mail. Operator shall within ten (10) days notify the City Manager in writing of any change in such agent or mailing address unless operations in the City are discontinued and abandonment is complete.

Notice addresses are as follows:

City of Midland
Attn: Office of the City Manager
P. O. Box 1152
Midland, Texas 79702

OPERATOR: _____
Jimmy Baggett, Operations Manager

Callon Petroleum Operating Company
4305 N. Garfield, Suite 235
Midland, Texas 79705
(432)686-2764

OIL AND GAS WELL PERMIT: ORDINANCE 8769 SPECIFIC CONDITIONS-EXHIBIT "B"

(L)

Specific conditions of all Oil and Gas Well Permits; On-Site Requirements.

1.

Abandoned wells. All wells shall be abandoned in accordance with the rules of the Railroad Commission and pursuant to Subsection (O) of this Section.

2.

Automated audible alarm system. After completion, the appropriate system for flowing gas and/or flowing oil wells must be maintained to provide warnings for a substantial drop in pressure, or the release of any oil or gas, or a fire. Said audible alarm system must be approved by the Fire Marshal prior to installation of production equipment at the flowing gas and/or flowing oil well site.

3.

Blowout prevention. In all cases, ram-type and annular Blowout Preventers shall be used on all wells being drilled. In cases where Re-working is being performed on a Well, ram-type or annular Blowout Preventers shall be used. Protection shall be provided to prevent blowout during Drilling operations as required by and in conformance with the requirements of the Railroad Commission and the recommendations of the American Petroleum Institute. In addition to the Blowout Preventers stated above, all drilling must be equipped with flow lines and valves commensurate with the working pressures involved as required by the Railroad Commission each Blowout Preventer shall be a double-ram design with blinds and pipe. After surface casing has been set and cemented to surface, each Blowout Preventer shall be tested and witnessed by Operator's personnel and the results of such test shall be documented in the Operator's well file. Testing expenses shall be the responsibility of the Operator. The Operator shall provide a complete report of the well blowout prevention test to the City Manager within fifteen (15) days of the test.

4.

Casing. The surface portions of the Well shall be cased with cement circulated to the surface. All surface and intermediate casing must comply with all applicable rules of the Railroad Commission and the Texas Commission on Environmental Quality.

5.

Compliance. Operator shall comply at all times with all applicable federal, state and City requirements.

6.

Discharge. No person shall place, deposit, discharge, or cause or permit to be placed, deposited or discharged, any oil, naphtha, petroleum, asphalt, tar, hydrocarbon substances or any refuse including water or brine from any oil and gas operation or the contents of any container used in connection with any oil and gas operation in, into, or upon any Right-of-way, alleys, streets, lots, storm

drain, ditch or sewer, sanitary drain without permits from the appropriate City departments, or any body of water or onto any private property in the City.

7.

Drilling notice. The operator shall provide at least a forty eight (48)-hour notice to the City Manager prior to mobilizing the Drilling Equipment. In addition to notification to the City Manager, the operator shall provide a notice to the owners of at least forty eight (48) hours or more prior to mobilizing the drilling equipment through a publication in the Midland Reporter Telegram and a posting in the City Secretary's Office.

8.

Drill stem testing. No drill stem testing shall be allowed.

9.

Dust, vibration, odors. All drilling and production operations shall be conducted in such a manner as to minimize, so far as practicable, dust, vibration, or noxious odors, and shall be in accordance with the best accepted practices incident to drilling for the production of oil, gas and other hydrocarbon substances in urban areas. All equipment used shall be so constructed and operated so that, vibrations, dust, odor or other harmful or annoying substances or effect will be minimized by the operations carried on at any Drill Site or Operation Site or from anything incident thereto, to the injury or annoyance of persons living in the vicinity; nor shall the site or structures thereon be permitted to become dilapidated, unsightly or unsafe. Proven technological improvements in industry standards of drilling and production in this area shall be adopted as they become available if capable of reducing factors of dust, vibration and odor.

10.

Electric lines. All electric lines going under City roadways must be bored and encased pursuant to city standards. All electric lines to production facilities may be overhead service unless the surrounding neighborhood is developed with underground electric service. If the surrounding neighborhood is developed with underground electric service, then all electric lines to production facilities shall be buried underground.

11.

Electric motors. Only electric prime movers or motors shall be permitted for the purpose of pumping wells. No electric power shall be generated on location. All electrical installations and equipment shall conform to the City ordinances and the appropriate national codes.

12.

Emergency response plan. Prior to the commencement of any oil or gas production activities, Operator shall submit to the City Manager an emergency response plan establishing written procedures to minimize any hazard resulting from drilling, completion or producing of oil and gas wells. Said plan shall use existing guidelines established by the Railroad Commission, Texas Commission on Environmental Quality, Department of Transportation and/or the Environmental Protection Agency and City Fire Code. A copy of the Emergency Response Plan shall be kept at the Operator's office.

13.

Equipment painted. All production equipment on the site shall be painted beige and maintained at all times, including pumping units, tanks, buildings and structures. The City shall regularly inspect all painted structures and inform Operator when repainting is necessary. Operator shall repaint within sixty (60) days written notice from City. When requiring re-painting of such facilities, the City Manager shall consider the deterioration of the quality of the material of which such facility or structure is constructed, the degree of rust, and its appearance. Upon request of the Operator, a color other than beige may be approved by the City Council.

14.

Explosives. Use of an explosive perforating gun during completion operations and during plugging operations and down-hole operations that require such explosives shall be allowed.

15.

Fire notice. In the event of a fire or discovery of a fire, smoke, or unauthorized release of flammable or hazardous materials on any property, the Operator shall immediately report such condition to the Fire Department in accordance with the City of Midland Fire Code. The reporting limits for hazardous materials release shall conform to the requirements of the Railroad Commission and not exceed any state or federal permitting limit.

16.

Fire prevention; sources of ignition. Firefighting apparatus and supplies as approved by the Fire Marshal and required by any applicable federal, state, or local law shall be provided by the Operator, at the Operator's cost, and shall be maintained on the drilling site at all times during drilling and/or reworking operations. The Operator shall be responsible for the maintenance and upkeep of such equipment.

17.

Fracing operations. No fracing or formation fracture stimulation operations may take place before 7:00 a.m. or after 7:00 p.m.

18.

Fresh water wells. The measurements required by this Subsection shall be in a direct line from the closest Oil and Gas well to the fresh water well.

a.

Upon request of an owner of a fresh water well within 860 feet of an Oil and Gas well, who has been duly notified, Operator shall provide the City Manager with a "pre-drilling" and "post-drilling" water analysis from any such existing fresh water well(s).

b.

Operator shall conduct and fund annual testing for water wells that have been tested pursuant to Subsection (L)18.a. above. This testing program shall continue for the production life of The Well plus three years for a producing well, or for a period of one (1) year for a dry hole.

19.

Compressors. No onsite compressor used to "lift gas" shall be used. No compressor of any type shall be used. In the event Operator determines the use of such compressor is necessary, a detailed plan shall be submitted by Operator to the City Council for consideration. An on-site compressor plan shall include the following information:

- a. The physical size of the compressor;
- b. The power source of the compressor;
- c. The horsepower of the compressor;
- d. The noise of the compressor; and
- e. The manufacturer of the compressor.

No compressor of any type shall be used unless a plan is approved by the City Council.

20.

Gas emission or burning restricted. Operator shall not allow, cause or permit gases to be vented into the atmosphere or to be burned by open flame except as provided by law or as permitted by the Railroad Commission. If the venting of gases into the atmosphere or the burning of gases by open flame is authorized as provided by law or as permitted by the Railroad Commission, then such vent or open flame shall not be located closer than three hundred thirty (330) feet from any building not used in operations on the drilling site and such vent or open flame shall be screened in an effort to minimize detrimental effects to adjacent owners. Operator shall provide notice to the Fire Marshall prior to any open flaring of gas. Gas may not be flared unless for a limited time when completing, or recompleting a well, and only if flaring will not constitute a fire hazard to other owners. If flaring gas, it shall not be burned at a rate greater than 3,000 mcf/d. No gas may be flared between the hours of 7:00 p.m. and 7:00 a.m., except in an emergency.

21.

Gas processing onsite. Except for a conventional gas separator or line heater, no refinery, processing, treating, dehydrating or absorption plant of any kind shall be constructed, established or maintained on the premises without prior written consent of the City Manager.

22.

Grass, weeds, trash. All Drill sites and Operation sites shall be kept clear of high grass, weeds, and combustible trash within a radius of one hundred (100) feet around any Tanks, production facilities, or producing wells.

23.

Hazardous plan. Hazardous Materials Management Plan (HMMP) and all Material Safety Data Sheets (MSDS) for all hazardous materials that will be located, or stored, on the Operations Site shall be submitted to the City Manager.

24.

Lights. Except under emergency circumstances, operator shall not Operate any lights located at the Drill Site. To the extent practicable, and taking into account safety considerations, emergency site lighting shall be directed downward and internally so as to avoid glare on public roads and adjacent dwellings and buildings within three hundred (300) feet. This paragraph does not apply during initial Drilling Operations.

25.

Monitoring for H₂S gas. If required by the Railroad Commission, equipment for the monitoring of H₂S gas shall be used during Drilling. The Operator will comply with all requirements found in Statewide Rule 36 of the Railroad Commission, as amended. Within sixty (60) days after completion, and annually thereafter, Operator shall submit to the City Manager results of testing to determine the concentration of H₂S produced from the Well. If the results of the H₂S testing proves to be one hundred (100) PPM H₂S or greater, the Operator is responsible for determining the one hundred (100) PPM H₂S radius of exposure for each Well and production facility. Wells and facilities where the concentration of H₂S is equal to or greater than one hundred (100) PPM will be considered "Sour." Safety systems described herein must be approved by the Fire Marshall.

a.

The following safety alarms and equipment are required at the well site of all wells that are capable of producing at a sustained rate of at least one hundred twenty-five (125) barrels of oil per day and/or three hundred (300) MCF of gas per day and for "sour" wells whose one hundred (100) PPM H₂S radius of exposure is greater than fifteen (15) feet:

i.

H₂S monitors located along the fencing, as set forth in Subsection M (for "sour" wells only).

ii.

Automated audible alarms to provide warnings for a substantial drop in pressure or for the presence of H₂S in concentrations greater than one hundred (100) PPM.

iii.

Automated valve to shut-in production from the well if a substantial drop in pressure or if the presence of H₂S in concentrations greater than one hundred (100) PPM is detected.

b.

The following safety alarms and equipment are required at "Sour" Tank battery facilities:

i.

H₂S monitors located along the fencing, as set forth in Subsection M.

ii.

Automated audible alarm to provide warnings for the presence of H₂S in concentrations greater one hundred (100) PPM.

iii.

An electrical device capable of shutting down power to all "Sour" wells producing into the battery in the event H₂S in concentrations great than 100 PPM is detected.

26.

Muffling exhaust. Exhaust from any internal combustion engine or compressor, stationary or mounted on wheels, used in connection with the Drilling of any well or for use on any production equipment shall not be discharged into the open air unless it is equipped with an exhaust muffler, or mufflers or an exhaust muffler box constructed of noncombustible materials sufficient to suppress noise and disruptive vibrations and prevent the escape of obnoxious gases, fumes or ignited carbon or soot.

27.

Pits. The following applies for pits used for Drilling and completion operations:

a.

No pit shall be placed in a floodplain without obtaining a floodplain development permit from the City Department of Development Services.

b.

No fresh water pit may be placed in any City recognized drainage way, FEMA floodplain or floodway. Construction of the fresh water pit must comply with all City, state and federal regulations.

c.

The use of earthen pits shall be allowed so long as the construction, use, dewatering and closure of such pits meets or exceeds the requirements of the applicable Railroad Commission rules and Texas Commission on Environmental Quality rules. In addition to compliance with applicable Railroad Commission rules, and Texas Commission on Environmental Quality rules, such earthen reserve pits shall also meet the following requirements;

(i)

the maximum size of a reserve pit shall be no greater than two hundred (200) feet by two hundred (200) feet;

(ii)

The pits shall be lined with a plastic liner having a minimum thickness of eight (8) mil reinforced polyethylene;

(iii)

Reserve pits used in Drilling operations shall be fenced on all open sides during such operations and shall be enclosed on all sides once Drilling operations have ceased;

(iv)

Reserve pits shall be closed within one hundred (180) days of the cessation of drilling operations;

(v)

Drill cuttings may be disposed of on the Drill Site using a deep burial method provided that the burial pit containing the cuttings is located entirely within one hundred thirty five (135) feet of the surface location of the Well, provided that all free water has been removed prior to burying the cuttings, and an impermeable liner is placed above the cuttings prior to covering the cuttings and liner with top soil, and provided that the burial pit is constructed in such a manner that the cuttings will be covered with a minimum of thirty six (36) inches of clean, compactable soil. A survey and description of the location of any closed pit used in connection with the Drill Site shall be recorded in the property records of the county in which the real property is located.

28.

Salt water wells. No commercial salt-water disposal wells that receive water by truck shall be located within the City of Midland. In the event the operator determines that the use of a non-commercial salt-water well is necessary, a detailed plan shall be submitted by the operator to the City Council for consideration. No salt water disposal well of any type shall be used unless a plan is approved by the City Council.

29.

Signs.

a.

A sign shall be immediately and prominently displayed at the gate on the temporary and permanent site fencing erected pursuant to Subsection (M) of this Section. Such sign shall be durable material, maintained in good condition and, unless otherwise required by the Railroad Commission, shall have a surface area of not less than two square feet not more than four square feet and shall be lettered with the following:

i.

Well name and number;

ii.

Name of operator;

iii.

The emergency 911 number; and

iv.

A 24-hour phone number that will provide an emergency phone number of Operator's Representatives as stated in Subsection F.

b.

Permanent weatherproof signs reading "DANGER NO SMOKING OR OPEN FLAME ALLOWED IN THIS AREA" shall be posted immediately upon completion of the well site fencing at the entrance of the well site and tank battery or in any other location approved or designated by the Fire Chief of the City. Sign lettering for this sign shall be two (2) inches or greater in height and shall be red on a white background or white on a red background. Each sign shall include the emergency notification numbers of the Fire Department and the Operator, well and lease designations required by the Texas Railroad Commission.

c.

Provide a National Fire Prevention Association (NFPA) 704 diamond hazard identification signs are required at the entrance to the Operation Site adjacent to the Operator's sign if chemicals are present. A label must be located on each chemical Tank indicating exact chemicals that may be contained in such Tank. Text shall be minimum two inches or greater in height, contrasting with the background color.

30.

Storage of equipment. Storage of equipment and materials shall be minimized and limited to the immediate operational needs of the well. Lumber, pipes, empty drums, trucks, trailers, automobiles, junk tubing, casing and rods shall not be left on the operation site except when drilling or reworking operations are being conducted on the site.

No vehicle or item of machinery shall be parked or stored on any Street, Right-of-Way or in any driveway, alley or upon any Operation Site which constitutes a fire hazard or an obstruction to or interference with fighting or controlling fires except that equipment which is necessary for Drilling or production operations on the site. The Fire Department shall be the entity that determines whether any equipment on the site shall constitute a fire hazard.

31.

Tank Battery Facilities. At the tank battery for either oil and/or gas Wells a sensor for fire detection should be appropriately placed near heater treaters, separators, and oil storage tanks that would allow an automated valve placed at the header to be closed in the event of a detected fire. All storage tanks shall be equipped with a secondary containment system. The secondary containment system shall be a minimum of three (3) feet in height and one and one-half (1½) times the contents of the total tank volume. Drip pots shall be provided at the pump out connection to contain the liquids from the storage tanks. No storage tank shall be over sixteen 16 feet in height. All storage tanks shall be built on an adequate foundation with a twelve 12-mil liner being placed

beneath each tank, extending a minimum of three (3) feet beyond the edge of each tank.

Operator must use portable steel storage tanks or fiberglass tanks for storing all fluids from the well. Tanks must meet the American Petroleum Institute standards. All tanks must have a vent line, lightning arrester and pressure relief valve. All tanks must be enclosed by a fence as required by Section (M) herein. No tank shall exceed sixteen (16) feet in height. No tank battery shall be constructed within five hundred (500) feet of any Occupied Residence, Occupied Commercial Structure or Occupied Public Building, unless a variance is granted by the City Council.

Drilling mud, cuttings, liquid hydrocarbons and all other field refuse derived or resulting from or connected with the drilling, re-working or deepening of any well shall be discharged into a steel pit or an approved earthen pit. All disposals must be in accordance with the rules of the Railroad Commission and with a plan submitted to and approved by the City Manager. Water stored in on-site tanks shall be removed as necessary.

All refuse shall be disposed of in such a manner as to comply with the applicable air and water pollution control regulations of the state, the conditions of this permit, and any applicable ordinance of the City.

Temporary flowback tanks shall be removed within ninety (90) days after completion date of the well at the pad site unless permission is obtained from the City Manager to extend the time period for no more than thirty (30) days. Completion date is that date which is stated as the "completion or recompletion date" shown on the Form W-2 or G-I filed with the Railroad Commission.

All tanks shall be set back pursuant to the standards of the Railroad Commission and the National Fire Protection Association, but in all cases, shall be at one hundred (135) feet from any street or alley right-of-way, three hundred thirty (330) feet from any public athletic field, and five hundred (500) feet from an Occupied Residence, Occupied Commercial Structure or Occupied Public Building, church, public or private school, hospital, nursing home, college or university or daycare center unless a variance is granted by the Midland City Council. Operator shall institute operational practices involving the daily monitoring of tank integrity and fluid levels within each tank. The use of a remote monitoring system is acceptable.

No meters, storage tanks, separation facilities, or other aboveground facilities, other than the well head and flow lines, shall be placed in a floodway identified by FEMA on the most current FIRM or the 100-year floodplain without a floodplain development permit obtained from the Department of Development services.

All fluids and tank bottoms will be disposed of in accordance with Railroad Commission regulations.

32.

Valves. Each flowing high volume well must have an automated shut-off valve to shut-in the well's production at the Operation Site for either a fire or

abnormal change in pressure. The fire department shall have access to the Operation Site and the shut-off valve in an emergency.

33.

Work hours for site development. No construction activities involving the excavation of, demolition of, alteration to, or repair work on any access road or pad site shall occur before 7:00 a.m. or after 7:00 p.m.

34.

Wellhead status after fracing. The wellhead between the time of Drilling/completion and tank battery construction, shall be:

a.

Surrounded with a six (6) foot tall temporary chain link fence having a gate and lock until permanent fencing is installed;

b.

The gate shall be locked at all times, except when the Operator is involved in active operations;

c.

The cellar shall be filled or closed; and

d.

The Bradenhead shall be piped to the surface and open to the atmosphere or have an observable and adequate pressure gauge with operable test valve.

35.

Inspections. In accordance within applicable law, the City Manager, or his designee, at his sole cost, risk and expense shall have a right of entry to the Drill Site/Operation Site and may, at his discretion, visit the Drill Site/Operation Site to make sure operator is in compliance with the requirements of this Section.

36.

Violation. In the event a violation of this ordinance is determined by the City's official (or officials), the City may act in any or all of the following ways:

a.

The City, through its designated official (or officials), may issue a notice of violation to the Operator, its agent, agents, employees or independent contractors (whether on site or not), or to any Person participating in the Drilling of the Well. Such notice may include a citation to appear before the Midland Municipal Court.

b.

If the City Manager, or his designee, finds the Operator to be in violation of any requirement of the applicable Oil and Gas well permit, then the City reserves the right after giving ten (10) business days written notice to the Operator regarding such violation, to draw upon the letter of credit, certificate of deposit or surety bond as outlined in Subsection (K) of this Section, in order to remedy such violation. In the event that a violation is not capable of being remedied within such ten (10) business day period, then Operator must have commenced efforts

to remedy such violation within said ten (10) business day period and thereafter continue with such efforts to remedy said violation with due diligence until completed, and as long as the Operator continues with efforts to remedy a violation with due diligence, the City shall not draw against the letter of credit, certificate of deposit or surety bond. In the event the City makes a claim on the letter of credit, certificate of deposit or surety bond pursuant to the terms hereof, reinstatement of the full amount of the letter of credit, certificate of deposit or surety bond shall be a condition to the cure of the violation leading to such claim. Alternatively, if the City Manager finds the Operator to be in violation of any requirement of the applicable Oil and Gas Well Permit, the City Manager shall give written notice to the Operator that unless all violations are corrected within ten (10) business days of the Operator's receipt of notice of the violation, the City Manager shall recommend to the City Council that the Oil and Gas Well Permit be cancelled by the City Council. In the event that a violation is not capable of being remedied within such ten (10) business-day period, then Operator must have commenced efforts to remedy said violation within said ten (10) business-day period and thereafter continue with such efforts to remedy said violation with due diligence until completed, and as long as the Operator continues with efforts to remedy a violation with due diligence, as determined by the City, the City shall not draw against the letter of credit, certificate of deposit or surety bond. If the City Council determines to consider the cancelling of the permit, it shall give the Operator written notice of the date and time of the hearing and shall give the Operator the opportunity to be heard and present facts the Operator deems relevant. The cancelling of a permit requires the majority vote of the City Council.

c.

Prosecution of violations of this Section shall be given priority and expedited upon the Municipal Court docket. Provided, however, that this subsection does not grant or guarantee Persons cited a right to expedited consideration of their citation before the Midland Municipal Court.

d.

In the event that there exists an imminent threat to public health and safety, a certified peace officer, in conjunction with the Railroad Commission, may order the temporary cessation of operations. An Operator may appeal the order to an appropriate Court in Midland County, Texas and request an expedited hearing. With respect to the contestation of an order issued pursuant to this subsection, an Operator retains all of its legal remedies.

M.

Fencing and landscaping.

1.

Fences.

A fencing plan shall be submitted, said plan containing a description of the building materials, dimensions, and locations of the proposed fence/walls and gates. The plan shall take into consideration the surrounding area and neighborhood.

At a minimum, tank battery facilities, wellheads and any production equipment associated with Oil and Gas wells shall be enclosed by a chain link fence at least seven (7) feet in height with beige-colored slats woven through the chain link, topped with three (3) strands of barbed wire angled outward or concertina wire, and shall be equipped with a locking gate. Gates shall be provided with a combination catch and locking attachment for a padlock, and shall be kept locked except when being used for access to the operation site. Operator must provide the City Fire Chief with a "Knox Padlock" or "Knox Box with a key" to access the Operation Site to be used only in case of an emergency.

The City Council may require additional or a different type of fencing to the extent necessary to conform with architectural standards and building materials existing on lots and/or lands immediately adjacent to the well and within five (500) feet of the Well at the time the Oil and Gas Well Permit is issued.

