

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

June 12, 2012 - 9:30 AM

Council Chamber - City Hall
300 North Loraine
Midland, Texas

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

1. Receive a presentation from Community Services on initiatives being implemented and considered including Hike and Bike Trails.

AGENDA FOR CITY COUNCIL MEETING
June 12, 2012 – 10:00 AM
Council Chamber - City Hall

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

OPENING ITEMS

1. Invocation - Pastor Robert Pase, Grace Lutheran 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 Midland Christian Track & Field Team Day.
 - b. Presentation of Retirement Commendation for retiring city employee Robert Brian Bogart.

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 May 22, 2012
 - b. Special Meeting of May 30, 2012

6. Consider a resolution authorizing the execution of a contract with Y&S Technologies, Incorporated, to remove and replace the uninterrupted power system at the Police and Communications Building located at 601 North Loraine Street, Midland, Texas, at a cost of \$160,480.00. (GENERAL SERVICES) (2012 - 170)
7. Consider a resolution authorizing the execution of a Professional Services Agreement with Rhotenberry-Wellen Architects & Planners, Incorporated, for renovations to the Midland Center, at a total cost of \$220,000.00; and appropriating \$2,000,000 to the Midland Center Improvements Project. (GENERAL SERVICES) (2012 - 171)
8. Consider a resolution approving the purchase of one (1) Boom Mower from South Plains Implement Ltd., at a total cost of \$52,441.00; said mower will be used to mow right-of-way and other sloped areas which are maintained by the City of Midland. (GENERAL SERVICES) (2012 - 172)
9. Consider a resolution authorizing the execution of a contract with Business Information Systems, Incorporated, DBA BIS Digital, Incorporated, of Fort Lauderdale, Florida, to provide and install new video and audio equipment in the Council Chambers at City Hall, at a cost of \$43,519.00. (GENERAL SERVICES) (2012 - 173)
10. Consider a resolution authorizing the execution of a contract with Rendon Ramirez Corporation DBA RRC, of Leander, Texas, for the addition of windows at the Martin Luther King Jr. Community Center Training Room at a cost of \$165,000.00; and appropriating funds. (GENERAL SERVICES) (2012 - 174)
11. Consider a resolution approving the purchase of LED traffic lights in assorted configurations from Leotek Electronics USA Corporation, at a total cost of \$85,666.00. (GENERAL SERVICES) (2012 - 175)
12. Consider a resolution approving the purchase of one (1) asphalt distributor body from Yellowhouse Machinery Company, of Odessa, Texas, at a total cost of \$94,500.00; and Yellowhouse Machinery Company was the sole bidder. (GENERAL SERVICES) (2012 - 176)
13. Consider a resolution authorizing the issuance of a Request for Proposals for development of facilities to be used by the City of Midland, other governmental

entities and the private sector. (GENERAL SERVICES) (2012 - 177)

14. Consider a resolution authorizing the execution of a Land Lease Agreement with W-T Hangar, LLC for hangar development located on a 0.48 acre tract of land located in Lot 4B, Block 11, Midland International Airport, Industrial Park Addition, Section 6, an addition to the City of Midland, Midland County, Texas. (AIRPORTS) (2012 - 178)
15. Consider a resolution approving the acceptance of a bid made for the purchase of real property described as Lots 7 and 8, Block 34, Greenwood Addition, City of Midland, Midland County, Texas. (CITY MANAGER'S OFFICE) (2012 - 179)
16. Consider a motion authorizing the staff to proceed with the voluntary annexation of approximately 77 acres including 76 acres in Section 37, Block 40 and a 1/2 acre tract located in Section 26, Block 40. (DEVELOPMENT SERVICES)
17. Consider a motion on a request by Newton Engineering on behalf of Southwest Baptist Church for the Midland City Council to approve items requested for deferral in the amount of \$32,804, and to waive the associated public improvement guarantee; and authorizing the City Manager to negotiate a development agreement, which must be approved by City Council, regarding the construction of a water main extension along State Highway 191 frontage. This property is positioned in the City Limits, generally located on the north side of State Highway 191 approximately four miles west of Loop 250. (ENGINEERING SERVICES)
18. Consider a resolution accepting additional grant funding from the Southwest Border High Intensity Drug Trafficking Areas Program in the amount of \$22,000.00; these funds will be directed to the Fiscal Year 2012 High Intensity Drug Trafficking Areas Project 7080; and appropriating funds. (POLICE) (2012 - 180)
19. Consider a resolution authorizing the submission of an application to the United States Department of Homeland Security Transportation Security Administration's Fiscal Year 2013 Law Enforcement Officer Reimbursement Program; this application will be for partial reimbursement for costs associated with the deployment of a law enforcement officer at the airport passenger screening checkpoint; this reimbursement, if awarded, will be used to offset the cost of providing a mandated law enforcement officer at the passenger screening checkpoint at the Midland International Airport. (POLICE) (2012 - 181)

20. Consider a resolution accepting a grant from the Permian Basin Regional Planning Commission in the amount of \$8,000.00 for backyard composting projects; authorizing the execution of acceptance documents; and appropriating the grant funds to the Backyard Composting Grant Project; the grant funds will be used to purchase composting bins and associated tools; and the grant funds consist of a portion of the \$1.25 per ton Tipping Fee that cities across the State collect at landfills. (SOLID WASTE) (2012 - 182)

SECOND READINGS

21. Consider an ordinance amending Title XI, "Planning and Development", Chapter 2, "Plats and Subdivisions", Section 1, "General Provisions", Subsection (E), "Jurisdiction", of the City Code of Midland, Texas, by repealing paragraph 9, which prohibits the issuance of a Septic Permit for a new or expanded septic system for property for which a plat has not been approved; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine; and ordering publication (DEVELOPMENT SERVICES) (9022)
22. 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 10A-29A, and Lots 31 and 32, Block 5, Greathouse Addition, Section 8, City and County of Midland, Texas, which is presently zoned PD, Planned District for a Housing Development, to be used as an amended Planned District (Generally located on both sides of Quicksand Cove, West of Spence Drive); providing for such use to be subject to certain special conditions and restrictions as set out herein; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2,000.00); and ordering publication. (DEVELOPMENT SERVICES) (9023)
23. 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 36.81-acre tract of land which is presently zoned FD, Future Development District, to be used as a 1F-3, One-Family Dwelling District; by permitting a 3.98-acre tract of land which is presently zoned FD, Future Development District, to be used as a TH, Townhouse District; said tracts being located in Section 25, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas; said tracts being more specifically described by metes and bounds made a part hereof; said tracts are generally located on the west side of Holiday Hill Road, approximately 450 feet south of Briarwood Avenue; 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) (9024)

24. Consider an ordinance on second reading vacating and abandoning a 0.032-acre portion of West Louisiana Avenue right-of-way adjacent to the north 75 feet of the east half of Block 29, Homestead Addition, City and County of Midland, Texas (Generally located on the southwest corner of the intersection of West Louisiana Avenue and North Colorado Street); adopting the appraisal by the City Manager of \$1,400.00; and ordering recordation by the City Secretary. (DEVELOPMENT SERVICES) (9025)

PUBLIC HEARINGS

25. At approximately 10:30 am conduct a Public Hearing for the 2012/13 Community Development Block Grant (CDBG) Program. (DEVELOPMENT SERVICES)
26. At approximately 10:33 a.m. hold a public hearing and consider an ordinance changing the zoning classification by amending Chapter One, Title XI, of the City Code of Midland, Texas, by permitting Lots 1-33, Block 1, and Lots 1-51, Block 2, Mockingbird Oaks, City and County of Midland, Texas, which is presently zoned PD, Planned District for a Housing Development, to be used as an Amended Planned District (Generally located on the north side of Mockingbird Lane, 700 feet west of Garfield Street); providing for such use to be subject to certain special conditions and restrictions as set out herein; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2,000.00); and ordering publication. (DEVELOPMENT SERVICES) (9031)
27. At approximately 10:36 hold a public hearing and consider a resolution authorizing the temporary use of land for a church fair on Lot 1A, Block 19, Midland Heights Addition, Section 4, City and County of Midland, Texas (Generally located on the southwest corner of Camp Street and Dakota Avenue); and making said permit subject to certain special conditions and restrictions contained herein. (DEVELOPMENT SERVICES) (2012 - 183)

MISCELLANEOUS

28. Consider a resolution approving the issuance of a permit to Bluestem Energy Holdings, LLC ("Operator") to drill an oil and gas well within the City Limits located 1,949 feet from the south line and 1,927 feet from the west line, Section 8, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas (Generally located on the east side of North Midland Drive, approximately 1/3 of a mile

north 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) (2012 - 184)

29. Consider a resolution approving the issuance of a permit to Bluestem Energy Holdings, LLC ("Operator") to drill an oil and gas well within the City Limits located 623 feet from the south line and 2,035 feet from the east line, Section 8, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas (Generally located on the west side of North Midkiff Road, approximately 625 feet north 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) (2012 - 185)
30. Receive notification regarding no legal action filed pertaining to dilapidated structures Ordinance No. 8907, approved March 20, 2012. (DEVELOPMENT SERVICES)
31. Consider an ordinance prohibiting parking on the north side of Faulkner Drive from a point 185 feet west of the centerline of Melville Drive and continuing east a distance of 640 feet to the north/south alley and the east and west sides of Melville Drive beginning at the centerline of Faulkner Drive and continuing north a distance of 130 feet to the east/west alley except to residents whose property abuts such street and have obtained a valid Parking Permit; authorizing and directing the Traffic Engineer to erect appropriate signs; declaring any vehicle in violation of the provisions of this ordinance a nuisance and providing for the removal of same; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two hundred dollars (\$200.00); and ordering publication. (ENGINEERING SERVICES) (9032)
32. Consider an ordinance establishing intersection stops at various locations within the City of Midland, Texas; requiring and authorizing the posting of appropriate signs at intersections; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two hundred dollars (\$200.00); and ordering publication. (ENGINEERING SERVICES) (9033)
33. Consider an ordinance vacating and abandoning a 0.08-acre portion of West Louisiana Avenue right-of-way and North Colorado Street right-of-way adjacent to the south 200 feet of the west half of Block 12, Homestead Addition, City and County of Midland, Texas (Generally located on the northeast corner of North Colorado Street and West Louisiana Avenue); adopting the appraisal by the City Manager of \$1,742.40; retaining a general utility easement; and ordering recordation by the City Secretary. (DEVELOPMENT SERVICES) (9034)

34. Consider making appointments to various Boards and Commissions.

EXECUTIVE SESSION

35. 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 litigation styled Lemon v. Kurtzman, 403 U.S. 602 (1971) and cases that have interpreted the Lemon decision. The Lemon test will also be discussed and how it relates to the First Amendment to the United States Constitution and the Establishment Clause.
 - a.2. Discuss with the City Attorney contemplated litigation with the U.S. Fish and Wildlife Service regarding the Dunes Sagebrush Lizard.
 - b. Section 551.087, Deliberation Regarding Economic Development Negotiations
 - b.1. Discuss business prospects that the City of Midland and/or the Midland Development Corporation seeks to have locate, stay, or expand in or near the City of Midland, Texas, and discuss possible incentives.

Respectfully Submitted,

Courtney B. Sharp
City Manager

**MIDLAND CITY COUNCIL
MINUTES
May 22, 2012**

BRIEFING SESSION

The City Council convened in a Briefing Session in the basement conference room, City Hall, Midland, Texas, at 9:00 a.m. on May 22, 2012.

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

Staff members present: City Manager Courtney Sharp, City Attorney Keith Stretcher, Deputy City Manager Tommy Hudson, City Secretary Amy Turner, Development Services Director Rick Crownover, Fire Chief Robert Isbell, General Services Director Robert Patrick, Utilities Director Stuart Purvis, Building Official Steve Thorpe, Senior Planner Ken VanDyne, Oil & Gas Compliance Officer Ron Jenkins, and Multimedia Developer Ryan Stout.

1. Receive an update from the Fire Department regarding the use of squad trucks for improved response times.

Fire Chief Isbell reported on the pilot program to use squad trucks instead of fire engines on any call that did not require fire hoses in an effort to lower response times. He reported that overall citywide response times have decreased. Discussion ensued about potential fuel savings and about making this a permanent program.

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

Jay Edwards provided an update to the City Council reporting that 30% of the right-of-way had been purchased, tanks were in prefabrication, the first geotechnical testing began on the elevated storage tank site, and provided an update on SCADA control system. Conversations continue with Oncor for power delivery and the system has been designed by Oncor. He provided an operations update.

Following discussion, Jay reported that they will have a link on Parkhill, Smith and Cooper website with updates on the project in order to be as transparent as possible, noting that every piece of pipe would be able to be tracked throughout the project.

The foregoing agenda items were discussed by the City Council with no formal action taken. The Briefing Session was adjourned at 9:46 a.m.

REGULAR SESSION

The City Council convened in regular session in the Council Chamber, City Hall, Midland, Texas, at 10:01 a.m., May 22, 2012.

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

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

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

OPENING ITEMS

1. Invocation - Monsignor Larry Droll, St. Ann's Catholic Church
2. Pledge of Allegiance

PRESENTATIONS

3. Presentation of special events, organizations, individuals, or periods of time including, but not limited to:
 - a. Mayor Perry presented Certificates to the Midland 101 Class of 2011-12 Graduates.

PUBLIC COMMENT

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

There was no one present from the public wishing to speak.

CONSENT AGENDA

Council Member Morales moved to approve Consent Agenda items 5 - 13 excluding 8; seconded by Council Member James. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

5. Approved a motion approving the following minutes:
 - a. Regular meeting of May 8, 2012.
6. Approved a resolution approving a master agreement for Flexible Base "City Base"

Caliche - Bid 4843-12 (GENERAL SERVICES)

RESOLUTION NO. 2012 - 139

RESOLUTION APPROVING THE PURCHASE OF FIVE THOUSAND (5,000) TONS OF FLEXIBLE BASE CALICHE FROM JONES BROTHERS PARTNERSHIP, OF ODESSA, TEXAS, FOR A TOTAL COST OF \$63,750.00

7. Approved a resolution authorizing the execution of Amendment #1 to Parkhill, Smith & Cooper's Professional Services Agreement (AIRPORTS)

RESOLUTION NO. 2012 - 140

RESOLUTION AUTHORIZING THE EXECUTION OF AMENDMENT NUMBER 1 TO THE PROFESSIONAL SERVICES AGREEMENT WITH PARKHILL, SMITH & COOPER, INCORPORATED, FOR IMPROVEMENTS CONTAINED IN THE AIRPORT CAPITAL IMPROVEMENT PROGRAM; SAID AMENDMENT TO INCLUDE THE FOLLOWING PROJECTS: EXECUTIVE APRON RECONSTRUCTION AREA B, NORTHWEST TAXILANE EXTENSION PROJECT PHASE 2, EMERGENCY ROADWAY AND GATES REHABILITATION, ACCESS CONTROL SYSTEM SOFTWARE AND CABLE UPGRADE, AIRPARK HANGAR EXPANSION, REPLAT AND REZONE PROPERTY AT MIDLAND INTERNATIONAL AIRPORT; THE CITY WILL UP-FRONT THE FEDERAL AVIATION ADMINISTRATION AND TEXAS DEPARTMENT OF TRANSPORTATION PORTION OF THE DESIGN PHASE OF THESE PROJECTS AND BE REIMBURSED OUT OF THE 2013 FEDERAL AVIATION ADMINISTRATION AND TEXAS DEPARTMENT OF TRANSPORTATION ENTITLEMENT FUNDS; THE CITY SHARE FOR THE PROJECT IS \$97,750.00, THE FEDERAL AVIATION ADMINISTRATION SHARE IS \$173,700.00, AND THE TEXAS DEPARTMENT OF TRANSPORTATION SHARE IS \$6,750.00; AND APPROPRIATING NECESSARY FUNDS

9. Approved a resolution authorizing the City of Midland Police Department in conjunction with the Midland County Sheriff's Department to apply for the Fiscal Year 2012 Justice Assistance Grant Funds. (POLICE)

RESOLUTION NO. 2012 - 141

RESOLUTION AUTHORIZING THE CITY OF MIDLAND TO FILE A JOINT APPLICATION WITH MIDLAND COUNTY FOR FISCAL YEAR 2012 JUSTICE ASSISTANCE GRANT FUNDS PROGRAM TOTALING \$31,908.00; AND AUTHORIZING THE EXECUTION OF AN AGREEMENT REGARDING THE DIVISION OF SAID GRANT FUNDS; THE CITY OF MIDLAND WILL RECEIVE \$19,145.00 (60%) AND MIDLAND COUNTY WILL RECEIVE \$12,763.00 (40%) OF THE GRANT FUNDS RESPECTIVELY; THIS AGREEMENT DOES NOT SUPERSEDE, MODIFY OR AMEND ANY OTHER PRIOR AGREEMENTS

10. Approved a resolution to approve Change Order Number 1 for the Headworks Improvements - Replacement of Influent Screens Project with Red River Construction Company and Appropriate Funds (UTILITIES)

RESOLUTION NO. 2012 - 142

RESOLUTION AUTHORIZING THE EXECUTION OF CHANGE ORDER NUMBER ONE WITH RED RIVER CONSTRUCTION COMPANY, INCORPORATED, ADDING \$503,102.00 FOR ADDITIONAL WORK TO THE EXISTING CONTRACT FOR THE

HEADWORKS IMPROVEMENTS - REPLACEMENT OF INFLUENT SCREENS PROJECT; AND APPROPRIATING \$503,102.00; THE ORIGINAL CONTRACT WAS FOR \$5,357,080.00; THIS CHANGE ORDER BRINGS THE TOTAL CONTRACT PRICE TO \$5,860,182.00

11. Received for information the Second Quarter Fiscal Year 2011 - 2012 Investment Report (FINANCE)
12. Approved a resolution to deny the effective date of an Atmos West Texas proposed rate increase. (CITY MANAGER'S OFFICE)

RESOLUTION NO. 2012 - 143

RESOLUTION OF THE CITY OF MIDLAND, TEXAS, DENYING ATMOS ENERGY CORPORATION - WEST TEXAS DIVISION'S ("ATMOS WEST TEXAS") REQUESTED RATE CHANGE; REQUIRING THE COMPANY TO REIMBURSE THE CITY'S REASONABLE RATEMAKING EXPENSES; FINDING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; REQUIRING NOTICE OF THIS RESOLUTION TO THE COMPANY AND THE CITY'S LEGAL COUNSEL

13. Approved a resolution authorizing the Mayor to negotiate and execute a Wholesale Water Delivery Agreement with the Midland County Fresh Water Supply District No. 1 (CITY MANAGER'S OFFICE)

RESOLUTION NO. 2012 - 144

RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A WHOLESALE WATER DELIVERY AGREEMENT WITH THE MIDLAND COUNTY FRESH WATER SUPPLY DISTRICT NO. 1 REGARDING THE TRANSPORTATION OF CITY-OWNED WATER FROM THE T-BAR RANCH WATER FIELD TO THE CITY OF MIDLAND; THE T-BAR RANCH WATER FIELD IS LOCATED IN LOVING COUNTY AND WINKLER COUNTY, TEXAS

The following item was pulled from Consent Calendar and considered individually.

8. Consider a motion on a request by Newton Engineering for Southwest Baptist Church to approve items requested for deferral in the amount of \$32,804, and to enter into a development agreement to accept funds for the construction of a water main extension along SH 191 frontage and to waive the associated public improvement guarantee. This property is positioned in the City Limits, generally located on the north side of SH 191 approximately 4 miles west of Loop 250. (ENGINEERING SERVICES)

City Engineer David Beard reported that the applicant requested the item be heard at a future date.

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

SECOND READINGS

14. Consider an ordinance on second reading on a request by Grace Partnership for a zone change from PD, Planned District for a Housing Development and from PD Planned District of a Transition District, to an Amended Planned District on Lots 1 and 2, Block 4, Gateway Plaza, Section 2, City and County of Midland, Texas. (Generally located on the west side of Tradewinds Boulevard, approximately 800 feet north of Business I-20 - District 2) (Development Services)

ORDINANCE NO. 9016

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOTS 1 AND 2, BLOCK 4, GATEWAY PLAZA, SECTION 2, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT, IN PART, AND PD, PLANNED DISTRICT FOR A TRANSITION DISTRICT, IN PART, TO BE USED AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT (GENERALLY LOCATED ON THE WEST SIDE OF TRADEWINDS BOULEVARD, APPROXIMATELY 800 FEET NORTH OF BUSINESS INTERSTATE 20); 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 Garcia read the caption of Ordinance No. 9016.

Council Member Morales moved to approve the second and final reading of Ordinance No. 9016 in accordance with the Charter of the City of Midland; seconded by Council Member Hailey. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

15. Consider an ordinance on second reading on a request by GRACO Real Estate for a zone change from PD, Planned District for a Shopping Center to Amended Planned District. (Development Services)

ORDINANCE NO. 9017

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 6.61-ACRE TRACT OF LAND OUT OF SECTION 4, BLOCK "X", H.P. HILLIARD SURVEY, 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 WEST LOOP 250 NORTH, APPROXIMATELY 435 FEET EAST OF BILLINGSLEY 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 Garcia read the caption of Ordinance No. 9017.

Council Member Trost moved to approve the second and final reading of Ordinance No. 9017 in accordance with the Charter of the City of Midland; seconded by Council Member Hailey. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

16. Consider an ordinance on second reading on a request by Milton Lary for a zone change from AE, Agriculture Estate District to PD, Planned District for a Shopping Center on Lot 87, 87A, 88 and 89, Block 3, Skyview Development, City and County of Midland, Texas. (Generally located on the south side of East Loop 250 North, between Cynthia Drive and Kniffen Avenue.) (Development Services)

ORDINANCE NO. 9018

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOTS 87, 87A, 88 AND 89, BLOCK 3, SKYVIEW DEVELOPMENT, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED AE, AGRICULTURE ESTATE DISTRICT, TO BE USED AS A PD, PLANNED DISTRICT FOR A SHOPPING CENTER (GENERALLY LOCATED ON THE SOUTH SIDE OF EAST LOOP 250 NORTH, BETWEEN CYNTHIA DRIVE AND KNIFFEN 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 Garcia read the caption of Ordinance No. 9018.

Council Member Dufford moved to approve the second and final reading of Ordinance No. 9018 in accordance with the Charter of the City of Midland; seconded by Council Member Hailey. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

17. Consider an ordinance on second reading on a request by CVS Pharmacy for approval of a Municipal Setting Designation on Lot 1A, Block 1, Permian Shopping Center, Section 2, City and County of Midland, Texas. (Generally located on the northeast corner of Illinois Avenue and Andrews Highway). (Engineering)

ORDINANCE NO. 9021

AN ORDINANCE APPROVING A MUNICIPAL SETTING DESIGNATION SITE FOR LOT 1A, BLOCK 1, PERMIAN SHOPPING CENTER, SECTION 2, CITY AND COUNTY OF MIDLAND, TEXAS (COMMONLY KNOWN AS CVS PHARMACY, 301 ANDREWS HIGHWAY, MIDLAND, TEXAS 79701); PROVIDING FOR THE PROHIBITION OF THE USE OF GROUNDWATER FOR POTABLE AND IRRIGATION PURPOSES ; 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 Garcia read the caption of Ordinance No. 9021.

Council Member Morales moved to approve the second and final reading of Ordinance No. 9021 in accordance with the Charter of the City of Midland; seconded by Council Member Hailey. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

18. Consider an ordinance on second reading on a request by CY Houston Management Company for a Specific Use Permit with Term for the sale of alcoholic beverages, for on-premises consumption in a bar, on Lot 8, Block 2, Westridge Park Addition, Section 20, City and County of Midland, Texas. (Generally located on the northwest corner of Illinois Avenue and Andrews Highway.) (Development Services)

ORDINANCE NO. 9020

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF THE PROPERTY DESCRIBED AS LOT 8, BLOCK 2, WESTRIDGE PARK ADDITION, SECTION 20, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTHWEST CORNER OF THE INTERSECTION OF NORTH LOOP 250 WEST AND DEAUVILLE BOULEVARD), WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A SHOPPING CENTER, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT WITH TERM FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A BAR FOR ON-PREMISES CONSUMPTION; MAKING SAID PERMIT SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

Deputy City Secretary Garcia read the caption of Ordinance No. 9020.

Council Member Hailey moved to approve the second and final reading of Ordinance No. 9020 in accordance with the Charter of the City of Midland; seconded by Council Member Morales. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

PUBLIC HEARINGS

19. At approximately 10:30 a.m. hold a public hearing and consider an ordinance on a City-initiated proposal to delete Section 11-2-1(E) 9 of the Subdivision Code. (DEVELOPMENT SERVICES)

ORDINANCE NO. 9022

AN ORDINANCE AMENDING TITLE XI, "PLANNING AND DEVELOPMENT", CHAPTER 2, "PLATS AND SUBDIVISIONS", SECTION 1, "GENERAL PROVISIONS", SUBSECTION (E), "JURISDICTION", OF THE CITY CODE OF MIDLAND, TEXAS, BY REPEALING PARAGRAPH 9, WHICH PROHIBITS THE ISSUANCE OF A SEPTIC PERMIT FOR A NEW OR EXPANDED SEPTIC SYSTEM FOR PROPERTY FOR WHICH A PLAT HAS NOT BEEN APPROVED; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE; AND ORDERING PUBLICATION

Senior Planner Ken VanDyne reported the City initiated the request to amend the

subdivision code to strike the requirement of a septic permit in the ETJ. Staff felt it was ineffective for its intended use of stopping illegal platting. The item was approved by Planning & Zoning Commission and no letters of objection had been received.

Mayor Perry opened the public hearing at 10:33 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Deputy City Secretary Garcia read the caption of Ordinance No. 9022.

Council Member Trost moved approval of the first of two readings of Ordinance No. 9022 in accordance with the Charter of the City of Midland; seconded by Council Member Morales. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

20. At approximately 10:33 a.m. hold a public hearing and consider an ordinance on a request by Glenn Miller Homes for a zone change from PD, Planned District for a Housing Development to Amended Planned District. (DEVELOPMENT SERVICES)

ORDINANCE NO. 9023

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOTS 10A-29A, AND LOTS 31 AND 32, BLOCK 5, GREATHOUSE ADDITION, SECTION 8, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A SHOPPING CENTER, TO BE USED AS AN AMENDED PLANNED DISTRICT (GENERALLY LOCATED ON BOTH SIDES OF QUICKSAND COVE, WEST OF SPENCE DRIVE); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

Senior Planner VanDyne reported this was a request by Glen Miller Homes noting the developer received sign-off from the three occupants of the 22-acre lot northeast of Holiday Hill Road and Briarwood. The applicant is changing the existing 15 foot setback to 10 feet. This item was approved 6-1 by Planning & Zoning and staff concurred with approval of this item. He noted there was a typo in the Ordinance. In the caption and Section One it says, "Planned District for a Shopping Center" but it should say, "Planned District for a Housing Development." He reported no letters of objection had been received.

Mayor Perry opened the public hearing at 10:37 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Deputy City Secretary Garcia read the caption of Ordinance No. 9023.

Council Member Sparks moved approval of the first of two readings of Ordinance No. 9023 in accordance with the Charter of the City of Midland with the amendment to change the wording "Planned District for a Shopping Center" to "Planned District for a Housing Development"; seconded by Council Member James. The motion carried by

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

21. At approximately 10:36 a.m. hold a public hearing and consider an ordinance on a request by Mockingbird Oaks Development for a zone change from FD, Future Development District to 1F-3, One-Family Development District and TH, Townhouse Development District. (DEVELOPMENT SERVICES)

ORDINANCE NO. 9024

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 36.81-ACRE TRACT OF LAND WHICH IS PRESENTLY ZONED FD, FUTURE DEVELOPMENT DISTRICT, TO BE USED AS A 1F-3, ONE-FAMILY DWELLING DISTRICT; BY PERMITTING A 3.98-ACRE TRACT OF LAND WHICH IS PRESENTLY ZONED FD, FUTURE DEVELOPMENT DISTRICT, TO BE USED AS A TH, TOWNHOUSE DISTRICT; SAID TRACTS BEING LOCATED IN SECTION 25, BLOCK 40, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS; SAID TRACTS BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS MADE A PART HEREOF; SAID TRACTS ARE GENERALLY LOCATED ON THE WEST SIDE OF HOLIDAY HILL ROAD, APPROXIMATELY 450 FEET SOUTH OF BRIARWOOD AVENUE; PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

Senior Planner VanDyne reported this item was a request by the developer to rezone the property from FD, Future Development to put in a residential subdivision of 135 lots and four acres of townhomes. The item was approved by Planning & Zoning and staff concurs with their recommendation. Two letters of objection were received out of 57 letters that were mailed out.