Additionally, if at any time within twenty-four (24) months following the issuance of an Oil and Gas Well Permit, a structure intended for permanent occupancy is constructed within five hundred (500) feet of the Well, the City Council may require the operator to undertake a one-time revision of the fencing plan to account for architectural standards and building materials associated with such structure to the extent that the revised fencing plan is consistent with, but not better than, the architectural standards and building materials associated with such structure.

Fences shall not be required on drill sites during drilling, completion or re-working operations as long as 24-hour on-site supervision is provided.

2.

Landscaping.

Landscaping is not required at this time but will be required within two years from May 14, 2013. Operator shall notify the City Manager within 180 days (November 14, 2014) in writing if the landscaping is not to be completed prior to expiration of the two year period. If landscaping is not completed prior to the two year period this permit shall automatically terminate without any action of the City Council required.

(N)

Cleanup and Maintenance.

1.

Cleanup after well servicing. After the well has been completed or plugged and abandoned, the Operator shall clean the drill site or operation site, complete restoration activities and repair all damage to public property caused by such operations within one hundred eighty (180) days.

2.

Clean-up after spills, leaks and malfunctions. After any Railroad Commission reportable spill, leak or malfunction, the Operator shall remove or cause to be removed to the satisfaction of the City Fire Chief and the City Manager all refuse materials from any public or private property affected by such spill, leak or malfunction. Clean-up operations must begin immediately. The Operator shall comply with all requirements found in Statewide Rule 91 of the Railroad Commission, as amended. If Statewide Rule 91 requires reporting of the spill, the operator shall comply with the notification and reporting requirements found in Statewide Rule 20 of the Railroad Commission, as amended. Upon request the Operator shall furnish the City Manager with all information filed with the Railroad Commission. If the Operator fails to begin site clean-up immediately the City Manager may then employ any cleanup expert or experts or other contractors or suppliers of special services, or may incur any other expenses for labor and material which the City Manager deems necessary to clean-up such spill, leak or malfunction. The City shall then be able to collect from operator the costs involved in the site clean-up. The City may collect from the posted letter of credit, certificate of deposit or surety bond or any other legal means.

3.

Free from debris. The public street entrance and property on which a well site is located shall at all times be kept free of mud, debris, pools of water or other liquids, contaminated soil, weeds, brush, trash or other refuse material within a radius of one hundred (100) feet around any production facilities, tanks and producing wells.

4.

Painting. All production equipment shall be painted beige and maintained at all times, including pumping units, tanks, secondary containment and buildings or structures. When requiring painting of such facilities, the City Manager shall consider the deterioration of the quality of the material of which such facility or structure is constructed, the degree of rust, and its appearance.

5.

Blowouts. In the event of the loss of control of any well, Operator shall immediately take all reasonable steps to regain control regardless of any other provision of this permit and shall provide the City Manager with the same

information as required to be filed with the Railroad Commission under Statewide Rule 20 as soon as practicable.

6.

Cleanup after Drilling/Completion. After the well has been drilled and completed, the Operator shall clean the Drill site, complete restoration activities and repair all damage to public property caused by such operations within ninety (90) days as specified previously in Subsection (L)27.

O.

Drilled and Abandoned Wells.

1.

Surface Requirements for Plugged and Abandoned Well. Whenever abandonment occurs pursuant to the requirements of the Railroad Commission, the Operator so abandoning shall be responsible for the restoration of the Operation site to its original condition as nearly as practicable, in conformity with the requirements of this permit underground pipelines associated with operations shall be purged of all fluids and may be abandoned in place.

2.

Surface Requirements for Drilled and Abandoned Well. Abandonment shall be approved by the City Manager after restoration of the Drill Site has been accomplished in conformity with the following requirements at the discretion of the City Manager:

a.

The Derrick and all appurtenant equipment thereto shall be removed from Drill site;

b.

All tanks, towers, and other surface installations shall be removed from the Drill site;

c.

All concrete foundations, above ground piping, wood, guy anchors and other foreign materials regardless of depth, except surface casing, shall be removed from the site, unless otherwise directed by the Railroad Commission;

d.

All holes and depressions shall be filled with clean, compactable soil;

e.

All, refuse and trash shall be removed from the Drill Site; and

f.

During abandonment, Operator shall comply with all applicable subsections in this section; and

g.

The drill site shall be restored, as close as practicable, to its original condition.

h.

Unless modified by the approved plan, deep burying of pits within the drill site perimeter is permitted. A survey and description of the location of any closed pit used in connection with the drill site shall be recorded in the property records of the county in which the real property is located. In any event the Operator shall comply with Subsection (L), Paragraph 27.

3.

Abandoned well requirement. The Operator shall furnish the following to the City Manager:

a.

A copy of the W-3A "Notice of Intention to Plug & Abandon" and W-3 "Plugging Record" forms on the same date these forms are submitted to the Railroad Commission.

b.

Prior 48-hour notice of intention to abandon under the provisions of this section and stating the date such work will be commenced. Abandonment may then be commenced on or subsequent to the date so stated.

c.

All wells shall be abandoned in accordance with the rules of the Railroad Commission; however, all well casings and cellars shall be cut and removed to a depth of at least three feet below the surface. A permanent abandonment marker, with the well identity and location permanently inscribed, shall be welded to the casing.

4.

Abandonment requirements prior to new construction. All abandoned or deserted wells or drill sites shall meet the most current abandonment requirements of the Railroad Commission prior to the issuance of any building permit for development of the property. No structure shall be built over an abandoned well.

P.

Certificate of Request for Inspection and Extension of Permit.

On or before ninety (90) days prior to each annual anniversary date of Operator's Oil and Gas Well Permit, Operator shall submit to the City Manager a Certificate of Request for Inspection of Permit. The Certificate of Request for Inspection of Permit must state the location and name of the well and the date the permit was granted by the City Council. The Certificate of Request for Inspection of Permit must be signed by the Operator before a notary public stating that the well is in compliance with the permit and all applicable Ordinances. The Certificate of Request for Inspection of Permit must

be accompanied by an application and inspection fee of \$300.00. The City Manager shall grant a one-year inspection approval on the oil/gas drilling permit if the Operator is in compliance with the permit and all applicable ordinances as they apply to the inspected well. Prior to authorizing the inspection approval, the City Manager, or his designee, shall inspect the oil and gas well site that is subject to the oil/gas drilling permit. The City Manager shall issue his decision in writing, within thirty (30) days of receiving the Certificate for Request for Inspection of Permit, either granting or denying the inspection of the oil/gas drilling permit.

The Operator may appeal the City Manager's denial of an oil/gas drilling permit inspection by submitting, in writing, an appeal to the City Council within thirty (30) days of the City Manager's written denial of the oil and gas well permit inspection. If an appeal is received by the City Council, a hearing shall be set before a meeting of the City Council to consider the denial of the oil/gas drilling permit inspection. The City Council shall hear and consider the recommendation of the City Manager, or his designee, before deciding whether or not to uphold the City Manager's decision. The Operator shall be allowed to speak and present any relevant evidence for consideration by the City Council prior to a vote of the council. A majority vote of the City Council shall be required to uphold the denial of the Oil and Gas Well Permit inspection by the City Manager. An inspection that is approved shall be valid for one (1) year from the inspection date.

(Q)

Measurement.

The measurement of all distances set forth herein shall be calculated from the proposed surface location of the well and tank batteries in a straight line, without regard to intervening structures or objects, to the closest exterior point of the object.

(R)

Effect of denial of oil and gas well permit.

If an application for an Oil and Gas Well Permit is denied by the City Council, nothing herein contained shall prevent a new permit application from being submitted to the City Council for the same proposed Oil and Gas Well or a different location for a well. A new application may also be filed on any of the mineral estate owned or leased by the applicant. Once all of the Operator's administrative and legislative remedies have been exhausted herein, the Operator may appeal or challenge the denial of an application in an appropriate Court in Midland County Texas under applicable state or federal law.

(S)

Amendment to Oil and Gas Well Permit.

1.

Amendment required. Within one hundred eighty (180) days after an Operator has been granted an Oil and Gas Well Permit, an Operator may submit an application to the City to amend an existing Oil and Gas Well Permit to commence Drilling from a new Drill site that is not shown on (or incorporated by reference as part of) the existing Oil and Gas Well Permit.

2.

Application Requirement for Amendment to Permit. An application for an amended Oil and Gas Well Permit shall meet all the requirements of this Section, shall be in writing, shall be on forms provided by the City, shall be signed by the Operator, and shall include the following:

a.

An amendment fee of \$1,000.00.

b.

A description of the proposed amendments.

c.

Any changes to the information previously submitted with the application for the existing oil/gas drilling permit (if such information has not previously been provided to the City).

d.

Such additional information as is reasonably required by the City to demonstrate compliance with the original oil/gas drilling permit.

e.

Such additional information as is reasonably required by the City to prevent imminent destruction of property or injury to persons.

3.

Review of Application for Amendment to Permit. All applications for an amended oil/gas drilling permit shall be considered in accordance with the factors listed in Subsection (I) herein. The City Council may elect to consider the application for an amended oil/gas drilling permit without the requirement of a public hearing.

4.

Standard of review.

a.

No Material Change from Existing Permit. If the activities proposed by the amendment are not materially different from the activities covered by the existing Oil and Gas Well Permit, and are otherwise in conformance with the requirements of this section, other applicable City Ordinances, the Oil/Gas Drilling Permit then the City Council shall approve the Amended Application.

b.

Material Change from Existing Permit. If the activities proposed by the amendment are materially different from the activities covered by the existing Oil/Gas Well Permit, are not in conformance with the requirements of this Section, other applicable City Ordinances, the Oil/Gas Well Permit, or if, in the judgment of the City Council, the activities proposed by the amendment might create a risk of imminent destruction of property or injury to persons or property or that were not otherwise taken into consideration by the existing Oil/Gas Well

Permit, the City Council may require the amendment to be processed as a new Oil and Gas Well Permit Application.

T.

Independent Contractor. Operator understands and agrees that Operator, its employees, servants, agents, and representatives, shall at no time represent themselves to be employees, servants, agents, and/or representatives of the City. The City shall not have any control over the means or methods by which Operator shall perform its obligations hereunder. Operator shall furnish all equipment and materials necessary to perform hereunder and shall at all times be acting as an independent contractor. No action by either party should be construed to create a partnership, joint venture, or other dual enterprise between the parties.

U.

Assignability; Transfer Permit.

1.

The Operator shall not, either directly or indirectly, assign, sell, or transfer any part of the Oil and Gas Well Permit, or any interest, right, duty, obligation or privilege under the permit, except in accordance with this Subsection.

2.

An Oil and Gas Well Permit may be transferred upon written request by the Operator with the consent of the City Council:

a.

If the transferee agrees in writing to be bound by the terms and conditions of the current Oil and Gas Well Permit and road repair agreement;

b.

If all information previously provided to the City as part of the current Oil and Gas Well Permit is updated to reflect any changes; and

c.

If the transferee provides the insurance and security required by this section.

3.

In determining whether to approve the transfer permit, the City Council may consider the financial standing of the transferee and its record of compliance with respect to existing permits. Should the transfer permit be denied, the transferee may file an application for a new Oil and Gas Well Permit.

4.

The insurance and security provided by the transferor shall be released if the transfer permit is approved; provided, however, that the transfer shall not relieve the transferor from any liability to the City arising out of any activities conducted prior to the transfer, except to the extent that the transferee expressly agrees in writing to assume such liabilities as part of the transfer.

5.

Applications for the transfer of Oil and Gas Well Permits shall be filed with the City's planning department. A non-refundable administration fee shall be charged for each application in the amount of five hundred (\$500.00).

V.

Time Limit Requirements. The failure of the City Council to review and approve an Oil and Gas Well Permit within a specified time limit shall not cause the application for the Oil and Gas Well Permit to be deemed approved. If the City Council denies a request for a permit, the applicant may file a request with the City Council to re-consider the application. The applicant may present any new evidence to the council and may present any extenuating circumstances or other matters deemed relevant by the applicant. The decision of the City Council regarding the issuance of a permit is not final until the request for re-consideration is voted upon by the City Council.

W.

Indemnification. The oil and gas well permit may contain the following language:

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

X.

Incident Reports or Written Complaints. The Operator shall provide a copy of any "incident reports" or written complaints submitted to the Railroad Commission or any other state or federal agency within thirty (30) days after Operator has notice of the existence of such reports or complaints.

Y.

Expiration of permit. Drilling must commence on the Well covered by the Oil and Gas Well permit twelve (12) months of approval by the City Council, after which the Oil and Gas Well Permit shall automatically expire if no drilling has commenced. A permit extension for a maximum time period of six (6) months may be granted by the City Manager without reapplication after the City Manager receives a written request from the Operator.

Z.

Takings determination.

1.

Any aggrieved applicant that believes that an action taken pursuant to this Section by the City Council or any officer or employee of the City constitutes a taking under the Texas or United States Constitution or under other state law, may file an application with the City Council requesting a takings determination.

2.

The applicant seeking a takings determination from the Council shall file its appeal with the office of the City Secretary. The City Secretary shall then forward the appeal to the City Council for consideration. An appeal fee in the amount of two hundred fifty (\$250.00) dollars shall accompany each filing.

3.

The appeal shall state the reasons that the applicant believes would support a finding that the City's actions constitute a taking under the Texas or United States Constitution or pursuant to other State law and shall include evidence substantiating the purported diminution in value of the applicant's real property.

4.

If the Council finds by a majority vote in favor of the applicant it may: (1) grant the relief requested, or (2) direct the City Manager to rescind action taken by City Staff that formed the basis of the takings determination appeal. If the Council denies the appeal, or after a favorable determination the City Council fails to take action as specified above, the applicant may appeal the decision or inaction of the City Council to the county or district court of the county in which the affected real property is located within thirty (30) days of the date that the Council issues its final decision or in the event the Council does not act on the application, then the operator may appeal to the county or district court after the expiration of one hundred twenty (120) days from the date the application is heard by the City Council.

Notice addresses are as follows:

City of Midland
Attn: Office of the City Manager
P. O. Box 1152
Midland, Texas 79702

OPERATOR: _____
Jimmy Baggett, Operations Manager

Callon Petroleum Operating Company
4305 N. Garfield, Suite 235
Midland, Texas 79705
(432) 686-2764



APPLICATION FOR OIL AND GAS PERMIT

0-13-001

(Pursuant to Midland City Ordinance No. 8769)

I. General Information

Date 1/3/13	Operator Name (must match W-1) Callon Petroleum Operating Company	Operator Address P.O. Box 1287 Natchez, MS 39121
Representative Name Jimmy Baggett	Representative Address (within Midland City Limits) 4305 N. Garfield, Suite 235 Midland, TX 79705	Rep. Tele. (432) 686-1828 Rep. Fax (432) 686-2764
Fee: \$4,000.00 Rec'd Yes ___ No ___		

Permit Compliance Contact (Choose 1):
Option A:
24/7 Answering Services - No. 1 (tele): _____ No. 2 (Tele.): _____
Option B: **Jimmy Baggett 4305 N. Garfield, Suite 235 Midland, TX 79705**
Company Compliance Representative (Name, Address, Local Telephone) (ATTACH STATEMENT AS EXHIBIT A):

Emergency Contact Representative (Name, Address, 24-Hour Tele. No.):
Vince Borrello (432) 553-9522
4305 N. Garfield, Suite 235 Midland, TX 79705
Other Permitted Wells in City (ATTACH EXHIBIT B [see § J(26)]). **Eleven: See Exhibit B**

II. Mineral Ownership

Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease): **See Attached List**

-
-
-

ATTACHED AS EXHIBIT C is (a Title Opinion by **Monty D. Biggs, a licensed Texas Attorney**/Title Commitment by Abstract Company/a Take-off from _____, a Certified Petroleum Landman/an opinion letter from _____, a licensed Texas Attorney) indicating that |Operator| has a legal right to develop the mineral estate that is the subject of this Application. [See § J(5)]. **Attached**

III. Surface Ownership & Use

General Description of Current Surface Use (within 860 feet of proposed surface location):
Agricultural use (zoned AE)



ATTACHED AS EXHIBIT D is (a Title Opinion by _____, A licensed Texas Attorney/a Take-off from _____, a Certified Petroleum Landman/Current Tax Roll from Midland Central Appraisal District), which lists the name(s) and address(es) of all surface owners within 860 feet of the surface well location. [See § J(7)]. **Attached**
ATTACHED AS EXHIBIT E is a (map/p lat/satellite/aerial photo) depicting all Residences, commercial structures, public buildings, all publicly dedicated Streets and alleys, Rights of Way, and permanent accessory structures surrounding the proposed Drill Site. The (map/p lat/satellite/aerial photo) includes two circles, as required by the Ordinance - one depicting a 500 foot radius and one depicting an 860 foot radius from the proposed well's surface location. [See § J(10)]. **Attached**
ATTACHED AS EXHIBIT F is a copy of the notification letter(s) sent to 100 percent of the surface owners, Certified Mail, Return Receipt Requested. [See § J(36)]. **Attached**

IV. Well & Operations Information

Proposed Well Name: **Pecan Acres 22C #2**

Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary) [See § J(11) and § L(4)]:

Attached

Legal Description of Proposed Well Site: **467' FEL, 467' FSL of Section 22, Block 40, T1S, T&P RR Co. Survey, Midland County, Texas**

ATTACHED AS EXHIBIT G is the Location Site Plan [See § J(9)]. **Attached**

ATTACHED AS EXHIBIT H is the Map with the proposed transportation route(s) and road(s) for equipment, chemicals, or refuse products used or produced in the proposed oil and gas operations. [See § J(12)]. **Attached**

ATTACHED AS EXHIBIT I is a copy of the approved Texas Railroad Commission permit to drill (Form W-1), together with all attachments (also file copy of W-1 with City Secretary before commencement of drilling operations). [See § J(16) and (20)]. **Attached**

ATTACHED AS EXHIBIT J is a copy of the required TCEQ report as to depth of usable quality ground water. [See § J(17)] **Attached**

ATTACHED AS EXHIBIT K (if applicable) is the list of alternative locations developed in consultation with the Oil & Gas Advisory Committee. [See § J(27)]. **Attached**

ATTACHED AS EXHIBIT L is the Fencing and Irrigation Plan. [See § J(30)]. **Attached variance request**

ATTACHED AS EXHIBIT M is the Road Repair Agreement and Letter of Credit/Certificate of Deposit/Surety Bond in the amount of at least \$25,000. Option (if applicable): Applicant would further state that no City-owned streets or alleys will be used by the Operator in connection with its oil and gas operations and as a result, requests a waiver from the Council of this requirement. Option B (if applicable): Because Applicant has three Road Repair Agreements in effect that have been approved by the Council, Applicant requests that the Council consolidate all agreements into one and is filing the necessary \$75,000 letter of credit/certificate of deposit/surety bond in conjunction with this request. [See § J(31)]. **Attached**

ATTACHED AS EXHIBIT N is the Concept Plan depicting the proposed Operations Site (which includes tanks, roads, power lines, and pipeline routes). [See § J(32)]. **Attached**

Description of Public Utilities required during (1) drilling and (2) operations:

(1) Drilling: **No public utilities will be needed during drilling operations.**

(2) Operations: **See Exhibit N and N-3**

Description of water source to be used during Drilling: **Water will be pulled from water wells existing on adjacent property and hauled if necessary.**

Description of all electric lines to production facilities (reference exhibits as necessary) [See § L(10)]: **See Exhibits G & N attached.**

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]: **See Exhibit O - Pits will be deep buried in accordance with City of Midland requirements.**

V. Additional Required Exhibits

ATTACHED AS EXHIBIT P is the Letter of Credit/Certificate of Deposit in accordance with Subsection (K)(2). [See § J(18)]. **Attached**

ATTACHED AS EXHIBIT Q are Tax certificates from Midland Central Appraisal District to be submitted indicating that all taxes on personal and real property, including minerals, owned by Applicant are current. [See § J(29)]. **Attached**

ATTACHED AS EXHIBIT R is the required Insurance Certificate. [See § J(19) and § K(3)]. **Attached**

ATTACHED AS EXHIBIT S (if applicable) is the Drainage Plan approved by the City Engineer relating to Applicant's proposed operations. [See § J(21)]. **Attached**

ATTACHED AS EXHIBIT T is Applicant's Emergency Action Response Plan. [See § J(22)]. **See Exhibit T and Attachment T-1**

ATTACHED AS EXHIBIT U is Applicant's Hazardous Materials Management Plan, a copy of which has been submitted and is on file with the Midland Fire Department. [See § J(23)]. **Attached**

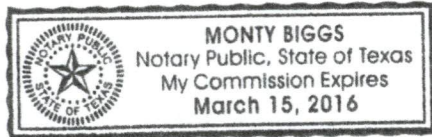
Callon Petroleum Operating Company

By: Jimmy Baggett
Jimmy Baggett
Operations Manager

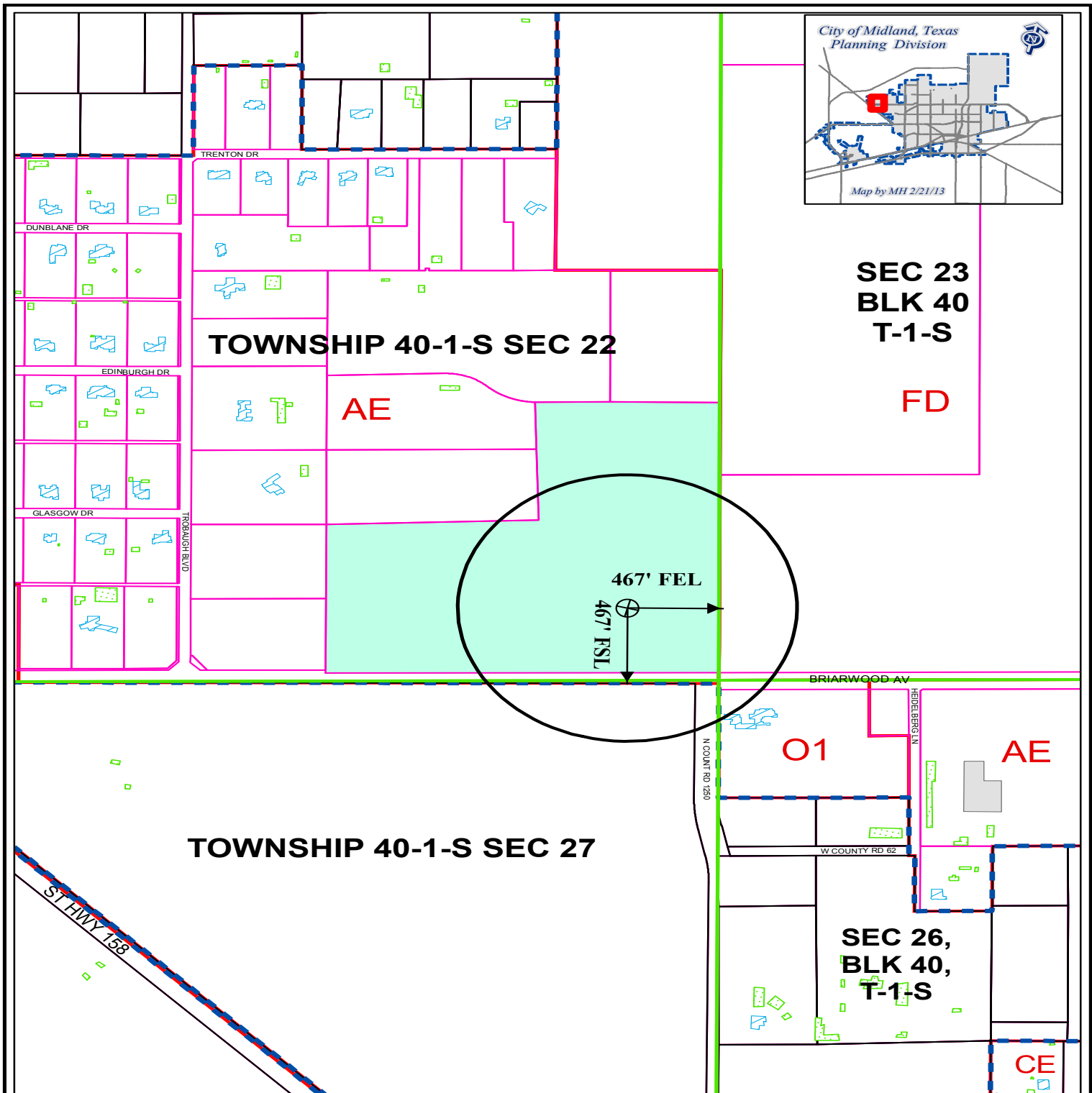
STATE OF TEXAS

COUNTY OF MIDLAND

This instrument was acknowledged before me on the 3rd day of January, 2013 by Jimmy Baggett, Operations Manager for Callon Petroleum Operating Company, who personally appeared before me, and states that he has read the above application and attached exhibits and the statements therein are true and correct to the best of his knowledge.



[Signature]
Notary Public – State of Texas



LOCATION AND ZONING MAP

O - 13 - 001

Scale: 1" = 700'

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 467' FEL and 467' FSL, Section 22, Block 40, T-1-S, T & P RR Co. Survey, Midland County, Texas.

Pecan Acres 22C #2

© THE CITY OF MIDLAND 2013. THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA. WHILE THIS DATA IS MADE AVAILABLE TO THE PUBLIC, IT WAS CREATED FOR INTERNAL USE BY THE CITY OF MIDLAND WHICH MAKES NO CLAIM AS TO ITS ACCURACY OR COMPLETENESS. THIS DATA IS NOT PRESENTED TO BE USED AS A PRIMARY TOOL IN PERMITTING, CITING, OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.

LEGEND

	CITY PARCELS		PUBLIC BLDGS		CITY LIMITS
	COUNTY PARCELS		PRIVATE BLDGS		860 FT. BUFFER
	ZONING		ACCESSORY BLDGS		SURVEY SEC.

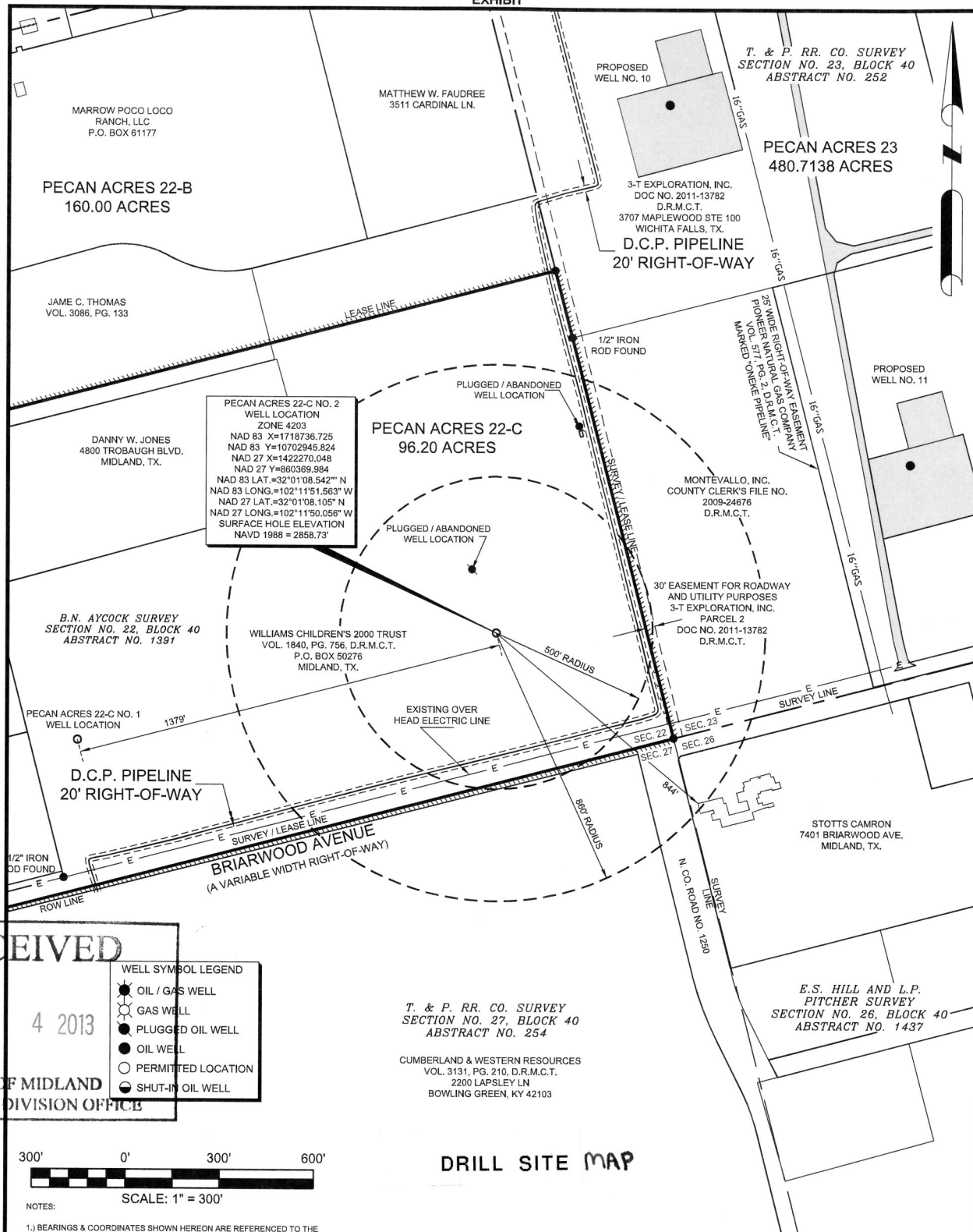
ZONING DISTRICTS:

FD
PD
AE
1F1, 1F2, 1F3
MH
TH
2F
MF1, MF2

FUTURE DEVELOPMENT
PLANNED DISTRICT
AGRICULTURE ESTATE
ONE-FAMILY DWELLING
MOBILE HOME DWELLING
TOWNHOUSE DWELLING
TWO-FAMILY DWELLING
MULTIPLE FAMILY DWELLING

BP
P
01, 02
NS
LR1, LR2, LR3
C1, C2, C3
IP, JP1, IP2, IP3
LI
HI

BUSINESS PARK
PARKING
OFFICE
NEIGHBORHOOD SERVICE
LOCAL RETAIL
COMMERCIAL
INDUSTRIAL PARK
LIGHT INDUSTRY
HEAVY INDUSTRY



RECEIVED

FEB 4 2013

CITY OF MIDLAND
PLANNING DIVISION OFFICET. & P. RR. CO. SURVEY
SECTION NO. 27, BLOCK 40
ABSTRACT NO. 254CUMBERLAND & WESTERN RESOURCES
VOL. 3131, PG. 210, D.R.M.C.T.
2200 LAPSLEY LN
BOWLING GREEN, KY 42103I HEREBY STATE THAT THIS PLAT SHOWS
THE PROPOSED WELL LOCATION.

James Curtis Yarger

JAMES CURTIS YARGER
REGISTERED PROFESSIONAL LAND SURVEYOR
STATE OF TEXAS #5854



REV.	DATE	BY:	DESCRIPTION	CHK
1	01-07-13	GG	CORRECT ROAD NAME	CY

ZPSMS
Zero Degrees Surveying & Mapping Services

8205 Camp Bowie West, Suite 204
Fort Worth, Texas 76116
(817) 396-0362 ~ Fax (862)-224-3377

Callon Petroleum Operating Company

"FOR PERMITTING PURPOSES ONLY"

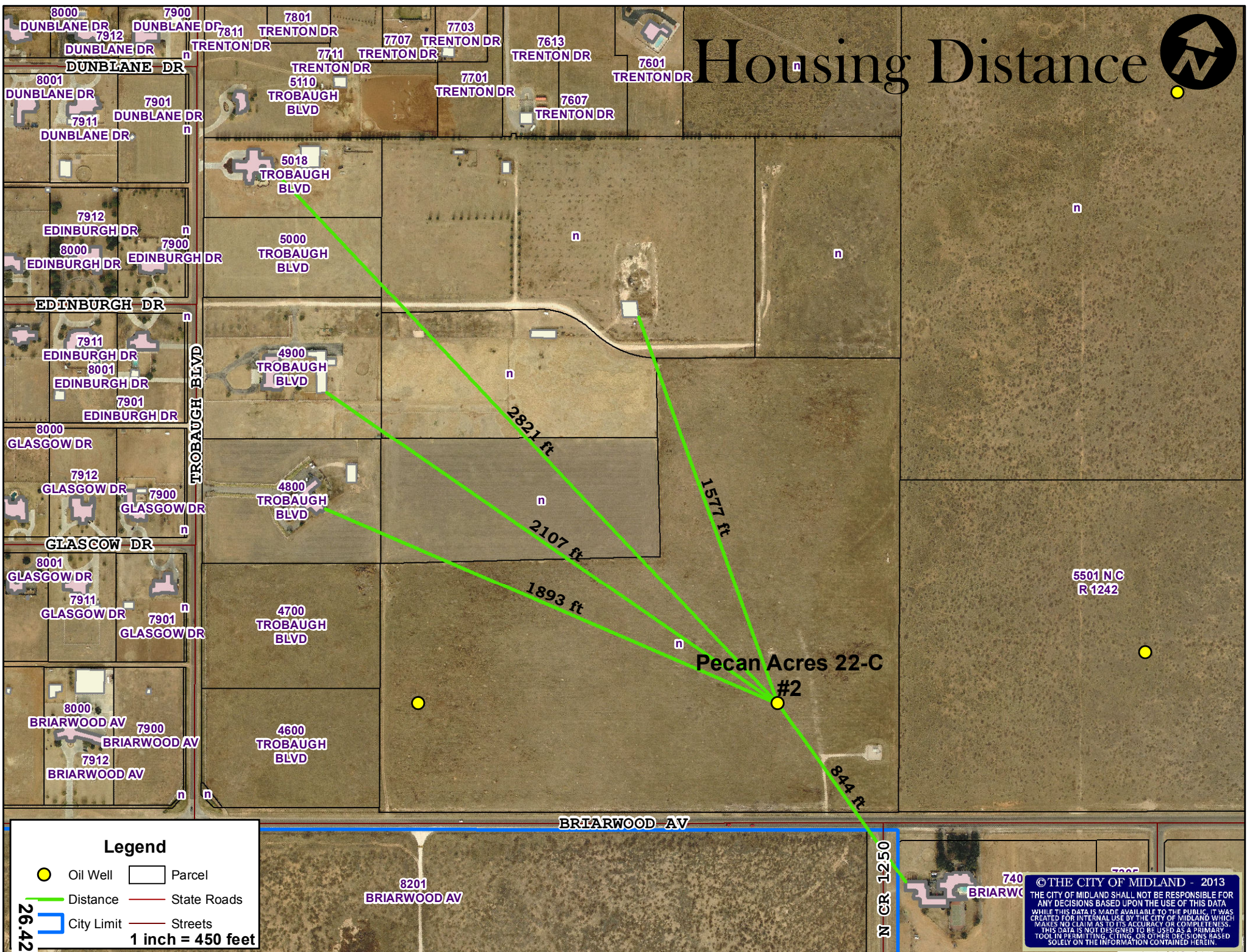
PECAN ACRES 22-C NO. 2
RESIDENCE STRUCTURE TIES PLAT

SITUATED IN THE
B.N. AYCOCK SURVEY, SECTION NO. 22
BLOCK 40 T-1-S, OF THE T. & P. RR. CO. SURVEY, ABSTRACT NO. 1391
PECAN ACRES 22-C LEASE
MIDLAND COUNTY, TEXAS
SAID WELL LOCATION BEING
N 78°43' W, 7.5 MILE FROM THE CITY OF MIDLAND
MIDLAND COUNTY, TEXAS

DRAWN BY: GG	DATE: 11-15-12	DWG. NO.	REV.
CHECKED BY: CY	DATE: 11-15-12	111004 PECAN ACRES 22-C NO. 2 RESIDENCE STRUCTURE PLAT	1
SCALE: 1"=300'	APP.:		PAGE 1 OF 1

CASE NO. D-13-001

Housing Distance





City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: May 14, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Ron Jenkins, Oil & Gas Compliance Coordinator

SUBJECT: Consider a resolution approving the issuance of a permit to Vector Oil & Gas LP (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (Barron #2) located 2,050 feet from the north line and 2,071 feet from the west line located in Section 6, Block "X", H. P. Hilliard Survey, City and County of Midland, Texas. (Generally located on the west side of Oriole Drive, approximately ½ mile south of the Mockingbird Lane.)

Purpose:

To consider a resolution approving the issuance of a permit to Vector Oil & Gas LP (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (Barron #2) located 2,050 feet from the north line and 2,071 feet from the west line located in Section 6, Block "X", H. P. Hilliard Survey, City and County of Midland, Texas. The required 30-day public comment period has passed and the Council may consider this request. One letter of objection has been received.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to process this application.

Discussion:

The Oil and Gas Advisory Committee has reviewed this well site in detail and recommends application with updated plat identifying water wells, revised insurance certificate and include the approved drainage plan. Vector Oil & Gas LP has addressed these recommendations and updated the application. Vector Oil & Gas LP is not requesting any variances. The fencing and landscaping will be consistent with the same style and material to be constructed in the proposed subdivision. Road repair can be consolidated with existing agreement.

Attachments: Application; Location map; Exhibit - Drill site map, Exhibit – Flow Line Location and Exhibit – Residence Distance.

RESOLUTION NO. _____

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO VECTOR OIL & GAS LP (“OPERATOR”) TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 2,050 FEET FROM THE NORTH LINE AND 2,071 FEET FROM THE WEST LINE, SECTION 6, BLOCK “X”, H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF ORIOLE DRIVE, APPROXIMATELY ½ MILE SOUTH OF MOCKINGBIRD LANE); AND PROVIDING THAT SAID PERMIT DOES NOT REQUIRE A NEW ROAD REPAIR AGREEMENT BUT SHALL BE CONSOLIDATED UNDER AN EXISTING ROAD REPAIR AGREEMENT

WHEREAS, on December 8, 2009, the City Council of the City of Midland duly approved Ordinance No. 8769 which amended Title VI, “Police Regulations,” Chapter 1, “General Offenses,” of the City Code of Midland, Texas, so as to establish Section 23, “Oil and Gas Well Permits issued on or after January 1, 2010,” which governs the granting or rejecting of Oil and Gas Well Permits; and

WHEREAS, the purpose of said section is to establish reasonable and uniform limitations, safeguards, and regulations for present and future operations related to the exploring, drilling, developing, producing, transporting and storing of oil or gas or other substances produced in association with oil and gas within the City of Midland to protect the health, safety, and general welfare of the public and the orderly development of the City of Midland; abate or prevent potential public nuisances; minimize the potential adverse impact to surface and mineral owners, protect the quality of the environment and encourage the orderly production of available mineral resources; and

WHEREAS, Section 6-1-23(C) of the City Code of Midland, Texas, makes it an offense to knowingly drill or participate in the drilling of any well or to re-enter any well within the corporate limits of the City of Midland without a permit having first been issued by the authority of the City Council; and

WHEREAS, Operator has submitted an application to the City of Midland to drill an

oil and gas well on the property described in Section Two hereof; and

WHEREAS, notice of the public hearing on this matter was provided in accordance with Section 6-1-23(H)(1) and a public hearing was held on April 9, 2013; and

WHEREAS, subsequent to said public hearing, and in accordance with Section 6-1-23(H)(1), the City Council allowed the public and Operator thirty (30) days to submit written input to the City Manager regarding Operator's application to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, the City Council has considered those issues set forth in Section 6-1-23(I) in determining whether to grant or deny a permit to Operator to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, the City Council finds it to be in the public interest to approve the issuance of a permit to Operator to drill an oil and gas well on the property described in Section Two hereof;

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

SECTION ONE. That the above recitals are hereby adopted and approved by the City Council of the City of Midland.

SECTION TWO. That the Mayor is hereby authorized and directed to execute a permit, on behalf of the City of Midland, that will allow Operator to drill an oil and gas well within the City limits located 2,050 feet from the north line and 2,071 feet from the west line, Section 6, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas. Said permit is attached hereto as Exhibit "A" and incorporated herein for all legal purposes.

SECTION THREE. That said permit does not require a new road repair agreement but shall be consolidated under the existing road repair agreement between Operator and the City of Midland for Operator's wells located on the property described in Section Two hereof.

On motion of Council member _____, seconded by Council member

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

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

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 May 14, 2013, considered the application of Vector Oil & Gas LP, dated February 1, 2013, 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 Vector Oil & Gas LP, dated February 1, 2013, and filed with the Oil & Gas Compliance Officer and incorporated herein for all legal purposes.

The location of Vector Oil & Gas LP, Barron #2 oil and gas well shall be 2050 feet from the north line and 2071 feet from the west line, Section 6, Blk X, T-1-S, T&P RR Co. Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in that application of Vector Oil & Gas LP, 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 May 14, 2013, through May 14, 2014, and so long thereafter as oil or gas is produced or until such time as the permittee has permanently abandoned the operations of the well or facility for which this permit is issued.

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

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts the permittee from its responsibilities or obligations as to third parties. The issuance of this permit only means that the permittee has, at this time, complied with Ordinance No. 8769 and that the Midland City Council, as a regulatory body, will allow the permittee to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize the recipient to act with impunity as to third parties, nor does it insulate the permittee from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize the permit holder from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a "negative pronouncement" that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. The permittee has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield the permittee from third party tort liability stemming from the consequences of the permitted activity.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, utility and drainage rights-of-way.

This permit shall constitute a written contract for purposes of insurance requirements.

In addition to the requirements of the Midland City Code, Ordinance 8769, and the requirements of this permit, including the General and Specific Conditions incorporated herein, Vector Oil & Gas LP, shall develop, maintain and operate the well described herein in accordance with the conditions, limitations and safeguards contained in Vector Oil & Gas LP, application for said well. Vector Oil & Gas LP, application for said well is incorporated herein by reference for all legal purposes.

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

CITY OF MIDLAND, TEXAS

BY: _____

W. Wesley Perry, Mayor

UNDERSTOOD AND AGREE THIS _____ day of May, 2013.

Vector Oil & Gas LP

By: _____

Michael W Wallace, Vice President of 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 policies.
 - i. The City, the City's officials, employees, agents and officers shall be endorsed as an "Additional Insured" on all policies, except under Operator's Workers Compensation Policy.
 - ii. All policies shall be written on an occurrence basis, except for Environmental Pollution Liability (Seepage and Pollution coverage) and Excess and Umbrella Liability, which may be on a claims-made basis.
 - iii. All policies shall be written by an admitted insurer or eligible surplus lines insurer authorized to do business in the State of Texas.
 - iv. Deductibles shall be listed on the Certificate of Insurance and shall be on a "per occurrence" basis unless otherwise stipulated herein.
 - v. Certificates of Insurance shall be delivered to the City of Midland, P.O. Box 1152, Midland, Texas 79702, Attn: City Attorney's Office, evidencing all the required coverages, including endorsements, prior to the issuance of an Oil and Gas Well Permit under this Section.
 - vi. All policies shall be endorsed with a waiver of subrogation providing rights of recovery in favor of the City.
 - vii. Any failure on the part of the City to request required insurance documentation shall not constitute a waiver of the insurance requirements specified herein.
 - viii. Each policy shall be endorsed to provide the City a minimum thirty (30) day notice of cancellation, non-renewal, and/or material change in policy terms or coverage. A ten (10) day notice shall be acceptable in the event of non-payment of premium.
 - ix. During the term of any Oil and Gas Well Permit issued hereunder, the Operator shall report, in writing, within thirty (30) days of the occurrence, to the City Manager, any known

loss occurrence which could give rise to a liability claim or lawsuit or which could result in a property loss.

x.

Upon request, certified copies of all insurance policies shall be furnished to the City.

xi.

Operator shall have the right to maintain a qualified, self-insurance plan and/or maintain prudent levels of self-insured retentions for insurance coverage required in this section; however, Operator shall remain financially obligated for all self-insured retention amounts and deductibles. To the extent of the liabilities assumed by the Operator, Operator's insurance shall be primary coverage as to any liabilities of the City.

b.

Standard Commercial General Liability Policy.

This coverage must include premises, operations, blowout or explosion, products, completed operations, sudden and accidental pollution, blanket contractual liability, underground resources damage, broad form property damage, independent contractors protective liability, accidental death and personal injury. This coverage shall be a minimum Combined Single Limit of \$1,000,000.00 per occurrence for Bodily Injury, Accidental Death, and Property Injury.

c.

Excess or Umbrella Liability.

\$1,000,000	Excess, if the Operator has a stand-alone Environmental Pollution Liability (EPL) policy.
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\$10,000,000	Excess, if the Operator does not have a stand-alone EPL policy. Coverage must include an endorsement for sudden or accidental pollution. If Seepage and Pollution coverage is written on a "claims made" basis, the Operator must maintain continuous coverage and purchase Extended Coverage Period when necessary.
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d.

Environmental Pollution Liability Coverage.

Operator shall purchase and maintain in force for the duration of any Oil and Gas Well Permit issued hereunder, insurance for environmental pollution liability applicable to bodily injury, property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense or settlement of claims; all in connection with any loss arising from the insured site.

Coverage shall be maintained in an amount of at least \$1,000,000 per loss, with an annual aggregate of at least \$10,000,000.