Mayor Perry opened the public hearing at 10:42 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Deputy City Secretary Garcia read the caption of Ordinance No. 9024.

Council Member Hailey moved approval of the first of two readings of Ordinance No. 9024 in accordance with the Charter of the City of Midland; seconded by Council Member Morales. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

MISCELLANEOUS

22. Consider a resolution approving the issuance of a permit to Vector Oil & Gas LP (Operator) for a Permit to Drill an Oil and Gas Well within the City Limits, (Barron #1) located 1,910.4 feet from the north line and 820.8 feet from the west line of Section 6, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas. (Generally located on the east side of Holiday Hill Road, approximately 1/2 mile south of Mockingbird Lane.) (DEVELOPMENT SERVICES)

RESOLUTION NO. 2012 - 145

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 1,910.4 FEET FROM THE NORTH LINE AND 820.8 FEET FROM THE WEST LINE, SECTION 6, BLOCK "X", H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF HOLIDAY HILL ROAD, APPROXIMATELY ½ MILE SOUTH OF MOCKINGBIRD LANE)

Oil & Gas Compliance Officer Jenkins reported that this item previously went to a public hearing and no letters of objection had been received. The Oil & Gas Advisory Committee approved the item with the following recommendation of using multiple wells per pad site for possible directional drilling. There were no residences within 500 feet and no variances were needed.

Council Member Sparks moved to adopt Resolution No. 2012 - 145; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

23. Consider a resolution approving the issuance of a permit to Vector Oil & Gas LP (Operator) for a Permit to Drill an Oil and Gas Well within the City Limits, (Barron #3) located 714 feet from the north line and 730.4 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 east side of Holiday Hill Road, approximately 720 feet south of Mockingbird Lane.) (DEVELOPMENT SERVICES)

RESOLUTION NO. 2012 - 146

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 714 FEET FROM THE NORTH LINE AND 730.4 FEET FROM THE WEST LINE, SECTION 6, BLOCK "X", H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF HOLIDAY HILL ROAD, APPROXIMATELY 720 FEET SOUTH OF MOCKINGBIRD LANE)

Oil & Gas Compliance Officer Jenkins reported this well was to the north of the previous well, the same information applies from the previous item, no letters of objection had been received, the same recommendations apply from the Oil & Gas Advisory Committee, and the tank battery was located to the east of the location.

Council Member Sparks moved to adopt Resolution No. 2012 - 146; seconded by Council Member Trost. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

24. Consider a resolution authorizing the execution of a road repair agreement with Vector Oil & Gas LP regarding its applications to drill oil and gas wells within the City Limits, in Section 6, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas. The Road Repair Agreement will cover Briarwood Avenue and Holiday Hill Road in the amount of \$75,000.00. (DEVELOPMENT SERVICES)

RESOLUTION NO. 2012 - 147

RESOLUTION AUTHORIZING THE EXECUTION OF A ROAD REPAIR AGREEMENT WITH VECTOR OIL & GAS LP REGARDING ITS APPLICATIONS TO DRILL OIL AND GAS WELLS WITHIN THE CITY LIMITS IN SECTION 6, BLOCK "X", H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS

Oil & Gas Compliance Officer Jenkins reported they would be using Briarwood and Holiday Hill Road to access the location where Mockingbird Lane will be connected.

Discussion ensued regarding the construction of Briarwood and the potential of using a cash deposit in lieu of a letter of credit.

Council Member Dufford moved to adopt Resolution No. 2012 - 147; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

25. Consider a motion approving an amendment to an oil and gas well drilling permit from Bluestem Energy Holdings, LLC. (Evans "C" 1) inside the City Limits located 1021 feet from the north line and 2310 feet from the west line, Section 8, Block "X", H.P. Hilliard Survey, Midland County, Texas. (Generally located on the east side of the North Midland Drive, approximately 3/4 mile north of Mockingbird Lane - Resolution 2011-281) (DEVELOPMENT SERVICES)

Oil & Gas Compliance Officer Ron Jenkins reported that all of the following wells were for the same amendment to their permits and that fees have been paid for each permit. He described what items would be changed to the tank battery.

Council Member Sparks moved to approve an amendment to an oil and gas well drilling permit from Bluestem Energy Holdings, LLC. (Evans "C" 1) inside the City Limits located 1021 feet from the north line and 2310 feet from the west line, Section 8, Block "X", H.P. Hilliard Survey, Midland County, Texas. (Generally located on the east side of the North Midland Drive, approximately 3/4 mile north of Mockingbird Lane - Resolution 2011-281); seconded by Council Member Trost. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

26. Consider a motion approving an amendment to an oil and gas well drilling permit from Bluestem Energy Holdings, LLC. (Evans "D" 1) inside the City Limits located 1021 feet from the north line and 1041 feet from the west line, Section 8, Block "X", H.P. Hilliard Survey, Midland County, Texas. (Generally located on the east side of the North Midland Drive, approximately 3/4 mile north of Mockingbird Lane – Resolution 2011-282) (DEVELOPMENT SERVICES)

Oil & Gas Compliance Officer Jenkins reported everything was exactly the same as the previous item and the changes were strictly dealing with the tank battery.

Council Member Sparks moved to approve Approved a motion approving an amendment to an oil and gas well drilling permit from Bluestem Energy Holdings, LLC. (Evans "D" 1) inside the City Limits located 1021 feet from the north line and 1041 feet from the west line, Section 8, Block "X", H.P. Hilliard Survey, Midland County, Texas.

(Generally located on the east side of the North Midland Drive, approximately $\frac{3}{4}$ mile north of Mockingbird Lane – Resolution 2011-282); seconded by Council Member Trost. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

27. Consider a motion approving an amendment to an oil and gas well drilling permit from Bluestem Energy Holdings, LLC. (Evans "G" 1) inside the City Limits located 1650 feet from the north line and 2310 feet from the east line, Section 8, Block "X", H.P. Hilliard Survey, Midland County, Texas. (Generally located on the west side of the North Midkiff Road, approximately $\frac{3}{4}$ mile north of Mockingbird Lane. – Resolution 2011-283) (DEVELOPMENT SERVICES)

Oil & Gas Compliance Officer Jenkins reported this item contained the same changes.

Council Member Sparks moved to approve an amendment to an oil and gas well drilling permit from Bluestem Energy Holdings, LLC. (Evans "G" 1) inside the City Limits located 1650 feet from the north line and 2310 feet from the east line, Section 8, Block "X", H.P. Hilliard Survey, Midland County, Texas. (Generally located on the west side of the North Midkiff Road, approximately $\frac{3}{4}$ mile north of Mockingbird Lane. – Resolution 2011-283); seconded by Council Member Hailey. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

28. Consider a motion approving an amendment to an oil and gas well drilling permit from Bluestem Energy Holdings, LLC. (Evans "H" 1) inside the City Limits located 1650 feet from the north line and 990 feet from the east line, Section 8, Block "X", H.P. Hilliard Survey, Midland County, Texas. (Generally located on the west side of the North Midkiff Road, approximately $\frac{3}{4}$ mile north of Mockingbird Lane. – Resolution 2011-284) (DEVELOPMENT SERVICES)

Oil & Gas Compliance Officer Jenkins reported this item contained the same changes.

Council Member Trost moved to approve an amendment to an oil and gas well drilling permit from Bluestem Energy Holdings, LLC. (Evans "H" 1) inside the City Limits located 1650 feet from the north line and 990 feet from the east line, Section 8, Block "X", H.P. Hilliard Survey, Midland County, Texas. (Generally located on the west side of the North Midkiff Road, approximately $\frac{3}{4}$ mile north of Mockingbird Lane. – Resolution 2011-284); seconded by Council Member James. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

29. Consider a motion approving an amendment to an oil and gas well drilling permit from Bluestem Energy Holdings, LLC. (Evans "I" 1) inside the City Limits located 2310 feet from the south line and 990 feet from the east line, Section 8, Block "X", H.P. Hilliard Survey, Midland County, Texas. (Generally located on the west side of the North Midkiff Road, approximately $\frac{1}{2}$ mile north of Mockingbird Lane. – Resolution 2011-285) (DEVELOPMENT SERVICES)

Oil & Gas Compliance Officer Jenkins reported this item contained the same changes.

Council Member Dufford moved to approve an amendment to an oil and gas well drilling

permit from Bluestem Energy Holdings, LLC. (Evans "I" 1) inside the City Limits located 2310 feet from the south line and 990 feet from the east line, Section 8, Block "X", H.P. Hilliard Survey, Midland County, Texas. (Generally located on the west side of the North Midkiff Road, approximately ½ mile north of Mockingbird Lane. – Resolution 2011-285); seconded by Council Member Sparks. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

30. Consider a motion approving an amendment to an oil and gas well drilling permit from Bluestem Energy Holdings, LLC. (Evans "J" 1) inside the City Limits located 2322 feet from the south line and 2310 feet from the east line, Section 8, Block "X", H. P. Hilliard Survey, Midland County, Texas. (Generally located on the west side of the North Midkiff Road, approximately ½ mile north of Mockingbird Lane. – Resolution 2011-301) (DEVELOPMENT SERVICES)

Oil & Gas Compliance Officer Jenkins reported this item contained the same changes.

Council Member Hailey moved to approve an amendment to an oil and gas well drilling permit from Bluestem Energy Holdings, LLC. (Evans "J" 1) inside the City Limits located 2322 feet from the south line and 2310 feet from the east line, Section 8, Block "X", H. P. Hilliard Survey, Midland County, Texas. (Generally located on the west side of the North Midkiff Road, approximately ½ mile north of Mockingbird Lane. – Resolution 2011-301); seconded by Council Member Trost. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

31. Consider a motion interpreting City of Midland Ordinance No. 8640 and determining that a proposed apartment development to be located on Lot 1, Block 11 and the north 100 feet of Lot 1, Block 10, Claydesta Plaza, City and County of Midland, Texas, is in compliance with Ordinance No. 8640 which governs said property. Said property is generally located on the southeast corner of the intersection of North "A" street and Veterans' Airpark Lane. (DEVELOPMENT SERVICES)

Senior Planner VanDyne reported this item was brought forward by the developer for interpretation of Ordinance 8640. The Ordinance had a site plan and associated elevations for the building for a multi-family unit near Midland Airfield. The developer would like an interpretation of their proposed site plan versus the site plan that was approved several years ago. By Council making a determination it could save approximately three months by not having to take the item back to Planning & Zoning. He noted Robert Rendall was present representing the developer. There were changes to the building orientation, architectural facades and structural materials.

Robert Rendall, 550 W. Texas Avenue, Suite 800, noted he was here on behalf of Claydesta L.P. The property was in contract to Mr. Urby who was ready to build the apartment complex in basically the same configuration that was approved four years ago. The only difference to the proposed site plan is a slight variation in four buildings. The primary reason for the change was to reorient the pool and club house which caused a slight movement to two of the other buildings. The other variations would be instead of stucco, the builder would prefer to build with brick and vertical wood plank which complies with the current façade building ordinance, and a slight variation of the entrance off of "A" Street. The Property Owners Association of Claydesta has approved

the item and likes the outside exterior better. They do not believe it would impact any neighborhoods and due to the current housing needs in City of Midland, the owner thought it would be in the best interest to have the Council make an interpretation in order to get more units on the ground.

Council Member Dufford moved to approve interpreting City of Midland Ordinance No. 8640 and determine that a proposed apartment development to be located on Lot 1, Block 11 and the north 100 feet of Lot 1, Block 10, Claydesta Plaza, City and County of Midland, Texas, is in compliance with Ordinance No. 8640 which governs said property. Said property is generally located on the southeast corner of the intersection of North "A" street and Veterans' Airpark Lane. ; seconded by Council Member Morales. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

32. Consider an ordinance on request for the vacation of right-of-way by Duke Edwards. (DEVELOPMENT SERVICES)

ORDINANCE NO. 9025

AN ORDINANCE VACATING AND ABANDONING A 0.032-ACRE PORTION OF WEST LOUISIANA AVENUE RIGHT-OF-WAY ADJACENT TO THE NORTH 75 FEET OF THE EAST HALF OF BLOCK 29, HOMESTEAD ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTHWEST CORNER OF THE INTERSECTION OF WEST LOUISIANA AVENUE AND NORTH COLORADO STREET); ADOPTING THE APPRAISAL BY THE CITY MANAGER OF \$1,400.00; AND ORDERING RECORDATION BY THE CITY SECRETARY

Senior Planner VanDyne reported this was a request by the applicant to vacate 10 feet by 140 feet of right-of-way on the building side of the property that would not affect traffic. The reason for the request was to obtain more parking. The plans were to put a burger restaurant at this location. The additional 10 feet allows for parking on both sides and doubles their parking. Staff has approved the item and it has also been approved by Transportation. All franchise utilities have been contacted and an electrical easement would be maintained in that property.

Deputy City Secretary Garcia read the caption of Ordinance No. 9025.

Council Member Hailey moved approval of the first of two readings of Ordinance No. 9025 in accordance with the Charter of the City of Midland; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

33. Consider a resolution selecting a Depository Institution and Authoring the City Manager to Negotiate and Execute a Contract for Depository Services (FINANCE)

RESOLUTION NO. 2012 - 148

RESOLUTION SELECTING WELLS FARGO BANK TO PROVIDE DEPOSITORY AND OTHER BANKING SERVICES FOR THE CITY OF MIDLAND; AND AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH WELLS FARGO BANK FOR SAID SERVICES

Finance Director McNaughton reported this item was in compliance with the Public Funds Investment Act and State statutes governing the selection of a depository and would allow the City Manager to conclude negotiations with Wells Fargo Bank and sign the contract.

Council Member Morales moved to adopt Resolution No. 2012 - 148; seconded by Council Member Hailey. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

34. Consider a resolution authorizing the City Manager and City attorney to negotiate the purchase of property described as approximately 2.5 acres out of a 14.28 acre tract of land out of Wallace Heights, Section 4, an addition to the City of Midland as per plat of record in Cabinet "C", page 174, Plat Records, Midland County, Texas. (GENERAL SERVICES)

RESOLUTION NO. 2012 - 149

RESOLUTION AUTHORIZING THE CITY MANAGER AND CITY ATTORNEY TO NEGOTIATE TERMS FOR THE PURCHASE OF PROPERTY LOCATED IN THE 4500 BLOCK OF SINCLAIR AVENUE, MIDLAND, TEXAS

Council Member Dufford moved to adopted Resolution No. 2012 – 149; seconded by Council Member Hailey. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

35. Consider a resolution authorizing the Mayor to execute an Employment Agreement with the City Attorney (CITY ATTORNEY'S OFFICE)

RESOLUTION NO. 2012 - 150

RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN EMPLOYMENT AGREEMENT WITH THE CITY ATTORNEY

Council Member Sparks moved to adopt Resolution No. 2012 - 150; seconded by Council Member James. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

36. Consider making appointments to various Boards and Commissions.

Council Member Dufford moved to appoint Mayor Wes Perry, Wayne Merritt and Gary Harris to the Midland County Fresh Water Supply District #1; seconded by Council Member Hailey. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

37. At approximately 12:00 noon, recess to Midland International Airport, 9506 La Force Boulevard, for lunch and an Airport Department update in the Airport Media Room.

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. Deliberation Regarding Real Property, Section 551.072
 - a.1. Discuss the purchase and value of property described as approximately 2.5 acres out of a 14.28 acre tract of land out of Wallace Heights, Section 4, an addition to the City of Midland as per plat of record in Cabinet "C", page 174, Plat Records, Midland County, Texas.
- b. Section 551.074 Personnel Matters
 - b.1. Deliberate the employment, evaluation, duties, and salary of the Presiding Municipal Court Judge, the Associate Municipal Court Judge, the City Manager, the City Attorney and the City Secretary.
- c. Section 551.087, Deliberation Regarding Economic Development Negotiations.
 - c.1. Discuss business prospects that the City of Midland and/or the Midland Development Corporation seeks to have locate, stay, or expand in or near the City of Midland, Texas, and discuss possible incentives.

Mayor Perry recessed the meeting to executive session at 11:07 a.m. The Council came out of executive session at 11:30 a.m. and heard Agenda Item number 34. At 11:33 a.m. the Council convened back into executive session.

Mayor Perry reconvened the meeting in open session at 12:15 p.m. and went to Midland International Airport for Agenda Item number 37.

All of the business at hand having been completed, the meeting adjourned at 12:40 p.m.

PASSED AND APPROVED the 12th day of June, 2012.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

**MIDLAND CITY COUNCIL
MINUTES
May 30, 2012**

The City Council convened in a Special Session in the Council Chamber, City Hall, Midland, Texas, at 9:06 a.m. on May 30, 2012.

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

Staff Members absent: City Manager Courtney Sharp, City Attorney Keith Stretcher, City Secretary Amy Turner, and First Assistant City Attorney John Ohnemiller.

1. Consider a resolution ratifying and approving revisions to the Amended and Restated Interlocal Agreement between the City of Midland the the Midland County Fresh Water Supply District No. 1 regarding 2012 - 151the delivery of water from the T-Bar Ranch; the T-Bar Ranch is located in Winkler County and Loving County, Texas.

Discussion ensued regarding whether MDC funds would be tied up if this item was approved. It was determined that they would not be tied up.

Council Member Dufford moved to adopt Resolution No. 2012 - 151; seconded by Council Member Hailey. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSENT: None. ABSTAIN: None.

2. Consider a resolution ratifying and approving revisions to the Wholesale Water Delivery Agreement between the City of Midland and the Midland County Fresh Water Supply District No. 1 regarding the del2012 - 152ivery of water from the T-Bar Ranch; the T-Bar Ranch is located in Winkler County and Loving County, Texas.

Council Member Hailey moved to adopt Resolution No. 2012 - 152; seconded by Council Member Morales. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSENT: None. ABSTAIN: None.

3. Consider a resolution approving a Remittance Agreement between the City of Midland and the Midland Development Corporation regarding the delivery of water from the T-Bar Ranch; the T-Bar Ranch is loca2012 - 153ted in Winkler County and Loving County, Texas.

Council Member Hailey moved to adopt Resolution No. 2012 - 153; seconded by Council Member James. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSENT: None. ABSTAIN: None.

All of the business at hand having been completed, the meeting adjourned at 9:11 a.m.

PASSED AND APPROVED the 12th day of June, 2012.

ATTEST:

W. Wesley Perry, Mayor

Amy M. Turner, City Secretary



City Council Agenda

Approved for Agenda:
thudson
City Manager's Office

MEETING DATE: 06/12/2012

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving a contract to remove and replace the Uninterrupted Power System at the Police & Communications Building - RFP 4849-12

Purpose:

Removal and replacement of the uninterrupted power system at the Police and Communications building located at 601 North Loraine Street

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$160,480.00 General Fund

Discussion:

The uninterrupted power system (UPS) provides an automatic transmission of power in the occurrence of a power outage, short circuit or overload. The current UPS is running at 95% capacity and is responsible for keeping 911 and other critical computer systems running in the event of a power outage. We received two proposals. We are recommending awarding the contract to the lowest proposer, Y & S Technologies, Inc. of Brooklyn, New York for a total cost of \$160,480.00.

RESOLUTION NO.

**RESOLUTION AUTHORIZING THE EXECUTION OF A
CONTRACT WITH Y&S TECHNOLOGIES,
INCORPORATED, TO REMOVE AND REPLACE THE
UNINTERRUPTED POWER SYSTEM AT THE POLICE
AND COMMUNICATIONS BUILDING LOCATED AT
601 NORTH LORAIN STREET, MIDLAND, TEXAS, AT
A COST OF \$160,480.00**

WHEREAS, the City Manager approved plans and specifications and authorized the request for proposals to remove and replace the uninterrupted power system at the Police and Communications Building (“Project”); and

WHEREAS, Y&S Technologies, Inc., submitted the lowest and most responsible bid for said Project in the total amount of \$160,480.00, as shown on the bid tabulation attached hereto as Exhibit “A” and incorporated herein for all legal purposes; and

WHEREAS, the City Council finds it to be in the public interest to execute a contract with Y&S Technologies, Inc., for said Project;

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

SECTION ONE. That the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a contract with Y&S Technologies, Inc., for said Project at a cost not to exceed \$160,480.00, said contract being on file in the office of the City Secretary, referenced by the date and number of this Resolution.

SECTION TWO. That the City Treasurer is hereby authorized and directed to pay Y&S Technologies, Inc., pursuant to the terms of said contract from funds available in the Fiscal Year 2011 – 2012 General Fund (001) Communications and Information System (030) Communications Maintenance (0033) budget accounts upon receipt of proper invoices or statements approved by the City Manager.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, General Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

City of Midland - Bid Tabulation

BID # 4849-12 Uninterrupted Power System OPENED May 4, 2012 Est. Cost: \$200,000.00			D & E Electric PO Box 80291 Midland, TX 79708 Coby T Easterwod (432) 682-6463		Y & S Technologies 383 Kingston Ave, Ste 357 Brooklyn, NY 11213 Mordy Finch (718) 473-0284	
ITEM	QTY	DESCRIPTION	COST EA.	TOTAL	COST EA.	TOTAL
1	1	Uninterrupted Power System	\$263,053.00	\$263,053.00	\$160,480.00	\$160,480.00
		Remove existing UPS & dispose			Includes: 100kVA UPS, 1-REPO switch wall mount, 1-Battery cabinet, 1-M90 wall mount	
		Install 100KW UPS w/new feeder & subpanel; install 116 dedicated				
		isolated quads in basement to new			maintenance bypass cabinet, 1-Start up upgrade, 2 - 3phase power distribution unit w/280V transformer & branch	
		PDU; add 73 dedicated isolated receptacles on first floor; add 6, 220 volt, 30 amp twistlocks on				
		first floor, install new PDU first			distribution, 1-installation, cabling & configuration of UPS, dispose of existing equipment, demolition of existing UPS	
		floor computer room				
		EXCLUDED: No power company fees; no concrete included; sales tax			EXCLUDED: concrete work	
					Opitonal services: Flex service plan 2nd yr (4058.00), Start up after hours 7x24 (1356.00), Power Trust Service Plan, 8 hour response 1st year (1016.00)	
TOTALS:				\$263,053.00		\$160,480.00

Bidding Summary:

11 Bid requests were issued.

2 Bids listed above

0 NO BIDS were received.

9 Bidders did not respond.

Gruber Power, Nationwide Power (2), Power Systems Engineering, Storage Battery Systems (2), Synetra, Toshiba, United Power & Battery

601 N. Loraine Midland Tx, 79701

May 8, 2012

Sharlett Chowning

601 North Loraine

Midland Texas, 79701

Subject: Recommend Y & S Technologies be awarded the UPS contract.

Dear Sharlett Chowning,

On Monday, May 7, 2012, my division received two Proposals for the replacement of the Uninterrupted Power System (UPS) for the 911 center and the IT division at 601 N. Loraine. The two companies that submitted bids were Y & S Technologies and D & E Electric.

D & E stated that all required features in section 4 of the RFP, would be meet with their solution, except the pouring of the concrete to support the proposed UPS and batteries. Their bid for their proposed solution came in at \$263,053 dollars. D & E did not submit any information pertaining to the recommended hardware and software.

Y & S Technologies stated that all required features in section 4 of the RFP, would be meet with their solution, except the pouring of the concrete to support the proposed UPS and batteries. Their bid for their proposed solution came in at \$160,480 dollars. Y & S submitted detailed information pertaining to the recommended hardware and software, to include maintenance contract information after warranty period is over.

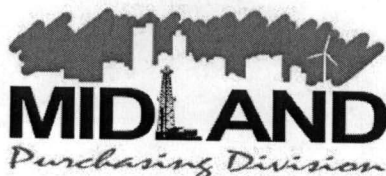
After reviewing both proposals, it is my recommendation that Y & S be granted the contract to replace the UPS. Aside from coming in within our target budget, they proposed the Eaton 9390 series UPS. After doing some research, this model of UPS is the ideal UPS for our intended purpose. The 9390 model can be networked for remote monitoring, can support direct connect to server racks, is scalable up to 160 kVA, and up to four battery banks can be linked to extend run times. The annual maintenance contract cost, with four-hour response time, is comparable to our current maintenance contract.

Sincerely,

David Flores

Communication Technician

City Of Midland, Texas



THE CITY OF MIDLAND

CONTRACT

Contract No.4849-12

THIS CONTRACT, effective the 13th day of June, 2012, by and between the City of Midland, hereinafter referred to as the "Owner", and Y & S Technologies Inc., hereinafter referred to as the "Contractor", is made for the following considerations:

1. **Cost:** Total Proposal: \$ 160,480.00 DOLLARS

2. **Scope of Work:** The Contractor shall perform all work described for labor, material, equipment and supervision necessary to supply and install an Uninterrupted Power System at the Police and Communications building located at 601 N. Loraine in the following documents, attached hereto and incorporated herein by reference for all legal purposes.

EXHIBIT A..... Specifications, Proposal or Cost Summary

EXHIBIT B..... Intentionally Omitted

EXHIBIT C..... Bonding instructions for Public Works Contract of \$50,000 and more

EXHIBIT D..... Wage Scale

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

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

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

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

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

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

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

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

8. **INDEMNITY: THE CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND THE OWNER AND ALL OF THE OWNER'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER,**

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

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

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

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

9. **Start of Work:** The Contractor shall commence work no later than ten (10) days after receipt of the execution of this document or other written release to proceed and shall complete such work no later than 45 to 60 calendar days after release to proceed.

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

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

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

11. **Warranty:** Neither the final payment nor any provision in this contract shall relieve the Contractor of responsibility for faulty materials or workmanship, and he shall remedy any defects due

thereto and pay for any damage to other work resulting therefrom, which shall appear within a period of one (1) year from the date of substantial completion. The Owner shall give notice of observed defects with reasonable promptness.

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

12.1. Defective work not remedied; or

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

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

12.4. Damages to another contractor or subcontractor.

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

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

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

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

15. **Payment:** After all work is completed by the Contractor, and the Owner has inspected and approved that work, the Owner shall within thirty-one (31) days thereafter issue payment to the Contractor in the amount of the contract and subsequent verified Change Orders. The Owner shall be the final judge of when work is completed by the Contractor. For contracts exceeding \$25,000 and

construction time exceeds ninety days, requests for progress payments may be made to the extent of the materials and labor completed at the end of each month. Upon approval by the Owner's Representative the request and invoice shall be forwarded for payment less 5% retainage. The total of these payments shall not exceed 95% of the total contract amount.

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

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

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

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

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

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

19. **Insurance**

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

Commercial General Liability (including Contractual liability):

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

-Property Damage: \$500,000.00 per occurrence

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

Worker's Compensation: Statutory limits

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

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

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

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

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

provided the notice by Contractor's insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage.

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

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

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

20. **Assignment:** Contractor shall not, either directly or indirectly, assign all or any part of this Contract or any interest, right or privilege herein, without the prior written consent of the Owner. The issue on whether or not to grant consent to an assignment is in the sole discretion of the Owner.

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

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

occurred in Midland County, Texas.

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

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

regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

25. **Consideration:** The terms of this Contract are supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties named herein.