Coverage shall apply to sudden and accidental pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids or gases, refuse material or other irritants, contaminants or pollutants.

e.

Workers Compensation and Employers Liability Insurance.

i.

Workers Compensation benefits shall be Texas Statutory Limits.

ii.

Employers Liability shall be a minimum of \$1,000,000.00 per accident.

iii.

Such coverage shall include a waiver of subrogation in favor of the City of Midland and provide coverage in accordance with applicable State and Federal laws.

f.

Automobile Liability Insurance.

i.

Combined single limit of \$1,000,000.00 per occurrence for bodily injury and property damage.

ii.

Coverage must include all owned, hired and not-owned automobiles.

g.

Certificates of Insurance.

i.

The company must be licensed or authorized to do business in the State of Texas.

ii.

The insurance set forth by the insurance company must be underwritten on forms that have been approved by the Texas State Board of Insurance or ISO or an equivalent policy form acceptable to the City, with the exception of environmental pollution liability and control of well coverage.

iii.

Set forth all endorsements and insurance coverage according to requirements and instructions contained herein.

iv.

Shall specifically set forth the notice of cancellation, termination, or change in coverage provisions to the City. All policies shall be endorsed to read "THIS POLICY WILL NOT BE CANCELLED OR NON-RENEWED WITHOUT THIRTY (30) DAYS ADVANCE WRITTEN NOTICE TO THE OWNER AND THE CITY, EXCEPT WHEN THIS POLICY IS BEING CANCELLED FOR NONPAYMENT OF PREMIUM, IN WHICH CASE, TEN (10) DAYS ADVANCE WRITTEN NOTICE IS REQUIRED".

v.

Original endorsements affecting coverage required by this section shall be furnished with the certificates of insurance.

vi.

At the request of an Operator, the Council may grant a variance to insurance requirements if the Council determines that the insurance procured by the Operator is sufficient to protect the City. A variance of this type may be required because of a change in underwriting policies of admitted insurance carriers.

Indemnification.

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

Notice.

The notices provided in this permit may be served in person or by registered or certified mail. Operator shall within ten (10) days notify the City Manager in writing of any change in such agent or mailing address unless operations in the City are discontinued and abandonment is complete.

Notice addresses are as follows:

City of Midland
Attn: Office of the City Manager
P. O. Box 1152
Midland, Texas 79702

OPERATOR: _____
Michael W. Wallace, Vice President of Operations

Vector Oil & Gas LP
508 West Wall Street; Suite 1200
Midland, Texas 79701
(432)686-4327

OIL AND GAS WELL PERMIT: ORDINANCE 8769 SPECIFIC CONDITIONS-EXHIBIT "B"

(L)

Specific conditions of all Oil and Gas Well Permits; On-Site Requirements.

1.

Abandoned wells. All wells shall be abandoned in accordance with the rules of the Railroad Commission and pursuant to Subsection (O) of this Section.

2.

Automated audible alarm system. After completion, the appropriate system for flowing gas and/or flowing oil wells must be maintained to provide warnings for a substantial drop in pressure, or the release of any oil or gas, or a fire. Said audible alarm system must be approved by the Fire Marshal prior to installation of production equipment at the flowing gas and/or flowing oil well site.

3.

Blowout prevention. In all cases, ram-type and annular Blowout Preventers shall be used on all wells being drilled. In cases where Re-working is being performed on a Well, ram-type or annular Blowout Preventers shall be used. Protection shall be provided to prevent blowout during Drilling operations as required by and in conformance with the requirements of the Railroad Commission and the recommendations of the American Petroleum Institute. In addition to the Blowout Preventers stated above, all drilling must be equipped with flow lines and valves commensurate with the working pressures involved as required by the Railroad Commission each Blowout Preventer shall be a double-ram design with blinds and pipe. After surface casing has been set and cemented to surface, each Blowout Preventer shall be tested and witnessed by Operator's personnel and the results of such test shall be documented in the Operator's well file. Testing expenses shall be the responsibility of the Operator. The Operator shall provide a complete report of the well blowout prevention test to the City Manager within fifteen (15) days of the test.

4.

Casing. The surface portions of the Well shall be cased with cement circulated to the surface. All surface and intermediate casing must comply with all applicable rules of the Railroad Commission and the Texas Commission on Environmental Quality.

5.

Compliance. Operator shall comply at all times with all applicable federal, state and City requirements.

6.

Discharge. No person shall place, deposit, discharge, or cause or permit to be placed, deposited or discharged, any oil, naphtha, petroleum, asphalt, tar, hydrocarbon substances or any refuse including water or brine from any oil and gas operation or the contents of any container used in connection with any oil and gas operation in, into, or upon any Right-of-way, alleys, streets, lots, storm

drain, ditch or sewer, sanitary drain without permits from the appropriate City departments, or any body of water or onto any private property in the City.

7.

Drilling notice. The operator shall provide at least a forty eight (48)-hour notice to the City Manager prior to mobilizing the Drilling Equipment. In addition to notification to the City Manager, the operator shall provide a notice to the owners of at least forty eight (48) hours or more prior to mobilizing the drilling equipment through a publication in the Midland Reporter Telegram and a posting in the City Secretary's Office.

8.

Drill stem testing. No drill stem testing shall be allowed.

9.

Dust, vibration, odors. All drilling and production operations shall be conducted in such a manner as to minimize, so far as practicable, dust, vibration, or noxious odors, and shall be in accordance with the best accepted practices incident to drilling for the production of oil, gas and other hydrocarbon substances in urban areas. All equipment used shall be so constructed and operated so that, vibrations, dust, odor or other harmful or annoying substances or effect will be minimized by the operations carried on at any Drill Site or Operation Site or from anything incident thereto, to the injury or annoyance of persons living in the vicinity; nor shall the site or structures thereon be permitted to become dilapidated, unsightly or unsafe. Proven technological improvements in industry standards of drilling and production in this area shall be adopted as they become available if capable of reducing factors of dust, vibration and odor.

10.

Electric lines. All electric lines going under City roadways must be bored and encased pursuant to city standards. All electric lines to production facilities may be overhead service unless the surrounding neighborhood is developed with underground electric service. If the surrounding neighborhood is developed with underground electric service, then all electric lines to production facilities shall be buried underground.

11.

Electric motors. Only electric prime movers or motors shall be permitted for the purpose of pumping wells. No electric power shall be generated on location. All electrical installations and equipment shall conform to the City ordinances and the appropriate national codes.

12.

Emergency response plan. Prior to the commencement of any oil or gas production activities, Operator shall submit to the City Manager an emergency response plan establishing written procedures to minimize any hazard resulting from drilling, completion or producing of oil and gas wells. Said plan shall use existing guidelines established by the Railroad Commission, Texas Commission on Environmental Quality, Department of Transportation and/or the Environmental Protection Agency and City Fire Code. A copy of the Emergency Response Plan shall be kept at the Operator's office.

13.

Equipment painted. All production equipment on the site shall be painted beige and maintained at all times, including pumping units, tanks, buildings and structures. The City shall regularly inspect all painted structures and inform Operator when repainting is necessary. Operator shall repaint within sixty (60) days written notice from City. When requiring re-painting of such facilities, the City Manager shall consider the deterioration of the quality of the material of which such facility or structure is constructed, the degree of rust, and its appearance. Upon request of the Operator, a color other than beige may be approved by the City Council.

14.

Explosives. Use of an explosive perforating gun during completion operations and during plugging operations and down-hole operations that require such explosives shall be allowed.

15.

Fire notice. In the event of a fire or discovery of a fire, smoke, or unauthorized release of flammable or hazardous materials on any property, the Operator shall immediately report such condition to the Fire Department in accordance with the City of Midland Fire Code. The reporting limits for hazardous materials release shall conform to the requirements of the Railroad Commission and not exceed any state or federal permitting limit.

16.

Fire prevention; sources of ignition. Firefighting apparatus and supplies as approved by the Fire Marshal and required by any applicable federal, state, or local law shall be provided by the Operator, at the Operator's cost, and shall be maintained on the drilling site at all times during drilling and/or reworking operations. The Operator shall be responsible for the maintenance and upkeep of such equipment.

17.

Fracing operations. No fracing or formation fracture stimulation operations may take place before 7:00 a.m. or after 7:00 p.m.

18.

Fresh water wells. The measurements required by this Subsection shall be in a direct line from the closest Oil and Gas well to the fresh water well.

a.

Upon request of an owner of a fresh water well within 860 feet of an Oil and Gas well, who has been duly notified, Operator shall provide the City Manager with a "pre-drilling" and "post-drilling" water analysis from any such existing fresh water well(s).

b.

Operator shall conduct and fund annual testing for water wells that have been tested pursuant to Subsection (L)18.a. above. This testing program shall continue for the production life of The Well plus three years for a producing well, or for a period of one (1) year for a dry hole.

19.

Compressors. No onsite compressor used to "lift gas" shall be used. No compressor of any type shall be used. In the event Operator determines the use of such compressor is necessary, a detailed plan shall be submitted by Operator to the City Council for consideration. An on-site compressor plan shall include the following information:

- a. The physical size of the compressor;
- b. The power source of the compressor;
- c. The horsepower of the compressor;
- d. The noise of the compressor; and
- e. The manufacturer of the compressor.

No compressor of any type shall be used unless a plan is approved by the City Council.

20.

Gas emission or burning restricted. Operator shall not allow, cause or permit gases to be vented into the atmosphere or to be burned by open flame except as provided by law or as permitted by the Railroad Commission. If the venting of gases into the atmosphere or the burning of gases by open flame is authorized as provided by law or as permitted by the Railroad Commission, then such vent or open flame shall not be located closer than three hundred thirty (330) feet from any building not used in operations on the drilling site and such vent or open flame shall be screened in an effort to minimize detrimental effects to adjacent owners. Operator shall provide notice to the Fire Marshall prior to any open flaring of gas. Gas may not be flared unless for a limited time when completing, or recompleting a well, and only if flaring will not constitute a fire hazard to other owners. If flaring gas, it shall not be burned at a rate greater than 3,000 mcf/d. No gas may be flared between the hours of 7:00 p.m. and 7:00 a.m., except in an emergency.

21.

Gas processing onsite. Except for a conventional gas separator or line heater, no refinery, processing, treating, dehydrating or absorption plant of any kind shall be constructed, established or maintained on the premises without prior written consent of the City Manager.

22.

Grass, weeds, trash. All Drill sites and Operation sites shall be kept clear of high grass, weeds, and combustible trash within a radius of one hundred (100) feet around any Tanks, production facilities, or producing wells.

23.

Hazardous plan. Hazardous Materials Management Plan (HMMP) and all Material Safety Data Sheets (MSDS) for all hazardous materials that will be located, or stored, on the Operations Site shall be submitted to the City Manager.

24.

Lights. Except under emergency circumstances, operator shall not Operate any lights located at the Drill Site. To the extent practicable, and taking into account safety considerations, emergency site lighting shall be directed downward and internally so as to avoid glare on public roads and adjacent dwellings and buildings within three hundred (300) feet. This paragraph does not apply during initial Drilling Operations.

25.

Monitoring for H₂S gas. If required by the Railroad Commission, equipment for the monitoring of H₂S gas shall be used during Drilling. The Operator will comply with all requirements found in Statewide Rule 36 of the Railroad Commission, as amended. Within sixty (60) days after completion, and annually thereafter, Operator shall submit to the City Manager results of testing to determine the concentration of H₂S produced from the Well. If the results of the H₂S testing proves to be one hundred (100) PPM H₂S or greater, the Operator is responsible for determining the one hundred (100) PPM H₂S radius of exposure for each Well and production facility. Wells and facilities where the concentration of H₂S is equal to or greater than one hundred (100) PPM will be considered "Sour." Safety systems described herein must be approved by the Fire Marshall.

a.

The following safety alarms and equipment are required at the well site of all wells that are capable of producing at a sustained rate of at least one hundred twenty-five (125) barrels of oil per day and/or three hundred (300) MCF of gas per day and for "sour" wells whose one hundred (100) PPM H₂S radius of exposure is greater than fifteen (15) feet:

i.

H₂S monitors located along the fencing, as set forth in Subsection M (for "sour" wells only).

ii.

Automated audible alarms to provide warnings for a substantial drop in pressure or for the presence of H₂S in concentrations greater than one hundred (100) PPM.

iii.

Automated valve to shut-in production from the well if a substantial drop in pressure or if the presence of H₂S in concentrations greater than one hundred (100) PPM is detected.

b.

The following safety alarms and equipment are required at "Sour" Tank battery facilities:

i.

H₂S monitors located along the fencing, as set forth in Subsection M.

ii.

Automated audible alarm to provide warnings for the presence of H₂S in concentrations greater one hundred (100) PPM.

iii.

An electrical device capable of shutting down power to all "Sour" wells producing into the battery in the event H₂S in concentrations great than 100 PPM is detected.

26.

Muffling exhaust. Exhaust from any internal combustion engine or compressor, stationary or mounted on wheels, used in connection with the Drilling of any well or for use on any production equipment shall not be discharged into the open air unless it is equipped with an exhaust muffler, or mufflers or an exhaust muffler box constructed of noncombustible materials sufficient to suppress noise and disruptive vibrations and prevent the escape of obnoxious gases, fumes or ignited carbon or soot.

27.

Pits. The following applies for pits used for Drilling and completion operations:

a.

No pit shall be placed in a floodplain without obtaining a floodplain development permit from the City Department of Development Services.

b.

No fresh water pit may be placed in any City recognized drainage way, FEMA floodplain or floodway. Construction of the fresh water pit must comply with all City, state and federal regulations.

c.

The use of earthen pits shall be allowed so long as the construction, use, dewatering and closure of such pits meets or exceeds the requirements of the applicable Railroad Commission rules and Texas Commission on Environmental Quality rules. In addition to compliance with applicable Railroad Commission rules, and Texas Commission on Environmental Quality rules, such earthen reserve pits shall also meet the following requirements;

(i)

the maximum size of a reserve pit shall be no greater than two hundred (200) feet by two hundred (200) feet;

(ii)

The pits shall be lined with a plastic liner having a minimum thickness of eight (8) mil reinforced polyethylene;

(iii)

Reserve pits used in Drilling operations shall be fenced on all open sides during such operations and shall be enclosed on all sides once Drilling operations have ceased;

(iv)

Reserve pits shall be closed within one hundred (180) days of the cessation of drilling operations;

(v)

Drill cuttings may be disposed of on the Drill Site using a deep burial method provided that the burial pit containing the cuttings is located entirely within one hundred thirty five (135) feet of the surface location of the Well, provided that all free water has been removed prior to burying the cuttings, and an impermeable liner is placed above the cuttings prior to covering the cuttings and liner with top soil, and provided that the burial pit is constructed in such a manner that the cuttings will be covered with a minimum of thirty six (36) inches of clean, compactable soil. A survey and description of the location of any closed pit used in connection with the Drill Site shall be recorded in the property records of the county in which the real property is located.

28.

Salt water wells. No commercial salt-water disposal wells that receive water by truck shall be located within the City of Midland. In the event the operator determines that the use of a non-commercial salt-water well is necessary, a detailed plan shall be submitted by the operator to the City Council for consideration. No salt water disposal well of any type shall be used unless a plan is approved by the City Council.

29.

Signs.

a.

A sign shall be immediately and prominently displayed at the gate on the temporary and permanent site fencing erected pursuant to Subsection (M) of this Section. Such sign shall be durable material, maintained in good condition and, unless otherwise required by the Railroad Commission, shall have a surface area of not less than two square feet not more than four square feet and shall be lettered with the following:

i.

Well name and number;

ii.

Name of operator;

iii.

The emergency 911 number; and

iv.

A 24-hour phone number that will provide an emergency phone number of Operator's Representatives as stated in Subsection F.

b.

Permanent weatherproof signs reading "DANGER NO SMOKING OR OPEN FLAME ALLOWED IN THIS AREA" shall be posted immediately upon completion of the well site fencing at the entrance of the well site and tank battery or in any other location approved or designated by the Fire Chief of the City. Sign lettering for this sign shall be two (2) inches or greater in height and shall be red on a white background or white on a red background. Each sign shall include the emergency notification numbers of the Fire Department and the Operator, well and lease designations required by the Texas Railroad Commission.

c.

Provide a National Fire Prevention Association (NFPA) 704 diamond hazard identification signs are required at the entrance to the Operation Site adjacent to the Operator's sign if chemicals are present. A label must be located on each chemical Tank indicating exact chemicals that may be contained in such Tank. Text shall be minimum two inches or greater in height, contrasting with the background color.

30.

Storage of equipment. Storage of equipment and materials shall be minimized and limited to the immediate operational needs of the well. Lumber, pipes, empty drums, trucks, trailers, automobiles, junk tubing, casing and rods shall not be left on the operation site except when drilling or reworking operations are being conducted on the site.

No vehicle or item of machinery shall be parked or stored on any Street, Right-of-Way or in any driveway, alley or upon any Operation Site which constitutes a fire hazard or an obstruction to or interference with fighting or controlling fires except that equipment which is necessary for Drilling or production operations on the site. The Fire Department shall be the entity that determines whether any equipment on the site shall constitute a fire hazard.

31.

Tank Battery Facilities. At the tank battery for either oil and/or gas Wells a sensor for fire detection should be appropriately placed near heater treaters, separators, and oil storage tanks that would allow an automated valve placed at the header to be closed in the event of a detected fire. All storage tanks shall be equipped with a secondary containment system. The secondary containment system shall be a minimum of three (3) feet in height and one and one-half (1½) times the contents of the total tank volume. Drip pots shall be provided at the pump out connection to contain the liquids from the storage tanks. No storage tank shall be over sixteen 16 feet in height. All storage tanks shall be built on an adequate foundation with a twelve 12-mil liner being placed

beneath each tank, extending a minimum of three (3) feet beyond the edge of each tank.

Operator must use portable steel storage tanks or fiberglass tanks for storing all fluids from the well. Tanks must meet the American Petroleum Institute standards. All tanks must have a vent line, lightning arrester and pressure relief valve. All tanks must be enclosed by a fence as required by Section (M) herein. No tank shall exceed sixteen (16) feet in height. No tank battery shall be constructed within five hundred (500) feet of any Occupied Residence, Occupied Commercial Structure or Occupied Public Building, unless a variance is granted by the City Council.

Drilling mud, cuttings, liquid hydrocarbons and all other field refuse derived or resulting from or connected with the drilling, re-working or deepening of any well shall be discharged into a steel pit or an approved earthen pit. All disposals must be in accordance with the rules of the Railroad Commission and with a plan submitted to and approved by the City Manager. Water stored in on-site tanks shall be removed as necessary.

All refuse shall be disposed of in such a manner as to comply with the applicable air and water pollution control regulations of the state, the conditions of this permit, and any applicable ordinance of the City.

Temporary flowback tanks shall be removed within ninety (90) days after completion date of the well at the pad site unless permission is obtained from the City Manager to extend the time period for no more than thirty (30) days. Completion date is that date which is stated as the "completion or recompletion date" shown on the Form W-2 or G-I filed with the Railroad Commission.

All tanks shall be set back pursuant to the standards of the Railroad Commission and the National Fire Protection Association, but in all cases, shall be at one hundred (135) feet from any street or alley right-of-way, three hundred thirty (330) feet from any public athletic field, and five hundred (500) feet from an Occupied Residence, Occupied Commercial Structure or Occupied Public Building, church, public or private school, hospital, nursing home, college or university or daycare center unless a variance is granted by the Midland City Council. Operator shall institute operational practices involving the daily monitoring of tank integrity and fluid levels within each tank. The use of a remote monitoring system is acceptable.

No meters, storage tanks, separation facilities, or other aboveground facilities, other than the well head and flow lines, shall be placed in a floodway identified by FEMA on the most current FIRM or the 100-year floodplain without a floodplain development permit obtained from the Department of Development services.

All fluids and tank bottoms will be disposed of in accordance with Railroad Commission regulations.

32.

Valves. Each flowing high volume well must have an automated shut-off valve to shut-in the well's production at the Operation Site for either a fire or

abnormal change in pressure. The fire department shall have access to the Operation Site and the shut-off valve in an emergency.

33.

Work hours for site development. No construction activities involving the excavation of, demolition of, alteration to, or repair work on any access road or pad site shall occur before 7:00 a.m. or after 7:00 p.m.

34.

Wellhead status after fracing. The wellhead between the time of Drilling/completion and tank battery construction, shall be:

a.

Surrounded with a six (6) foot tall temporary chain link fence having a gate and lock until permanent fencing is installed;

b.

The gate shall be locked at all times, except when the Operator is involved in active operations;

c.

The cellar shall be filled or closed; and

d.

The Bradenhead shall be piped to the surface and open to the atmosphere or have an observable and adequate pressure gauge with operable test valve.

35.

Inspections. In accordance within applicable law, the City Manager, or his designee, at his sole cost, risk and expense shall have a right of entry to the Drill Site/Operation Site and may, at his discretion, visit the Drill Site/Operation Site to make sure operator is in compliance with the requirements of this Section.

36.

Violation. In the event a violation of this ordinance is determined by the City's official (or officials), the City may act in any or all of the following ways:

a.

The City, through its designated official (or officials), may issue a notice of violation to the Operator, its agent, agents, employees or independent contractors (whether on site or not), or to any Person participating in the Drilling of the Well. Such notice may include a citation to appear before the Midland Municipal Court.

b.

If the City Manager, or his designee, finds the Operator to be in violation of any requirement of the applicable Oil and Gas well permit, then the City reserves the right after giving ten (10) business days written notice to the Operator regarding such violation, to draw upon the letter of credit, certificate of deposit or surety bond as outlined in Subsection (K) of this Section, in order to remedy such violation. In the event that a violation is not capable of being remedied within such ten (10) business day period, then Operator must have commenced efforts

to remedy such violation within said ten (10) business day period and thereafter continue with such efforts to remedy said violation with due diligence until completed, and as long as the Operator continues with efforts to remedy a violation with due diligence, the City shall not draw against the letter of credit, certificate of deposit or surety bond. In the event the City makes a claim on the letter of credit, certificate of deposit or surety bond pursuant to the terms hereof, reinstatement of the full amount of the letter of credit, certificate of deposit or surety bond shall be a condition to the cure of the violation leading to such claim. Alternatively, if the City Manager finds the Operator to be in violation of any requirement of the applicable Oil and Gas Well Permit, the City Manager shall give written notice to the Operator that unless all violations are corrected within ten (10) business days of the Operator's receipt of notice of the violation, the City Manager shall recommend to the City Council that the Oil and Gas Well Permit be cancelled by the City Council. In the event that a violation is not capable of being remedied within such ten (10) business-day period, then Operator must have commenced efforts to remedy said violation within said ten (10) business-day period and thereafter continue with such efforts to remedy said violation with due diligence until completed, and as long as the Operator continues with efforts to remedy a violation with due diligence, as determined by the City, the City shall not draw against the letter of credit, certificate of deposit or surety bond. If the City Council determines to consider the cancelling of the permit, it shall give the Operator written notice of the date and time of the hearing and shall give the Operator the opportunity to be heard and present facts the Operator deems relevant. The cancelling of a permit requires the majority vote of the City Council.

c.

Prosecution of violations of this Section shall be given priority and expedited upon the Municipal Court docket. Provided, however, that this subsection does not grant or guarantee Persons cited a right to expedited consideration of their citation before the Midland Municipal Court.

d.

In the event that there exists an imminent threat to public health and safety, a certified peace officer, in conjunction with the Railroad Commission, may order the temporary cessation of operations. An Operator may appeal the order to an appropriate Court in Midland County, Texas and request an expedited hearing. With respect to the contestation of an order issued pursuant to this subsection, an Operator retains all of its legal remedies.

M.

Fencing and landscaping.

1.

Fences.

A fencing plan shall be submitted, said plan containing a description of the building materials, dimensions, and locations of the proposed fence/walls and gates. The plan shall take into consideration the surrounding area and neighborhood.

At a minimum, tank battery facilities, wellheads and any production equipment associated with Oil and Gas wells shall be enclosed by a chain link fence at least seven (7) feet in height with beige-colored slats woven through the chain link, topped with three (3) strands of barbed wire angled outward or concertina wire, and shall be equipped with a locking gate. Gates shall be provided with a combination catch and locking attachment for a padlock, and shall be kept locked except when being used for access to the operation site. Operator must provide the City Fire Chief with a "Knox Padlock" or "Knox Box with a key" to access the Operation Site to be used only in case of an emergency.

The City Council may require additional or a different type of fencing to the extent necessary to conform with architectural standards and building materials existing on lots and/or lands immediately adjacent to the well and within five (500) feet of the Well at the time the Oil and Gas Well Permit is issued.

Additionally, if at any time within twenty-four (24) months following the issuance of an Oil and Gas Well Permit, a structure intended for permanent occupancy is constructed within five hundred (500) feet of the Well, the City Council may require the operator to undertake a one-time revision of the fencing plan to account for architectural standards and building materials associated with such structure to the extent that the revised fencing plan is consistent with, but not better than, the architectural standards and building materials associated with such structure.

Fences shall not be required on drill sites during drilling, completion or re-working operations as long as 24-hour on-site supervision is provided.

2.

Landscaping.

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: _____
Michael W. Wallace, Vice President of Operations

Vector Oil & Gas LP
508 West Wall Street; Suite 1200
Midland, Texas 79701
(432) 686-4327



APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

0-13-000

RECEIVED

FEB 1 2013

CITY OF MIDLAND
PLANNING DIVISION OFFICE

I. General Information

Date	Operator Name (must match W-1)	Operator Address
2/1/2013	Vector Oil & Gas LP	508 West Wall Street; Suite 1200 Midland, Texas 79701
Representative Name	Representative Address (within Midland City Limits)	Rep. Tele. (432) 686-4327
Michael W. Wallace	508 West Wall Street; Suite 1200 Midland, Texas 79701	Rep. Fax (432) 686-0302
Fee: \$4,000.00 Rec'd Yes ___ No ___	NOTE: All attachments need to bound and put in a binder before submitting.	Pages 1-4
Permit Compliance Contact (Choose 1):		
Option A:		
24/7 Answering Services - No. 1 (Tele.): (432) 582-3190 No. 2 (Tele.):		
Option B:		
Company Compliance Representative (Name, Address, Local Telephone) (ATTACH STATEMENT AS EXHIBIT A): Exhibit A Attached		
Emergency Contact Representative (Name, Address, 24-Hour Tele. No.):		
Other Permitted Wells in City (ATTACH EXHIBIT B [see § J(26)]). See Exhibit B		

II. Mineral Ownership

Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease):

1. Attached to Exhibit C

2.

3.

ATTACHED AS EXHIBIT C is (a Title Opinion by _____, a licensed Texas Attorney/Title Commitment by Abstract Company/a Take-off from _____, a Certified Petroleum Landman/an opinion letter from James H. Chandler a licensed Texas Attorney) indicating that [Operator] has a legal right to develop the mineral estate that is the subject of this Application. [See § J(5)].

III. Surface Ownership & Use

General Description of Current Surface Use (within 860 feet of proposed surface location):

Vacant land with some single family dwellings and pens outside of the leased area but within 860 feet of the proposed location.

ATTACHED AS EXHIBIT D is (a Title Opinion by _____, a licensed Texas Attorney/a Take-off from _____, a Certified Petroleum Landman/Current Tax Roll from Midland Central Appraisal District), which lists the name(s) and address(es) of all surface owners within 860 feet of the surface well location. [See § J(7)].

ATTACHED AS EXHIBIT E is a (map/p lat/satellite/aerial photo) depicting all Residences, commercial structures, public buildings, all publicly dedicated Streets and alleys, Rights of Way, and permanent accessory structures surrounding the proposed Drill Site. The (map/p lat/satellite/aerial photo) includes two circles, as required by the Ordinance—one depicting a 500 foot radius and one depicting an 860 foot radius from the proposed well's surface location. [See § J(10)].

ATTACHED AS EXHIBIT F is a copy of the notification letter(s) sent to 100 percent of the surface owners, Certified Mail, Return Receipt Requested. [See § J(36)].

IV. Well & Operations Information

Proposed Well Name: Barron #2

Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary)[See § J(11) and § L(4)]:

See attached Exhibit G

Legal Description of Proposed Well Site:

2050 FNL & 2071 FWL of Section 6, Block X, H.P. Hilliard Survey, Midland County, Texas

ATTACHED AS EXHIBIT G is the Location Site Plan [See § J(9)].

ATTACHED AS EXHIBIT H is the Map with the proposed transportation route(s) and road(s) for equipment, chemicals, or refuse products used or produced in the proposed oil and gas operations. [See § J(12)].

ATTACHED AS EXHIBIT I is a copy of the approved Texas Railroad Commission permit to drill (Form W-1), together with all attachments (also file copy of W-1 with City Secretary before commencement of drilling operations). [See § J(16) and (20)].

ATTACHED AS EXHIBIT J is a copy of the required TCEQ report as to depth of usable quality ground water. [See § J(17)].

ATTACHED AS EXHIBIT K (if applicable) is the list of alternative locations developed in consultation with the Oil & Gas Advisory Committee. [See § J(27)].

ATTACHED AS EXHIBIT L is the Fencing and Irrigation Plan. [See § J(30)].

ATTACHED AS EXHIBIT M is the Road Repair Agreement and Letter of Credit/Certificate of Deposit/Surety Bond in the amount of at least \$25,000. Option (if applicable): Applicant would further state that no City-owned streets or alleys will be used by the Operator in connection with its oil and gas operations and as a result, requests a waiver from the Council of this requirement. Option B (if applicable): Because Applicant has three Road Repair Agreements in effect that have been approved by the Council, Applicant requests that the Council consolidate all agreements into one and is filing the necessary \$75,000 letter of credit/certificate of deposit/surety bond in conjunction with this request. [See § J(31)].

ATTACHED AS EXHIBIT N is the Concept Plan depicting the proposed Operations Site (which includes tanks, roads, power lines, and pipeline routes). [See § J(32)].

Description of Public Utilities required during (1) drilling and (2) operations:

- (1) Drilling: None
- (2) Operations: Sharyland Utilities L.P.

Description of water source to be used during Drilling:

Water to be trucked onto well site as well as, use of water wells on location (See plat Exhibit N)

Description of all electric lines to production facilities (reference exhibits as necessary) [See § L(10)]:

Exhibit N

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]: Exhibit O

Trench and encapsulate per RRC Rule 27 (c) (10) (v)

V. Additional Required Exhibits

ATTACHED AS EXHIBIT P is the *Letter of Credit/Certificate of Deposit* in accordance with Subsection (K)(2). [See § J(18)].

ATTACHED AS EXHIBIT Q are Tax certificates from Midland Central Appraisal District to be submitted indicating that all taxes on personal and real property, including minerals, owned by Applicant are current. [See § J(29)].

ATTACHED AS EXHIBIT R is the required Insurance Certificate. [See § J(19) and § K(3)].

ATTACHED AS EXHIBIT S (if applicable) is the Drainage Plan approved by the City Engineer relating to Applicant's proposed operations. [See § J(21)].

ATTACHED AS EXHIBIT T is Applicant's Emergency Action Response Plan. [See § J(22)].

ATTACHED AS EXHIBIT U is Applicant's Hazardous Materials Management Plan, a copy of which has been submitted and is on file with the Midland Fire Department. [See § J(23)].

Vector Oil & Gas LP
[NAME OF COMPANY]

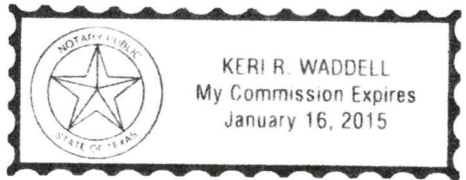
By Michael W Wallace
Its Michael W. Wallace

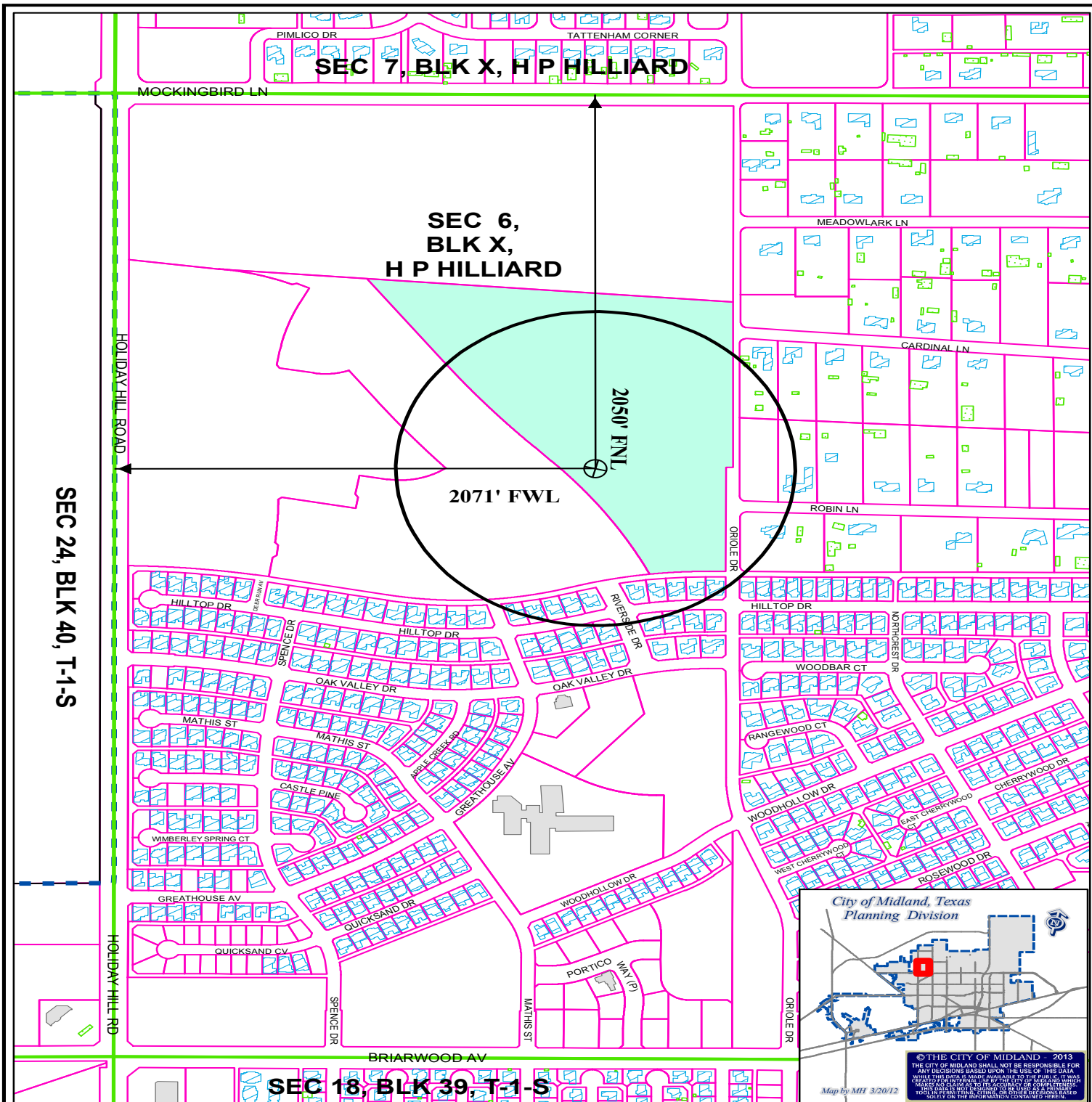
County of Midland) State of Texas)

Michael W. Wallace, personally appeared before me, and being first duly sworn declared he/she signed the application in the capacity designated, if any, and further states that he/she has read the above application and attached exhibits and the statements therein are true and correct to the best of their knowledge.

Keri R. Waddell
Notary Public, State of Texas

[S E A L]





LOCATION AND ZONING MAP

O - 13 - 002

Scale: 1" = 600'

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 2050' FNL and 2071' FWL, Section 6, Block "X", H. P. Hilliard Survey, Midland County, Texas.

Barron # 2

LEGEND

	CITY PARCELS		PUBLIC BLDGS		CITY LIMITS
	COUNTY PARCELS		PRIVATE BLDGS		860 FT. BUFFER
	ZONING		ACCESSORY BLDGS		SURVEY SEC.

ZONING DISTRICTS:

FD
PD
AE
1F1, 1F2, 1F3
MH
TH
2F
MF1, MF2

FUTURE DEVELOPMENT
PLANNED DISTRICT
AGRICULTURE ESTATE
ONE-FAMILY DWELLING
MOBILE HOME DWELLING
TOWNHOUSE DWELLING
TWO-FAMILY DWELLING
MULTIPLE FAMILY DWELLING

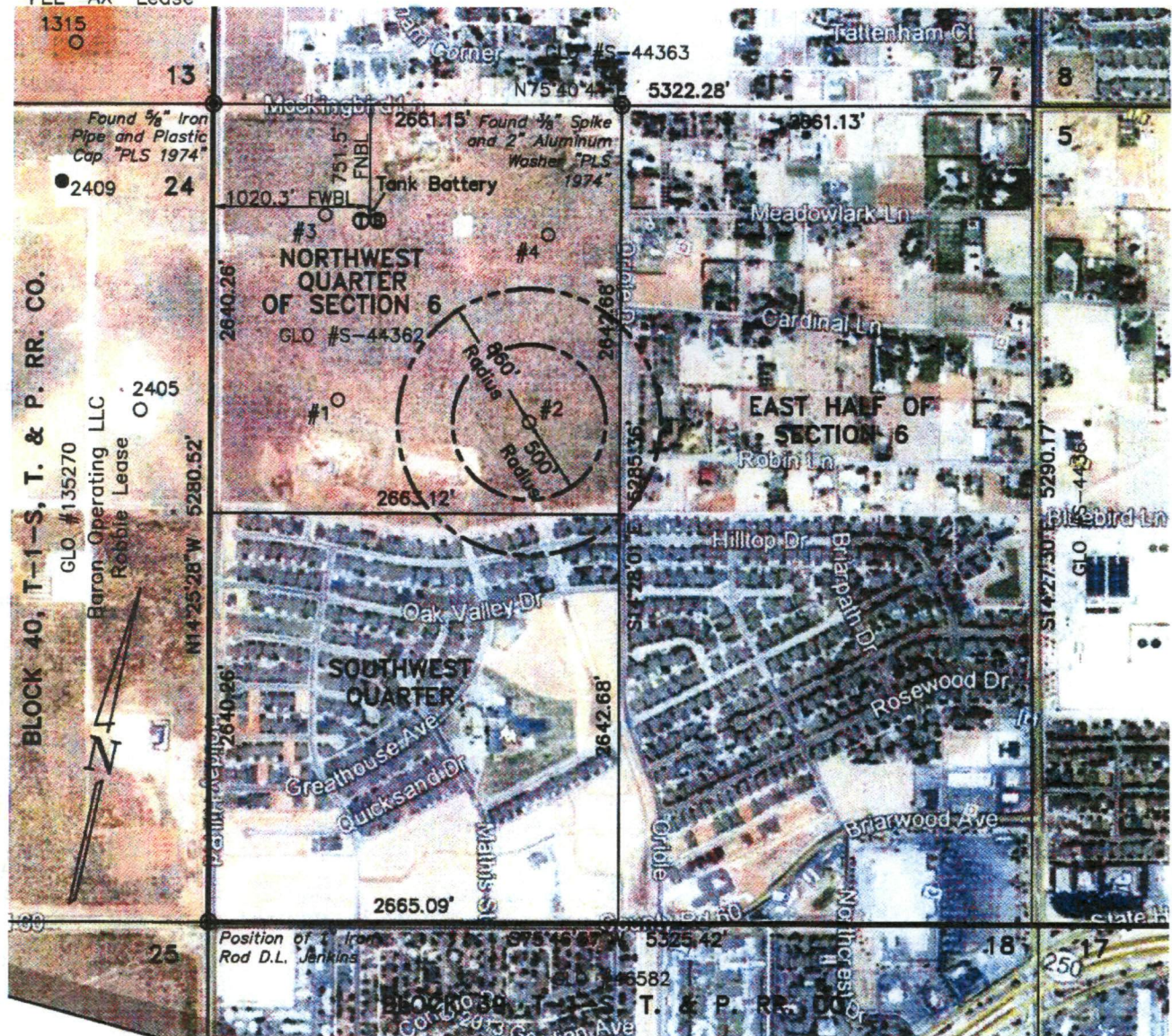
BP
P
01, 02
NS
LR1, LR2, LR3
C1, C2, C3
IP, JP1, IP2, IP3
LI
HI

BUSINESS PARK
PARKING
OFFICE
NEIGHBORHOOD SERVICE
LOCAL RETAIL
COMMERCIAL
INDUSTRIAL PARK
LIGHT INDUSTRY
HEAVY INDUSTRY

27.41

Faskin Oil and
Ranch, LTD
FEE "AX" Lease

HARD ROCK ENERGY INC.



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CITY OF MIDLAND
PLANNING DIVISION OFFICE

Drawing File: HolidayHill5.Dwg; Drawn by: Gene M. Rodriguez; Scale: 1"=1000'; Date: 2/15/13

PLAT SHOWING A 500' AND 860' RADIUS OF
PROPOSED BARRON #2 BEING 2050.5' FNL & 2071.1' FWL
IN SECTION 6 BLOCK X, H.P. HILLIARD SURVEY,
MIDLAND COUNTY, TEXAS

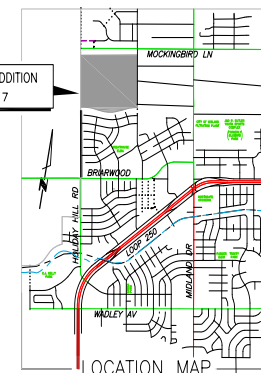
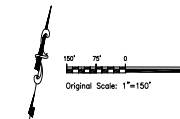
Bearings, distances, and coordinates are relative to the Texas State Plane Coordinate System,
1983/96CORS NAD, Central Zone.

Prepared for:
Vector Oil & Gas L.P.
3141 Hood St. Ste 350
Dallas, Tx 75219



PIPER SURVEYING P.O. BOX 60432; MIDLAND, TEXAS 79711; 432.550.7810

Being 155.99 Ac.
Located in
Section 6, Block X,
H.P. Hilliard Survey
City of Midland, Midland County, Texas

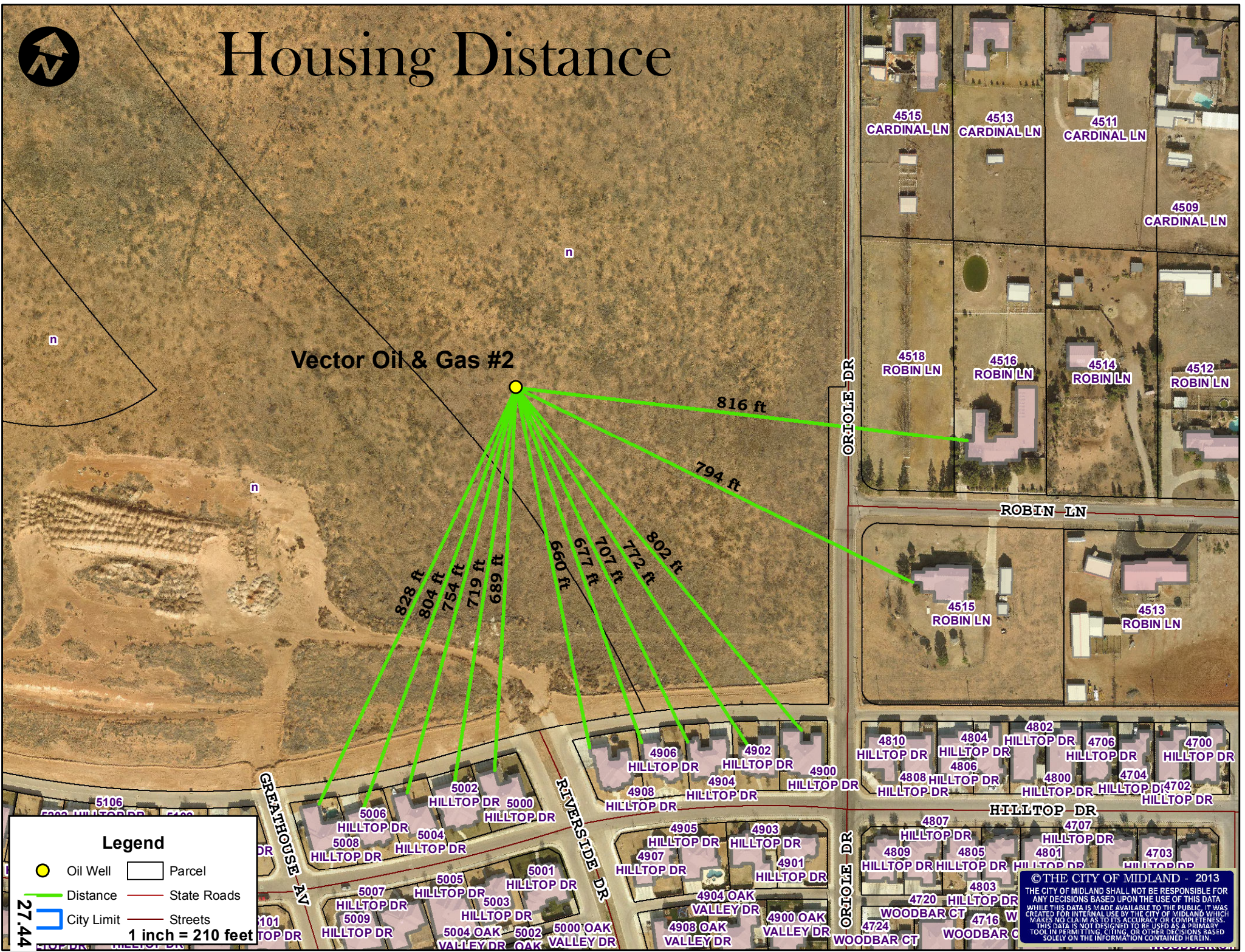


- PROPOSED PLAT LIMITS
- PROPOSED STREET ROW
- PHASING BOUNDARY
- ZONING BOUNDARY
- CITY LIMITS
- EXISTING SECTION CORNER
- EXISTING PLATTED LOTS & STREET R/W
- EXISTING EASEMENTS
- EXISTING WATER LINE
- EXISTING SEWER LINE & MANHOLE
- EXISTING FENCE
- EXISTING ELEVATION CONTOURS
(From COM GIS Survey)
- PROPOSED PLATTED LOTS & STREET R/W
- PROPOSED EASEMENTS
- PROPOSED WATER LINE
- PROPOSED SEWER LINE & MANHOLE
- BURIED FLOW LINE AND ELECTRIC LINES
- GAS LINE



Housing Distance

Vector Oil & Gas #2



Legend

- Oil Well
 - Distance
 - City Limit
 - State Roads
 - Streets
 - Parcel
- 1 inch = 210 feet

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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: May 14, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Ken VanDyne, Acting Planning Division Manager

SUBJECT: Consider a motion appealing the Building Official's denial of a sign permit application by Cinergy Cinemas. Generally located on Lots 1A and 2A, Block 2, Gateway Plaza Addition, Section 3.