Contract No: 4849-12

OWNER, City of Midland

CONTRACTOR

Courtney B. Sharp, City Manager

APPROVED AS TO FORM

Keith Stretcher, City Attorney

ATTEST

Amy M. Turner, City Secretary

Contractor Corporate Acknowledgment: Contract No.4849-12

STATE OF TEXAS §

§

COUNTY OF MIDLAND §

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

Notary Public, State of Texas

Request for Proposals

RFP 4849-12 for an Uninterrupted Power System

for

Uninterrupted Power Supply System for Public Safety Communication Center and Information Technology

Proposals for this requirement will be accepted until 11:00 A.M. on April 25, 2012

Proposals May be Mailed or Delivered to:

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

No Late Proposals Will Be Accepted

See Section 1.9 for Pre-proposal Meeting Information

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SCHEDULE OF EVENTS

RFP 4849-12

For

Uninterrupted Power Supply System For Public Safety Communication Center And Information Technology

Event	Date*
RFP Released	03-28-12
Announcements distributed	03-28-12
Deadline for Receipt of Announcement/requests for RFP	04-18-12
Pre-proposal Conference.....	04-11-12
Cutoff Date for inquiries and clarification.....	04-18-12
Proposal Due Date	04-25-12
Notification of Vendor Interviews / Product Demonstrations	04-30-12
Present Recommendation to Council for Consideration (if BFO is NOT required)...	05-08-12
Call for Best and Final Offers (if required)	05-07-12
Final Offer Due Date (if required)	05-11-12
Present Recommendation to Council for Consideration (if BFO is required).....	05-22-12
Intended Date for Contract Award.....	05-23-12

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

NOTE:

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

SPECIAL TERMS AND CONDITIONS

Proposal Requirements /Terms

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

Conditions

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

1. Offerors electing to respond to this RFP are responsible for all costs of proposal preparation. The City is not liable for any costs incurred by a offeror in response to this RFP.
2. No public disclosures or news releases pertaining to this RFP shall be made without prior written approval from purchasing.
3. In case of a tie between two or more offerors, the award will be made in accordance with preferences as outlined by statute.
4. The Offeror agrees to protect the City from claims involving infringement of patents or copyrights.
5. The Offeror hereby assigns to Purchaser, any and all claims for overcharges associated with any contract resulting from this RFP which arise under the antitrust laws of the United States 15 U.S.C.A. Section 1, et seq. 1973 and which arise under the antitrust laws of the State of Texas, Texas Business and Commercial Code Ann. Sec. 15.01, et seq. (1967).
6. No substitutions or cancellation permitted without the written approval of the City Purchasing Agent. Deliveries made pursuant to a resulting contract shall be made during normal working hours only, unless approval for late delivery has been obtained.
7. Contractor shall submit two copies of an itemized invoice to Accounts Payable, The City of Midland, Texas, P.O. Box 1152, Midland Texas 79702. Each copy of the invoice shall reference the P.O. and the RFP numbers.
8. In the event of a conflict between the standard proposal requirements and conditions and the attached detail specification, the detail specifications shall govern.
9. Governing Law & Venue: This agreement shall be governed by and construed in accordance with the laws of the State of Texas. Venue for any disputes or lawsuits arising from the performance of this contract shall be exclusively in Midland County, Texas. The parties agree that all performance under this contract shall take place in Midland, County, Texas. The Contractor and City agree that all payments made under this contract shall take place in Midland County, Texas.
10. This obligation and undertakings of each of the parties to this contract shall be deemed to have been performed in Midland County, Texas.

1. GENERAL INFORMATION

1.1. INTRODUCTION

The City of Midland (Communication and Information Systems Department) (hereinafter referred to as "the City") is pleased to invite you to submit a proposal for a Uninterrupted Power System as specified herein. Proposals submitted in response to the specifications contained herein shall comply with the following instructions and procedures.

Request for Proposal Standard Information

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

1.2. INITIAL EVALUATION

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

1.3. DISCUSSION/NEGOTIATION

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

1.4. BEST AND FINAL OFFER

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

1.5. AWARD

1.5.1. The City may award a contract or purchase order to the lowest responsible bidder or to the bidder who provides goods or services at the best value for the City.

1.5.2. The City will be solely responsible for the determination of what constitutes best value in accordance with the applicable Section 252.043 of the Local Government Code.

1.6. TRADE SECRETS

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

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

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

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

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

1.6.2.2. An affidavit from the offeror's legal counsel attesting to and explaining the validity of

the trade secret claim must be attached to each proposal containing trade secrets. In addition, offerors submitting a proposal containing trade secrets must be prepared to pay all legal costs and fees associated with defending the claim for trade secret protection in the event of an open records request from another party.

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

1.7. LATE PROPOSALS

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

1.8. PREPARING A RESPONSE

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

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

1.9. PRE-PROPOSAL CONFERENCE:

A Pre-Proposal Conference will be conducted at the Police & Communications building, located at 601 N. Loraine, Midland, Texas on April 11, 2012 at 1:30 PM. Offerors may use this opportunity to notify the City of any ambiguity, inconsistency, or error, which they may discover upon examination of this RFP. All responses to questions at the Pre-Proposal Conference will be oral and in no way binding on the City.

1.10. CLARIFICATION/ INTERPRETATION

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

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

FAX: (432) 685-0523

e-mail: purchasing@midlandtexas.gov

1.11. FORMAT FOR INQUIRIES:

Each offeror submitting written questions must clearly address each question by reference to a specific section, page and item of this RFP. An official written answer will be provided to all questions received. Verbal responses shall not be considered binding.

1.12. INTERPRETATION:

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

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

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

1.13. PROPOSAL ORGANIZATION AND SUBMISSION

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

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

1.14. OFFER PRICING

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

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

1.15. ALTERNATE PROPOSALS

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

1.16. SUBMITTING A SEALED PROPOSAL

1.16.1. Number of copies and Location:

1.16.1.1. Offerors must submit one original, 3 hard copies and one (1) soft copy (PDF or Word) to the City Secretary. Sealed Proposals must be received by the date before the time stated on the face of the Request for Proposal Cover Page, local time. Sealed Proposals received after this time will not be accepted for consideration. Facsimile copies are not acceptable.

1.16.1.2. A mailing label is included in the RFP. Please be sure to use it on the outermost package of the RFP whether it is an envelope, box or overnight package, so that it is visible when received by the City.

1.16.2. Each Offeror who submits a proposal represents that:

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

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

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

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

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

1.17. RIGHTS RESERVED

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

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

1.18. BONDING REQUIREMENTS

See Exhibit C

1.19. OFFEROR INTERVIEW / PRODUCT DEMONSTRATION

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

1.20. SUBCONTRACTING

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

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

1.21. INSURANCE REQUIREMENTS

See Exhibit B

1.22. CONTRACTOR'S RESPONSIBILITIES

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

1.23. OFFEROR COMPETITION

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

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

1.24. CONTRACT PROVISIONS AND TERMS

1.24.1. Contract Execution

1.24.1.1. The City will execute a contract with the successful offeror(s). The City requires that the RFP and the terms and conditions attached to it, the offeror's response, the best

and final offer (if required), and any formal addenda to the RFP be included as part of any contract documents.

1.24.2. Terms and Conditions

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

1.24.3. Exceptions to Contract Terms & Conditions

Offerors should notify the City of any terms within the sample contract that either precludes them from responding to the RFP or add unnecessary cost.

1.24.4. Contract Extension

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

1.24.5. Escalation

Annual pricing adjustments to contract extensions following the initial contract term, if applicable, shall not exceed seventy-five percent (75%) of the rate of increase in the cost of living as reflected in the Federal Bureau of Labor Statistics, Consumer Price Index (CPI) for all Urban Consumers (1982-84=100; through November 1991 = 137.8) or any other index which may be substituted in the future. The CPI for the latest twelve (12) month period of the contract will be the CPI base on which later adjustments are computed. Each time an adjustment is made, the earlier CPI base will be replaced by the adjusted CPI base. The percentage of adjustment to contract prices shall in no event exceed the percentage change in the index.

2. PROPOSAL WAIVER AND RELEASE:

2.1. WAIVER OF ATTORNEY FEES:

BY SUBMITTING A PROPOSAL, THE OFFEROR AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM THE OFFEROR HAS OR MAY HAVE IN THE FUTURE AGAINST THE CITY OF MIDLAND, TEXAS, AND THE CITY'S RESPECTIVE EMPLOYEES AND REPRESENTATIVES, REGARDING THE AWARD OF ATTORNEY'S FEES WHICH ARE IN ANY WAY RELATED TO THE ADMINISTRATION, EVALUATION OR RECOMMENDATION OF ANY PROPOSAL, THE WAIVER OF ANY REQUIREMENTS UNDER THE PROPOSAL DOCUMENTS OR THE CONTRACT DOCUMENTS, ACCEPTANCE OR REJECTION OF ANY PROPOSALS, AWARD OF THE CONTRACT OR BREACH OF THE CONTRACT. BY SUBMITTING A PROPOSAL, THE OFFEROR SPECIFICALLY AGREES THAT IF THE OFFEROR BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THE PROPOSAL OR THE RELATED CONTRACT, OR THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF EITHER, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGEMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE, SECTION 37.001 ET. SEQ., AS AMENDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, THE OFFEROR AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH THE OFFEROR MIGHT OTHERWISE BE ENTITLED.

THE OFFEROR AGREES THAT THIS IS THE VOLUNTARILY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING KNOWN RIGHT. THE OFFEROR ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THE PROPOSAL DOCUMENTS. THE OFFEROR FURTHER

ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN THE CITY OF MIDLAND, TEXAS, AND THE OFFEROR. THIS REQUEST FOR PROPOSALS OR ANY PART HEREIN SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF SOVEREIGN IMMUNITY.

THE OFFEROR AND THE CITY OF MIDLAND, TEXAS, ARE RELYING ON THEIR OWN JUDGMENT. EACH PARTY HAD THE OPPORTUNITY TO DISCUSS THESE PROPOSAL DOCUMENTS WITH LEGAL COUNSEL PRIOR TO EXECUTION.

2.2. RELEASE:

NOTWITHSTANDING ANY OTHER PROVISIONS, BY SUBMITTING A PROPOSAL, THE OFFEROR HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES THE CITY OF MIDLAND, TEXAS, THE CITY'S EMPLOYEES, AGENTS AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH THE OFFEROR HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS OR TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, CLAIMS FOR THE CITY OF MIDLAND'S NEGLIGENCE, OR CLAIMS REGARDING THE ADMINISTRATION, EVALUATION OR RECOMMENDATION OF ANY PROPOSAL, THE WAIVER OR DELETION OF ANY OF THE REQUIREMENTS UNDER THE PROPOSAL DOCUMENTS OR THE CONTRACT DOCUMENTS, THE ACCEPTANCE OR REJECTION OF ANY PROPOSALS, OR THE AWARD OF THE CONTRACT RELATED TO THIS REQUEST FOR PROPOSALS.

2.3 ACKNOWLEDGEMENT:

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

3. SCOPE OF PROJECT

3.1 Scope of Project

The replacement of the current Uninterruptible Power System (UPS) located in the Police and Communications Building at 601 N. Loraine Midland, TX 79701. The UPS provides and automatic transition of power in the occurrence of a power outage, short circuit or overload. The current system provides 50kVa of power and is currently running at 95 percent. The replacement UPS must double the current load capacity.

3.2 Implementation and System Description

The UPS that is being replaced supports equipment on two separate floors, the basement and the first floor. The basement houses the Public Safety Communication Center (PSCC) and the first floor houses the Information Technology Division (IT). There is currently one power distribution unit (PDU) that supports both floors. The current PDU will be replaced with two new PDU's. One PDU will remain in the basement to support the PSCC and the other will replace the legacy PDU that supports the IT division.

This project must be a total turnkey solution, and because these two divisions are critical to the City of Midland, The new UPS and PDU's must be in place before any of the legacy equipment

is removed. The installation of the new equipment will include but not limited to the following:

- Pouring of concrete beside the Legacy UPS to support the weight of the proposed UPS.
- Run new electrical cables that will support the additional current load from the transfer switch to the proposed UPS
- Complete setup of the proposed UPS on cured concrete foundation.
- Removal of all legacy equipment after the proposed equipment is operational.
- Complete install of both PDU's
- Run new electrical cables that will support the additional current load from the UPS to the PDU's
- Run new flexible distribution cables from the PDU's with red receptacles for easy identification of receptacle being on UPS.
- Install of emergency remote power off switch for both PDU's
- Networking of UPS and PDU's
- Provide training of the proposed system for at least 10 individuals.
- Provide a cutover plan with minimal downtime, a weekend cutover is preferred.

3.3 Proposed System Description

The City is not opposed to the proposer providing creative alternatives to the features listed in section 4. Likewise any features not covered in the proposal that you feel are desirable to the city may be included. Please list the features as Advance System Features.

3.4 Implementation Plan

The Proposer shall provide a complete and detailed description of key activities in the Implementation Plan for the Proposed Solution to include but not necessarily limited to the following:

- Procurement of hardware and software
- Installation and configuration of hardware and software
- Removal of antiquated hardware and wiring
- Training of Staff and Administrator
- Training of IT staff that use the alerting application
- Train the Trainer
- Testing and acceptance

The Implementation Plan shall be considered the Statement of Work and each key task must be identified. Each task will include any needed City resources required by the Proposer.

For each of the items below, Proposer must describe their approach to the management of the implementation.

- Describe the implementation team's structure, and roles and responsibilities of all team members.
- Describe what City resources will be necessary for the implementation plan to succeed.

3.5 Acceptance and Testing

This plan must be comprehensive to prove to the City that the Proposed solution has been properly implemented and that the installed equipment is performing to manufacturer specifications; and that the Proposed Solution is ready to be accepted by the City.

4. REQUIREMENTS

NOTE: Where the term "required Field" appears in the requirements, the intent is that the user may not leave that field blank and leave the current record. The blank required fields shall be flagged for easy identification of the fields left blank.

*Included means that if the feature or requirement is not normally included, but will be at No Extra Charge

**Will be at an additional cost. These added costs shall be listed on the cost summary/price sheet proposal page (whichever is attached)

Feature	Included In Package*	Will Add or Modify* *	Exception Detail
4.1. <u>REQUIRED FEATURES</u>			
4.1.2. The proposed UPS must be 100kVa or better.	☒	☐	
4.1.3. The proposed UPS must have automatic bypass in case of commercial power failure and manual bypass switch for maintenance purposes.	☒	☐	
4.1.4. Provide uninterrupted power during transfer from commercial power to generator power. With at least 30 minutes of run time.	☒	☐	
4.1.5. Provide software and connections hardware for remote monitoring and alerting.	☒	☐	
4.1.6. Provide warranty information.	☒	☐	
4.1.7. Provide maintenance information and cost of contracted maintenance after warranty. Local support with a two-hour response time.	☒	☐	
4.1.8. Batteries must be self-maintenance and easily obtained thru a local dealer.	☒	☐	
4.1.9 Front panel display with complete system read out.	☒	☐	
4.1.10 Removal and disposal of all legacy equipment.	☒	☐	
4.1.11. Training for 10 city personnel on new equipment.	☒	☐	
4.1.12. Cut over plan with minimal downtime. A weekend cut over is preferred.	☒	☐	
4.2. PDU's	☒	☐	
4.2.1 50KVA OR BETTER ON THE PDU'S	☒	☐	
4.2.2. Remote emergency power off switch close to the exit doors.	☒	☐	
4.2.3 A safety ground connector.	☒	☐	

- | | | | |
|---------|---|-------------------------------------|--------------------------|
| 4.2.4 | Software and connections for remote monitoring and alerting. The PSCC requires an audio and visual panel that can be seen and hear for all dispatch consoles. | ☒ | ☐ |
| 4.2.5 | 3 distribution panels per PDU with 42 circuit breaker slots per panel | ☒ | ☐ |
| 4.2.5.1 | Each panel must provide one 120/100 amp circuit breaker for a total of three 100 amp breakers | ☒ | ☐ |
| 4.2.5.2 | Each panel must provide one 120/50-amp circuit breaker for a total of three 50-amp breakers. | ☒ | ☐ |
| 4.2.5.3 | The rest of the circuits breakers can be 120/20 amp circuit breakers. | ☒ | ☐ |
| | | ☐ | ☐ |

5. VENDOR QUALIFICATIONS

5.1. INFORMATION VERIFICATION

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

5.2. RIGHT TO REJECT

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

5.3. VENDOR CAPABILITIES

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

5.3.1. References

- 5.3.1.1. Offeror shall provide a minimum of 3 references that are using services of the type proposed in this RFP. The references should fall within the categories identified below. At a minimum, the offeror shall provide the company name, the location where the services were provided, contact person(s), customer telephone number, a complete description of the service type, and dates the services were provided. The City reserves the right to use any information or additional references deemed necessary to establish the ability of the offerors to perform the conditions of the contract. Negative references may be grounds for proposal disqualification.
- 5.3.1.2. These references should include City government and universities where the offeror, preferably within the last 5 years, has successfully completed this type of project.
- 5.3.1.3. These references should include (any other desired information) _____

5.3.2. Vendor Stability

- 5.3.2.1. Offerors shall demonstrate their financial stability to supply, install and support the services specified.
- 5.3.2.2. Provide financial statements, preferably audited, for the 2 consecutive years immediately preceding the issuance of this RFP.
- 5.3.2.3. Provide copies of any quarterly financial statements that have been prepared since the

end of the period reported by your most recent annual report.

- 5.3.2.4. Offerors shall specify how long the company submitting the proposal has been in business (doing similar projects).

6. EVALUATION PROCESS

6.1. EVALUATION PROCEDURE

6.1.1. Committee Actions

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

6.2. EVALUATION CRITERIA

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

- 6.2.1. Company References and Qualifications
- 6.2.2. Implementation Plan
- 6.2.3. Cost Analysis
- 6.2.4. Technical Abilities

7. PROPOSAL CONTENTS

7.1. THE RFP

7.2. THE COST SUMMARY OR PROPOSAL FORM

7.3. REQUESTED ATTACHMENTS

- 7.3.1. References
- 7.3.2. Resumes
- 7.3.3. Business Plan
- 7.3.4. Financial Information
- 7.3.5. Signed Execution of Offer

EXECUTION OF OFFER

Date:

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

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

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

This offer consists of pages number 1 through ____.

Offeror/ COMPANY:

Yard S Technologies

SIGNATURE (INK):

Mordy Finck

NAME: (TYPED/PRINTED)

Mordy Finck

TITLE:

VP- Operations

STREET:

383 Kingston Ave # 357

CITY/STATE/ZIP:

Brooklyn NY 11213

TELEPHONE:

718-473-0284

FAX:

718-360-9627

E-MAIL ADDRESS:

Mordy@yardsTech.com

CITY OF MIDLAND

ADDENDUM

BID # 4849-12

Uninterrupted Power System

TO ALL BIDDERS ON THE SUBJECT BID:

ADDENDUM # 1

DATE: April 11, 2012

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

Q1. On page 7 of 11 near the top of the page the requirements say "Pouring concrete beside the Legacy UPS to support the weight of the proposed UPS. Will you be providing someone to do the concrete work or is it the responsibility of the UPS provider to do this work?"

A1. The City will consider a proposal that does not include the concrete work. Please state if the concrete work is not included in your proposal.

Q2. Can you please let us know if the UPS needs to be 280V or 480V and PDU will be stepping down the voltage? This is important in determining whether we need to configure a PDU or an RPP.

A2. The current UPS is 480 input, 480 output. The step down happens at the PDU.

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

All other terms and conditions shall remain the same.

Yand Technologies
Company Name

Mordy Finkel
Bidder Authorized Signature

Mordy Finkel
Please Print Above Name

05/02/12
Date

718-473-0284
Phone

Q3. For the 120/20A request, do you want 20A 3 pole, 20A 2 pole or 20A single pole?

A3. 20 amp single pole

Q3. How many outlets does the City want per 911 station?

A3. Please see the attached drawings.

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

All other terms and conditions shall remain the same.

J and S Technologies
Company Name

Mordy Finck
Bidder Authorized Signature

Mordy Finck
Please Print Above Name

05/02/12
Date

718-473-0284
Phone

CITY OF MIDLAND

ADDENDUM

BID # 4849-12

Uninterrupted Power System

TO ALL BIDDERS ON THE SUBJECT BID:

ADDENDUM # 2

DATE: April 24, 2012

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

The closing date has been **changed to May 2, 2012** at 11:00 AM.

The following are notes from the pre-proposal meeting held on April 11, 2012:

- The transfer unit (Onan switch) will not be replaced. Use existing transfer switch.
- The current UPS is in the northwest corner of the basement in the Police & Communication building. To gain access to the basement, contractors will have to utilize the stairs adjacent to the UPS room or the ramp in the garage area (also in the basement) and wheel the equipment into the UPS room. All doors into the building are standard size doors.
- The transfer unit is also on the west side of the building but it is located in the parking garage which is across the courtyard to the south.
- For those contractors who will be providing the concrete slab, the concrete slab shall be poured adjacent to the existing UPS concrete slab.
- Contractor shall provide new conduit.
- The conduit can be installed from the transfer switch in the parking garage to the UPS by trenching across the courtyard and then running the conduit up the wall to the cable chase in the basement.
- The power to the building cannot be turned off for more than 4 hours. The new UPS shall be ready to cut over before the current UPS is taken out of service.

Q1. For the 120/100A request, do you want 100A 3 pole or 100A 2 pole? The largest single pole (120V) breaker available is 60A. Please clarify.

A1. 100 amp 2 pole

Q2. For the 120/50A request, do you want 50A 3 pole, 50A 2 pole, or 50A single pole?

A2. 50 amp 2 pole

Q3. For the 120/20A request, do you want 20A 3 pole, 20A 2 pole or 20A single pole?

A3. 20 amp single pole

Q3. How many outlets does the City want per 911 station?

A3. Please see the attached drawings.

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

All other terms and conditions shall remain the same.

J and S Technologies
Company Name

Mordy Finck
Bidder Authorized Signature

Mordy Finck
Please Print Above Name

05/02/12
Date

718-473-0284
Phone

CITY OF MIDLAND

ADDENDUM

BID # 4849-12

Uninterrupted Power System

TO ALL BIDDERS ON THE SUBJECT BID:

ADDENDUM # 3

DATE: April 27, 2012

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

Q1. Where is the PDU located in the basement?

A1. The basement PDU is located in section D-10 of the IT PDU floor plan that was sent with Addendum 2.

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

All other terms and conditions shall remain the same.

<u>Y and S Technologies</u>	
Company Name	
<u>[Signature]</u>	<u>05/02/12</u>
Bidder Authorized Signature	Date
<u>Mordy Finck</u>	<u>718-473-0284</u>
Please Print Above Name	Phone

CITY OF MIDLAND

ADDENDUM

BID # 4849-12

Uninterrupted Power System

TO ALL BIDDERS ON THE SUBJECT BID:

ADDENDUM # 4

DATE: May 1, 2012

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

The closing date has been **changed to May 4, 2012** at 11:00 AM

Q1. What is the cost of the permit for the installation of the UPS?

A1. \$30.00

Q2. What is the weight capacity of the elevator?

A2. 2,500 pounds

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

All other terms and conditions shall remain the same.

Yas Technologies
Company Name

May 1st
Bidder Authorized Signature

Mordy Finck
Please Print Above Name

5/3/12
Date

718-473-0284
Phone

Y&Stechnologies

Solutions that drive results

Date 04/30/2012

City of Midland
Secretary's Office
300 N Loraine, Suite 340
Midland, TX 79701
RFP #4849-12
Due 05/04/12 @ 11 AM

UPS Solution

Dear Regina,

After extensive research we are proposing the following UPS solution by Eaton Corporation. Eaton is second largest UPS manufacture in the world and we are proud to offer this solution to the city. The solution meets or exceeds the specifications of the model that you are requesting and equipment is brand new and comes with a full manufacture warranty. We have provided data sheets and a **Bill of Materials** from which you will see it meets or exceeds the specification that you requested.

The UPS we are suggesting is the 9390 - 3 Phase UPS, Wall switch, Maintenance bypass panel with its corresponding battery & PDU cabinets. The UPS will give you more than required run time that you requested and **comes standard with a 1Yr 7X24 hour response time warranty that includes the batteries**. In addition, it comes with the **start up services bundled with the UPS and a 1 year remote monitoring service by Eaton for free**.

Installation

For the installation process we are partnering with a **local certified firm/Electrician** who will work with your IT/Facilities Maintenance Dept to connect and install the UPS, battery cabinet, PDU Cabinets and **all High voltage related cabling** (including running new lines through the courtyard). In addition, we will be **providing inside delivery of the UPS, battery cabinets and PDU cabinets. Also, we will disconnect and dispose the old UPS as requested.** However, since we are a Commuter hardware & Data Center integrator we will not be providing the option for the Concrete as we are **not a general contractor**.

Start up Services & Training

As part of our installation we will be providing start up services by factory trained Eaton engineers who will perform the start up services with your personal and our certified electrician and **provide free onsite training**. In addition, we can provide a free webinar on this solution at a later date if you so desire. Also, if you would like to have any conference calls with the Eaton engineers or the local electrician we would be more than happy to provide them.

References

- 1) **Kissimmee Utility Authority** in Kissimmee FL. Point of Contact is Terry Farley who can be contacted at PH #407-933-9889 or by E-mail TFarley@kua.com. **We provided and installed an Eaton 3-Phase UPS with Startup Services** at KUA and saved them almost \$6000 compared to the competition
- 2) **City of Columbia in Columbia, MO**. The point of contact is Scott Patterson who can be reached at Ph # 573-874-7724 or by E-mail at stpatter@GoColumbiaMO.com. We provided the city with **an Eaton 3-Phase UPS with Start up services**
- 3) **Elizabeth Public Schools**, in Elizabeth NJ. Point of contact is Alberto Marsal, Director of Network Infrastructure. Ph # 908-436-5061, E-mail MarsalAl@Elizabeth.K12.NJ.US. The School district purchases from us **over \$100,000** worth of Eaton Uninterruptable Power Supplies this past year.
- 4) **Owens Valley Career Development Center** in Bishop CA. The point of contact is Phil Ashworth who is the senior purchasing Administrator. Ph #760-873-5107 Ext. 275, E-mail pashworth@ovcdc.com. OV CDC purchased from us 200 Eaton Uninterruptable Power Supplies this past year.

References for our Local Certified Electrician

Please note that our electrician has been **installing 3- Phase UPS's for a number of years** and has even installed a 3- Phase UPS for the **City of Midland Prison/Corrections dept.** In addition, if you so desire we can provide a resume and more references for our electrician.

Insurance/Bid Bond/Finances Statements

With our proposal we have included a certified check and bond assurances as required. In addition, we have included the most update financial statements. Also, we and our local certified electrician have the necessary insurance and will provide an accord if we are the apparent low bidder or if you request it.