Purpose: Consider a motion appealing the Building Official's denial of a sign permit application by Cinergy Cinemas.

Recommended City Council Action

☐ Approve

☒ Deny

☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to process this application.

Discussion:

The applicant recently requested a sign permit exceeding the maximum square feet of signage that is permitted for the property located on the northwest corner of the intersection of S. Loop 250 W. and W. Business 20. The Building Official denied the sign permit application since it is not in compliance with the City Sign Code. The City Sign Code limits the total square footage of all signs for any individual property with multiple street frontages to 360 square feet for the zoning district with which it resides. The City Sign Code further stipulates that no one sign shall exceed 180 square feet in area. This item is being placed on the City Council agenda in order for the property owner to appeal the decision of the Building Official. The applicant is requesting a total of approximately 930 square feet for all signs on the property. If the Council chooses to allow the proposed sign, then direction should be given to the Building Official's office to issue the requested sign permit.

However, if approved, the applicant has requested for the following signs and sizes from the following exhibits:

- C. 45.6 square feet (film cup), 114.07 square feet Cinergy letters, and 48.6 square feet Cinemas & Entertainment letters.
- D. 180 square feet Cinergy Epic Sign
- G. 187.5 square feet pylon sign (33 feet high pole sign)
- H. 176.7 square feet East elevation Cinergy letters
- I. 176.7 square feet West elevation Cinergy letters

If approved in whole, or part, the signage shall abide by all other applicable sign code per the LR-2 District regulations.

Attachments: A,B,C,D,E,F,G,H,I,J

City of Midland
PO Box 1152
Midland, Tx. 79702

RE: Appeal to sign permit denial; request for variance

To: City Manager's office

We respectfully appeal the decision to deny the proposed sign package located at 1917 Liberty Drive. We therefore request to be added to the next City Council agenda to present our variance case.

The amount and size of signage we are requesting is very common for a multi-screen movie theater. The large scale nature of our building and the setback from visible roadways requires larger signage for optimal visibility. It is also very important to advertise our EPIC screen technology as other theaters do. Our requested signage is as follows:

FRONT ELEVATION SIGNAGE

CINERGY letters – 114.07sf
CINEMAS & ENTERTAINMENT letters – 48.6sf
Film Cup – 45.6sf
Cinergy EPIC sign – 180sf
Total square footage – 388.27sf

RIGHT SIDE ELEVATION SIGNAGE

CINERGY letters – 176.7sf
Total square footage – 176.7sf

LEFT SIDE ELEVATION SIGNAGE

CINERGY letters – 176.7sf
Total square footage – 176.7sf

DETACHED GROUND SIGN

Pylon sign – 187.5sf
Total square footage – 187.5

We respectfully ask that the city council omit the Film Cup from the area calculation for total signage on the front elevation since there is no copy/wording present. We also ask that the council would grant us permission to have the proposed one sign on the right and left elevations. And finally, we ask that the proposed pylon sign be considered to assist with visibility to traffic on I-20.

Sincerely,



Jeff Benson
Cinergy Cinemas

EXHIBIT A

SITE PLAN

- A Cinergy letters on canopy
- B Cinemas & Entertainment letters on canopy
- C EPIC wall sign
- D Cinergy letters - West elevation
- E Cinergy letters - East elevation
- F Pylon Sign

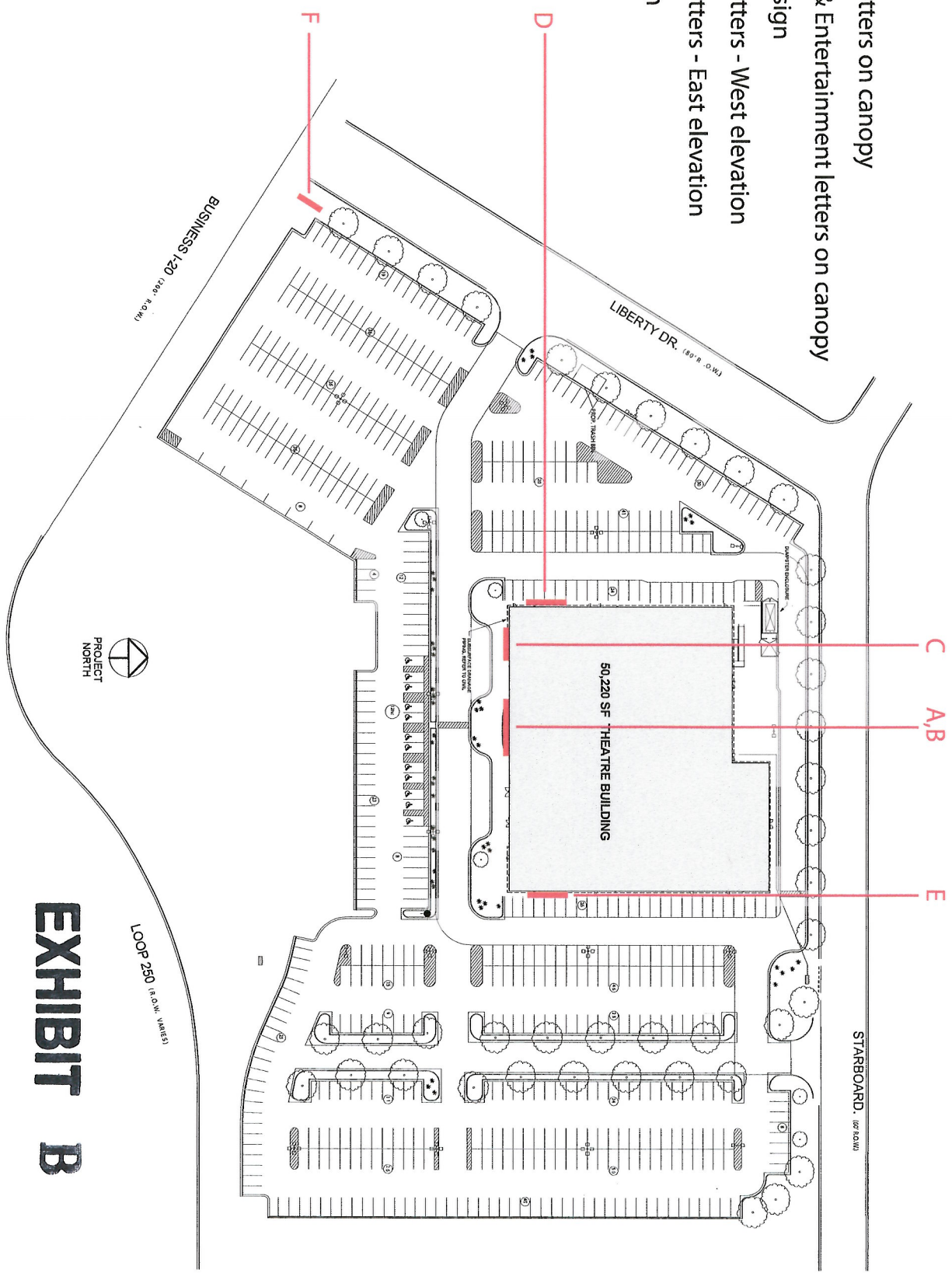


EXHIBIT B



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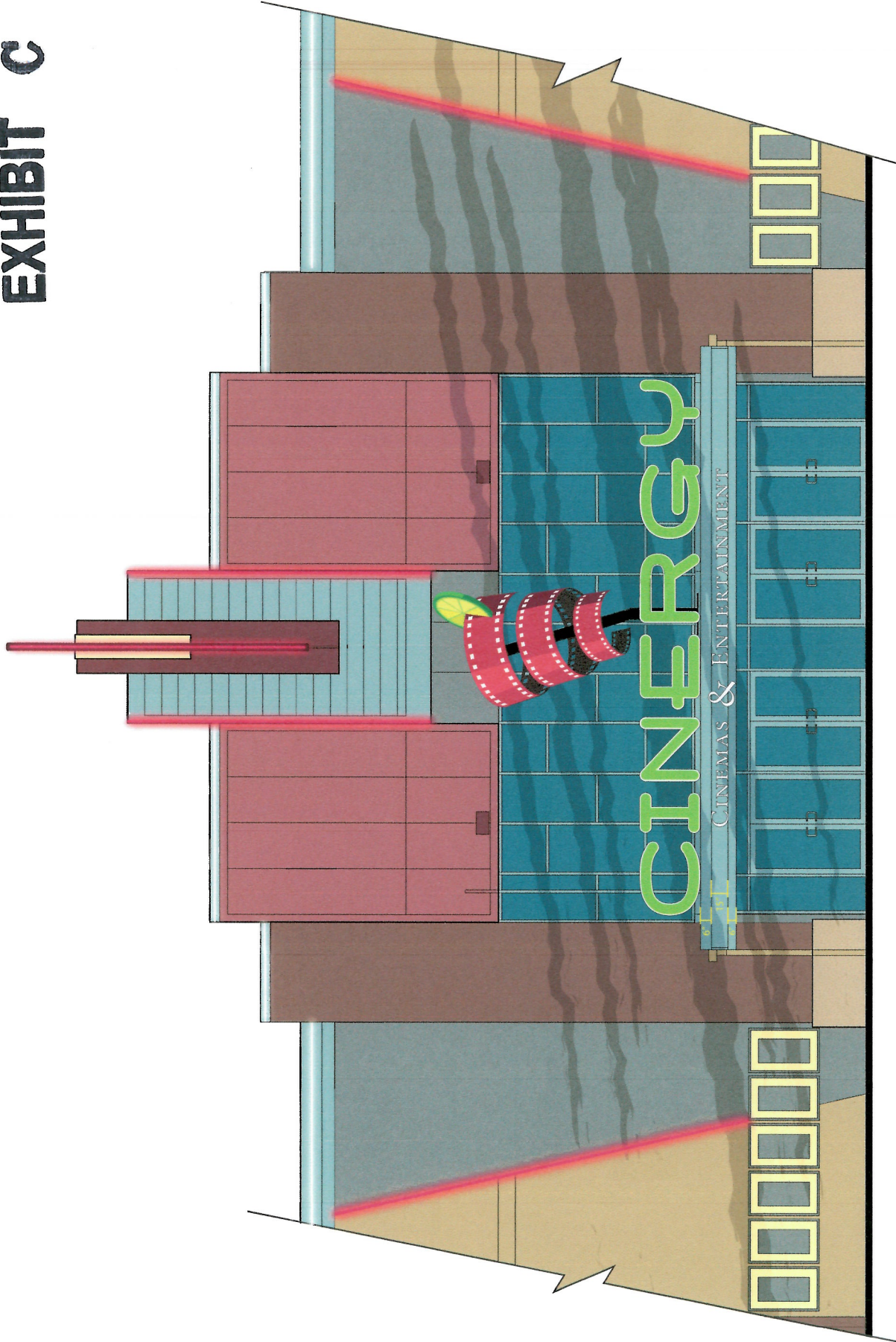
All electrical signs will be wired 120 volts, primary service. Other voltages are available at additional cost. Primary service time slots or other electrical devices are not included in this presentation.

CLIENT APPROVAL

LANDLORD APPROVAL

Cinergy Cinemas #3
1917 Liberty Dr.
Midland, TX 79706

EXHIBIT C



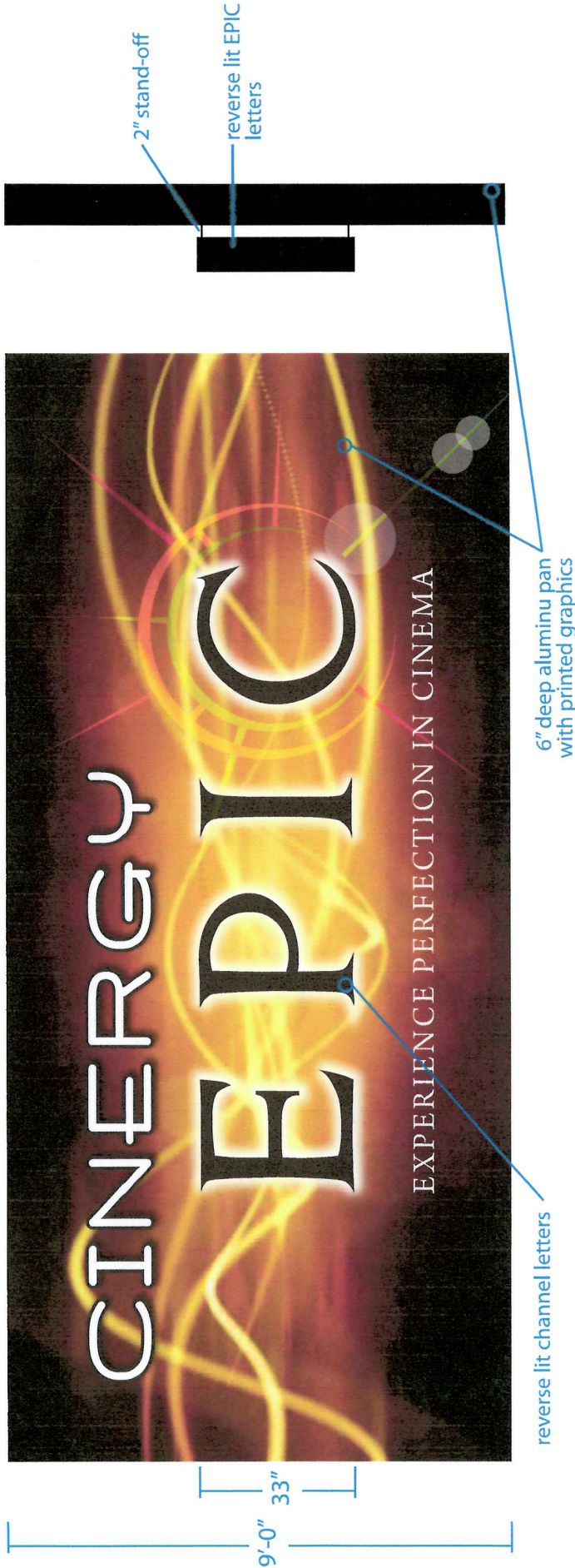
WALL SIGN DETAILS

SIGN AREA = 180 SF

20'-0"

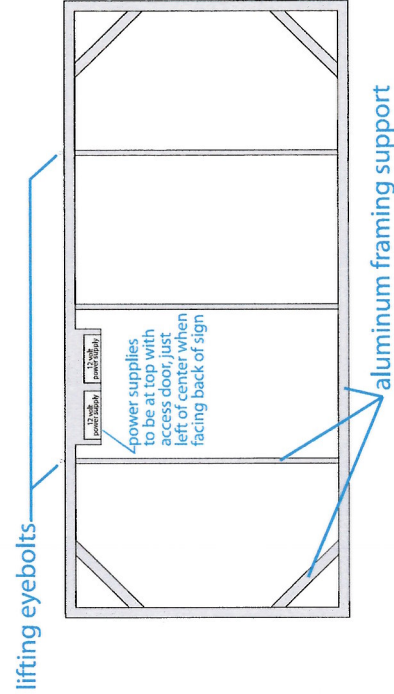
LEFT/FRONT ELEVATION

7



DETAILS & SPECIFICATIONS

BACKGROUND	Aluminum pan, black returns
GRAPHICS	Digitally printed
EPIC LETTERS	Reverse Lit Channel Letters
EPIC FACES	.090 aluminum - ptd MAP Black
EPIC RETURNS	.063 aluminum - ptd MAP Black
EPIC BACKS	3/16" Lexan - Clear
EPIC ILLUMINATION	LED - White
EPIC MOUNTING	Stud mounted - 2" stand-off from pan



SPECIFICATIONS

CINERGY

- Direct Mount Face Lit Channel Letters
- Returns: PTD PMS 376 Green
- Trim Cap: White
- Faces: White with 3630-106 Green vinyl with white border
- Illumination: White LED
- Mounting: Flush to wall surface

SIGN AREA = 176.7 SF

40'-0"

53"

CINERGY

CUT SHEET
DIRECT MOUNT LED CHANNEL LETTERS

ADDITIONAL SPECIFICATIONS:

- Installer is responsible for reviewing these specifications and assuring they meet local code. Installer must inform IDM in writing prior to start of fabrication of letters if any changes need to be made to meet code. Code compliance for variations or change not provided by Installer to IDM prior to the start of fabrication shall be at Installer's sole expense.
- Flush mount sign to fascia using corrosion resistant hardware.
- Letter backs will have rivnuts that accept standard 1/4-20 all thread.
- Exact mounting hardware (including all thread if used) to be determined in conjunction with site conditions & local code requirements and to be provided by Installer.
- Transformer boxes to be supplied by installer if required by local code.
- Disconnect switches to be supplied by installer if required by local code.
- Whips will be approximately 36" in length and fed through a 3/8" greenfield connector. Alternate whip lengths and connector types are available if requested by Installer in writing prior to the start of fabrication. Whip or connector replacement after start of fabrication will be at Installer's expense.
- Ground wires may be installed by IDM during fabrication at no additional cost if requested in writing by Installer prior to the start of fabrication. Ground wire installation after start of fabrication will be at Installer's expense whether provided during fabrication by IDM or in the field by Installer.
- Inside of letters to be painted white.
- Any specs not listed herein shall be determined at the sole discretion of IDM.

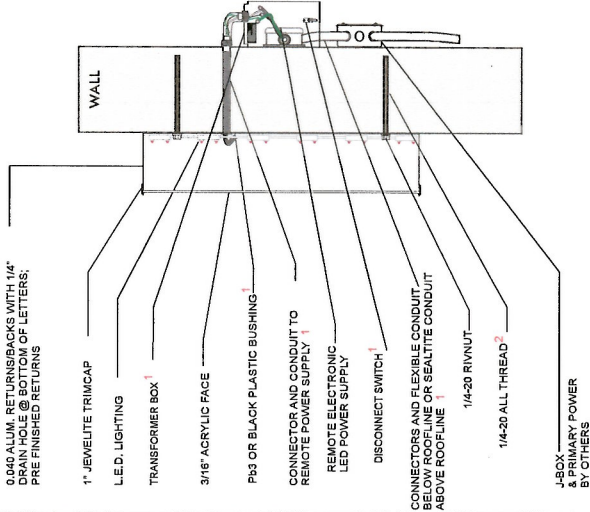
INSTALLATION NOTE:
DO NOT PENETRATE
FLASHING
CANT STRIP
ROOF MEMBRANE

ELECTRICAL NOTES

Primary power to sign to be provided by customer's licensed electrician unless otherwise specified in writing. Clear access to back side of fascia is required for installation. Each sign must have:

- Primary electrical of 120V
- Junction box installed within 6 feet of sign
- Three wires: Line, Ground, Neutral

SIDE VIEW/CROSS SECTION (NOT TO SCALE)
NOT INTENDED FOR DETERMINING DIMENSIONS



1- ITEM (OR SUBSTITUTE REQUIRED BY CODE) TO BE PROVIDED AND INSTALLED BY INSTALLER AS REQUIRED BY LOCAL CODE REQUIREMENTS

2- ITEM OR INSTALLER PREFERRED ALTERNATE TO BE PROVIDED BY INSTALLER.