Bill of Materials

Section 1: Eaton 480/480 UPS Solution - 30-minutes Runtime

QTY	Description	Part Number	Unit Price	Net
1	Eaton 9390 100kVA UPS 480/480 Single-feed, Field-Upgradeable to 120kVA	TC1012301130110	\$34,748.00	\$34,748.00

Y&Stechnologies

Solutions that drive results

	• Reverse Transfer. • Included communication cards: ConnectUPS-X WEB/SNMP card w/ EMP. • Setup for 480Vdc VRLA batteries. • Neutral forming kit included. • Language set to English. • Includes 5x8 start up and on-site one year parts and labor • 7x24 coverage w/ 8 hour response. • 1 Year of eNotify.				
	Input Voltage: 480V 60Hz Output Voltage: 480V 60Hz Input Connection: Hardwired Output Connection: Hardwired Estimated runtime (full load/half load): See IBC Below Dimensions (H" x W" x D"): 73.7 x 35.6 x 31.6 Weight (lbs): 860				
1	9390 REPO Switch Wall Mount	N/O	103006244	\$258.00	\$258.00
1	Eaton 9390 IBC - Integrated Battery Cabinet (L) Dual Cabinet. Eaton E33 VRLA Battery w/ 3-year warranty • Integrated Battery Cabinet. • 480 DC Link. Estimated runtime (full load/half load): 31-minutes @ 100% load Dimensions (H" x W" x D"): 73.7 x 85.4 x 31.6 Weight (lbs): 7180	9390 100kVA	TL1003E33211100	\$25,898.00	\$25,898.00
(2) Battery Cabinets, Seperatly Shipped. Each Cabinet = 3590lbs 73.7H x 42.7W x 31.6D					
1	Eaton 9390 M90 Wallmount/Non-Matching Maintenance Bypass Cabinet. • Maintenance bypass, three-breaker 35kAIC (225A MIS/MBP/BIB) • "OK to Bypass" Indicator Lamp w/ Kirk Keys Input Voltage: 480V Output Voltage: 480V Input Connection: Hardwired Output Connection: Hardwired Dimensions (H" x W" x D"): 73 x 24 x 11.5 Weight (lbs): 425	120kVA, AUX 2A/2B	M90BFG14XX	\$4,728.00	\$4,728.00
1	Eaton 9390 7x24 Start Up Upgrade Upgrade Start Up from 5x8 to 7x24	Required	W2UP05CXXX-0160	\$598.00	\$598.00

Section 1 Subtotal \$66,230.00

Section 2: Eaton 480/208 Power Distribution Unit (PDU) & Installation

QTY	Description	Part Number	Unit Price	Net
2	Eaton 50kVA 480V 3-Phase Power Distribution Unit w/ 208V Transformer and Branch Distribution Input Voltage: 480V Output Voltage: 280V Input Connection: Hardwired Output Connection: Branch Breakers, See Graphic Dimensions (H" x W" x D") 80.1 x 62.8 x 30.6 Weight (lbs): 1491 Input Voltage: 480V	PDU041212MH01R1	\$11,488.00	\$22,976.00

Main Cabinet Left Panelboard							
Ckt#	Breaker Type			Breaker Type			Ckt#
	P	Trip	kAIC	P	Trip	kAIC	
1	2	100A	10	2	50A	10	2
3							4
5	1	20A	10	1	20A	10	6
7	1	20A	10	1	20A	10	8
9	1	20A	10	1	20A	10	10
11	1	20A	10	1	20A	10	12
13	1	20A	10	1	20A	10	14
15	1	20A	10	1	20A	10	16
17	1	20A	10	1	20A	10	18
19	1	20A	10	1	20A	10	20
21	1	20A	10	1	20A	10	22
23	1	20A	10	1	20A	10	24
25	1	20A	10	1	20A	10	26
27	1	20A	10	1	20A	10	28
29	1	20A	10	1	20A	10	30
31	1	20A	10	1	20A	10	32
33	1	20A	10	1	20A	10	34
35	1	20A	10	1	20A	10	36
37	1	20A	10	1	20A	10	38
39	1	20A	10	1	20A	10	40
41	1	20A	10	1	20A	10	42

Main Cabinet Right Panelboard							
Ckt#	Breaker Type			Breaker Type			Ckt#
	P	Trip	kAIC	P	Trip	kAIC	
1	2	100A	10	2	50A	10	2
3							4
5	1	20A	10	1	20A	10	6
7	1	20A	10	1	20A	10	8
9	1	20A	10	1	20A	10	10
11	1	20A	10	1	20A	10	12
13	1	20A	10	1	20A	10	14
15	1	20A	10	1	20A	10	16
17	1	20A	10	1	20A	10	18
19	1	20A	10	1	20A	10	20
21	1	20A	10	1	20A	10	22
23	1	20A	10	1	20A	10	24
25	1	20A	10	1	20A	10	26
27	1	20A	10	1	20A	10	28
29	1	20A	10	1	20A	10	30
31	1	20A	10	1	20A	10	32
33	1	20A	10	1	20A	10	34
35	1	20A	10	1	20A	10	36
37	1	20A	10	1	20A	10	38
39	1	20A	10	1	20A	10	40
41	1	20A	10	1	20A	10	42

Left Sidecar Bottom PanelBoard							
Ckt#	Breaker Type			Breaker Type			Ckt#
	P	Trip	kAIC	P	Trip	kAIC	
1	2	100A	10	2	50A	10	2
3							4
5	1	20A	10	1	20A	10	6
7	1	20A	10	1	20A	10	8
9	1	20A	10	1	20A	10	10
11	1	20A	10	1	20A	10	12
13	1	20A	10	1	20A	10	14
15	1	20A	10	1	20A	10	16
17	1	20A	10	1	20A	10	18
19	1	20A	10	1	20A	10	20
21	1	20A	10	1	20A	10	22
23	1	20A	10	1	20A	10	24
25	1	20A	10	1	20A	10	26
27	1	20A	10	1	20A	10	28
29	1	20A	10	1	20A	10	30
31	1	20A	10	1	20A	10	32
33	1	20A	10	1	20A	10	34
35	1	20A	10	1	20A	10	36
37	1	20A	10	1	20A	10	38
39	1	20A	10	1	20A	10	40
41	1	20A	10	1	20A	10	42

Y&Stechologies

Solutions that drive results

1	Installation, cabling and configuration of UPS which includes the following We propose to furnish all necessary materials, labor, and permits to complete primary power to new UPS from existing generator and transfer switch, also new secondary power to new PDU's with the new proposed dedicated circuits in the Information Center. Consisting of the following materials, conduits, wire, adaptors, and fittings with the exception of concrete work. We will furnish the installation of UPS, PDU's, and related circuits as specified in the Bid We will supply the installation of equipment primary 480V service to new UPS, 480V secondary power to PDU's, 208/120V power to dedicated circuits. Conduit, wire, related junction boxes, <u>connectors and fitting, underground trenching</u> We will set-up and Install new UPS in basement area. We will furnish moving equipment, materials, and labor.		\$52,678.00	\$52,678.00
1	After start-up of new UPS system, existing legacy equipment and related devices must be removed and disposed of. We will furnish moving equipment, materials, and labor.		\$10,198.00	\$10,198.00
1	Total for demolition and disposal of old UPS according to State and Federal law		\$8,398.00	\$8,398.00
	Estimated time and completion of whole project, including disassembly and disposal of old Legacy equipment is 45 to 60 days			
Section 2 Subtotal				\$94,250.00
Grand Total				\$160,480.00

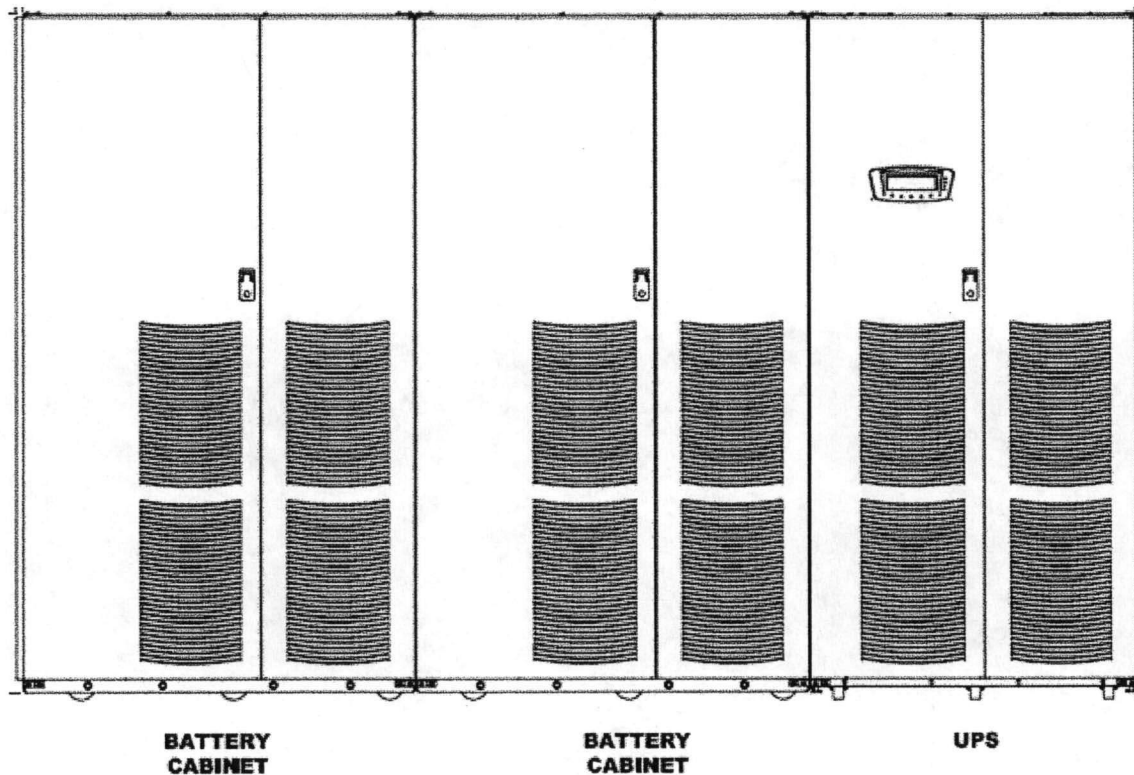
Section 3: Eaton UPS/PDU Services (Optional as Requested)

QTY	Description	Part Number	Unit Price	Net
1	Flex Service Plan, 4 hour response (for UPS) SECOND YEAR - Onsite 7x24 UPS parts and labor coverage. - Pricing is per year.	W2FL47NXXX-0160	\$4,058.00	0.00

Y&S technologies

Solutions that drive results

PDU Startup and Service Contract (Options)					
2	Startup, After Hours (7x24) Includes start-up, commissioning and basic user training.		WSU05NXXX-PDU1	\$678.00	\$1,356.00
2	PowerTrust Service Plan, 8 hour response • Onsite 7x24 UPS parts and labor coverage. • eNotify remote UPS and battery monitoring (Web/SNMP card and Environmental Monitoring Probe not included). • 30% discount on upgrades/T&M (time and materials). • Pricing for first year only.	First Year	W1PT42NEDX-PDU1	\$508.00	\$1,016.00



If you should have any questions please feel free to contact me at your earliest convenience.
Sincerely,

Mordy Finck

Mordy Finck

VP of Operations
Y & S Technologies

EXHIBIT C

Bonding Requirements

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

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

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

PAYMENT BOND

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

SURETY'S NO. _____

KNOW ALL MEN BY THESE PRESENTS, THAT _____,

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

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

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

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

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

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

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

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

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

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

Principal

Surety

By _____

By _____

Address _____

Address _____

APPROVED AS TO FORM:

City Attorney

NOTE: ATTACH POWER OF ATTORNEY

PERFORMANCE BOND

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

SURETY'S NO. _____

KNOW ALL MEN BY THESE PRESENTS, THAT _____

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

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

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

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

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

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

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

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

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

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

Principal

Surety

By _____

By _____

Address _____

Address _____

APPROVED AS TO FORM:

City Attorney

NOTE: ATTACH POWER OF ATTORNEY

EXHIBIT "D"

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

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

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

a under 5 years employment, 6% of BHR, over 5 years employment, 8%BHR.

Paid Holidays - New Year's Day, Memorial Day, Independence Day, Labor Day, Labor Day, Thanksgiving Day, The Friday after thanksgiving and Christmas Day.

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



City Council Agenda

Approved for Agenda:
thudson
City Manager's Office

MEETING DATE: 6/12/2012

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving a professional services agreement with Rhotenberry-Wellen Architects for the renovation of Midland Center.

Purpose:

Consider a resolution approving a professional services agreement with Rhotenberry-Wellen Architects & Planners Inc. for the renovation of Midland Center and appropriate funds for the project.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$2,000,000 from Hotel Motel Fund Unappropriated Fund Balance.

Discussion:

Please consider approval of a resolution authorizing the City Manager and City Attorney to execute a Professional Services agreement with Rhotenberry Wellen Architects & Planners Inc. Rhotenberry Wellen was recommended by a committee assigned to interview and rank 4 firms who responded to our advertisement for Request for Qualifications from Architectural Firms. The committee members were Tommy Hudson, Bobby Burns, Brad Barnett, and Robert Patrick. The total project is estimated at \$2,000,000 with professional services expenditures not to exceed \$220,000.

Therefore, please consider approval of a resolution authorizing the execution of a professional services agreement with Rhotenberry-Wellen Architects & Planners Inc. in an amount not to exceed \$220,000, and a total appropriation of \$2,000,000 including professional services.

RESOLUTION NO.

RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH RHOTENBERRY-WELLEN ARCHITECTS & PLANNERS, INCORPORATED, FOR RENOVATIONS TO THE MIDLAND CENTER, AT A TOTAL COST OF \$220,000.00; AND APPROPRIATING \$2,000,000.00 TO THE MIDLAND CENTER IMPROVEMENTS PROJECT

WHEREAS, the Request for Qualifications was advertised for architectural services regarding renovations to the Midland Center (“Professional Services”); and

WHEREAS, Rhotenberry-Wellen Architects & Planners, Inc., proposes to perform said Professional Services for a fee not to exceed \$220,000.00; and

WHEREAS, the Council finds Rhotenberry-Wellen Architects & Planners, 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 Rhotenberry-Wellen Architects & Planners, Inc., to provide said Professional Services; and

WHEREAS, the Council authorizes the City Manager to execute a professional services agreement with Rhotenberry-Wellen Architects & Planners, 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 Rhotenberry-Wellen Architects & Planners, 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 \$2,000,000.00 is hereby appropriated from the Hotel / Motel Fund (090) Unappropriated Fund Balance (5650) to the Midland Center Improvements Project (8979).

SECTION THREE. That the City Treasurer is hereby authorized and directed to make payments to Rhotenberry-Wellen Architects & Planners, 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., 2012, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, General Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

PROFESSIONAL SERVICES AGREEMENT
FOR ARCHITECTURAL SERVICES
#4088-12

THIS AGREEMENT is made and effective the 13th day of June 2012, by and between the CITY OF MIDLAND, TEXAS, a municipal corporation, hereinafter called "OWNER,"and, RHOTENBERRY WELLEN ARCHITECTS & PLANNERS, 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 architectural and engineering services for the renovation of the Midland Center.

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 design professionals in approximately the same location 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".
3. Total Agreement Price: \$220,000.00

ARTICLE III. FINANCIAL CONSIDERATIONS

OWNER 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 8.5 % of the total construction costs (breakdown of fees is located in Exhibit "A".) which fee for basic services shall in no event exceed Two Hundred and Twenty Thousand Dollars(\$220,000). Within 60 days of the date CONSULTANT's invoice is received by OWNER, OWNER shall pay the full amount of such invoice; provided, however, that if OWNER objects to any

portion of an invoice, OWNER shall notify CONSULTANT of OWNER's objection and the grounds therefor within 30 days of the date of receipt of the invoice, and the parties immediately shall make every effort to settle the disputed portion of the invoice. OWNER in any event shall pay every portion of the invoice that is not in dispute within the 60-day period for payment.

ARTICLE IV. TERM

The term of this Agreement shall be from June 13th, 2012 til June 13th, 2015, unless the project is completed sooner or the Agreement is terminated as provided below.

ARTICLE V. TERMINATION AT WILL

Either party may terminate this Agreement at will for no or any reason upon giving at least one-hundred-eighty (180) days written notice to the other party. The parties to this Agreement understand and agree that either party may cancel the Agreement during the term of the Agreement without penalty. The parties have no expectation and have 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

Neither party shall, 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 other party.

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 OWNER and shall be delivered to OWNER, without restriction, except that CONSULTANT may make copies of any and all instruments of service for its files. The OWNER 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 Owner; 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 Owner and Consultant, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between Owner 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 Owner. 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 Owner does not have the power to direct the order in which the work is done. The Owner shall not have the right to control the means, methods or details of the 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

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

Commercial General Liability (including Contractual liability):

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

-Property Damage: \$500,000.00 per occurrence

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

Worker's Compensation: Statutory limits

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

The Commercial General Liability shall be on a per project aggregate, including

completed operations, and shall be on an occurrence basis.

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

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

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

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

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

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

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 OWNER, 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 OWNER AND THE CONSULTANT. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF SOVEREIGN IMMUNITY.

THE CONSULTANT AND OWNER 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 Owner is not waiving its right of sovereign immunity. The Owner is retaining its immunity from suit. The Owner is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

ARTICLE XII. NO THIRD PARTY BENEFICIARIES

The OWNER'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 OWNER, OWNER'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 OWNER'S NEGLIGENCE.

ARTICLE XIV. GENERAL PROVISIONS

A. Waiver. No waiver by OWNER 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 OWNER: City Manager's Office
P.O. Box 1152
Midland, Texas 79702

If to CONSULTANT: Rhotenberry Wellen Architects & Planners, Inc
P O Box 163
Midland, TX 79702-0163

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. 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 Owner, 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 Owner from any liability whatsoever. The Owner is under no obligation to provide notice to Consultant that Consultant's notice is insufficient. Owner reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

The statutory prerequisites outlined herein constitute jurisdictional requirements pursuant to Section 271.154 of the Texas Local Government Code and Section 311.034 of the Texas Government Code. Notwithstanding any other provision, 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 Owner has actual or constructive notice or knowledge of said claim or alleged damages. Consultant agrees that the requirements of this entire Agreement are reasonable.

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 Rhotenberry Wellen Architects & Planners, 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 _____,
2012.

Notary Public, State of Texas

EXHIBIT A
Professional Services Agreement
For Architectural Services
#4088-12



April 23, 2012

Robert Patrick
Director of General Services
City of Midland
300 N. Loraine
Midland, Texas 79701

Re: Midland Center Renovations
Proposal for Architectural Services

Dear Mr. Patrick:

Pursuant to our recent meeting, I have outlined below a proposal for Rhotenberry Wellen Architects (the Architect) to provide Feasibility Study Services for additions and renovations to the Midland Center for the City of Midland, Texas (the Owner).

1. PROJECT SCOPE:

- 1.1 Architectural Feasibility Study Services including Design Programming, Existing Building Evaluation, Facility Master Planning and Cost Estimating for additions and renovations to the Midland Center, 105 N. Main Street, in Midland, Texas.

2. FEASIBILITY STUDY SERVICES:

- 2.1 **FACILITY DESIGN PROGRAMMING:**
RWA will perform a facilities needs assessment and analysis for renovations and additions to the existing Midland Center Building. In meetings with the Owner, RWA will confirm program space requirements and establish a list of Owner needs. At the Owner's request RWA will also facilitate meetings with Midland Center user groups and stakeholders to determine facility needs and requirements.

- 2.2 **BUILDING EVALUATION:**
A review of existing facilities will be performed including the preparation of as-built CAD based plans of the existing facilities, including a site plan and floor plans of all levels of the existing building. RWA will help the Owner coordinate necessary inspections of the building including the following:

- Mechanical System Review and Evaluation
- Plumbing System Review and Evaluation
- Electrical Systems Review and Evaluation
- Structural Systems Evaluation
- Hazardous Materials Survey
- Review for compliance with Texas Accessibility Standards
- Life Safety Evaluation
- Building Envelope and Waterproofing Evaluation
- Site Survey

Each of the evaluations noted will include a visual inspection and analysis of compliance with existing codes and standards.

2.3 MASTER PLAN:

Following the preparation of the Facility Design Program and the completion of the Building Evaluation, and using a site survey provided by the Owner, RWA will develop a facility Master Plan which proposes future building expansion, site development and renovations of the Midland Center. Proposed phasing of the building renovations and new construction will be illustrated on the plan.

2.4

COST ESTIMATING:

RWA will provide preliminary cost estimates on a "square foot" or unit cost basis for all proposed renovations and additions to the Midland Center. Costs will be summarized by project phase.

3.

BASIC SERVICES:

Using information developed in the Feasibility Study and approved by the Owner, RWA will provide Basic Architectural Services as outlined below for the Midland Center.

3.1

DESIGN DEVELOPMENT AND CONTRACT DOCUMENTS:

RWA, following the Owner's approval of the Master Plan, Phasing, and Project Budget, will prepare construction drawings, specifications, and other documents setting forth in detail the requirements for Phase 1 renovations and additions to the Midland Center. Documentation for this phase will include the following:

1. Architectural:

Construction drawings illustrating the construction requirements and detailed construction of the building. Written specifications will be provided indicating required construction procedures, construction standards, and materials requirements.

2. M.E.P. Engineering Services:

The Architect will employ licensed mechanical, electrical, and plumbing engineers to prepare detailed construction documents for renovations and additions to the Midland Center.

3. Structural Engineering Services:

The Architect will employ a licensed structural engineer to prepare detailed construction documents necessary for renovations and additions to the building.

3.2 BIDDING OR NEGOTIATION:

The Architect, following the Owner's approval of the construction documents, shall assist the owner in obtaining bids and assist in awarding and preparing contracts for construction.

3.3 CONSTRUCTION PHASE:

Following the award of the Construction Contract, the Architect shall provide services for administration of the contract for construction as set forth herein. In general, the Architect shall be a representative of the Owner during the construction phase. The Architect shall make site visits at regular intervals to determine if the work is proceeding in accordance with the contract documents. The Architect shall review all required shop drawings and submittals and shall determine the amounts owing to the Contractor based on observations at the site, and analyze proposed change orders for the Owner's review.

4. COMPENSATION:

The Owner shall compensate the Architect for the services outlined herein on the basis outlined below for each phase.

4.1

FEASIBILITY STUDY SERVICES:

Compensation for Design Programming, Existing Building Evaluation, Master Planning Services, and Cost Estimating as outlined in Article 2, shall be made on an hourly basis according to the fee schedule in 4.3 plus reimbursable expenses invoiced in accordance with Article 6. Under no circumstances should the total amount of the fee for this work exceed a guaranteed maximum amounts listed below without the advance written consent of the Owner. Fees for Facility Master Plan and Cost Estimating will be applied towards a fee for Basic Services after the Phase 1 project scope has been defined. Fees for each phase are as follows:

Facility Design Program (Ref. 2.1)	\$ 3,500
Building Evaluation (Ref. 2.2)	
• As build CAD Drawings	\$ 5,500
• MEP Evaluations	\$ 6,500*
• Mechanical System Review and Evaluation	
• Plumbing System Review and Evaluation	
• Electrical Systems Review and Evaluation	\$ 0
• Structural Systems Review and Evaluation	\$ 3,250
• Hazardous Materials Survey	\$ 250
• Texas Accessibility Standards Review	\$ 4,900
• Life Safety Evaluation	
• Envelope and Waterproofing Evaluation	\$ 5,000

• Site Survey	\$ 6,975
• Architectural Coordination	\$ 5,000
Facility Master Plan (Ref. 2.3)	\$ 5,500*
Cost Estimating (2.4)	\$ 3,500*
Total Maximum Fee Amount:	\$49,875

* To be credited toward Architectural Services Fee

4.2

BASIC SERVICES:

Compensation for Basic Architectural Services as defined in Article 3 shall be made on the basis of a percentage fee to be calculated 8.5% of the Owner approved construction costs, plus reimbursable expenses in accordance with Article 6. Progress payments for Basic Architectural Services shall be made on a monthly basis and shall be in proportion to the services performed within each phase of the service on the basis set forth below:

Schematic Design	15%
Design Development	15%
Construction Documents	45%
Procurement Phase	5%
Construction Phase	20%

After the completion of the services described in Article 2, the fees invoiced for Master Planning and Cost Estimating described herein will be credited toward a fee proposal for Phase 1 Basic Services.

4.3

HOURLY FEE SCHEDULE:

For additional project services to be compensated on an hourly basis, fees shall be computed on the following basis:

Principals:	\$165.00/hour
Project Architect:	110.00/hour
Technical Level I:	83.00/hour
Technical Level II:	70.00/hour
Clerical:	55.00/hour

5.

ADDITIONAL SERVICES:

Additional Services are services not included in the Architectural Services outlined above and shall be provided only if authorized in advance by the Owner.

5.1

SPECIAL CONSULTANTS:

When required by the Owner, the Architect will employ and coordinate the services of special consultants to assist in the performance of the services outlined above. For additional services of special consultants compensation will be computed as a multiple of 1.10 x the actual amounts billed the Architect for such services.

5.2 OTHER ADDITIONAL SERVICES:

Other Additional Services not included in this proposal are outlined below.

- 5.2.1 Providing services for architectural renderings or models not already included in this proposal.
- 5.2.2 Providing special drawings, studies and submissions required for approvals of government authorities or others having jurisdiction over the Project.
- 5.2.3 Making revisions to Drawings, Specifications or other documents when such revisions are inconsistent with approvals or instructions previously given by the Owner, including revisions made necessary by the Owner's adjustments in the program, schedule, or Project budget.
- 5.2.4 Interior design and furnishings specification, (beyond color selections for basic architectural elements).
- 5.2.5 Subsurface Geotechnical Investigation.
- 5.2.6 Audio Visual Consulting Services.
- 5.2.7 E.P.A. Civil / Stormwater Management Plan.
- 5.2.8 Kitchen equipment layouts, existing equipment evaluation, and new kitchen equipment specification.

6. REIMBURSABLE EXPENSES:

Reimbursable Expenses are in addition to compensation for Architectural services identified above and include expenses incurred by the Architect in the direct interest of the project. Reimbursable expenses will be billed to the owner at a rate of 1.05 x the actual expense incurred and shall include the following:

- 6.1 Expense in connection with authorized out-of-town travel and authorized transportation essential to the project. These expenses shall be defined as the following:
 - 6.1.1 Cost of tickets for travel, (coach class only).
 - 6.1.2 Cost of rental cars including fuel charges.
 - 6.1.3 Cost of lodging.
 - 6.1.4 Photographs.
 - 6.1.5 Travel in personal vehicles at a rate of \$0.45/mile.
- 6.2 Expense of essential long distance phone or facsimile communications.
- 6.3 Expense of postage, express postage, courier services or shipping of Drawings and Specifications or other communications for the Owner's review, or the Architect's coordination with required consultants.

6.4 Expenses of essential printing and reproduction of reports, communications, drawings and specifications for the Owner's review for bid purposes or for the Architect's coordination with required consultants.

7. **PAYMENTS:**

Payments shall be made at the completion of each phase of the work or on a monthly basis in proportion to the services performed in each phase.

8. **TERMINATION:**

This agreement may be terminated by either party with or without cause, upon not less than ten days written notice. In the event of such termination, the Architect shall be compensated only for those services performed prior to notice of such suspension.

Thank you for the opportunity to submit this proposal for Architectural services for Renovations and Additions to the Midland Center. If you require any additional information, please don't hesitate to contact me.

RHOTENBERRY WELLEN ARCHITECTS


James R. Rhotenberry, Jr., President

5.30.12
Date



City Council Agenda

Approved for Agenda:
thudson
City Manager's Office

MEETING DATE: 6/12/2012

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving the purchase of a boom mower for the Garage Division. Bid 4848-12

Purpose:

Approval of a resolution authorizing the purchase of a boom mower for the Garage Division.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$52,441 Garage Fund

Discussion:

Two bids for two different models of boom mowers were received from one bidder, South Plains Implement LTD, located in Seminole Texas. We recommend purchasing the 60" Rotary Model which is the low bid. This mower will be used by the transportation division to mow right of way and other sloped areas which are maintained by the City of Midland.

Therefore, please consider approval of a resolution authorizing the purchase of a boom mower from South Plains Implement LTD for \$52,441.00.

RESOLUTION NO.

**RESOLUTION APPROVING THE PURCHASE OF ONE
(1) BOOM MOWER FROM SOUTH PLAINS
IMPLEMENT LTD, AT A TOTAL COST OF \$52,441.00;
SAID MOWER WILL BE USED TO MOW RIGHT OF
WAY AND OTHER SLOPED AREAS WHICH ARE
MAINTAINED BY THE CITY OF MIDLAND**

WHEREAS, the City Manager approved plans and specifications and authorized advertisement for bids for a boom mower; and

WHEREAS, Bid No. 4848-12 was opened on May 23, 2012, with the lowest and most responsible bid being submitted from South Plains Implement LTD, as shown on the bid tabulation attached hereto as Exhibit "A" and incorporated herein for all legal purposes;

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

SECTION ONE. That the City Manager is hereby authorized and directed to purchase the above listed boom mower from South Plains Implement LTD, at an estimated total price not to exceed \$52,441.00.

SECTION TWO. That the City Treasurer is hereby authorized and directed to pay South Plains Implement LTD, for said boom mower from funds available in the Fiscal Year 2011 – 2012 Garage Fund (750) General Services (040) Garage (0752) Construction Equipment (8421) budget account upon proper receipt of invoices or statements approved by the City Manager.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, General Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

City of Midland - Bid Tabulation

BID # 4848-12		Boom Mower	South Plains Implement LTD 204 N Hwy 385 Seminole, TX 79360 Joey Sanchez (915) 526-9699	South Plains Implement LTD 204 N Hwy 385 Seminole, TX 79360 Joey Sanchez (915) 526-9699
OPENED May 23, 2012				
Est. Cost: \$60,695.00				
ITEM	QTY	DESCRIPTION	COST EA.	TOTAL
1	1	Diamond 23' Boom Mower with rear cradle w/50" flail head	\$38,282.00	\$38,282.00
		Year/Make/Model	2012/Diamond mower/DBR060-C-H	
			*Pricing 60" Rotary Head	
2	1	Joystick Controls	\$1,202.00	\$1,202.00
		Year/Make/Model	2012/Diamond mowers/501	
			** Pricing Cable Controls	
3	1	Pump & Grill	\$544.00	\$544.00
		Year/Make/Model	2012/Diamond Mowers/503	
4	1	Hydraulic Actuator	\$7,308.00	\$7,308.00
		Year/Make/Model	2012/Diamond Mowers/Actuator	
			Actuator	
5	1	Installation/set-up charge/delivery/training:	\$5,105.00	\$5,105.00
		Delivery can be made:	30-60 days	30-60 days after award
TOTALS:			\$52,441.00	\$61,000.00

Bidding Summary:

3 Bid requests were issued.

1 Bids listed above

0 NO BIDS were received.



City Council Agenda

Approved for Agenda:
thudson
City Manager's Office

MEETING DATE: 6/12/2012

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving a contract for audio and video equipment for the Council Chambers for the Communications and Information Systems Department. RFP 4983-12

Purpose:

Consider a resolution approving the replacement of the audio and video equipment in the Council Chambers.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$43,519 General Fund

Discussion:

Two requests for proposals (RFPs) were received for the replacement of the audio and video equipment in the Council Chambers. The lower of the two proposals, SKC Smart Communications, did not meet the microphone requirements of the RFP. BIS Digital, Inc's proposal stated that all required features in the Requirements section 4 of the RFP would be met with their solution. Please see the attached memo from David Flores with the Communications and Information Systems Department for further discussion on this item.

Therefore, please consider approval of a resolution authorizing the purchase of audio and video equipment for the Council Chambers from Business Information Systems, Inc. dba BIS Digital, Inc. of Fort Lauderdale, Florida for a total cost of \$43,519.00.

RESOLUTION NO.

**RESOLUTION AUTHORIZING THE EXECUTION OF A
CONTRACT WITH BUSINESS INFORMATION
SYSTEMS, INCORPORATED, DBA BIS DIGITAL,
INCORPORATED, OF FORT LAUDERDALE, FLORIDA,
TO PROVIDE AND INSTALL NEW VIDEO AND AUDIO
EQUIPMENT IN THE COUNCIL CHAMBERS AT CITY
HALL, AT A COST OF \$43,519.00**

WHEREAS, the City Manager approved plans and specifications and authorized the request for proposals to provide and install new video and audio equipment in the Council Chambers at City Hall (“Project”); and

WHEREAS, Business Information Systems, Inc., dba BIS Digital, Inc., submitted the lowest and most responsible bid for said Project in the total amount of \$43,519.00, as shown on the bid tabulation attached hereto as Exhibit “A” and incorporated herein for all legal purposes; and

WHEREAS, the City Council finds it to be in the public interest to execute a contract with Business Information Systems, Inc., dba BIS Digital, Inc., for said Project;

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

SECTION ONE. That the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a contract with Business Information Systems, Inc., dba BIS Digital, Inc., for said Project at a cost not to exceed \$43,519.00, said contract being on file in the office of the City Secretary, referenced by the date and number of this Resolution.

SECTION TWO. That the City Treasurer is hereby authorized and directed to pay Business Information Systems, Inc., dba BIS Digital, Inc., pursuant to the terms of said contract from funds available in the Fiscal Year 2011 – 2012 General Fund (001) Communications and Information Systems (030) Communications Maintenance (0033) budget accounts upon receipt of proper invoices or statements approved by the City Manager.

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

the following vote:

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, General Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

City of Midland - Bid Tabulation

BID # 4983-12 RFP for Council Chambers Audio System OPENED May 9, 2012 Est. Cost: \$64,045.00			SKC Smart Communications Julie Hudson (800) 882-7779		BIS Digital Inc 1350 NE 56th St., Suite 300 Ft. Lauderdale, FL Jade Coldren (800) 834-7674	
ITEM	QTY	DESCRIPTION	COST EA.	TOTAL	COST EA.	TOTAL
1	1	Council Chambers Audio System	\$22,290.92	\$22,290.92	\$43,519.00	\$43,519.00
		Specifications in each RFP given to David Flores				
TOTALS:				\$22,290.92		\$43,519.00
TOTAL OF LOW BID ITEMS BY VENDOR:				\$22,290.92		\$0.00

Bidding Summary:

18 Bid requests were issued.

2 Bids listed above

1 NO BIDS were received.
N-Tune

15 Bidders did not respond.
CompView, Lubbock Audio Visual, N-Stalls by Nick, SKC, Synetra, Summit Integration Systems, TFE Connect
Granicus, e.Rupublic, F2Autin, Media Vision USA, Norris Audio, Yandstech, Swagit Productions, Y & S Technologies

601 N. Loraine Midland Tx, 79701

May 8, 2012

Sharlett Chowning

601 North Loraine

Midland Texas, 79701

Subject: Recommend BIS digital Inc. be awarded the Council Chambers Audio System contract.

Dear Sharlett Chowning,

On Tuesday, May 15, 2012, my division received two Proposals for the replacement of the City Council Audio System for the City Hall Council Chambers at 300 N. Loraine. The two companies that submitted bids were BIS Digital Inc and SKC Smart Communications.

SKC's proposed solution and scope of work was for a courtroom audio system setup. SKC's solution described 2 microphone on the dais, 5 microphones for the staff and 1 microphone for the podium. The city required at least 13 different microphones for the council audio system. Although SKC did mention all the requirements, the bid is incomplete do to the missing audio positions. Their bid for their proposed solution came in at \$22,290 dollars.

BIS Digital Inc stated that all required features in section 4 of the RFP, would be meet with their solution, to include some of the optional features such as digital audio recording retrieval. Their bid for their proposed solution came in at \$43,519 dollars. BIS submitted detailed information pertaining to the recommended hardware and software, to include maintenance contract information.

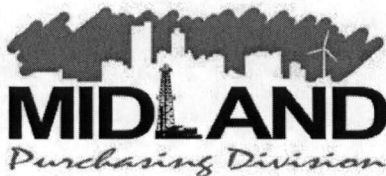
After reviewing both proposals, it is my recommendation that BIS Digital Inc. be granted the contract to replace the Council Chamber Audio System. Aside from BIS coming in within our target budget, they proposed the Medialon Manger for the control software, BIAMP for the multi channel amplifier, PPA 377 Pro for the assisted hearing, Audio Technica ATW-R2100 for the wireless microphone along with the nexia digital signal processor and Sony BDP-S380 disc player. After doing some research, this equipment is ideal for the City Hall Council Chambers Audio System. The BIS Digital Inc. proposed equipment that can be networked for remote retrieval of recorded audio, can support direct connect to city servers, is scalable for future growth, such as, telephone connectivity and streaming live audio feeds to streaming media and television feeds. BIS's proposed annual maintenance annual contract after warranty is not unreasonable.

Sincerely,

David Flores

Communication Technician

City Of Midland, Texas



THE CITY OF MIDLAND

CONTRACT

Contract #4983-12

THIS CONTRACT, effective the 13th day of June, 2012, by and between the City of Midland, hereinafter referred to as the "Owner", and Business Information Systems, Inc. dba BIS Digital, Inc., hereinafter referred to as the "Contractor", is made for the following considerations:

1. **Cost:** Total Proposal: \$ 43,519.00 DOLLARS

2. **Scope of Work:** The Contractor shall perform all work described for labor, material, equipment and supervision necessary to provide and install Audio and Video Equipment for the City Hall Council Chamber located at 300 N. Loraine for the Communications and Information Services Department in the following documents, attached hereto and incorporated herein by reference for all legal purposes.

EXHIBIT A..... Specifications, Proposal or Cost Summary

EXHIBIT B..... Intentionally Omitted

EXHIBIT C..... Bonding instructions for Public Works Contract of \$50,000 and more

EXHIBIT D..... Wage Scale

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

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

to perform the work in accordance with the contract.

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

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

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

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

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

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

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

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

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

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

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

9. **Start of Work:** The Contractor shall commence work no later than ten (10) days after receipt of the execution of this document or other written release to proceed and shall complete such work no later than 30 calendar days after release to proceed.

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

9.1. TIME IS OF THE ESSENCE IN THIS CONTRACT.

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

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

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

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

12.1. Defective work not remedied; or

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

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

12.4. Damages to another contractor or subcontractor.

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

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

14. **Wage Scale:** The Contractor agrees to pay all workmen in his employ no less than the generally prevailing wage rate for employees of similar category in the Permian Basin Area, as is depicted in the

wage rate scale attached hereto as EXHIBIT D, and incorporated herein by reference for all legal purposes.

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

15. **Payment:** After all work is completed by the Contractor, and the Owner has inspected and approved that work, the Owner shall within thirty-one (31) days thereafter issue payment to the Contractor in the amount of the contract and subsequent verified Change Orders. The Owner shall be the final judge of when work is completed by the Contractor.

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

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

CONTRACTOR AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING KNOWN

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

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

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

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

19. **Insurance**

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

Commercial General Liability (including Contractual liability):

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

-Property Damage: \$500,000.00 per occurrence

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

Worker's Compensation: Statutory limits

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

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

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

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

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

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

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

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

20. **Assignment:** Contractor shall not, either directly or indirectly, assign all or any part of this Contract or any interest, right or privilege herein, without the prior written consent of the Owner. The issue on whether or not to grant consent to an assignment is in the sole discretion of the Owner.

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

CONSTITUTIONS, TORT CLAIMS, OR OWNER'S NEGLIGENCE.

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

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

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

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

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

25. **Consideration:** The terms of this Contract are supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties named herein.

Contract No: 4983-12

OWNER, City of Midland

CONTRACTOR

Courtney B. Sharp, City Manager

APPROVED AS TO FORM

Keith Stretcher, City Attorney

ATTEST

Amy M. Turner, City Secretary

Contractor Corporate Acknowledgment: Contract: 4983-12

STATE OF TEXAS §

§

COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared _____, an officer of Business Information Systems, Inc. dba BIS Digital, 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 _____, 2012.

Notary Public, State of Texas

RFP RESPONSE

BIS Digital Inc
800-834-7674 x4516
jade.coldren@bisdigital.com
www.bisdigital.com

Request for Proposals

RFP 4983-12

for

Council Chambers Audio System

Proposals for this requirement will be accepted until 11:00 A.M. on May 9, 2012

Proposals May be Mailed or Delivered to:

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

No Late Proposals Will Be Accepted

See Section 1.9 for Pre-proposal Conference Information

Exhibit "A"



5-5-12

City of Midland Purchasing
Purchasing Department
300 N Loraine, Suite 340
Midland, TX 79701

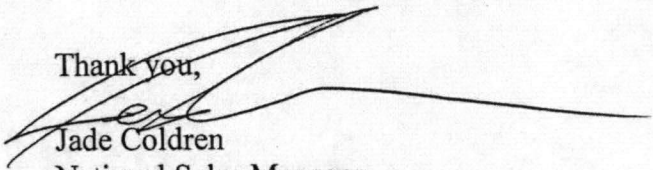
RE: Council chambers Audio System

Thank you for allowing BIS Digital Inc. to present our proposal for the supply, installation and training of our Council Chambers sound reinforcement system.

BIS utilizes industry leading audio technology to provide the best possible solution to meet our customer's high standards. Each system is customized to meet the needs of the chambers in which it is being installed. Due to the room's busy schedule BIS will work closely with the county's contact person to schedule onsite setup, installation and training.

After reviewing your RFP we would like to present you with the following solution that will meet and exceed your listed requirements. We greatly appreciate this opportunity to provide you with the industry's best recording and sound reinforcement solution.

Thank you,



Jade Coldren
National Sales Manager
BIS Digital Inc.
800-834-7674 x 4516
Jade.coldren@bisdigital.com

4. REQUIREMENTS

NOTE: Where the term "required Field" appears in the requirements, the intent is that the user may not leave that field blank and leave the current record. The blank required fields shall be flagged for easy identification of the fields left blank.

*Included means that if the feature or requirement is not normally included, but will be at No Extra Charge

**Will be at an additional cost. These added costs shall be listed on the cost summary/price sheet proposal page (whichever is attached)

The successful implementation of the proposed system requires that certain features are available. In addition, there are some features that are desirable, but not required. Following are descriptions of required and optional features.

Feature	Included In Package*	Will Add or Modify **	Exception Detail
4.1. REQUIRED FEATURES			
4.1.1. Dais Microphones- The system will have seven microphones for use at the dais. These microphones should be unobtrusive. Each microphone must have a mute button controlled by the individual at that station. The station must have a visual on/off indication of mute function. All dais microphones must be able to be controlled (muted,volume) by a Control Station.	☒	☐	
4.1.2 Staff Microphones- The system will have five microphones available for staff to use in the area below the dais. These microphones should be unobtrusive. Each microphone must have a mute button controlled by the individual at the station. All staff microphones must be able to be controlled by the Control Station.	☒	☐	
4.1.3 Podium Microphone- The system will have one or more microphones available for speakers to use at the podium. These microphones should be unobtrusive, but allow for easy access by speakers who may address the Council as a group. All podium microphones must be able to be controlled (muted) by the Control Station.	☒	☐	
4.1.4 Audience Microphones- The system will have two or more wireless microphones to be used throughout the auditorium. These would allow audience members to participate without leaving their seat. The audience microphones must be able to be controlled by the Control Station.	☒	☐	

4.1.5 ADA Device for Hearing Impaired- The system must allow for hearing impaired persons to use assistant devices to hear the proceedings. These devices must meet all applicable ADA requirements. Five assisted listening devices should be provided with the ability to add more as needed.

☒

☐

4.1.6 Digital Audio Recording- The system must provide high quality audio from all the audio inputs to the system. The system must be able to create a Read Only CD or similar media, capable of being used as a legal record of the proceedings. The entire meeting needs to be recorded. Any breaks in the recording must be identified as having occurred.

☒

☐

4.1.7 Transcription Equipment- The CD created from the digital recording needs to be able to be played back for transcription. Equipment and software to do this must be included in the proposal.

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4.1.8 Control Station- The City Secretary will serve as a Control Station for the system. This station must be able to control the individual microphones, audio levels, etc. Simple audio production (recording) control must be available at the control station. This position must be remote controlled with the hardware mounted in a 19" rack in the server room. This station is highly visible and must remain aesthetically pleasing.

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4.1.9 Play CD- The system must be able to play CD's/ DVD audio.

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4.1.10 Audio Input at Podium- The system will allow for the podium to link their laptop to the system as an Audio input. The system must accept RCA inputs.

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4.1.11 Power Conditioning- The system will be run from conditioned power to ensure the proper operation and longevity of the system. The vendor will work with the city's building Maintenance Division to ensure that critical elements of the systems are not susceptible to power outages, spikes, and brown outs (UPS).

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4.2 OPTIONAL FEATURES

4.2.1 Lighting Controls- Lighting controls incorporated into the Control Station.

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will require correct lighting connection from the city. system is capable of controlling once in place.

4.2.2 Television Inputs- The system will allow inputs from a Cable TV provider, Satellite TV provider. The Control Station must control the TV input.

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4.2.3 Telephone Connectivity- The system will allow for telephone input and output to the audio system. Those speaking into the microphones will be heard by the caller, and the caller will be heard on over the audio system. The Control Station will have the ability to make and receive telephone calls.

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Can be added when customer is ready.
Designed to be added when customer is ready.

4.2.4 **Digital Audio Recording Retrieval-** The City Secretary may have a need to retrieve audio recordings from their office. Have the Digital Audio Recording device should be networkable with security feature to prevent anyone without proper access from modifying or retrieving recordings.



4.2.5 **Digital Audio Output** The City may have a need to feed the audio to live streaming media and television feeds. Extra audio outputs will be needed.



designed to be added
when customer is ready

5 VENDOR QUALIFICATIONS

5.1 INFORMATION VERIFICATION

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

5.2 RIGHT TO REJECT

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

5.3 VENDOR CAPABILITIES

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

5.3.7 References

5.3.7.1 Offeror shall provide a minimum of 3 Texas references, preferably from local governments, that are using services of the type proposed in this RFP. The references should fall within the categories identified below. At a minimum, the offeror shall provide the company name, the location where the services were provided, contact person(s), customer telephone number, a complete description of the service type, and dates the services were provided. The City reserves the right to use any information or additional references deemed necessary to establish the ability of the offerors to perform the conditions of the contract. Negative references may be grounds for proposal disqualification.

5.3.7.2 These references should include City government and universities where the offeror, preferably within the last 5 years, has successfully completed this type of project.

5.3.7.3 These references should include a point of contact, name of agency and phone number.

5.3.8 Vendor Stability

5.3.8.1 Offerors shall demonstrate their financial stability to supply, install and support the services specified.

5.3.8.2 Provide financial statements, preferably audited, for the 2 consecutive years immediately preceding the issuance of this RFP.

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

5.3.8.4 Offerors shall specify how long the company submitting the proposal has been in business (doing similar projects).

6 EVALUATION PROCESS

6.1 EVALUATION PROCEDURE

CITY OF MIDLAND

ADDENDUM

BID # 4983-12

Audio & Video in Council Chamber

TO ALL BIDDERS ON THE SUBJECT BID:

ADDENDUM # 1

DATE: May 2, 2012

The following changes have been made to the specifications. Please make note of these changes and incorporate them in your bid.

Section 4.1: Required Features – Dais, Staff, and Podium microphones need to have vibration resistant mounts with mute buttons.

The City Secretary's microphone station needs to be a wired station versus the wireless station already in use.

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

All other terms and conditions shall remain the same.

BIS Digital Inc
Company Name

[Signature]
Bidder Authorized Signature

Jade Coldren
Please Print Above Name

5-7-12
Date

800-834-7674 x4514
Phone

BIS Digital

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Business Information Systems, Inc
1350 NE 56th Street, Suite 300 • Ft. Lauderdale, FL 33334
Phone: (800) 834-7674 • Fax: (877) 858-5611

Date Tuesday, June 05, 2012

Quote Number Q-8005919-6.5.2012

Sales Consultant Jade Coldren
(800) 834-7674 x4516 / jade.coldren@bisdigital.com

Primary Contact Regina Stephenson, Purchasing Tech
300 N. Loraine, 3rd floor
Midland, TX 79702
(432) 685-7233 / (432) 685-0523 (Fax)
rstephenson@midlandtexas.gov (Email)

Billing Address Midland (TX) / A-1011508
300 N. Loraine, 3rd floor
Midland, TX 79702

Shipping Address Same

Users To Train Yes

Wiring Required Yes

Installation Notes BIS to provide installation and training of the following equipment for the new sound system in the City Commission Chambers.

Item	Code	Qty	Unit Price	Total Price
Hardware Control Manager (Software Only) Medialon	BIS-HCM	1		
Control System Device Converter	BIS-N-HA	1		
Wireless Tablet Control Device	MISC	1		
Wireless Network Router (4-Port)	BIS-N-RW4	1		
Professional Digital PA Mixer	BIS-MX-PA	2		
Multi-Channel Audio Amplifier (150W)	BIS-PA-MCA150	1		
Blu-Ray Disc Player	BIS-BR-DVD	1		
UPS 8-Outlet Rackmount Surge w/Remote Control	BIS-R-UPS-8R	1		

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Assisted Listening Device (FM)	BIS-PA-ALS	1		
Additional Headset for Assisted Listening System	BIS-PA-ALS-H	1		
BIS Gooseneck Microphone	BIS-M-GN	14		
Microphone Desk Stand w/ Mute Light Switch	BIS-MS-338666rsp	13		
Microphone Shock Mount Plate w/XLRF Connector	BIS-MS-338646	1		
UHF Wireless System with Gooseneck Microphone	BIS-M-W66GM	2		
Joining Hardware for Wireless Mic System	BIS-MK-118630	1		
Wall Mount Speakers - Black (Pair)	BIS-SP-WM/B	4		
Desk Mount Speakers (Black Pair)	BIS-SP-DM	2		
DCR2 (2 Ch) Digital Audio/Video Recording Software w/Word Integration (T)	DCR2-2T	1		
USB Audio Capture Device (2 Channel)	BIS-MX-ACD	1		
USB Footpedal	BIS-FP	1		
Stereo Headset w/Long Cord	BIS-HS-LC	1		
Microphone Wire (Plenum) - 1,000ft Roll	BIS-W-MP	1		
Speaker Wire (Plenum) - 1,000ft Roll	BIS-W-SP	1		
Installation Supplies	BIS-PAS-IS	1		
Installation & Training of Hardware Control Manager (1 day)	SIT-HCM	1	\$1,350.00	\$1,350.00
Annual DCR On-Site Service & Support (Contract to be issued upon installation)	NMNT-DCR	1	\$4,550.00	\$4,550.00
Setup, Installation and Training	SIT	1	\$5,500.00	\$5,500.00
			Sales Tax Rate	0%
			Total (Excluding Sales Tax)	\$43,519.00



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Minimum Specifications for BIS Digital Recording PC Systems

DCR & DCR 2 Specifications

2/4 Channel Audio Only (Desktop)

- 1 GB RAM (*For Windows XP*) / 2 GB (*For Windows Vista or Windows 7*)
- 120 GB Hard Drive / 8 MB Cache / 7200 RPM
- CD Writer
- 3.0 GHz Intel Pentium 4 / 800 MHz FSB (**Not AMD or Atom / Nano Processors**)
- Ethernet RJ-45 Network Interface
- AGP 8x or PCI-Express 128MB Video Display Card
- USB 2.0 Ports
- Windows XP Professional, Vista For Business Operating System or 7 Professional
- Roxio Easy CD Creator 8 (*Not Necessary with Windows Vista for Business or Windows 7 Professional*)

4/8 Channel Audio or Audio and Video (Desktop)

- 1 GB RAM (*For Windows XP*) / 2 GB (*For Windows Vista or Windows 7*)
- 160 GB Hard Drive / 8 MB Cache / 7200 RPM
- CD Writer (For Audio) or DVD Writer (For Video)
- 2.8 GHz Intel Core 2 Duo (**Not AMD or Atom / Nano Processors**)
- Ethernet RJ-45 Network Interface
- AGP 8x or PCI-Express 128MB Video Display Card
- USB 2.0 Port (x2)
- Windows XP Professional, Vista For Business Operating System or 7 Professional
- Roxio Easy CD Creator 8 (*Not Necessary with Windows Vista for Business or Windows 7 Professional*)
- PCI Slot (*For 8ch. systems only*)

2/4 Channel Audio Only (Portable)

- 1 GB RAM (*For Windows XP*) / 2 GB (*For Windows Vista or Windows 7*)
- 80 GB Hard Drive / 8 MB Cache / 7200 RPM
- CD Writer
- 2.8 GHz Intel Pentium 4 / 800 MHz FSB (**Not AMD or Atom / Nano Processors**)
- Ethernet RJ-45 Network Interfaces
- USB 2.0 Ports
- Windows XP Professional, Vista For Business Operating System or 7 Professional
- Roxio Easy CD Creator 8 (*Not Necessary with Windows Vista for Business or Windows 7 Professional*)

4/8 Channel Audio or Audio and Video (Portable)

- 1 GB RAM (*For Windows XP*) / 2 GB (*For Windows Vista or Windows 7*)
- 120 GB Hard Drive / 8 MB Cache / 7200 RPM
- CD Writer (For Audio) or DVD Writer (For Video)
- 2.8 GHz Intel Core 2 Duo (**Not AMD or Atom / Nano Processors**)
- Ethernet RJ-45 Network Interfaces
- USB 2.0 Ports
- PCMCIA Slot (*For 8ch. systems only*)
- Windows XP Professional, Vista For Business Operating System or 7 Professional
- Roxio Easy CD Creator 8 (*Not Necessary with Windows Vista for Business or Windows 7 Professional*)

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DCR IR

Single Room Application

- 1 GB RAM (*For Windows XP*) / 2 GB (*For Windows Vista or Windows 7*)
- 160 GB Hard Drive / 8 MB Cache / 7200 RPM
- CD Writer (For Audio) or DVD Writer (For Video)
- 2.8 GHz Intel Core 2 Duo (**Not AMD or Atom / Nano Processors**)
- Ethernet RJ-45 Network Interface
- AGP 8x or PCI-Express 128MB Video Display Card
- USB 2.0 Port (x2)
- Windows XP Professional, Vista For Business Operating System or 7 Professional
- Roxio Easy CD Creator 8 (*Not Necessary with Windows Vista for Business or Windows 7 Professional*)
- PCI Slot or PCIe Slot

Multiple Room Application

- 2 GB RAM (*For Windows XP*) / 4 GB (*For Windows Vista or Windows 7*)
- 300 GB Hard Drive / 8 MB Cache / 7200 RPM
- CD Writer (For Audio) or DVD Writer (For Video)
- 2.5 GHz Intel Core 2 Quad (**Not AMD or Atom / Nano Processors**)
- Ethernet RJ-45 Network Interface
- AGP 8x or PCI-Express 128MB Video Display Card
- USB 2.0 Port (x2)
- Windows XP Professional, Vista For Business Operating System or 7 Professional
- Network or USB Mirror Location
- PCI or PCIe slot

Live Stream & On-Demand Requirements

- BIS Digital, Inc. recommends customer can transmit continuous stream of 300kbps or more for optimal performance

All specifications are subject to change without notice. All computers sourced from third parties must first be approved by BIS Digital prior to purchase.

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Order Summary

Date	Tuesday, June 05, 2012
Quote Number	Q-8005919-6.5.2012
Account Name	Midland (TX)
Total (Excluding Sales Tax)	\$43,519.00

Terms and Conditions: The below are our normal terms: BIS will work with the purchasing body if these do not meet your guidelines.

Effective Period	This proposal is a firm offer for 120 days from quote date Monday, May 07, 2012.
Tax Status	Sales tax will be added to invoice unless Tax Exempt Form is on file with BIS Digital.
Payment Terms	Deposit: All orders above \$5,000 require a 50% deposit. Once the order and deposit is confirmed {received} by BIS Digital, scheduling of the installation / and shipment of goods will occur. Balance: The remaining balance is to be paid on the completion of the installation. {delivery of goods at customer site}
Restocking Fee	20% restocking fee will be charged for all cancelled orders
Site Preparation	Customer is required to supply all conduit and cable pulls not listed on this quote. Customer will be responsible for any additional wiring or installation supplies needed during installation.
Training	BIS Digital will provide full training of all system users per agreed training schedule.
Limited Warranty	All BIS supplied new systems (Hardware & Software) are covered for 90 days following date of installation/delivery. Warranty does not cover On-Site Technical Support, Shipping costs, or Software upgrades (See Software Assurance below).
Software Assurance	Annual Software Assurance entitles user to unlimited software upgrades throughout the one year term, at the cost of \$300 per license/year.

This signature and Purchase Order number states acceptance to the above price, terms and conditions, authorizing BIS Digital, Inc. to order, install and bill for the above equipment:

* Accepted by: _____
Name Title

Signature Date

* Accounts Payable Information * Required for order to be processed

A/P Contact: _____
Name Phone Number

Email Address Fax #

Is a Purchase Order required for processing? _____ P.O # _____



Project References: Texas

Linda Rose
Court Administrator
2150 Universal City Blvd.
Universal City, TX 78148
(210) 659-0333 x715
courtadministration@universalcitytexas.com

Judge Chris Brown
Hopkins County Courthouse
Sulphur Springs, TX 75482
(903) 438-4006
cbrown@hopkinscountytexas.org

Ms. Shanna Curiel
Court Coordinator
Medina County Courts
1100 16th Street
Room 203
Hondo, TX 78861
(830) 741-6061
shanna.curiel@medinacountytexas.org



BACKGROUND

BIS was founded in 1982 and is headquartered in Ft. Lauderdale, Florida, with a fully staffed office in Nashville, TN and Direct Sales and Service Representatives located in MI, OH, IN, TN, GA, AL, SC, NC, VA, WV, KY & TX. Our primary business is the sales and service of multi-channel Digital Audio/Video Recording, Evidence Presentation, Sound Reinforcement, Video Conferencing / Arraignment, Digital Dictation, Call Logging and Agenda Automation Systems in the S.E and Midwestern United States. BIS has provided this technology to over 4,000 customers including Courtroom systems, Interview rooms, Board of County Commissioners Chambers, City Council Chambers, 911 Centers, several major Hospitals, multiple Government Agencies, Law Firms and Medical Offices.