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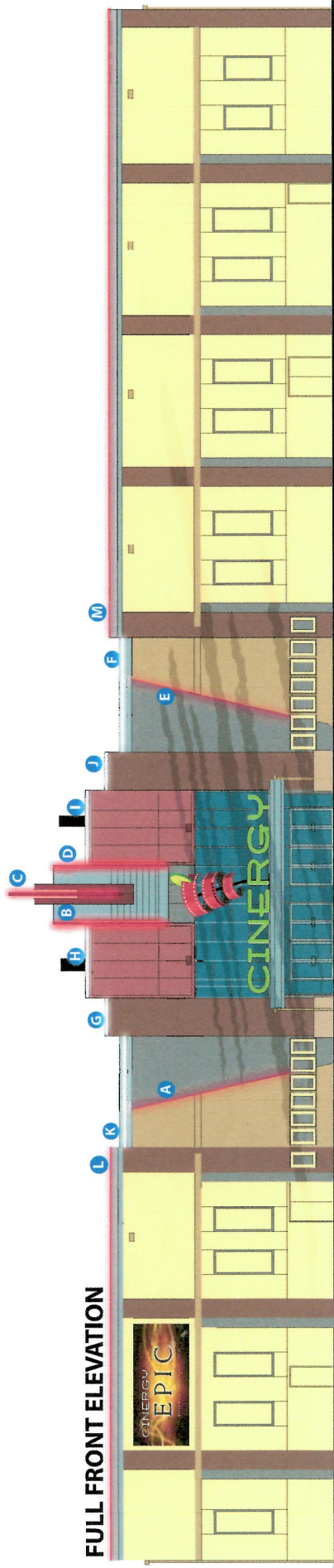


CLIENT APPROVAL

LANDLORD APPROVAL

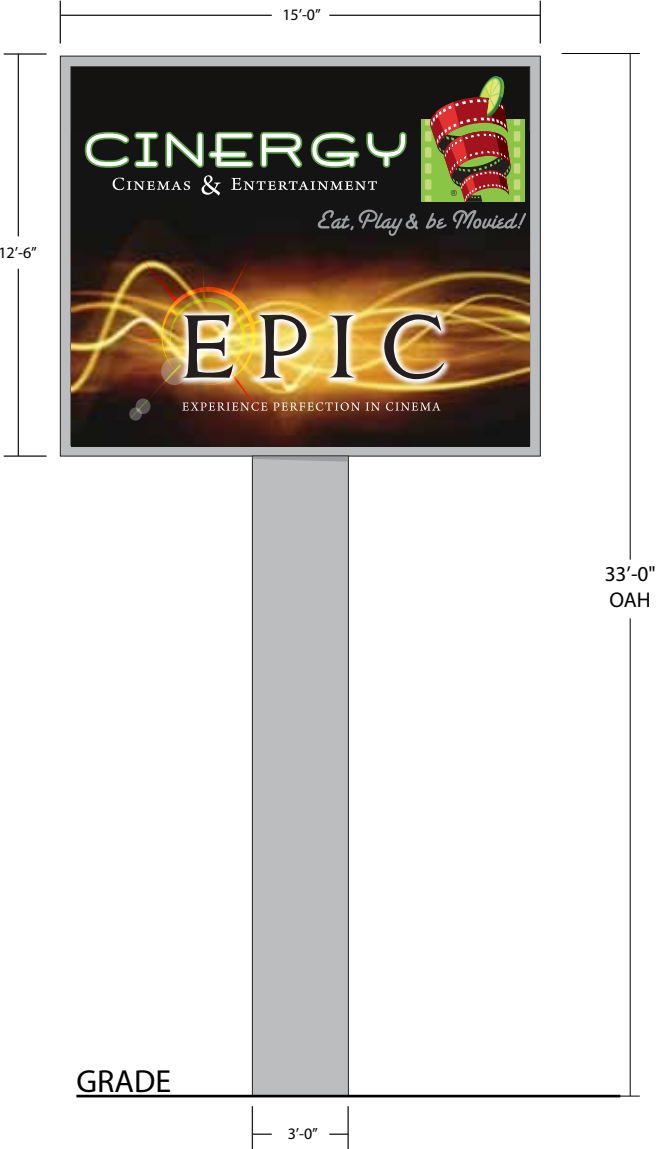
EXHIBIT F

RED LED		WHITE LED	
A	27'	F	19'
B	18'	G	7'
C	18'	H	12'
D	18'	I	12'
E	27'	J	7'
L	66'	K	18'
M	100'		
Total Red = 274'		Total White = 75'	

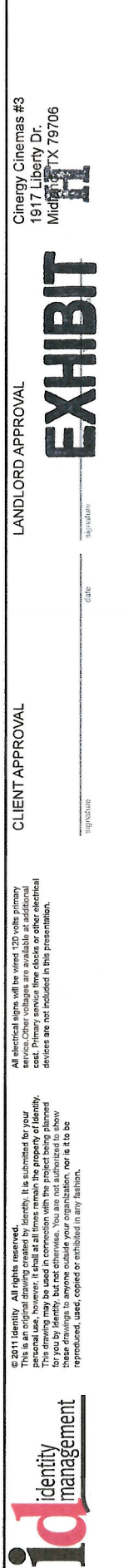


SIGN AREA = 187.5 SF

CABINET	Angle iron frame, aluminum filer, ptd Brushed Aluminum
RETAINERS	4" aluminum, ptd MAP Brushed Aluminum
POLE COVER	Aluminum, ptd MAPP Brushed Aluminum
FACES	Flex material - Printed
ILLUMINATION	HO Lamps
ELECTRICAL	120 volt



EAST ELEVATION



WEST ELEVATION



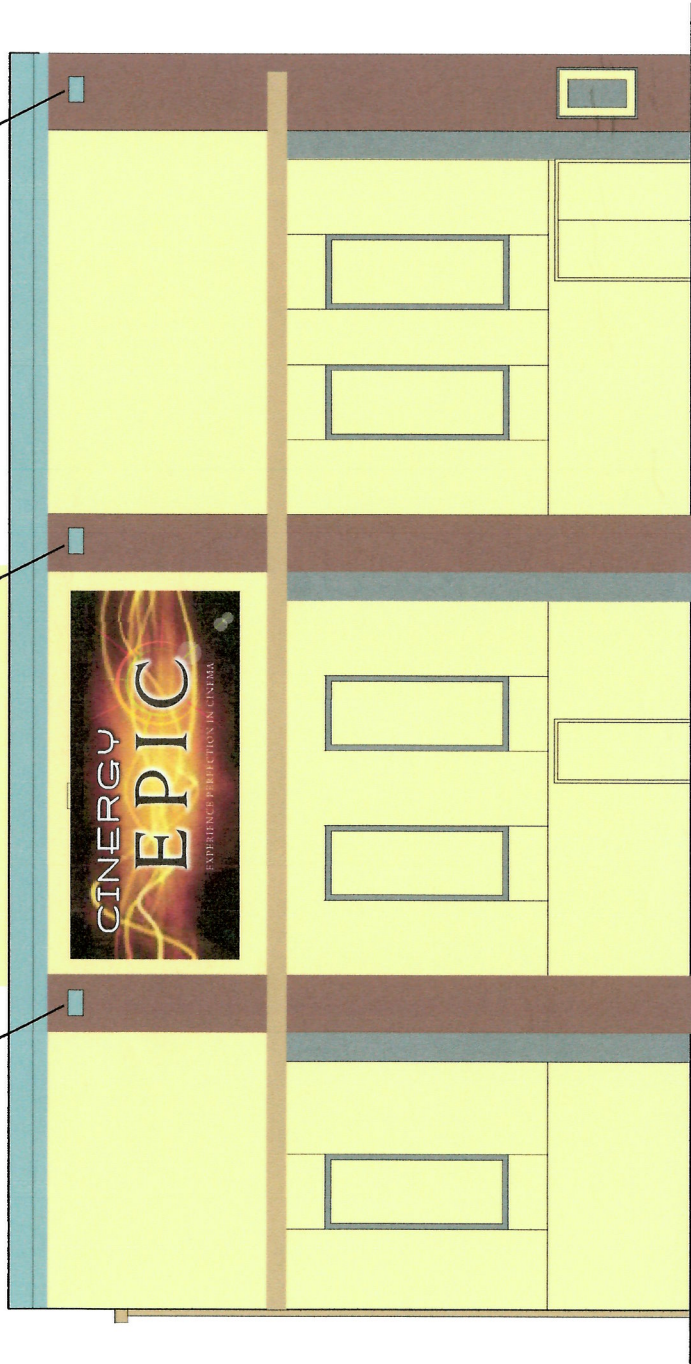
All electrical signs will be wired 120 volts primary service. Other voltages are available at additional cost. Primary service time clocks or other electrical devices are not included in this presentation.

LANDLORD APPROVAL

Cinergy Cinemas #3
1917 Liberty Dr.
Midland, TX 79706

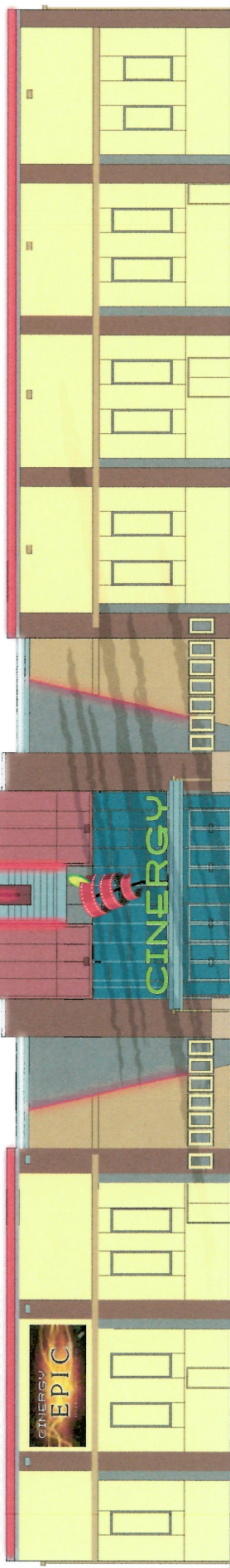
identity management

light fixture - by others



LEFT SIDE - FRONT ELEVATION

FULL FRONT ELEVATION





City Council Agenda

Approved for Agenda:
jnichols
City Manager's Office

MEETING DATE: 5/14/2013

TO: City Council / City Manager

FROM: Morris Williams, Solid Waste Director

SUBJECT: Consider an ordinance amending Title III, Chapter 1, Section 10 of the City Code.

Purpose:

Consider an ordinance amending Title III, "Department", Chapter 1, "Water Department", Section 10, "Permitted uses of the Optional Litter Abatement and Beautification Fee" to remove the word "optional" throughout the section.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

N/A

Discussion:

Title III, Chapter 1, Section 10 of the City Code contains the phrase "Optional Litter Abatement and Beautification Fee" throughout. The phrase shall be changed to reflect the current Ordinance No. 9065 that makes the "Optional Litter Abatement and Beautification Fee" mandatory. Below are the modifications.

3-1-10 Permitted uses of the Optional Litter Abatement and Beautification Fee.

Modify:

3-1-10. - Permitted uses of the Optional Litter Abatement and Beautification Fee.

(A)

All Optional Litter Abatement and Beautification Fees collected shall be designated as such and used only for the purposes provided herein.

(B)

An Optional Litter Abatement and Beautification Fee Revenue and Expense Line Item shall be created to identify revenues and expenses attributable to the Litter Abatement and Beautification Program.

(C)

All Optional Litter Abatement and Beautification Fees shall be allocated to a Litter Abatement and Beautification Revenue Line Item in the Sanitation Fund.

(D)

Funds from sources other than the Optional Litter Abatement and Beautification Fee that are available for the removal of litter and/or beautification of City right-of-way may be allocated to a separate miscellaneous Litter Abatement and Beautification Revenue and Expense Line Item in the Sanitation Fund.

(E)

An expenditure from the Litter Abatement and Beautification Line Item need not specifically relate to the property of a particular utility customer from whom the Optional Litter Abatement and Beautification Fee was collected.

(F)

The Building Official shall provide an annual report to the City Council on the Litter Abatement and Beautification Revenues and Expenses.

(G)

All funds raised through the Optional Litter Abatement and Beautification Fee will be allocated towards the following public purposes:

1.

The removal of litter, including litter abatement, education and enforcement of the litter ordinances and Section 8-6-18 of the Midland City Code;

2.

The beautification of City Council approved sites located within City right-of-way; especially, but not exclusively, those areas that are visible from roadways entering the City of Midland;

3.

The acquisition and planting of trees and vegetation; and

4.

The installation of benches, seats, decorative fencing, ground cover and sidewalks in or near City right-of-way in an area where funds have been spent for beautification purposes.

(H)

As approved by the City Council, the City Manager will have the authority to disperse funds as necessary, including wages and benefits, from the Optional Litter Abatement and Beautification Fee. This shall include the hiring or contracting of sufficient staff or services to carry out the purposes herein. The City Manager shall have the authority to contract with independent contractors to carry out the purposes of this ordinance [Sections 3-19-9 through 3-1-11].

To:

3-1-10. - Permitted uses of the Litter Abatement and Beautification Fee.

- (A)

All Litter Abatement and Beautification Fees collected shall be designated as such and used only for the purposes provided herein.
- (B)

An Litter Abatement and Beautification Fee Revenue and Expense Line Item shall be created to identify revenues and expenses attributable to the Litter Abatement and Beautification Program.
- (C)

All Litter Abatement and Beautification Fees shall be allocated to a Litter Abatement and Beautification Revenue Line Item in the Sanitation Fund.
- (D)

Funds from sources other than the Litter Abatement and Beautification Fee that are available for the removal of litter and/or beautification of City right-of-way may be allocated to a separate miscellaneous Litter Abatement and Beautification Revenue and Expense Line Item in the Sanitation Fund.
- (E)

An expenditure from the Litter Abatement and Beautification Line Item need not specifically relate to the property of a particular utility customer from whom the Litter Abatement and Beautification Fee was collected.
- (F)

The Building Official shall provide an annual report to the City Council on the Litter Abatement and Beautification Revenues and Expenses.
- (G)

All funds raised through the Litter Abatement and Beautification Fee will be allocated towards the following public purposes:

 - 1.

The removal of litter, including litter abatement, education and enforcement of the litter ordinances and Section 8-6-18 of the Midland City Code;
 - 2.

The beautification of City Council approved sites located within City right-of-way; especially, but not exclusively, those areas that are visible from roadways entering the City of Midland;
 - 3.

The acquisition and planting of trees and vegetation; and
 - 4.

The installation of benches, seats, decorative fencing, ground cover and sidewalks in or near City right-of-way in an area where funds have been spent for beautification purposes.

(H)

As approved by the City Council, the City Manager will have the authority to disperse funds as necessary, including wages and benefits, from the Litter Abatement and Beautification Fee. This shall include the hiring or contracting of sufficient staff or services to carry out the purposes herein. The City Manager shall have the authority to contract with independent contractors to carry out the purposes of this ordinance [Sections 3-19-9 through 3-1-11].

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE III, “DEPARTMENTS,” CHAPTER 1, “WATER DEPARTMENT,” SECTION 10, “PERMITTED USES OF THE OPTIONAL LITTER ABATEMENT AND BEAUTIFICATION FEE,” OF THE CITY CODE OF MIDLAND, TEXAS, SO AS TO REFLECT THE CURRENT ORDINANCE NO. 9065 WHICH MADE SAID FEE MANDATORY; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; AND ORDERING PUBLICATION

WHEREAS, the City Council finds it to be in the public interest to amend Title III, “Departments,” Chapter 1, “Water Department,” Section 10, “Permitted Uses of the Optional Litter Abatement and Beautification Fee,” of the City Code of Midland, Texas, so as to reflect the current Ordinance No. 9065 which made said fee mandatory;

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

SECTION ONE. That Title III, “Departments,” Chapter 1, “Water Department,” Section 10, “Permitted Uses of the Optional Litter Abatement and Beautification Fee,” of the City Code of Midland, Texas, shall be amended to read as follows:

3-1-10. Permitted Uses of the Litter Abatement and Beautification Fee.

- (A) All Litter Abatement and Beautification Fees collected shall be designated as such and used only for the purposes provided herein.
- (B) A Litter Abatement and Beautification Fee Revenue and Expense Line Item shall be created to identify revenues and expenses attributable to the Litter Abatement and Beautification Program.
- (C) All Litter Abatement and Beautification Fees shall be allocated to a Litter Abatement and Beautification Revenue Line Item in the Sanitation Fund.
- (D) Funds from sources other than the Litter Abatement and Beautification Fee that are available for the removal of litter and/or beautification of City right-of-way may be allocated to a separate miscellaneous Litter Abatement and Beautification Revenue and Expense Line Item in the Sanitation Fund.

- (E) An expenditure from the Litter Abatement and Beautification Line Item need not specifically relate to the property of a particular utility customer from whom the Litter Abatement and Beautification Fee was collected.
- (F) The Building Official shall provide an annual report to the City Council on the Litter Abatement and Beautification Revenues and Expenses.
- (G) All funds raised through the Litter Abatement and Beautification Fee will be allocated towards the following public purposes:
 - 1. The removal of litter, including litter abatement, education and enforcement of the litter ordinances and Section 8-6-18 of the Midland City Code;
 - 2. The beautification of City Council approved sites located within City right-of-way; especially, but not exclusively, those areas that are visible from roadways entering the City of Midland;
 - 3. The acquisition and planting of trees and vegetation; and
 - 4. The installation of benches, seats, decorative fencing, ground cover and sidewalks in or near City right-of-way in an area where funds have been spent for beautification purposes.
- (H) As approved by the City Council, the City Manager will have the authority to disperse funds as necessary, including wages and benefits, from the Litter Abatement and Beautification Fee. This shall include the hiring or contracting of sufficient staff or services to carry out the purposes herein. The City Manager shall have the authority to contract with independent contractors to carry out the purposes of this ordinance [Sections 3-19-9 through 3-1-11].

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 effective date of this Ordinance shall be June 1, 2013.

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 law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2013; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2013, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2013.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:
jnichols
City Manager's Office

MEETING DATE: 5/14/2013

TO: City Council / City Manager

FROM: Morris Williams, Solid Waste Director

SUBJECT: Consider an ordinance amending Title III, Chapter 1, Section 11 of the City Code.

Purpose:

Consider an ordinance amending Title III, "Department", Chapter 1, "Water Department", Section 11, "Billing of the Optional Litter Abatement and Beautification Fee" to remove the word optional and changing Director of Utilities to Director of Solid Waste throughout the section.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

N/A

Discussion:

Title III, Chapter 1, Section 11 of the City Code contains the word optional and title Director of Utilities. The word optional shall be removed and the title Director of Utilities shall be changed to Director of Solid Waste. Below are the modifications.

3-1-11 Billing of the Optional Litter Abatement and Beautification Fee

Modify:

3-1-11. - Billing of the Optional Litter Abatement and Beautification Fee.

(A)

The Optional Litter Abatement and Beautification Fee shall be billed each month on the City of Midland Combined Billing Statement for each utility customer. The option not to pay the Optional Litter Abatement and Beautification Fee will be

included in the City's Combined Billing Statement. The Director of Utilities is authorized to collect such charges in a manner consistent with the City Charter and State Law. The customer shall have a monthly option to not pay the Optional Litter Abatement and Beautification Fee.

(B)

Payment for the Optional Litter Abatement and Beautification Fee is due when all other charges on the Combined Billing Statement are due.

(C)

The City Manager shall establish a procedure whereby new utility customers are given an option on whether or not to pay the Optional Litter Abatement and Beautification Fee.

To:

3-1-11. - Billing of the Litter Abatement and Beautification Fee.

(A)

The Litter Abatement and Beautification Fee shall be billed each month on the City of Midland Combined Billing Statement for each utility customer. The Director of Solid Waste is authorized to collect such charges in a manner consistent with the City Charter and State Law.

(B)

Payment for the Litter Abatement and Beautification Fee is due when all other charges on the Combined Billing Statement are due.

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE III, "DEPARTMENTS," CHAPTER 1, "WATER DEPARTMENT," SECTION 11, "BILLING OF THE OPTIONAL LITTER ABATEMENT AND BEAUTIFICATION FEE," OF THE CITY CODE OF MIDLAND, TEXAS, SO AS TO REFLECT THE CURRENT ORDINANCE NO. 9065 WHICH MADE SAID FEE MANDATORY; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; AND ORDERING PUBLICATION

WHEREAS, the City Council finds it to be in the public interest to amend Title III, "Departments," Chapter 1, "Water Department," Section 11, "Billing of the Optional Litter Abatement and Beautification Fee," of the City Code of Midland, Texas, so as to reflect the current Ordinance No. 9065 which made said fee mandatory;

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

SECTION ONE. That Title III, "Departments," Chapter 1, "Water Department," Section 11, "Billing of the Optional Litter Abatement and Beautification Fee," of the City Code of Midland, Texas, shall be amended to read as follows:

3-1-11. Billing of the Litter Abatement and Beautification Fee.

- (A) The Litter Abatement and Beautification Fee shall be billed each month on the City of Midland Combined Billing Statement for each utility customer. The Director of Solid Waste is authorized to collect such charges in a manner consistent with the City Charter and State Law.
- (B) Payment for the Litter Abatement and Beautification Fee is due when all other charges on the Combined Billing Statement are due.

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 effective date of this Ordinance shall be June 1, 2013.

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 law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2013; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2013, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2013.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

City of Midland
City Secretary's Office
Interoffice Memorandum

Date: May 9, 2013
To: The Honorable Mayor Perry and Council
From: Amy M. Turner, City Secretary
Subject: Membership - Boards and Commissions

Attached is an updated membership listing for the City's Boards and Commissions effective May 14, 2013. Remaining expirations and vacancies are listed below:

AIRPORT PLANNING AND DEVELOPMENT BOARD – Two terms expired on September 30, 2012.

CITY DEVELOPMENT ADVISORY COMMITTEE – One terms expired on September 30, 2012.

CONSTRUCTION BOARD OF ADJUSTMENTS AND APPEALS – Two vacancies for Alternate terms expired on September 30, 2007.

HOUSING AUTHORITY COMMISSION – One vacancy as Alternate term expiring in October 2015

MIDLAND FOOTBALL-SOCCER AND BASEBALL COMPLEX DEVELOPMENT CORPORATION – Two terms expired in November 2011.

MIDLAND HIGHER EDUCATION FACILITIES CORPORATION – Three vacancies expired on January 1, 2007, one term expired on January 1, 2009, and two terms expired on January 1, 2010.

MIDLAND HOUSING FINANCE CORPORATION – One vacancy expired on September 30, 2010, two terms expired on September 30, 2011 and one term expired on September 30, 2012.

MIDLAND MUNICIPAL MANAGEMENT DISTRICT BOARD – One vacancy.

MIDLAND-ODESSA URBAN TRANSIT DISTRICT BOARD – Two terms expired on September 30, 2012.

PERMIAN BASIN AIRPORT BOARD – Two terms expired on September 30, 2010 (Carlsbad and Hobbs New Mexico), one term expired on September 30, 2011 and two terms expired on September 30, 2012.

TAX INCREMENT REINVESTMENT ZONE BOARD – Four terms expired on March 20, 2010,

one term expired March 20, 2011, one terms expired on March 20, 2012 and two terms expired on March 20, 2013. (Four City representatives, two Hospital representatives and two County representatives.)

ZONING BOARD OF ADJUSTMENT AND AIRPORT ZONING BOARD OF ADJUSTMENT-

One term expired on September 30, 2011, one term expired on September 30, 2012 and one vacancy for Alternate term expired on September 30, 2006 and one vacancy for Alternate term expired September 30, 2009.

BOARDS AND COMMISSIONS OF THE CITY OF MIDLAND

May 14, 2013

AIRPORT PLANNING AND DEVELOPMENT BOARD

(Advisory)

(Membership-10; Terms - 3 Years expiring 3-3-4.)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Ronald Schwisow	09/06	Sept 30 2012	Sept 30 2012
Herbert Blankinship	09/06	Sept 30 2012	Sept 30 2012
Jerry Walton	11/09	Sept 30 2015	Sept 30 2015
Mike Owen	10/07	Sept 30 2013	Sept 30 2013
Gregory F. Baiano	09/10	Sept 30 2013	Sept 30 2016
John T. Echols	09/10	Sept 30 2013	Sept 30 2016
Dallas L. Smith	09/10	Sept 30 2013	Sept 30 2016
Earl Erdmann, Chairman	09/08	Sept 30 2014	Sept 30 2014
J. Ross Lacy	09/12*	Sept 30 2014	Sept 30 2020
Don "Woody" Woodward	11/11	Sept 30 2014	Sept 30 2017

Ex-Officio members are Harry Spannaus, the City Manager and the City Attorney. The Secretary is the Director of Aviation.

ANIMAL SERVICES ADVISORY COMMISSION

(Advisory)

(Membership - 6; Terms - 4 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Dr. Tom Green (Veterinarian)	10/07*	Sept 30 2013	Sept 30 2017
Kelly Spencer	09/09	Sept 30 2013	Sept 30 2017
Laura Hollifield	09/08*	Sept 30 2013	Sept 30 2017
Justin Petty	04/07*	Sept 30 2013	Sept 30 2017
Tony Carrillo	09/09	Sept 30 2013	Sept 30 2017
Paul O'Neill	09/09	Sept 30 2013	Sept 30 2017

BUILDING CODES REVIEW COMMITTEE

(Membership – 9; Terms – 2 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
James Rigger	12/09	Dec 31 2013	Dec 31 2013
Chris Repman	12/09	Dec 31 2013	Dec 31 2013
John Cooper	12/09	Dec 31 2013	Dec 31 2013
Bill Routh	12/09	Dec 31 2013	Dec 31 2013
Tom Woodruff	12/09	Dec 31 2013	Dec 31 2013
Ron Ainsworth	12/09	Dec 31 2013	Dec 31 2013
Walter Pate	12/09	Dec 31 2013	Dec 31 2013
Robert Harrington	12/09	Dec 31 2013	Dec 31 2013
Jerry Morales	12/09	Dec 31 2013	Dec 31 2013

CITY DEVELOPMENT ADVISORY COMMITTEE

(Advisory)

(Membership - 5; Terms - 2 Years expiring 2 even & 3 odd)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Reggie Lawrence	09/10	Sept 30 2012	Sept 30 2014
Alonda Massey	11/11	Sept 30 2013	Sept 30 2015
Tim Bryson	11/11	Sept 30 2013	Sept 30 2015
W. Roger Beebe	02/13	Sept 30 2014	Sept 30 2016
Avery I. Pullins	02/13*	Sept 30 2013	Sept 30 2017

CONSTRUCTION BOARD OF ADJUSTMENTS AND APPEALS

(Decision Making)

(Membership - 7; Terms - 4 Years expiring 2-2-2-1)

Position to include: 1. Registered Architectural or Builder Superintendent, 2. Registered Structural Engineer, 3. Registered Mechanical and Plumbing, 4. Registered Electrical Engineer, 5. Registered Fire Protection Engineer

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>	<u>Position</u>
Don Woodward (At Large)	11/11*	Sept 30 2016	Sept 30 2020	5
Richard D. Dunham	10/05	Sept 30 2013	Sept 30 2013	1
Greg Turner	03/11*	Sept 30 2013	Sept 30 2021	4
Chris Repman	10/07*	Sept 30 2014	Sept 30 2018	3
Jay K. Bradford	09/10	Sept 30 2014	Sept 30 2018	2

ALTERNATES:

Vacancy	Sept 30 2007	Any
Vacancy	Sept 30 2007	Any

HOTEL/MOTEL TAX ADVISORY BOARD

(Advisory)

(Membership - 7; Terms - 2 Years Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Karmen Hendrix Bryant	02/12*	Sept 30 2013	Sept 30 2017
David Baur	09/10	Sept 30 2013	Sept 30 2014
Lisa Grissom	09/09	Sept 30 2013	Sept 30 2013
Steve Jones	02/09*	Sept 30 2013	Sept 30 2013
Annabell Ramirez	09/12	Sept 30 2014	Sept 30 2016
Brian Smith	09/12	Sept 30 2014	Sept 30 2016
Alex Singh-Hotel/Motel Assn. Rep.	09/09	Dec 31 2013	Assn. Appt.
Vicky Hailey (Liaison Officer)			

* Indicates appointment to an unexpired term.

HOUSING AUTHORITY COMMISSION

(Membership - 5; Terms - 2 Years expiring 2 even & 3 odd.)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Gregory Maes	11/11	Oct 2013	Oct 2015
Carla Repman, Vice Chairman	09/09	Oct 2013	Oct 2013
James A. Blischke	01/10	Oct 2013	Oct 2015
Dennis Bade	09/12	Oct 2014	Oct 2016
Norma Duran	11/08*	Oct 2014	Oct 2014

ALTERNATES:

Vacancy	Oct 2013	Oct 2015
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JOINT ECONOMIC DEVELOPMENT TASK FORCE

(Ad Hoc)

	<u>Appt. Date</u>
(Midland)	
Wes Perry	01/08
LuAnn Morgan	12/00
Keith Stretcher	12/00
Tommy Hudson	08/07
John Breier	01/04
(Odessa)	
Larry Melton	08/01
Jim Morris	11/00
Richard Morton	11/02
Joel Roberts	11/00
Neil McDonald	11/00

MANAGED COMPETITION COMMITTEE

(Ad Hoc)

	<u>Appt. Date</u>
Jon Morgan	01/02
Wes Perry	01/02
Roy Nelson	01/02
Hugh "Andy" Shaffer	12/03
Scott Dufford	01/02
Ted Tipton	04/04
Kevin Sparks	11/07
Scott Lovett	04/10
P. Lourcey Sams	04/10

Ex-Officio members are the Mayor and the City Manager.

MIDLAND CENTER ADVISORY BOARD

(Advisory & Decision Making)

(Membership - 9; Terms - 3 Years expiring 3-2-2.)

		<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Brent Blackburn	(City)	09/09*	Sept 30 2013	Sept 30 2016
Charles Spence	(CC)	11/07	Sept 30 2013	N/A
Lorri Lyon West	(City)	09/10	Sept 30 2013	Sept 30 2016
Patricia S. Blackwell	(City)	10/07*	Sept 30 2014	Sept 30 2014
Paula Mitchell	(City)	09/08	Sept 30 2014	Sept 30 2014
Vicky Hailey	(CC)	01/13*	Sept 30 2014	N/A
Tracy Bacon	(CC)	12/11	Sept 30 2014	N/A
Jerry Morales (Liaison Officer)				

Ex-Officio members are the City Manager and Executive Director of the Chamber of Commerce.

MIDLAND CENTRAL APPRAISAL DISTRICT BOARD OF DIRECTORS

Five Directors, Elected by Local Taxing Entities.

City Nominates/Cast Vote for one Director

(Terms - 2 Years)

	<u>Appt Date</u>	<u>Term Expires</u>
Chad Clark	3/12*	Dec 31 2013

MIDLAND DEVELOPMENT CORPORATION

(Membership - 5; Terms -3 Years - Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Laura Roman	01/08	Jan 14 2014	Jan 14 2014
Robert Rendall, Chairman	01/09*	Jan 14 2014	Jan 14 2017
Michael Trost	02/11*	Jan 14 2016	Jan 14 2019
Cary J. Love	12/09	Jan 14 2016	Jan 14 2016
Gary Douglas	11/11*	Jan 14 2016	Jan 14 2019

MIDLAND FRESH WATER SUPPLY DISTRICT #1

(Ad Hoc)

(3 Non Voting Members)

Appt Date

Wes Perry
 Gary Harris
 Wayne Merritt

05/12
 05/12
 05/12

**MIDLAND FOOTBALL-SOCCER AND BASEBALL COMPLEX
 DEVELOPMENT CORPORATION**

(Decision Making)

Membership - 7; Terms - 2 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Ken Marks, Vice President	10/07	Nov 2011	Nov 2011
James G. Smith	12/07	Nov 2011	Nov 2011
Mike Thompson	11/11	Nov 2013	Nov 2015
Tim Bryson	11/11	Nov 2013	Nov 2015
Wesley D. Bownds	02/09*	Nov 2013	Nov 2013
John James	08/08*	Nov 2013	Nov 2013
Rick Davis (MISD Resp.)	10/10*	Nov 2013	Nov 2015

MIDLAND HIGHER EDUCATION FACILITIES CORPORATION

(Membership - 7; Terms - 2 Years Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Vacancy		Jan 1 2007	
Vacancy		Jan 1 2007	
Vacancy		Jan 1 2007	
Vacancy		Jan 1 2009	
Cathy Oestmann	11/05*	Jan 1 2010	Jan 1 2010
Steve Jones	09/08*	Jan 1 2010	Jan 1 2012
Curt Kamradt	11/05*	Jan 1 2014	Jan 1 2014

* Indicates appointment to an unexpired term.

MIDLAND HOUSING FINANCE CORPORATION

(Decision Making)

(Membership - 5; Terms - 2 Years - Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Vacancy - (Damon L. Blakeley)	07/07*	Sept 30 2010	
Adrienne Valencia	10/07	Sept 30 2011	Sept 30 2011
Melissa Wicker	10/07	Sept 30 2011	Sept 30 2011
Jerry Morales (Liaison Officer)	10/08	Sept 30 2012	Sept 30 2012
Nathan Miller	11/11*	Sept 30 2012	Sept 30 2016

MIDLAND MUNICIPAL MANAGEMENT DISTRICT BOARD

(Ad Hoc)

Appt. Date

Vacancy	
Richard Hatchett	11/08
W. L. "Scooter" Brown	09/04
Ken Burgess	09/04
Jim Hightower	11/08
Ted H. Jones	09/04
Mitch Malouf	11/08
Christi Newton	09/04
Dan Rush	09/04

MIDLAND-ODESSA URBAN TRANSIT DISTRICT BOARD

(Decision Making)

(Membership - 6; Terms - 2 Years Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Willie Barber	09/08	Sept 30 2012	Sept 30 2012
Michael Trost	09/08	Sept 30 2012	Sept 30 2012
John H. James	09/09	Sept 30 2013	Sept 30 2013
Karen York	06/09*	Sept 30 2013	Sept 30 2013
Guy McKenize	03/11*	Sept 30 2013	Sept 30 2015
Rebecca Bell	09/12	Sept 30 2014	Sept 30 2016

* Indicates appointment to an unexpired term.

OIL AND GAS ADVISORY COMMITTEE

(Advisory)

(Membership – 5; Terms – 3 Years expiring 2-2-1)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Russell Richards (Petroleum Eng.)	09/12	Sept 30 2015	Sept 30 2018
Perry Dan Taylor (Real Estate)	09/12	Sept 30 2015	Sept 30 2018
Lance Friday (Real Estate)	09/12*	Sept 30 2013	Sept 30 2019
Paul Brown (Petroleum Eng.)	11/11	Sept 30 2014	Sept 30 2017
David Rosen (Petroleum Eng.)	11/11	Sept 30 2014	Sept 30 2017

PARKS AND RECREATION COMMISSION

(Advisory)

(Membership - 9; Terms - 3 Years expiring 3-3-3.)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Charles A. Spence	01/10*	Sept 30 2013	Sept 30 2016
Susan Nichols	02/06*	Sept 30 2013	Sept 30 2013
Eric L. West	10/07	Sept 30 2013	Sept 30 2013
Kenny Harper	03/12*	Sept 30 2013	Sept 30 2019
P. Lourcey Sams	09/08	Sept 30 2014	Sept 30 2014
Tina Corbett	09/08	Sept 30 2014	Sept 30 2014
Katey Howard	09/12*	Sept 30 2014	Sept 30 2020
Amanda McCann	11/11*	Sept 30 2015	Sept 30 2018
Edward Mayberry	09/12	Sept 30 2015	Sept 30 2021

PERMIAN BASIN AIRPORT BOARD

(Advisory)

(Membership - 30; Terms - 1 year.)

	<u>Appt. Date</u>	<u>Term Expires</u>
10 Members of the Airport Planning and Development Board		
Bob Forrest (Carlsbad, NM)	10/04	Sept 30 2010
Larry Shed (Hobbs, NM)	10/01	Sept 30 2010
Larry Gill (Abilene)	10/10	Sept 30 2011
David Hardwick (Ft. Stockton)	10/07	Sept 30 2012
Lex Hinds (Seminole)	10/08	Sept 30 2012

PERMIAN BASIN AIRPORT BOARD CON'T

	<u>Appt. Date</u>	<u>Term Expires</u>
Elvin Brownlee III (Andrews)	12/10*	Sept 30 2013
Jim Little (Big Spring)	09/03	Sept 30 2013
Frankie Rolfe (Kermit)	09/12	Sept 30 2013
Don Bethel (Lamesa)	02/91	Sept 30 2013
Willie Taylor (Odessa)	02/00	Sept 30 2013
Gloria Pena (Odessa)	03/03*	Sept 30 2013
Barbara Graff (Odessa)	06/10*	Sept 30 2013
Henry Cutbirth (Monahans)	09/05	Sept 30 2013
Isabelle Blanchard (Pecos)	10/10	Sept 30 2013
Luis E. Elguezabal (San Angelo)	10/07	Sept 30 2013
Glenn Wortham (Sweetwater)	10/07	Sept 30 2013
John Rogotzke (Snyder)	01/12	Sept 30 2013
Lance Goodrich (Artesia, NM)	09/09	Sept 30 2013
Larry Fry (Roswell, NM)	09/00	Sept 30 2013

Ex-Officio members are the City Manager and the City Attorney. The Secretary is the Director of Aviation.

**PERMIAN BASIN COMMUNITY CENTER FOR MENTAL HEALTH
AND MENTAL RETARDATION**

(Decision Making)

(Membership - 2 (City); Terms - 2 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Janet R. Pritchett (City)	05/09*	June 2014	June 2014
Larry Edgerton	07/10*	June 2013	June 2015

PERSONNEL BOARD OF APPEALS

(Decision Making)

(Membership - 3; No designated terms.)

	<u>Appt. Date</u>
John James	03/08
Hugh A. "Andy" Shaffer	09/05
Michael Trost	01/10

PLANNING AND ZONING COMMISSION

(Advisory & Decision Making)
(Membership - 9; Terms - 3 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Jane Wolf	03/09*	Sept 30 2013	Sept 30 2016
Cindy Lanning	09/10	Sept 30 2013	Sept 30 2016
Jay Norris	11/11	Sept 30 2014	Sept 30 2017
Galen Gatten, Vice Chairman	09/08	Sept 30 2014	Sept 30 2014
Kevin Wilton	09/08*	Sept 30 2015	Sept 30 2017
Royce Watkins	02/08*	Sept 30 2015	Sept 30 2017
Karen York	10/10*	Sept 30 2015	Sept 30 2018
Sharla Hotchkiss	10/12	Sept 30 2015	Sept 30 2018
Warren Lvey	10/12*	Sept 30 2014	Sept 30 2020
<u>ALTERNATES:</u>			
Tony Carrillo	11/11	Sept 30 2014	Sept 30 2017

TAX INCREMENT REINVESTMENT ZONE BOARD

(Decision Making)
(Membership - 12; Terms - 2 Years, or 3 Years if appointed after 3/1/07)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Mark T. Wellen (City), Chairman	07/01	Mar 20 2010	Mar 20 2010
Randy Prude (County)	03/07	Mar 20 2010	Mar 20 2013
Ken Burgess (City)	10/12*	Mar 20 2013	Mar 20 2018
Judge Mike Bradford (County)	01/07*	Mar 20 2010	Mar 20 2014
Bob Lanier (City), Secretary	04/03	Mar 20 2011	Mar 20 2011
Pete Hulder (Hospital)	03/10	Mar 20 2016	Mar 20 2016
Michael Blonkvist (City)	09/12*	Mar 20 2014	Mar 20 2020
John L. Kennedy (City)	10/09*	Mar 20 2015	Mar 20 2018
Link Grimes (City)	12/12*	Mar 20 2015	Mar 20 2021
Charlene McBride (College)	12/12	Mar 20 2016	Mar 20 2019
Steve Castle (College)	04/13*	Mar 20 2015	Mar 20 2021
Russell Meyer (Hospital)	12/12	Mar 20 2016	Mar 20 2019

Ex-Officio member is President, Board of Trustees, Midland Independent School District

ZONING BOARD OF ADJUSTMENT
AND
AIRPORT ZONING BOARD OF ADJUSTMENT

(Decision Making)

(Membership - 5; Terms - 2 Years expiring 3 odd & 2 even.)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Manny Ribera	10/07	Sept 30 2011	Sept 30 2011
Ken Morgan	01/10*	Sept 30 2012	Sept 30 2014
Carla Repman	01/10*	Sept 30 2013	Sept 30 2015
Scott Young	09/12*	Sept 30 2013	Sept 30 2017
Todd Byars	02/08*	Sept 30 2014	Sept 30 2014

ALTERNATES: (not applicable to Airport Zoning)

Vacancy		Sept 30 2006	
Vacancy		Sept 30 2009	
Annabel Holguin	11/11	Sept 30 2013	Sept 30 2015
Greg Turner	11/11	Sept 30 2013	Sept 30 2015



DATE: May 1, 2013

TO: The Honorable Mayor and City Council Members

FROM: Keith Stretcher, City Attorney

SUBJECT: The T-Bar Ranch Water Field

The proposed resolution authorizes the employment of the law firm of Lloyd Gosselink Rochelle and Townsend of Austin, Texas. The law firm will assist in representing the City of Midland before the Railroad Commission of Texas in relation to a proposed commercial saltwater disposal well to be drilled at the T-Bar Ranch.

The proposed resolution also authorizes the employment of needed experts and authorizes the City Attorney and attorneys with the law firm of Lloyd Gosselink Rochelle and Townsend to make all appearances and file any documents with the Railroad Commission of Texas.

If you have any questions or if I may be of any assistance do not hesitate to contact me.

KS/lo

RESOLUTION NO.

RESOLUTION AUTHORIZING THE CITY ATTORNEY TO ENTER INTO A PROFESSIONAL SERVICES CONTRACT WITH JASON HILL OF THE LAW FIRM OF LLOYD GOSSELINK ROCHELLE AND TOWNSEND, P.C. OF AUSTIN, TEXAS IN CONNECTION WITH THE PROTEST OF A COMMERCIAL SALTWATER DISPOSAL WELL IN SECTION 7, BLOCK 74, PUBLIC SCHOOL LAND SURVEY, WINKLER COUNTY, TEXAS; AND ALLOCATING FUNDS; AND THE CITY ATTORNEY AND ATTORNEYS WITH THE LAW FIRM OF LLOYD GOSSELINK ROCHELLE AND TOWNSEND, P.C. ARE HEREBY AUTHORIZED TO EMPLOY NEEDED EXPERTS AND MAKE ALL APPEARANCES BEFORE THE RAILROAD COMMISSION OF TEXAS

WHEREAS, the City Council finds it to be in the public interest to employ Jason Hill with the Law Firm of Lloyd Gosselink Rochelle and Townsend, P.C. of Austin, Texas to oppose the drilling of a commercial saltwater disposal well in Section 7, Block 74, Public School Land Survey, Winkler County, Texas; and

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

SECTION ONE. That the City Attorney is authorized and directed to enter into a professional services contract with Jason Hill with the Law Firm of Lloyd Gosselink Rochelle and Townsend, P.C. of Austin, Texas to provide legal services in connection with the protest of a commercial saltwater disposal well in Section 7, Block 74, Public School Land Survey, Winkler County, Texas.

SECTION TWO. That the City Attorney and the Law Firm of Lloyd Gosselink Rochelle and Townsend, P.C. are hereby authorized to employ all needed experts and make all appearances and file any documents with the Railroad Commission of Texas.

SECTION THREE. That the City Treasurer is hereby authorized and directed to pay for the above professional services and all associated costs upon receipt of proper invoice or statement therefor executed by the City Attorney from funds available from the Water and Sewer Fund (300) Unappropriated Fund Balance (5650) to the T-Bar Water Evaluation and

Acquisition Project (9047).

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

Robert McNaughton, Director of Finance

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



DATE: May 1, 2013

TO: The Honorable Mayor and City Council Members

FROM: Keith Stretcher, City Attorney

SUBJECT: The T-Bar Ranch

The proposed resolution does the following:

1. Ratifies and affirms the letter Ron Jenkins, Oil and Gas Coordinator, sent to the Railroad Commission of Texas protesting the drilling of a commercial saltwater disposal well at the T-Bar Ranch;
2. Ratifies and affirms all actions of the Mayor, City Manager, and the City Attorney in relation to the T-Bar Ranch;
3. Authorizes the City Manager to purchase water rights and the surface estate of property in the vicinity of the T-Bar Ranch; and
4. Appropriates funds.

If you have any questions or if I may be of any assistance do not hesitate to contact me.

KS/lo

RESOLUTION NO.

RESOLUTION RATIFYING THE ACTIONS OF THE CITY OF MIDLAND'S OIL AND GAS COORDINATOR IN RELATION TO PROTESTING THE APPLICATION OF HERITAGE GATHERING CORPORATION FOR THE DEVELOPMENT OF A COMMERCIAL SALTWATER DISPOSAL WELL IN SECTION 7, BLOCK 74, PUBLIC SCHOOL LAND SURVEY, WINKLER COUNTY, TEXAS; RATIFYING AND AFFIRMING ALL PRIOR ACTS OF THE MAYOR, CITY MANAGER, AND CITY ATTORNEY IN ANY WAY RELATED TO THE T-BAR RANCH WATER FIELD IN WINKLER AND LOVING COUNTY, TEXAS; AND AUTHORIZING THE CITY MANAGER TO PURCHASE WATER RIGHTS AND/OR THE SURFACE OF PROPERTY IN WINKLER AND LOVING COUNTY, TEXAS, IN THE VICINITY OF THE T-BAR WATER FIELD; AND APPROPRIATING FUNDS

WHEREAS, the City Council finds it to be in the public interest to oppose the drilling of a Commercial Saltwater Disposal Well in Section 7, Block 74, Public School Land Survey, Winkler County, Texas; and

WHEREAS, the City of Midland's Oil and Gas Coordinator has filed the appropriate protest with the Railroad Commission of Texas and the City Council hereby ratifies and affirms the protest in all respects; and

WHEREAS, the City Council finds it to be in the public interest to protect the T-Bar Ranch Water Field;

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

SECTION ONE. That the recitals stated above are adopted and approved for all purposes.

SECTION TWO. That the City Manager is authorized to purchase water rights and/or the surface estate of property in Winkler and Loving County, Texas in the vicinity of the T-Bar Ranch Water Field.

SECTION THREE. That the sum of \$3,800,000 is hereby appropriated from the Water and Sewer Fund (300) Unappropriated Fund Balance (5650) to the T-Bar Water

Evaluation and Acquisition Project (9047).

SECTION FOUR. That the City Treasurer is hereby authorized and directed to pay for the above services and or property and all associated costs from funds appropriated herein upon receipt of proper invoice or statement therefor executed by the City Attorney or the City Manager.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

Robert McNaughton, Director of Finance

APPROVED AS TO FORM:

Keith Stretcher, City Attorney