The ability to integrate DCR with computers, operating systems, networks, microphones, cameras, mixers, sound reinforcement systems, hearing impaired devices and evidence presentation systems makes BIS unique. We provide a total turnkey solution based upon the needs of our users that include planning, installing, training and on-going support and service. We have a solid reputation for fast reliable service and a knowledgeable sales staff. Our service department is available 24/7 for remote online support as well as on-site emergency service.

Installation and Training

BIS Digital's main objective is to deliver product to our clients with the least amount of workflow disruption. Once an order is placed you will receive a phone call from an installation coordinator to schedule your new system installation. Installation times will vary and are dependent on the complexity of your system. A BIS lead installer/trainer will work with the client's network administrator or the person in charge of the account to ensure the installation runs smoothly. All users will then be given initial on-site training with related support materials. This on-site training will be scheduled in advance and all training will be performed by a BIS technician. At the completion of the training each user will be asked to complete and sign a training checklist. Additional training will be available on-line at the user's request.

Service and Support

BIS Digital has a toll free service hotline that is staffed 24/7 by experienced BIS technical service representatives. Service calls may also be placed directly into our website. While most cases can usually be solved over the phone or via a WebEx session, there may be times where an on-site visit will be necessary. On-site calls are scheduled and coordinated by our service department. All service is tracked in our hosted CRM software which is fitted to handle any and all customer service needs. At the completion of all service calls, an automated email updates the customer with the completed results.

Complete information is available from our web-site: <http://www.BISdigital.com> .



Scope of Work:

BIS will provide a state of the art, reliable, easy to use professional Multi-Channel Digital Audio/Video recording solution, PA and Interpretation/Hearing Assist system, with our networked based Control System.

The core of BIS Digital's solution is Medialon Manager V6. Medialon Manager V6 is a Windows® based control software which can control any audiovisual equipment using any protocol and network. Being software-based it integrates perfectly with IT opening a wide range of new applications. Control of audio & video streaming, links to database, media management, and facility wide control are not dreams any more.

Thanks to its easy graphical programming environment, applications are programmed in much less time than with any other conventional control system. Programming can be done "live", and thanks to the real time no-coding/no-compiling environment, programmers can test and adjust their shows and logical programming on the fly.

Medialon Manager includes an easy built-in graphical user interface tool to create custom touch panels (with buttons, sliders, gauges, etc.). These GUIs are published as live web pages accessible from any device with a web browser, including **PC, Mac, iPad, Android and other tablet devices**. Remote control is even possible through the Cloud without needing to set up a server or to write any additional code.

Medialon Manager is hardware independent and relies on standard hardware from IT or audiovisual industries to connect to devices. The customer has the choice between proprietary or standard hardware making maintenance and upgrade far easier.

To capture of the record. This is done with DCR. DCR, Multi-channel Recorder, is a PC-based digital audio/video recording program designed to run on a standard PC using Windows™ operating system. DCR has been designed around the highest standards to meet all of your mission critical recording needs. With the DCR solution your Bookmarks (Notes) are imbedded directly into the audio/video files or linked to your Word based Agenda for easier management and faster retrieval.

DCR records your proceedings to two simultaneous locations. The first location is to the local PC's hard drive. The second location is your choice. Most Cities choose a network drive to allow for centralized storage and retrieval. After a recording is complete, the file with the audio/video and notes may be moved to a CD, a DVD, or any other PC-compatible storage media. Audio files can be copied and moved throughout a network just like any other type of file. Files can be exported to .WAV, WMA, WMV or MP3 if desired. DCR is scalable up to 32 audio channels and 4 video channels per room. DCR also offers file attachments, live steaming across the network and remote

monitoring. DCR also offers optional features like remote control from anywhere on your network and Case Management integration.

Our sound reinforcement systems utilize industry leading technologies. The BIAMP Nexia CS is at the center of the solution. Nexia CS is a digital signal processor with 10 mic/line inputs and 6 mic/line outputs. Intended for a variety of conferencing applications such as boardrooms, courtrooms, and council chambers, NEXIA CS includes a broad selection of audio components, routing options, and signal processing. The internal system design is completely user definable via PC software, and can be controlled via dedicated software screens, RS-232 control systems, and/or a variety of optional remote control devices. Multiunit NEXIA systems can be created utilizing Ethernet and NexLink digital audio linking. The Nexia CS will be paired with a BIAMP multi-zone amplifier. BIS utilizes industry leading microphones. The microphones are designed for high-quality sound reinforcement, professional recording and broadcasting. The sound system will be housed in the City's existing equipment rack with a power conditioner. The PA will also be accompanied by a Williamson Sound FM based assisted listening devices. This is the complete hearing assistance solution for the Council Chambers. Listeners wear wireless receivers to hear to the proceeding anywhere in the listening area. Each system includes: one (1) transmitter, five (5) body-pack style receivers, five (5) headphones, (1) RPK rack panel kit. The system meets and exceeds government ADA regulations for public hearing assistance. Each microprocessor controlled MOD modulator handles two audio channels. Flexible combination jacks permit balanced/unbalanced line-level inputs. Carrier frequencies are controlled by the microprocessor and a frequency synthesizer for rock-solid frequency control.

BIS understands this is a big project for the City and will work with the City to determine an installation schedule. We will also work with the City to make sure power and conduit is located in the required locations throughout the courtroom. We are confident we can provide a time line that is acceptable for both parties. Under normal circumstances a typical installation will start within 30 days of receipt of order. However this is discussed and worked out once a purchase order is received.

Training will be provided at the completion of the installation. BIS is fully aware of how import this is to the City. We will provide training to all court employees that will be interacting with this technology and we will be available 24/7 to answer any questions or provide support to any issues that might arise after the completion of the installation. BIS has been providing 24/7 support to our digital customers since 1990.



Methods and Timeline:

The organizational review will require a meeting with the City Clerks Office & I.T. to have a detailed final decision on exactly what technology will be placed into the Council Chambers. This will be very detailed and will cover location of each piece of technology.

The next step is a Scope of Work Meeting with the same group to establish primary contacts from BIS & the City. The placement of the conduit, floor boxes, data drops, wiring, cabling, speaker location, camera location, and microphone locations. With regards to the conduit, we will make suggestions to the contractor who is installing the conduit, as to specific locations and size requirements. Timelines will be established. We will have our Installation Manager on site for a walk thru as soon as possible, we anticipate within days of getting approval for the project.

If feasible, we would want a secure area on site to store the technology when shipped on site. This would make installation much more efficient. The first phase is the wiring and installation for the microphones, camera, PA, speakers and integrating with the computer networks.

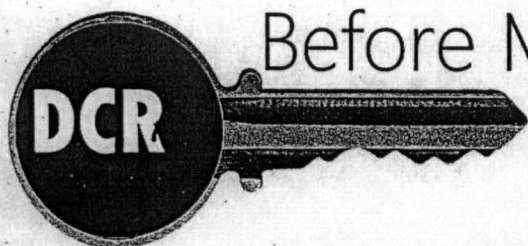
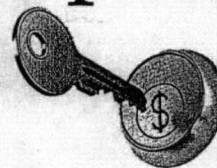
Once the Setup and Installation is completed, then the training phase is next. We will tailor the training to make sure everyone who needs to run the equipment will be very comfortable the operations of all the technology. Ideally, we would like to conduct some of the training before the chamber is in use. We also will provide support via GoToSupport and Telephone support.

Keep Your Meeting Record **SAFE AND OPEN** the Key is DCR2

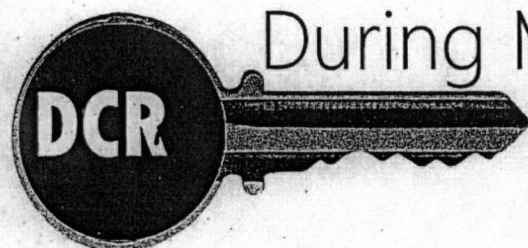
BIS has the Keys to your Electronic Meeting Record



Let us show you how to improve your records and reduce cost



Before Meetings Agenda Preparation



During Meetings

Agenda Integration (A/V)

Public Address Systems

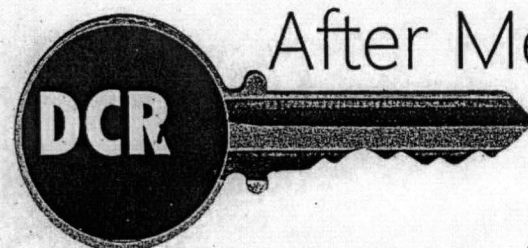
Video Cameras

Professional Mics

Multi-Media Presentation Systems

ADA Compliant Assisted Listening Devices

Live Streaming & Web Casting



After Meetings

Web Hosting

Plus

- ✓ Turn-Key Installation & Training
- ✓ 24/7 Customer Support
- ✓ Experience with over 4000 installations



Contact us for more information

(800) 834-7674

Fax (877) 858-5611

www.Bisdigital.com

Sales@Bisdigital.com

FEATURES

- Controls any device with any protocol on network
- iPad / Android Compatibility
- Web Panel Design Tool
- Easy programming No coding, No compilation
- Drag & Drop Programming
- Multiple Timeline Programming
- Sync Accuracy 100th/Sec
- Device Position Tracking
- DMX, Serial & MIDI Recording
- Logical Programming
- Alarm via Email
- Medialon Extension Supported
- Third Party Extension Supported
- Medialon SDK

OVERVIEW

Medialon Manager V6 is a Windows® based control software which can control any audiovisual equipment using any protocol and network. Being software-based it integrates perfectly with IT opening a wide range of new applications. Control of audio & video streaming, links to database, media management, and facility wide control are not dreams any more.

Thanks to its easy graphical programming environment, applications are programmed in much less time than with any other conventional control system. Programming can be done "live", and thanks to the real time no-coding/no-compiling environment, programmers can test and adjust their shows and logical programming on the fly.

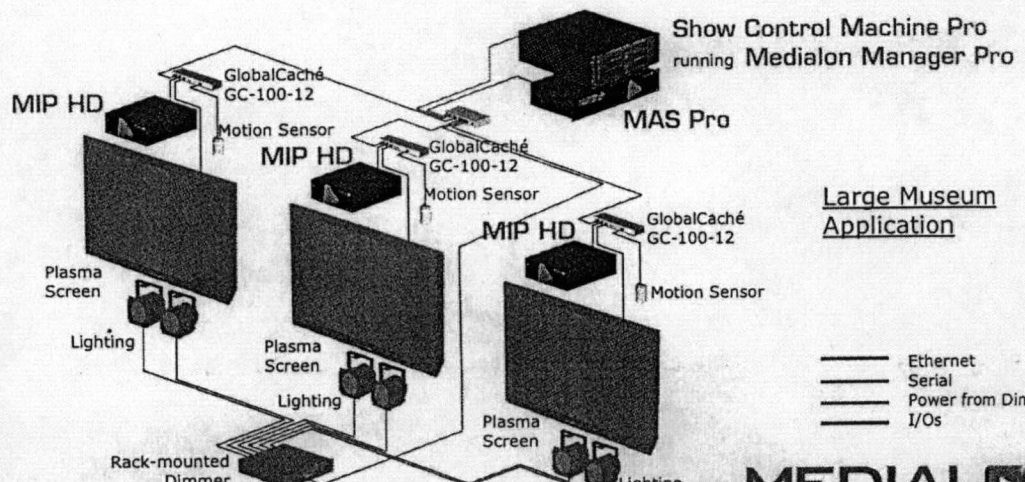
Its native synchronization capabilities and legendary Timeline with drag and drop programming makes it the ideal choice for Show Control applications. However, complex logical task programming is also available.

Medialon Manager includes an easy built-in graphical user interface tool to create custom touch panels (with buttons, sliders, gauges, etc.). These GUIs are published as live web pages accessible from any device with a web browser, including PC, Mac, iPad, Android and other tablet devices. Remote control is even possible through the Cloud without needing to set up a server or to write any additional code.

Medialon Manager is hardware independent and relies on standard hardware from IT or audiovisual industries to connect to devices. The customer has the choice between proprietary or standard hardware making maintenance and upgrade far easier.

APPLICATIONS

Medialon Manager V6 legendary ease of programming and reliability make it widely used in simple as well as critical control applications such as: Museum media control, Theme Parks and Attractions Show Control, Architectural video & Lighting control, Convention Centers audio & video remote control, etc.

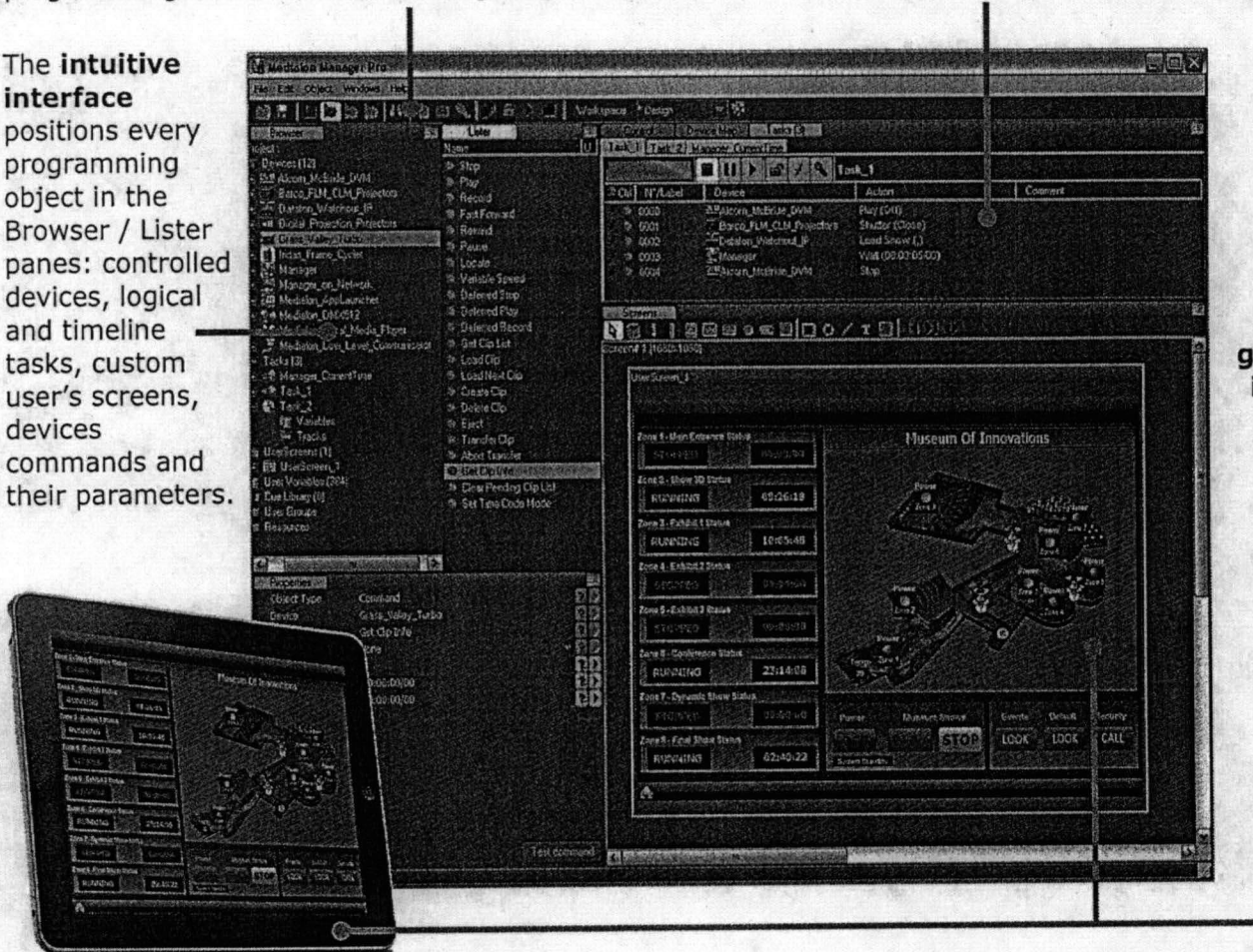


MEDIALON CONTROL SYSTEM'S PROGRAMMING ENVIRONMENT

In **programming mode** all elements are visible and editable. In run mode, only the user's screens will show up in the form and size designed by the programmer. There is **no compilation needed**, going from programming mode to run mode is just a click away.

Step based tasks allow creation of complex programming using logical operators, variables, and expressions. In Medialon programming environment, task programming is done by **drag and drop of commands** from the Lister pane.

The **intuitive interface** positions every programming object in the Browser / Lister panes: controlled devices, logical and timeline tasks, custom user's screens, devices commands and their parameters.

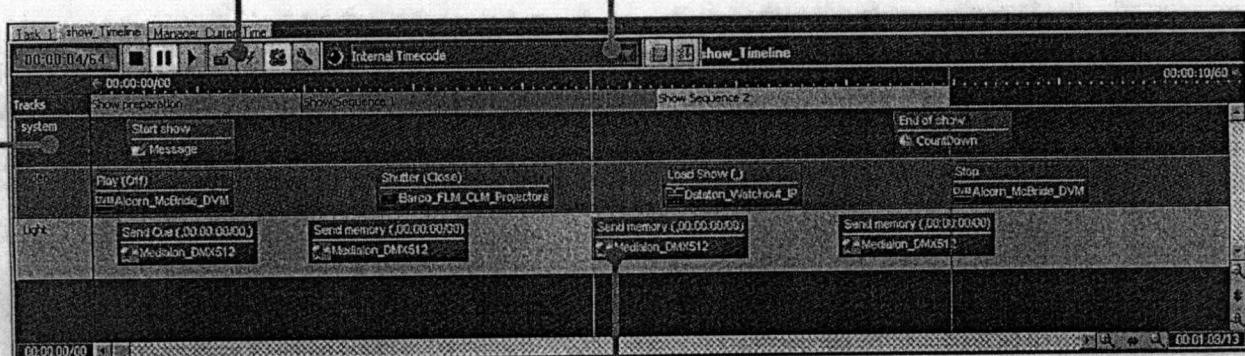


Medialon programming environment provides an **easy built-in graphical user interface tool** to create custom touch panels. These are published as **live web pages accessible from any device** with a web browser, including **PC, Mac, iPad, Android** and other tablet devices.

MEDIALON CONTROL SYSTEM'S TIMELINE

Timeline can be started, paused, locked. There can be **as many timelines as necessary**.

The timeline can be **synchronized** to an external time reference or running following its own internal time code.



Each command to be sent to a device is programmed by drag & dropping a cue on a track. There can be **as many tracks as necessary**.

Each command can be programmed exactly and is executed when the time bar passes it. Commands can be positioned and executed with an **accuracy of 100th/sec.**

Part Number

MNG_V6	Manager V6 PRO - Professional full version with no restriction and with 10 Web Panels
MNG_V6L	Manager V6 LITE - Edition limited to one timeline and to 2 Web Panels
W10_BM	Batch of 10 additional simultaneous Web Panel connections for Manager
MNG_PANEL	Manager PANEL - FREE edition reserved to touch screen edition

Control Protocol Supported

Network	Ethernet (TCP/IP, UDP)
Serial	Up to 256 internal or external serial ports
MIDI	MIDI Show Control, MIDI Machine Control
DMX 512	Up to 4096 channels internal, unlimited external, Artnet
Time code	Synchronization and generation
I/O	Relay and sensors
Infrared	Philips Protocol
Driver writing tool	Built-in TCP/IP serial and MIDI driver

Interface Hardware Supported (non exhaustive)

AMX	Serial, I/O, Infrared, (Touchpanel)
Moxa	Serial
Opto22	I/O
Adlink	I/O
Redrat	Infrared
Kiss-Box	MIDI, DMX 512, I/O
Soundlight	DMX 512
Artnet	DMX 512
Medialon PCI	DMX, I/O, Serial
Windows®	Serial

Multitasking Kernel

Several tasks can run simultaneously in synchronization or separately. Possibility of task programming while running in debug mode. Native network interconnection through TCP/IP. Unlimited number of tasks.

Logical Programming Capabilities

Variables Type:	Integer, String, Time, Date, Enum. Unlimited number of variables
Operators	+, -, *, /, %, ^, =, ==, !=, >, <, >=, <=, , &, #, ()
Functions	Hours, Minutes, Seconds, Frames, Day, Day Of The Week As Name, Day Of The Week As Number, Month, Year, Lower Case, Upper Case, Length, Char At, Get Field Of Enum, Get Index Of Enum, Random, Sqrt, Round, Ceil, Floor, Abs, Max, Min, Sin, Asin, Tan, Atan, Cos, Acos, Ln, Log, Exp

Show Control Capabilities

Show synch.	Task programming through Timeline Tasks
Accuracy	One hundredth of a second time-based task synchronization accuracy with position tracking of controlled devices
Time Code	24, 25, 30, 30DP, and 100 fps base time supported. User defined or automatic type selected
Cue Recording	DMX, MIDI, Serial

Human Interface Design Tools

User' screen design tool, buttons, sliders, bar graphs, video return windows, LEDs, text fields, picture import

Server Capabilities

TCP/IP server and client plug-ins
Link to SQL database
Act as server for other Medialon Manager software

Hardware Requirements

Windows Vista, Windows XP Pro, Windows 7 (32 bits)
Pentium IV minimum
256 RAM (512 recommended)
XGA video card, 20GB hard disk
TCP/IP, PCI Slots if DMX, RS or Time Code card used

MEDIALON Inc.

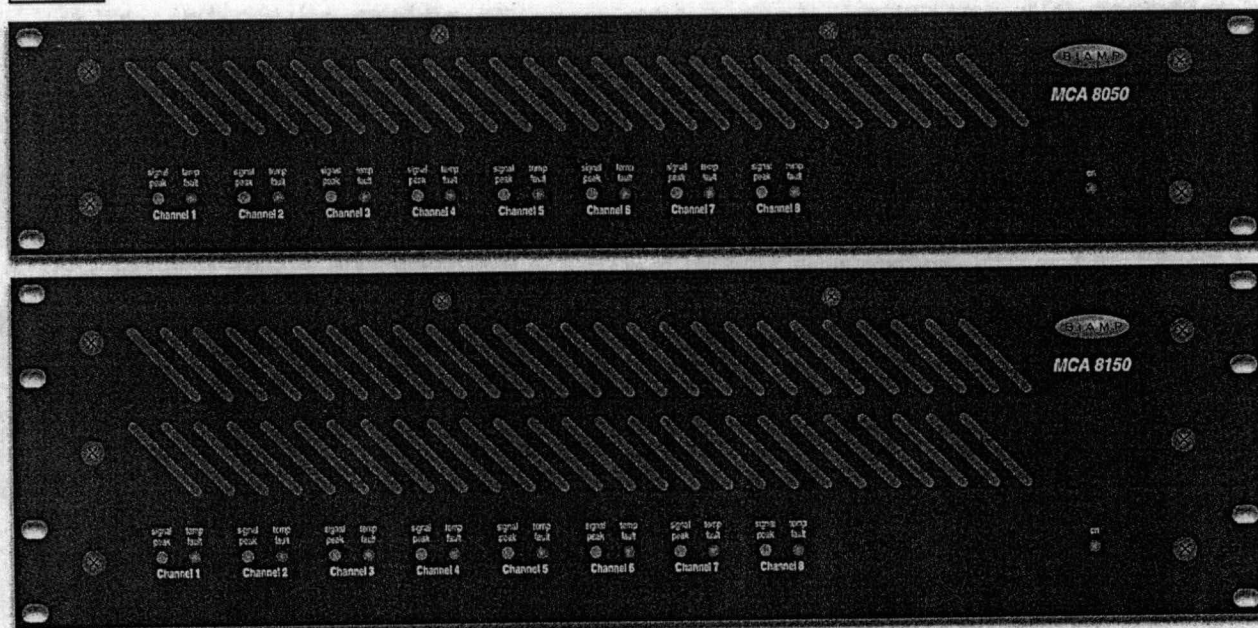
245 Catalonia Avenue
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Tel.: +1 305 445 4045
Fax: +1 305 445 4048

MEDIALON

101 rue Pierre Séward
F 92324 Châtillon Cedex, France
Tel.: +33 (0)1 46 55 60 70
Fax: +33 (0)1 46 55 54 83
www.medialon.com



MCA Series Multi-Channel Amplifiers



MCA Series Multi-Channel Amplifiers provide eight channels of power amplification. Model MCA 8050 delivers 50 watts/channel into 4 ohms. Model MCA 8150 delivers 150 watts/channel into 4 ohms. Channels may be bridged in pairs for higher combined wattage. Connections are provided for remote control of channel levels & muting. MCA Series amplifiers are covered by a five-year warranty.

FEATURES

- 8 channels of 50W (MCA 8050) or 150W (MCA 8150)
- channels may be bridged in pairs for combined power
- terminals for remote control of channel levels/muting
- balanced line-level inputs on plug-in barrier strips
- rear panel level controls & high-pass filter switches
- amplifier outputs on screw-terminal connectors
- dual-color signal/peak indicators on front & rear panels
- front panel indicators for amplifier temp/load faults
- fan cooled with complete output/speaker protection
- optional transformers for 25/70/100 Volt systems
- RoHS compliance and AES grounding practices
- CE marked & UL / C-UL listed
- CCC certified
- covered by Biamp Systems' five-year warranty

ARCHITECTS & ENGINEERS SPECIFICATION

The multi-channel amplifier shall provide eight individual channels of power amplification, in two different models. One model shall deliver 50 watts/channel into 4 ohms, with channels bridgeable in pairs to provide 100 watts into 8 ohms. The other model shall deliver 150 watts/channel into 4 ohms, with channels bridgeable in pairs to provide 300 watts into 8 ohms. Connections shall be provided for remote control of individual channel levels & muting, via external potentiometers & switches. Channel inputs shall be line-level, with connections provided on plug-in barrier strips. Channel amplifier outputs shall be provided on standard screw terminals.

Each channel shall include LED indication of signal presence, output clipping, over-temperature condition, and output fault condition. Each channel shall include complete self re-setting protection against short-circuit, improper load, and over-temperature conditions. Input level controls & high-pass filter switches shall be provided on each channel. Internally mounted transformers for distributed speaker systems shall be available as a user-installed option, for both individual channel & bridged-pair outputs.

Frequency Response shall be +0/-1dB, THD+N shall be less than 0.2%, and S/N Ratio shall be greater than 85dB (20Hz~20kHz @ rated power). Power Consumption shall be less than 900 Watts (50 watt/channel model) or 1800 Watts (150 watt/channel model). The amplifier shall be CE marked, UL / C-UL listed, and shall incorporate AES48-2005 Grounding & EMC practices. The mixer shall be compliant with EU Directive 2002/95/EC, the RoHS directive. The amplifier shall carry a five-year warranty.

The 50 Watt / channel model shall be a BIAMP MCA 8050.

The 150 Watt / channel model shall be a BIAMP MCA 8150.

BIAMP

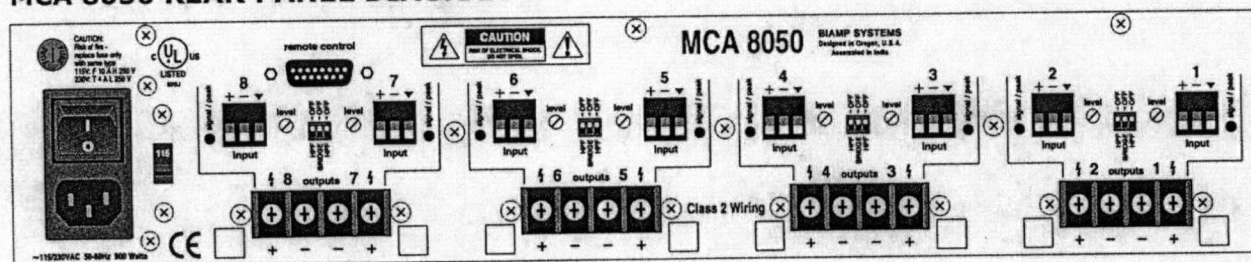
MCA 8050 SPECIFICATIONS

Maximum Power Output (@ 2kHz):	
individual channel into 4 ohm load	50 watts/channel
individual channel into 8 ohm load	30 watts/channel
bridged channels into 8 ohm load	100 watts
Signal-to-Noise Ratio (20Hz~20kHz @ rated power):	> 85dB
THD + Noise (20Hz~20kHz @ rated power):	< 0.2%
Intermodulation Distortion (SMPTE):	< 0.35%
Frequency Response (20Hz~20kHz):	+0/-1dB
Input Impedance:	
balanced	20k ohms
unbalanced	10k ohms
Input Sensitivity:	0.775 Vrms (0dBu)
Channel High-Pass Filters:	12dB/octave @ 120Hz
Power Requirements:	115/230VAC 50/60Hz
Power Consumption:	900 watts max.
Dimensions:	
height (2 rack spaces)	3.5 inches (89mm)
width	19 inches (483mm)
depth	15.5 inches (394mm)
Weight:	30 lbs. (13.6kg)
Compliance:	
AES48-2005 Grounding & EMC practices	
EU Directive 2002/95/EC, RoHS directive	
CE marked	
UL / C-UL listed	
CCC Certified	

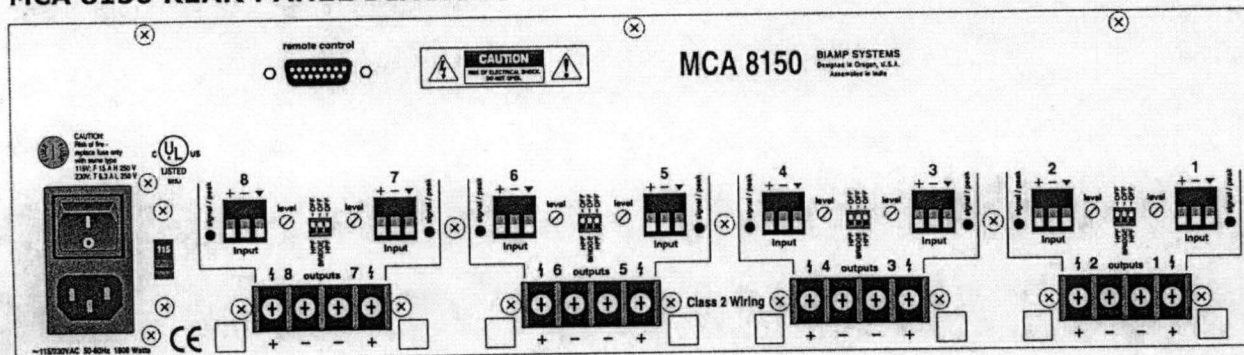
MCA 8150 SPECIFICATIONS

Maximum Power Output (@ 2kHz):	
individual channel into 4 ohm load	150 watts/channel
individual channel into 8 ohm load	90 watts/channel
bridged channels into 8 ohm load	300 watts
Signal-to-Noise Ratio (20Hz~20kHz @ rated power):	> 85dB
THD + Noise (20Hz~20kHz @ rated power):	< 0.2%
Intermodulation Distortion (SMPTE):	< 0.35%
Frequency Response (20Hz~20kHz):	+0/-1dB
Input Impedance:	
balanced	20k ohms
unbalanced	10k ohms
Input Sensitivity:	0.775 Vrms (0dBu)
Channel High-Pass Filters:	12dB/octave @ 120Hz
Power Requirements:	115/230VAC 50/60Hz
Power Consumption:	1800 watts max.
Dimensions:	
height (3 rack spaces)	5.25 inches (133mm)
width	19 inches (483mm)
depth	15.5 inches (394mm)
Weight:	35 lbs. (15.9kg)
Compliance:	
AES48-2005 Grounding & EMC practices	
EU Directive 2002/95/EC, RoHS directive	
CE marked	
UL / C-UL listed	
CCC Certified	

MCA 8050 REAR PANEL DIAGRAM



MCA 8150 REAR PANEL DIAGRAM





Large-Area FM Assisted Listening System



DISCLAIMER: FCC rules limit use of this equipment to auditory assistance.

[THE PROFESSIONAL'S CHOICE FOR HEARING ASSISTANCE]

NEW The Personal PA® 377 PRO ensures people in your facility receive direct, clear communication of your message. Push-button menu controls make the system easy to set up and use. With professional sound features and an operating range of up to 1000 feet, the PPA 377 PRO is ideal for large venues where superior coverage is essential. This complete turnkey solution offers the same great features as

the Personal PA 377--plus the convenience of (1) ANT 005 coaxial antenna and (1) RPK 005 Rack Panel Kit for professional installation. The PPA 377 PRO is expandable, accommodating any number of listeners. The system meets ADA (Americans with Disabilities Act) requirements and is covered by an industry-leading 5-year warranty.*

*90 days on accessories.

SYSTEM INCLUDES

- (1) T35 Transmitter
- (4) NEW PPA Select™ Receivers (PPA R37)*--each featuring seek-button channel selection with access to 17 pre-set wideband frequencies between 72-76 MHz
- (4) EAR 013 Earphones
- (1) ANT 005 Coaxial Antenna
- (1) WCA 013 Audio Cable
- (1) TFP 016 Power Supply
- (1) RPK 005 Rack Panel Kit
- (1) IDP 008 ADA Wall Plaque
- (8) BAT 001 AA Alkaline Batteries

*Optional 8-channel receivers (PPA R35-8N) are available for multi-channel applications.



PPA R37

APPLICATIONS

- Cinemas
- Houses of Worship
- Schools
- Auditoriums
- Theaters
- Conferences
- Stadiums

FEATURES

- Digital Display
- 17 Wideband Channels
- Push-Button Menu Controls
- Self-monitoring startup
- Accommodates any number of listeners



WILLIAMS SOUND®
HELPING PEOPLE HEAR



THE WORLD LEADER IN
POWER CONDITIONING TECHNOLOGIES



SX1120RT

SURGE ELIMINATOR & POWER CONDITIONER

- Advanced *Series Mode*® Surge Protection
- *SurgeX ICE*® Inrush Current Elimination
- *Impedance Tolerant*® EMI/RFI Filtering
- *COUVS*® Catastrophic Over/Under-Voltage Shutdown

The SX1120RT has remote control capability for use in AC power distribution systems and can be interfaced with a sequential controller such as the SurgeX SEQ. Switched receptacles can be controlled with an Switched receptacles can be controlled with an applied voltage (5-30 vdc) or contact closure switch connected to the Phoenix connector on the back panel. The connector can also be used to cascade multiple units or provide status to a central controller.

The SX1120RT provides guaranteed surge protection and power conditioning for audio, video, broadcast and computer equipment. The units are 20-amp load-capable and have 8 industrial grade grounded AC receptacles (6 switched, 2 always on) plus a front-panel courtesy receptacle.

The unit features both common mode and normal mode *Impedance Tolerant* EMI/RFI filtering,

SurgeX ICE -Inrush Current Elimination and *COUVS* -Catastrophic Over/Under Voltage Shutdown for a complete power conditioning solution.

SurgeX Advanced *Series Mode* technology is superior to conventional MOV circuitry or MOV-Hybrid designs and is completely non-sacrificial. Our zero let-through technology provides the most reliable protection available. It stops all surges up to 6,000 volts (unlimited surge current) without producing harmful side effects such as ground contamination or common-mode disturbances.



COUVS
SURGEX ICE
Inrush Current Elimination

SURGEX®

Professional AC Power Products

www.surgex.com

10-YEAR WARRANTY

SX1120RT

SURGE ELIMINATOR & POWER CONDITIONER

- Advanced *Series Mode*® Surge Protection
- *SurgeX ICE*® Inrush Current Elimination
- *Impedance Tolerant*® EMI/RFI Filtering
- *COUVS*® Catastrophic Over/Under-Voltage Shutdown

SPECIFICATIONS

Load Rating: 20 amps @ 120 volts.

Power Requirement (no load): 15 watts.

Surge Let-Through Voltage (6000-volt surge):
0 volts.

UL 1449 Adjunct Classification Test Results: 1000 surges, 6000 volts, 3000 amps, B3 pulse; Measured suppressed voltage: 170 volts; no failures.

Federal Guidelines: Grade A, Class 1, Mode 1 (CID A-A-55818).

EMI/RFI Filter, Normal Mode (50-ohm load): 40 dB @ 100 kHz; 50 dB @ 300 kHz; 50 dB @ 3 MHz; 50 dB @ 30 MHz

EMI/RFI Filter, Common Mode (50-ohm load): 18 dB @ 300 kHz; 30 dB @ 1 MHz; 50 dB @ 5 MHz; 50 dB @ 20 MHz

Maximum Applied Surge Voltage: 6000 volts.*

Maximum Applied Surge Current: Unlimited, due to current limiting.*

Maximum Applied Surge Energy: Unlimited, due to current limiting.*

Endurance (C62.41-1991 Category B3 pulses): 1 kV>500,000; 3 kV>10,000; 6 kV>1000.

Undervoltage Shutdown: 90 volts (resume at 100 v)

Overvoltage Shutdown: 145 volts (resume at 135 v)

Maximum Load Inrush Current During Power-up: 1000 Joules

Remote Turn-on Applied Voltage Range: 5 to 30 volts DC

Remote Turn-on Current Draw:

 Contact Closure: 1.5 mA

 5 V DC Applied Voltage: 0.1 mA

 12 V DC Applied Voltage: 1.5 mA

 24 V DC Applied Voltage: 5.0 mA

Auxiliary Relay Contact Rating: 30 Volts at 1 Amp

LED Output: 12 volts DC, maximum 20 mA (resistor required)

Dimensions: 1.75" H x 19" W x 10.5" D
(4.5 x 48.3 x 26.7 cm)

Weight: 11 lbs (5.0 kg)

Temperature Range: 5° to 35° C

Humidity Range: 5% to 95% R.H., non-condensing.

Agency Listings: ETL and cETL (UL 1449, 2nd edition; CSA C22.2 No.8-M1986, R2000)

*1.2 x 50 µs pulse, industry standard combination wave surge, as per IEEE C62.41.

TECHNICAL DESCRIPTION

The SX1120RT shall be a one-rack-space unit in a magnetic shielding steel enclosure. It shall operate from 120 volts AC and have a 9-foot, grounded, 3-wire #12 line cord. There shall be 8 grounded AC receptacles on the back panel, with 6 switched and 2 always on. The unit shall have a front-panel courtesy receptacle and remote-control capability with a visual indicator. Overall dimensions shall be 1.75" H x 19" W x 10.5" D. Weight shall be 11 pounds.

The SX1120RT shall have a load rating of 20 amps at 120 volts, a self-test circuit with visual indicator, and provide EMI/RFI filtering, inrush current elimination and catastrophic over/under-voltage shutdown. It shall meet Federal Grade A, Class 1, Mode 1 guidelines for powerline surge suppressors and withstand at least 1000 occurrences of surge pulse voltages up to 6000 volts.

FEATURES

- Magnetic shielding steel enclosure
- 9' grounded 3-wire #12 line cord
- 8 grounded AC receptacles on rear panel (6 switched, 2 always on)
- Front panel courtesy receptacle
- Advanced *Series Mode* surge protection
- Advanced *Impedance Tolerant* EMI/RFI filtering
- *SurgeX ICE* inrush current elimination technology
- *COUVS* catastrophic over/under-voltage shutdown
- Remote turn-on
- Thermal circuit breaker overload protection
- Self-test circuit with visual indicator
- 10-year warranty
- Made in U.S.A.

BIS Digital Inc.
800-834-7674
sales@bisdigital.com
www.bisdigital.com

SURGEX®
Professional AC Power Products

6131 Kellers Church Road • Pipersville, PA 18947
PH 215-766-1240 • FAX 215-766-9202
www.surgex.com

**NO
MOVs**



Specifications subject to change without notice. *SurgeX* is a division of New Frontier Electronics Inc.

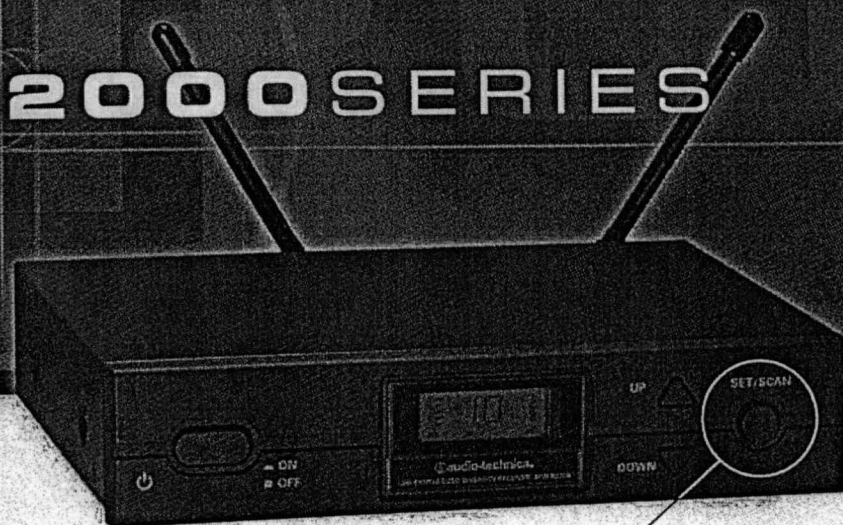
This product, including its components and/or processes carried out thereby, are covered by one or more of the following:
U.S. Pat. No. 4,870,534; 4,870,526; 6,728,089; 6,744,613; 7,068,487. Can. Pat. No. 1,333,191; 1,332,439. Other Patents Pending.

FREQUENCY-AGILE TRUE DIVERSITY UHF WIRELESS SYSTEMS

ATW-2110 UniPak™ Transmitter System

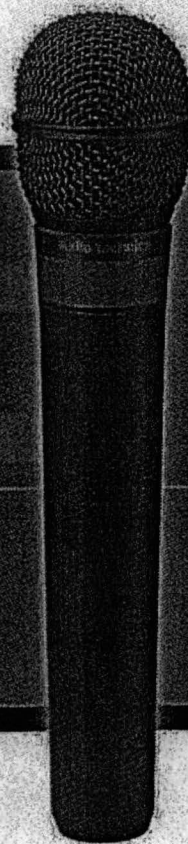
ATW-2120 Handheld Dynamic Microphone System

2000 SERIES



ATW-R2100

Automatic Frequency Scanning



ATW-T220



ATW-T210

SERIOUS ADVANCES IN AFFORDABLE WIRELESS

Audio-Technica's innovative 2000 Series wireless delivers professional performance unheard of in its class. With this breakthrough series, Audio-Technica makes easy setup, automatic scanning and other advanced wireless features affordable as never before.

Automatic frequency scanning—standard on all 2000 Series wireless receivers—finds and sets the best available channel at the touch of a button. For those using multiple wireless systems simultaneously, the 2000 Series offers another ease-of-use standout: any of its 10 channels may be used together—eliminating confusing frequency groups and other frequency-coordination problems.

SYSTEM FEATURES

- Clear sound quality and rock-solid, dependable performance
- Automatic frequency scanning finds an open channel at the touch of a button
- All 10 user-switchable channels are compatible—for easy use with multiple systems; no confusing frequency groups
- True Diversity operation selects the better signal from the two receiver sections, reducing dropouts
- Tone Lock™ tone squelch system fights interference
- Rugged metal half-rack receiver with soft-touch controls and LCD display featuring RF and AF metering
- Balanced XLR and unbalanced 1/4" output jacks enable use with a wide variety of audio gear
- Includes rack-mount kit and detachable UHF antennas
- Ground-lift switch helps eliminate audible hum caused by ground loops between the sound system and receiver
- ATW-T220 Handheld Microphone/Transmitter features PRO 41 capsule for maximum feedback rejection and consistent sound

 **audio-technica.**
always listening™

2000 SERIES

Specifications†

Overall System

Operating Frequency	UHF band, 656.125 to 678.500 MHz
Number of Channels	10 total
Frequency Stability	±0.005%, Phase Lock Loop frequency control
Modulation Mode	FM
Normal Deviation	±5 kHz
Operating Range	300' typical
Operating Temperature Range	41° F (5° C) to 113° F (45° C)
Frequency Response	100 Hz to 15 kHz

ATW-R2100 Receiver

Receiving System	Dual independent receivers, automatic-switching diversity
Image Rejection	55 dB nominal, 50 dB minimum
Signal-to-noise Ratio	>100 dB at 40 kHz deviation (A-weighted), maximum modulation 40 kHz
Total Harmonic Distortion	<1% (±10 kHz deviation at 1 kHz)
Sensitivity	20 dBµV (S/N 60 dB at 5 kHz deviation, IEC-weighted)
Intermediate Frequency	65.75 MHz, 10.7 MHz
Audio Output (AF Level set at "0")	
Unbalanced:	25 mV (at 1kHz, ±5 kHz deviation, 100k ohm load)
Balanced:	12.5 mV (at 1kHz, ±5 kHz deviation, 100k ohm load)
Output Connectors	
Unbalanced:	1/4" phone jack
Balanced:	XLRM-type
Power Supply	120V AC 60 Hz, or 12-18V DC, 350 mA, with external supply
Dimensions	8.27" (210.0 mm) W x 1.73" (44.0 mm) H x 6.39" (162.2 mm) D
Weight	2.2 lbs (1.0 kg)
Accessories Included	Two flexible UHF antennas, rack-mount adapters, AC adapter

ATW-T210 UniPak™ Transmitter

RF Power Output	12 mW
Spurious Emissions	Under federal regulations
Input Connections	High impedance, low impedance, bias
Batteries (not included)	Two 1.5V AA alkaline
Current Consumption	150 mA typical
Battery Life	Approximately 9 hours (depending on battery type and use pattern)
Dimensions	2.60" (66.0 mm) W x 3.63" (92.3 mm) H x 0.89" (22.5 mm) D
Net Weight (without batteries)	2.82 oz (80 g)

ATW-T220 Handheld Transmitter

RF Power Output	12 mW
Spurious Emissions	Under federal regulations
Microphone Element	Dynamic, unidirectional
Batteries (not included)	Two 1.5V AA alkaline
Current Consumption	150 mA typical
Battery Life	Approximately 9 hours (depending on battery type and use pattern)
Dimensions	9.02" (229.0 mm) long, 2.11" (53.5 mm) max. dia.
Net Weight (without batteries)	7.81 oz (221.5 g)
Accessory Included	AT8456a Quiet-Flex™ stand clamp

† In the interest of standards development, A.T.U.S. offers full details on its test methods to other industry professionals on request.

Specifications are subject to change without notice.

Wireless Essentials™ Microphones and Cables

All Wireless Essentials accessories are terminated for use with all A-T UniPak™ transmitters.

AT829cW	Miniature cardioid condenser lavalier microphone.
MT830cW	Miniature omnidirectional condenser lavalier microphone.
MT830cW-TH	"Theater" model, same as MT830cW except beige color mic and cable.
AT831cW	Miniature cardioid condenser lavalier microphone.
AT889cW	Headworn noise-canceling condenser microphone.
AT892cW	MicroSet® headworn omnidirectional condenser microphone.
AT892cW-CO	Same as AT892cW except cocoa color mic, earset and cable.
AT892cW-TH	"Theater" model, same as AT892cW except beige color mic, earset and cable.
AT898cW	Subminiature cardioid condenser lavalier microphone.

AT899cW	Subminiature omnidirectional condenser lavalier microphone.
AT899cW-TH	"Theater" model, same as AT899cW except beige color mic and cable.
ATM35cW	Cardioid condenser instrument microphone.
ATM73cW	Headworn cardioid condenser microphone.
ATM75cW	Headworn cardioid condenser microphone.
PRO 8HEcW	Headworn hypercardioid dynamic microphone.
PRO 35xcW	Cardioid condenser instrument microphone.
U851cW	Cardioid condenser boundary microphone.
U857ALcW	Cardioid condenser gooseneck microphone. Mounts to 3/8"-27 thread.
AT-GCW	Hi-Z instrument/guitar cable with 1/4" phone plug.
XLRW	Connecting cable for UniPak transmitter with an XLR-type input connector, for Lo-Z microphones with XLRM-type output terminations.

BIAMP

SYSTEMS

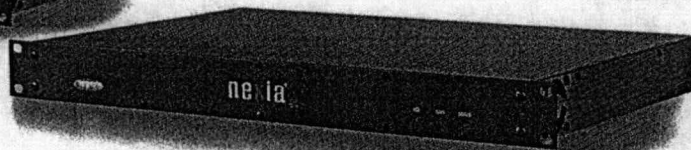
PROFESSIONAL AUDIO SYSTEMS

THE NEW NEXIA VC AND NEXIA TC DIGITAL SIGNAL PROCESSORS.
WITH BUILT-IN WIDE-BAND ACOUSTIC ECHO CANCELLATION.

nexia^{TC}



nexia^{VC}



WHEN BIAMP LAUNCHED NEXIA, it was hailed as one of the coolest products of the year. Now, we've done it again — with Nexia VC and Nexia TC. These intuitive, network-ready processors provide a full range of audio routing and signal processing features, including full wide-band acoustic echo cancellation in single, economical, easy to install boxes.

Designed specifically to provide crisp, clear audio in any video-conferencing or teleconferencing application, these processors deliver true 20 Hz to 20 kHz bandwidth during multiple participant conversations.

"THE USE OF DISTANCE CONFERENCING ON BROADBAND FEEDS, VIDEOCONFERENCING WITH HIGH QUALITY CODECS AND THE USE OF VOIP, ALL DEMAND DEDICATED ACOUSTIC ECHO CANCELLATION."

Matt Czyzewski, Vice President of Technical Operations, Biamp Systems

Nexia VC and TC are economical, intuitive solutions for any audio or video network, and give integrators all the functionality of Biamp's Nexia, plus some of the flexibility of the Audia Digital Audio Platform — all in a single rackspace box. You'll save time, effort and, ultimately, money.

"WITH THE AEC2W ALGORITHM BUILT INTO NEXIA TC AND NEXIA VC, BIAMP CUSTOMERS NOW HAVE ONE OF THE MOST POWERFUL ACOUSTIC ECHO CANCELLATION SOLUTIONS AVAILABLE FOR CONFERENCING SYSTEMS."

Ralph Lockhart, President, Biamp Systems

Biamp Acoustic Echo Canceling. Clear Conferencing Advantages.
Our proprietary AEC2w algorithm is built into Nexia TC and Nexia VC. It provides all the highs and all the lows so conferences sound as natural as possible.

INDUSTRY AWARDS

NEXIA TC:

"Pick Hit Award,"
Sound & Video Contractor
InfoComm 2006

BIAMP AEC2w CARD:

Voted "Most Innovative
Audio/Videoconferencing
Product for 2006"
at *InfoComm*

NEW ACCESSORIES

VOLTAGE CONTROL

BOX (VCB) for Nexia
control with 4 pot. &
4 logic connections

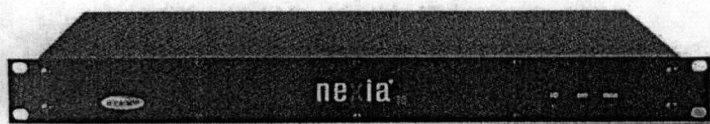
REMOTE CONTROL BUS HUB (RCB HUB)

for "multi-branch" wiring
of control network

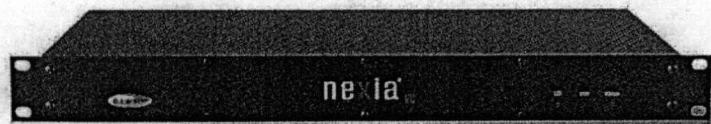
FOR MORE INFORMATION

www.biamp.com
800.826.1457

nexia[®] TC



nexia[®] VC



NEXIA TC – TELECONFERENCE DSP

Nexia TC is a digital signal processor with 8 wide-band AEC mic/line inputs, 2 standard mic/line inputs, 4 mic/line outputs, and a telephone interface. Intended for a variety of teleconferencing applications, Nexia TC includes a broad selection of audio components, routing options and signal processing.

The internal system design is completely user-definable via PC software, and can be controlled via dedicated software screens, RS-232 control systems, and/or a variety of optional remote control devices. Multi-unit Nexia systems can be created utilizing Ethernet and NexLink digital audio linking.

FEATURES:

- 8 wide-band AEC balanced mic/line inputs
- 2 standard balanced mic/line inputs
- 4 balanced mic/line outputs
- Telephone interface with line & set connections
- Ethernet port for software configuration/control
- Serial port for third-party RS-232 remote control
- Remote control bus for dedicated control panels
- NexLink ports for multi-unit system designs
- Nexia software for Windows[®] 2000/XP
- Pre-configured I/O with definable processing
- CE marked and UL listed
- Covered by Biamp Systems' five-year warranty
- Ability to select, view and calibrate: Mixers, Equalizers, Filters, Crossovers, Dynamics, Routers, Delays, Controls, Meters, Generators, Diagnostics.
- Telephone Interface capabilities include:
 - Initiation of outgoing calls
 - Detection and answering of incoming calls
 - Line echo cancellation
 - TouchTone[™] decoding
 - Caller ID reception
 - Call progress detection
 - Line intrusion detection
 - Continuous line status and fault monitoring

NEXIA VC – VIDEOCONFERENCE DSP

Nexia VC is a digital signal processor with 8 wide-band AEC mic/line inputs, 2 standard mic/line inputs, 4 mic/line outputs, and a codec interface. Intended for a variety of videoconferencing applications, Nexia VC includes a broad selection of audio components, routing options and signal processing.

The internal system design is completely user-definable via PC software, and can be controlled via dedicated software screens, RS-232 control systems, and/or a variety of optional remote control devices. Multi-unit Nexia systems can be created utilizing Ethernet and NexLink digital audio linking.

FEATURES:

- 8 wide-band AEC balanced mic/line inputs
- 2 standard balanced mic/line inputs
- 4 balanced mic/line outputs
- Codec interface with balanced line input & output
- Ethernet port for software configuration/control
- Serial port for third-party RS-232 remote control
- Remote control bus for dedicated control panels
- NexLink ports for multi-unit system designs
- Nexia software for Windows[®] 2000/XP
- Pre-configured I/O with definable processing
- CE marked and UL listed
- Covered by Biamp Systems' five-year warranty
- Ability to select, view and calibrate:
 - Mixers: standard, automatic, matrix, combiners
 - Equalizers: graphic, parametric, feedback
 - Filters: HPF, LPF, high shelf, low shelf, all-pass
 - Crossovers: 2-Way, 3-Way and 4-Way
 - Dynamics: leveler, comp/limiter, ducker, ANC
 - Routers: 2x1 ~ 32x32
 - Delays: 0 ~ 2000 ms
 - Controls: levels, presets, logic, RS-232, etc.
 - Meters: signal present, peak, RMS
 - Generators: tone, pink-noise, white-noise
 - Diagnostics: transfer function



Sony BDP-S380 Blu-ray Disc Player

With the Sony BDP-S380 Blu-ray Disc Player, you can enjoy full HD 1080p Blu-ray Disc™ movies plus connect to the internet. You can use the Sony BDP-S380 Blu-ray Disc Player to stream a wide variety of online entertainment, including movies, TV episodes, videos, music, and live sports from Netflix®, YouTube™, HuluPlus™, Pandora®. Also, download the free "Media remote" app and turn your iPhone®, iPad® or compatible Android™ phone into a versatile remote control with a full keyboard, so you can search and instantly access detailed movie information. The Sony BDP-S380 Blu-ray Disc Player allows you to start watching your movies faster than ever with the Quick Start/Load feature.

Specifications

Sony BDP-S380 Blu-ray Disc Player

- Type:
- Native Resolution:
- Connector(s):

- Playback Format:

- Decoder:

- Ports:
- Features:

Blu-Ray Player

1080p
USB
Composite Video
Component Video
HDMI
Coaxial Digital Audio
Ethernet Connection
CD-R/RW
JPEG
CD
MP3
WMA
DVD
DVD±R/RW
BD-R/RE
Blu-Ray
Dolby True-HD
Dolby Digital DTS HD
USB
Remote Control
WIFI
BD-Live
DVD Upconversion

EXECUTION OF OFFER

FOR

RFP 4983-12

Date: 5-7-12

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

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

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

This offer consists of pages number 1 through ____.

Offeror/ COMPANY: BIS Digital Inc.

SIGNATURE (INK): 

NAME: (TYPED/PRINTED) Jade Coldren

TITLE: National Sales Manager

STREET: 1350 NE 56th Street, suite 300

CITY/STATE/ZIP: Fort Lauderdale, FL 33334

TELEPHONE: 800-834-7674 FAX: 877-858-5611

E-MAIL ADDRESS: jade.coldren@bisdigital.com

EXHIBIT C

Bonding Requirements

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

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

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

EXHIBIT "D"

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

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

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

a under 5 years employment, 6% of BHR, over 5 years employment, 8%BHR.

Paid Holidays - New Year's Day, Memorial Day, Independence Day, Labor Day, Labor Day, Thanksgiving Day, The Friday after thanksgiving and Christmas Day.

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

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Paid Holidays - New Year's Day, Memorial Day, Independence Day, Labor Day, Labor Day, Thanksgiving Day, The Friday after thanksgiving and Christmas Day.

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



City Council Agenda

Approved for Agenda:
thudson
City Manager's Office

MEETING DATE: 6/12/2012

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving a contract and appropriating funds for windows at the Martin Luther King Jr. Community Center for the Parks Division. Bid 5040-12

Purpose:

Approve a resolution approving a contract and appropriating funds for windows at the Martin Luther King Jr. Community Center for the Parks Division.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$165,000 to be funded from the Martin Luther King, Jr. Community Center Renovations Project, General Fund Unappropriated Fund Balance and the General Construction Fund.

Discussion:

This project will add permanent window structures to the existing training room to protect it from outside elements (please refer to memo from Community Services Director Tina Jauz for more details.) Two bids were received for this item with RRC Construction from Midland Texas being the apparent low bidder. We recommend awarding the bid to RRC Construction and appropriating funds in the amount of \$165,000 for the windows at the Martin Luther King Jr. Community Center.

Therefore, please consider approval of a resolution approving a contract and appropriating funds in the amount of \$165,000.

RESOLUTION NO.

RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT WITH A RENDON RAMIREZ CORPORATION DBA RRC, OF LEANDER, TEXAS, FOR THE ADDITION OF WINDOWS AT THE MARTIN LUTHER KING JR. COMMUNITY CENTER TRAINING ROOM AT A COST OF \$165,000.00; AND APPROPRIATING FUNDS

WHEREAS, the City Manager approved plans and specifications and authorized the advertisement for bids for the addition of windows at the Martin Luther King Jr. Community Center training room (“Construction”); and

WHEREAS, A Rendon Ramirez Corporation dba RRC, of Leander, Texas, submitted the lowest and most responsible bid for said Construction in the total amount of \$165,000.00, as shown on the bid tabulation attached hereto as Exhibit “A” and incorporated herein for all legal purposes; and

WHEREAS, the City Council finds it to be in the public interest to execute a contract with A Rendon Ramirez Corporation dba RRC, for said Construction;

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

SECTION ONE. That the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a contract with A Rendon Ramirez Corporation dba RRC, for said Construction at a cost not to exceed \$165,000.00, said contract being on file in the office of the City Secretary, referenced by the date and number of this Resolution.

SECTION TWO. That the sum of \$37,366.00 is currently available in the 2009 GPCO Facilities Bond Fund (196) Community Services (090) MLK Center Renovations Project (8906).

SECTION THREE. That the sum of \$80,000.00 is hereby appropriated from the General Fund (001) Unappropriated Fund Balance (5650) to the MLK Center Renovations Project (8906).

SECTION FOUR. That the sum of \$47,634.00 is hereby allocated from the General Fund (001) Non-Departmental (150) Inter-fund Transfer (0199) General Construction Fund

(6299).

SECTION FIVE. That the City Treasurer is hereby authorized and directed to pay A Rendon Ramirez Corporation dba RRC, pursuant to the terms of said contract from funds appropriated herein upon receipt of proper invoices or statements approved by the City Manager.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, General Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

City of Midland - Bid Tabulation

BID # 5040-12			Windows at MLK Rebid			RRC Construction 5023 Princeton Ave, STE 5 Midland, TX 79703 Michael Ramirez (432) 618-9939			Onyx Contractors LP 1010 FM 1788 Midland, TX 79706 John Darnell (432) 561-8900		
OPENED May 23, 2012											
Est. Cost: \$100,000.00											
ITEM	QTY	DESCRIPTION	COST EA.	TOTAL	COST EA.	TOTAL					
1	1	Materials Portion Incorporated into Project	\$99,500.00	\$99,500.00	\$135,390.00	\$135,390.00					
2	1	Labor Portion Incorporated into Project	\$65,500.00	\$65,500.00	\$58,025.00	\$58,025.00					
3	1	Other Costs Not Incorporated into Project		included in cost		Included in cost					
		Job completed:		110 days							
		Total Proposal		\$165,000.00		\$193,415.00					

Bidding Summary:

3 Bid requests were issued.

2 Bids listed above

0 NO BIDS were received.

1 Bidders did not respond.
Mid-Tex of Midland

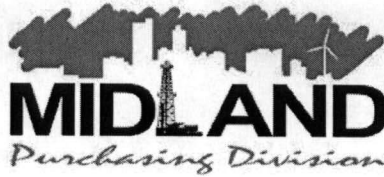
CITY OF MIDLAND
Community Services Department
Interoffice Memorandum

Date: May 29, 2012
To: Tommy Hudson, Deputy City Manager
From: Tina Jauz, Community Services Director
Subject: Award Bid for Windows at the MLKCC

The Parks and Recreation Division is seeking approval to award a contract for construction and addition of windows to the current training room at the Martin Luther King Jr. Community Center. The training room is the northern area of the building where the old indoor pool was located.

In order to keep water and debris out of the existing training room, the addition of a permanent window structure is necessary. In addition, this will allow for the structure to maintain ventilation, without having the expense of heating and cooling the respective area. The windows were not a part of the original design, however since opening, it is apparent the large area needs more protection from outside elements.

The total project will cost is \$165,000 with \$37,366 coming from the Martin Luther King, Jr. Community Center Renovations Project, \$80,000 from the Unappropriated Fund Balance, and \$47,633 from the operating budget, Grounds Maintenance. The sum of \$37,366 is currently available in the 2009 GPCO Facilities Bond Fund (196) Community Services (090) MLK Center Renovations Project (8906), and that the sum of \$80,000 is hereby appropriated from the General Fund (001) Unappropriated Fund Balance (5650) to the MLK Center Renovations Project (8906), and that the sum of \$47,634 is hereby allocated from the General Fund (001) NonDepartmental (150) Interfund Transfer (0199) General Construction Fund (6299).



THE CITY OF MIDLAND

CONTRACT

Contract No.5040-12

THIS CONTRACT, effective the 13th day of June, 2012, by and between the City of Midland, hereinafter referred to as the "Owner", and A Rendon Ramirez Corporation dba RRC Construction, hereinafter referred to as the "Contractor", is made for the following considerations:

1. **Cost:** Total Proposal: \$ 165,000 DOLLARS

2. **Scope of Work:** The Contractor shall perform all work described for labor, material, equipment and supervision necessary to remove existing chain link fence panels from window openings and provide and install sliding windows at the Martin Luther King, Jr. Community Center training room in the following documents, attached hereto and incorporated herein by reference for all legal purposes.

EXHIBIT A..... Specifications, Proposal or Cost Summary

EXHIBIT B..... Intentionally Omitted

EXHIBIT C..... Bonding instructions for Public Works Contract of \$50,000 and more

EXHIBIT D..... Wage Scale

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

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

to perform the work in accordance with the contract.

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

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

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

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

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

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

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

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

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

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

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

9. **Start of Work:** The Contractor shall commence work no later than ten (10) days after receipt of the execution of this document or other written release to proceed and shall complete such work no later than 110 calendar days after release to proceed.

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

9.1. TIME IS OF THE ESSENCE IN THIS CONTRACT.

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

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

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

12.1. Defective work not remedied; or

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

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

12.4. Damages to another contractor or subcontractor.

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

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

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

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

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

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

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

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

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

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

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

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

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

19. **Insurance**

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

Commercial General Liability (including Contractual liability):

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

-Property Damage: \$500,000.00 per occurrence

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

Worker's Compensation: Statutory limits

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

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

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

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

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

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

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

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

20. **Assignment:** Contractor shall not, either directly or indirectly, assign all or any part of this Contract or any interest, right or privilege herein, without the prior written consent of the Owner. The issue on whether or not to grant consent to an assignment is in the sole discretion of the Owner.

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

22. **Governing Law and Venue:** This Contract shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this Contract shall be deemed to have occurred in

Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this Contract or the performance of this Contract shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this Contract shall be deemed to have occurred in Midland County, Texas.

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

24. **Notice of Alleged Breach; Statutory Prerequisites:** As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Contract, Contractor or his legal representative, shall give the City Manager, or any other reasonable official of the Owner, notice in writing (consisting of one original and seven copies of notice attached to a copy of this Contract) of such damages, duly verified, within one-hundred twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which the Contractor will settle, the physical and mailing addresses of Contractor at the time and date the claim was presented and the physical and mailing addresses of Contractor for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Contractor relies to establish its claim; and a failure to so notify the City

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

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

25. **Consideration:** The terms of this Contract are supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties named herein.

Contract No: 5040-12

OWNER, City of Midland

CONTRACTOR

Courtney B. Sharp, City Manager

APPROVED AS TO FORM

Keith Stretcher, City Attorney

ATTEST

Amy M. Turner, City Secretary

Contractor Corporate Acknowledgment: Contract: Contract No.5040-12

STATE OF TEXAS §

§

COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared _____, an officer of A Rendon Ramirez Corporation dba RRC Construction, known to me to be the person and official whose name is subscribed to the forgoing instrument, and acknowledged to me that he executed the same as the act and deed of said corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the ____ day of _____, 2012.

Notary Public, State of Texas



**CITY OF MIDLAND
PURCHASING DIVISION
BID REQUEST**

DATE: 05-03-12

PAGE: 01

(THIS IS NOT AN ORDER)

BID NO: 5040-12

OPENING TIME: 11:00 AM

OPENING DATE: 05-23-12

CITY OF MIDLAND
300 NORTH LORAIN
P. O. BOX 1152
MIDLAND, TX 79702

BIDS WILL BE RECEIVED IN THE OFFICE OF THE City Secretary, Suite 330
UNTIL 11:00 A.M., 05-23-12 FOR GOODS AND SERVICES DESCRIBED BELOW WHICH WILL BE DELIVERED TO:
Martin Luther King Jr Community Center, 2300 Butternut, Midland, Texas

ITEM NO.	QTY	UNIT	DESCRIPTION	UNIT PRICE	AMOUNT
		1	Labor, material, equipment and supervision necessary to remove existing chain link fence panels from window openings and provide and install sliding windows at the Martin Luther King, Jr. Community Center in accordance with the attached proposal, specifications and contract. This is a re-bid of RFB 4684-12	165,000	
				TOTAL	165,000

NOTICE TO BIDDERS:

1. FAILURE TO RESPOND WITH EITHER A BID OR "NO BID" WILL SUBJECT YOUR FIRM TO REMOVAL FROM THE BID LIST FOR THIS TYPE OF MATERIAL, EQUIPMENT OR SUPPLY ITEM.
2. SEALED BIDS FAXED DIRECTLY TO THE CITY WILL BE REJECTED. FAX BIDS MAY BE SENT THROUGH A 3RD PARTY FOR SEALED DELIVERY TO THE CITY. PLEASE CALL FOR MORE INFORMATION.
3. THE CITY RESERVES THE RIGHT TO AWARD THIS PURCHASE TO THE NEXT LOW BIDDER. IF THIS PURCHASE REQUIRES A CONTRACT AND THE CONTRACTOR DOES NOT RETURN THE EXECUTED CONTRACT, BONDS AND AN INSURANCE CERTIFICATE WITH CORRECT ENDORSEMENTS **WITHIN 21 DAYS** OF THE DATE OF THE TRANSMITTAL LETTER, THIS PURCHASE WILL BE TAKEN BACK TO COUNCIL TO AWARD TO THE NEXT LOW BIDDER.
4. IF A CONTRACT IS REQUIRED, THE ATTACHED CONTRACT AND INSURANCE REQUIREMENTS ARE **NON-NEGOTIABLE**. CONTRACTOR MUST BE WILLING TO SIGN THE CONTRACT, AS IS, WITHOUT MODIFICATIONS AND PROVIDE AN INSURANCE CERTIFICATE WITH THE REQUESTED ENDORSEMENTS.

FOR ADDITIONAL INFORMATION, CONTACT (432) 685-7234 OR 685-7233. FAX NO. (432) 685-0523

NOTE: EACH BIDDER IS TO INDICATE BRAND NAME PRODUCT NUMBER AND ATTACH DESCRIPTIVE LITERATURE CLEARLY MARKED TO SHOW EACH ITEM ON THIS BID.

THE UNDERSIGNED HEREBY OFFERS TO FURNISH AND DELIVER THE ARTICLES OR SERVICE AS SPECIFIED ABOVE AT THE PRICES AND TERMS HEREIN STATED AND IN STRICT ACCORDANCE WITH THE SPECIFICATIONS AND CONDITIONS OF BIDDING ALL WHICH ARE MADE A PART OF THIS OFFER. THIS OFFER IS NOT SUBJECT TO WITHDRAWAL WITHOUT PERMISSION.

COMPANY NAME: RRC CONSTRUCTION
ADDRESS 5023 PRINCETON AVE STE 5
CITY MIDLAND ST TX ZIP 79703
PHONE NO. 612-9939 FAX NO. 612-0265
EMAIL: Michael.R@RRC-CONSTRUCTION.com

CASH DISCOUNT: 0 % 0 DAYS

DELIVERY CAN BE MADE _____

AUTHORIZED SIGNATURE _____

PLEASE READ CONDITIONS FOR BIDDING ON BACK BEFORE SUBMITTING

Exhibit "A"



RRC CONSTRUCTION
Contractor's Name

PROPOSAL Bid #5040-12

To: Purchasing Agent
City of Midland
Midland, Texas

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

Materials Portion Incorporated Into Project \$ 99,500 DOLLARS
Labor Portion Incorporated Into Project \$ 65,500 DOLLARS
Other Costs Not Incorporated Into Project 0 DOLLARS
Total Proposal \$ 165,000 DOLLARS

The undersigned bidder hereby declares that he has visited the site of the work and has carefully examined the Contract Documents pertaining to the work covered by the above bid and he further agrees to commence work within ten (10) days after the date of written notice to do so and to substantially complete same within 110 calendar days.

VENDOR CONTACT:

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

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

OR

FAX: (432) 685-0523

E-mail: purchasing@midlandtexas.gov

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

AWARD

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

BID WAIVERS:

A. **WAIVER OF ATTORNEY FEES:** BY SIGNING THIS PROPOSAL, BIDDER AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST THE OWNER, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE CONTRACT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE CONTRACT. THE BIDDER SPECIFICALLY AGREES THAT IF THE BIDDER BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS CONTRACT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS CONTRACT,

INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET. SEQ., AS AMENDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, THE BIDDER AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH BIDDER MIGHT OTHERWISE BE ENTITLED.

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

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

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

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

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

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

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

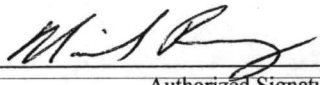
occurred, the apparent extent thereof, the amount of damages sustained, the amount for which the Bidder will settle, the physical and mailing addresses of Bidder at the time and date the claim was presented and the physical and mailing addresses of Bidder for the six months immediately preceding the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

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

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

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

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

<u>RRC CONSTRUCTION</u>	<u></u>	<u>(432) 608-9939</u>
Bidder	Authorized Signature	Telephone
<u>5023 PRINCETON AVE STE 5</u>	<u>Michael Ramirez</u>	<u>(432) 608-0205</u>
Address, City and State	Please Print above Name	Fax

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

- ☒ PROOF OF AUTOMOBILE, WORKER'S COMPENSATION AND GENERAL LIABILITY INSURANCE COVERAGE AS REQUIRED BY THE TERMS OF THE CONTRACT. (Upon award and prior to execution of the contract The City of Midland will have to be added to the policy as an additional insured and a certificate issued reflecting that provision) including a waiver of subrogation as stated in the contract)
- ☒ 5% BID BOND FOR CONTRACTS IN AMOUNTS OF \$50,000 OR MORE. (ONLY WHEN EXHIBIT "C" IS INCLUDED IN THE CONTRACT). * THE SUCCESSFUL BIDDER SHALL BE REQUIRED TO PROVIDE A PAYMENT BOND FOR BIDS IN EXCESS OF \$50,000 AND A PERFORMANCE BOND FOR BIDS OVER \$100,000. IF BOND FORMS WERE NOT INCLUDED, THEY MAY BE OBTAINED FROM THE OFFICE OF THE PURCHASING AGENT. Call (432) 685-7234 for information.

PLEASE NOTE:

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

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

THE CITY OF MIDLAND SPECIFICATION

For
Addition of windows at the Martin Luther King Community Center

1. SCOPE:

Labor, material, equipment and supervision necessary to remove the existing chain link fencing in the training room and replace with sliding windows to allow for ventilation without having to heat and cool the respective area.

2. PURPOSE:

To keep water and debris out of the existing training room.

3. VENDOR CONTACT:

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

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

OR

FAX: (432)685-0523

Email: purchasing@midlandtexas.gov

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

4. DEFINITIONS

4.1. OWNER

City of Midland

4.2. CONTRACTOR

Successful Bidder

5. DOCUMENTS

Contract

Exhibit A - These specifications, Proposal or Cost Summary

Exhibit B – Intentionally Omitted

Exhibit C – Bonding Requirements

Exhibit D – Wage Schedule

6. REQUIREMENTS

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

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

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

6.2.3.3. Provide material and labor to install new 3 ½" heavy commercial horizontal sliding window

6.2.3.4. Provide labor and means to dispose of material at completion of project.

6.2.3.5. Provide equipment for demo of existing fencing

6.2.4. Energy Code minimum requirements for windows in non residential structures:

6.2.4.1. The frames shall have a *U* factor and the glazing shall have a maximum Solar Heat Gain Coefficient (SHGC)

6.2.4.2. Frame material other than metal: 0.65 *u* factor

6.2.4.3. Metal frame material – Curtainwall/Storefront 0.60 *u* factor

6.2.4.4. Metal frame material – Entrance door 0.90 *u* factor

6.2.4.5. Metal frame material – all others 0.65 *u* factor

6.2.4.6. SHGC – Based on projection factor (ratio of Distance measured horizontally from edge of overhang, eave, etc over Distance measured vertically from the bottom of the glazing to the underside of the overhang:

6.2.4.7. PF < 0.25 SHGC 0.25

6.2.4.8. PF = 0.25-0.50 SHGC 0.33

6.2.4.9. PF > 0.5 SHGC 0.40

7. SITE HOUSE KEEPING

Contractor shall be responsible for removal and disposal of all old material from City premises, trimmings and other debris as a result of the work included under this contract

8. SITE INSPECTION

Bidders are encouraged to visit each location where work is to be performed in order to fully assess the bid requirements. To schedule a site visit, please contact Kimberly Cornelsen at (432) 254-9960.

9. BID WAIVERS:

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

ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH BIDDER MIGHT OTHERWISE BE ENTITLED.

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

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

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

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

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

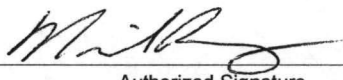
BY SUBMITTING A BID, THE BIDDER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN THE BIDDER AND THE CITY OF MIDLAND, TEXAS.

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

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

RRC Construction
Company Name

618-9939
Phone


Authorized Signature

618-0205
Fax

Michael Ramirez
Print Above Name

5/23/12
Date

EXHIBIT C

Bonding Requirements

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

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

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

PAYMENT BOND

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

SURETY'S NO. _____

KNOW ALL MEN BY THESE PRESENTS, THAT _____,

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

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

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

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

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

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

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

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

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

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

Principal

Surety

By _____

By _____

Address _____

Address _____

APPROVED AS TO FORM:

City Attorney

NOTE: ATTACH POWER OF ATTORNEY

PERFORMANCE BOND

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

SURETY'S NO. _____

KNOW ALL MEN BY THESE PRESENTS, THAT _____

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

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

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

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

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

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

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

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

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

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

Principal

Surety

By _____

By _____

Address _____

Address _____

APPROVED AS TO FORM:

City Attorney

NOTE: ATTACH POWER OF ATTORNEY

EXHIBIT "D"

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

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

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

a under 5 years employment, 6% of BHR, over 5 years employment, 8%BHR.

Paid Holidays - New Year's Day, Memorial Day, Independence Day, Labor Day, Labor Day, Thanksgiving Day, The Friday after thanksgiving and Christmas Day.

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



City Council Agenda

Approved for Agenda:
thudson
City Manager's Office

MEETING DATE: 6/12/2012

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving the purchase of LED traffic lights for the Transportation Division. Bid 5046-12

Purpose:

Approval of a resolution approving the purchase of LED traffic lights for the Transportation Division.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$85,666 from the General Fund.

Discussion:

Two bids for LED replacement lights were received from two bidders. Leotek Electronics USA Corp, located in Milpitas, California was the apparent lowest bid and we recommend purchasing these LED lights from Leotek Electronics USA Corp. These lights will be used by the transportation division to replace LED traffic lights within the City of Midland.

Therefore, please consider approval of a resolution authorizing the purchase of LED traffic lights from Leotek Electronics USA Corp of Milpitas, California in the amount of \$85,666.

RESOLUTION NO.

**RESOLUTION APPROVING THE PURCHASE OF LED
TRAFFIC LIGHTS IN ASSORTED CONFIGURATIONS
FROM LEOTEK ELECTRONICS USA CORPORATION,
AT A TOTAL COST OF \$85,666.00**

WHEREAS, the City Manager approved plans and specifications and authorized advertisement for bids for LED Traffic Lights in assorted configurations, as shown on the bid tabulation attached hereto as Exhibit “A” and incorporated herein for all legal purposes; and

WHEREAS, Bid No. 5046-12 was opened on May 23, 2012, with the lowest and most responsible bid being submitted from Leotek Electronics USA Corp., in the amount of \$85,666.00, also shown on Exhibit “A;”

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

SECTION ONE. That the City Manager is hereby authorized and directed to purchase the above listed LED Traffic Lights from Leotek Electronics USA Corp., at an estimated total price not to exceed \$85,666.00.

SECTION TWO. That the City Treasurer is hereby authorized and directed to pay Leotek Electronics USA Corp., for said LED Traffic Lights from funds available in the Fiscal Year 2011 – 2012 General Fund (001) Engineering Services (080) Traffic (0085) budget account upon proper receipt of invoices or statements approved by the City Manager.

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

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, General Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

City of Midland - Bid Tabulation

BID # 5046-12 LED Traffic Lights OPENED May 23, 2012 Est. Cost:			Leotek Electronics USA Corp 726 S Hillview Drive Milpitas, CA 95035 Meg Meyers (408) 380-1788		Republic Intelligent Transportation Service, Inc 2725 114th Street Grand Prairie, TX 75050 Christopher J. Romero (817) 633-6300	
ITEM	QTY	DESCRIPTION	COST EA.	TOTAL	COST EA.	TOTAL
1	1455	TSL-12R-LX-IL3-A 1 Red 12" LED	\$21.00	\$30,555.00	\$29.00	\$42,195.00
		Brand Name/Model #:	Leotek/TSL-12R-LX-IL6-A1-P2		Dialight/433-1210-003XL	
2	100	TSL-12Y-LX-IL3-A1 Yellow 12" LED	\$31.00	\$3,100.00	\$35.00	\$3,500.00
		Brand Name/Model #:	Leotek/TSL-12Y-LX-IL6-A1-P2		Dialight/433-3230-001XL	
3	1455	TSL-12G-LX-IL3-A1 Green 12" LED	\$23.40	\$34,047.00	\$27.00	\$39,285.00
		Brand Name/Model #:	Leotek/TSL-12G-LX-IL6-A1-P2		Dialight/433-2220-001XL	
4	50	TSL-12YA-IL3-A1 Yellow Arrow 12" LED	\$26.00	\$1,300.00	\$35.00	\$1,750.00
		Brand Name/Model #:	Leotek/TSL-12YA-IL6-A1		Dialight/431-3334-901XODTE	
5	50	TSL-12GA-IL3-AL Green Arrow 12" LED	\$28.00	\$1,400.00	\$36.00	\$1,800.00
		Brand Name/Model #:	Leotek/TSL-12GA-IL6-A1		Dialight/432-2324-001XODTE	
6	100	TP-16H-CD-LED Full Hnd/Man Symbol CD PED	\$97.00	\$9,700.00	\$123.00	\$12,300.00
		Brand Name/Model #:	Leotek/TSL-PED-16-CIL-9		Dialight/430-6479-001X	
7	50	TSL-12Y-IL1-B1 12" VDC Yellow LED	\$30.00	\$1,500.00	\$83.00	\$4,150.00
		Brand Name/Model #:	Leotek/TSL-12Y-LX-IL3-B1		Dialight/433-3230-905XL	
8	10	TSL-12R-MG-B1 12" VDC Red LED	\$35.00	\$350.00	\$69.00	\$690.00
		Brand Name/Model #:	Leotek/TSL-12R-LX-IL3-B1		Dialight/P463R33003	
9	30	T05R-A-6100 5" LED Red	\$38.00	\$1,140.00	\$50.00	\$1,500.00
		Brand Name/Model #:	Leotek/T05R-A-6100		Dialight/P463R33003	
10	30	T05Y-A-6100 5" LED Yellow	\$39.00	\$1,170.00	\$50.00	\$1,500.00
		Brand Name/Model #:	Leotek/T05Y-A-6100		Dialight/P463Y33003	
11	30	T05G-A-6100 5" LED Green	\$46.80	\$1,404.00	\$65.00	\$1,950.00
		Brand Name/Model #:	Leotek/T05G-A-CA01		Dialight/P463G33003	
		Delivery	Included			\$697.00
			30-45 Days ARO		30-45 Days ARO	
					*Product must be prequalified Product List (QPL)	
					for T0-7057ITE 12" (300mm) LED Traffic	
					Single Lamp Unit	
TOTALS:				\$85,666.00		\$111,317.00

Bidding Summary:

6 Bid requests were issued.

2 Bids listed above

0 NO BIDS were received.

4 Bidders did not respond.

Consolidated Traffic, Siemens ITS, Centerline Supply, OMJC Signal



City Council Agenda

Approved for Agenda:
thudson
City Manager's Office

MEETING DATE: 6/12/2012

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving the purchase of an asphalt distributor body for the Garage Division. Bid 5072-12

Purpose:

Approval of a resolution authorizing the purchase of an asphalt distributor body for the Garage Division.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$94,500 from the Garage Fund.

Discussion:

A single bid was received for this item from Yellowhouse Machinery Co. in Odessa Texas. We recommend purchasing the 2012 Etnyre Centennial Asphalt Distributor including installation on an existing City owned 2012 International Cab & Chassis. This Distributor will be utilized by the Transportation division to maintain pavement for the City of Midland.

Therefore, please consider approval of a resolution authorizing the purchase of an asphalt distributor from Yellowhouse Machinery Co. in the amount of \$94,500.

RESOLUTION NO.

**RESOLUTION APPROVING THE PURCHASE OF ONE
(1) ASPHALT DISTRIBUTOR BODY FROM
YELLOWHOUSE MACHINERY COMPANY, OF
ODESSA, TEXAS, AT A TOTAL COST OF \$94,500.00;
AND YELLOWHOUSE MACHINERY COMPANY WAS
THE SOLE BIDDER**

WHEREAS, the City Manager approved plans and specifications and authorized advertisement for bids for one (1) asphalt distributor body; and

WHEREAS, Bid No. 5072-12 was opened on May 30, 2012, with the only bid being from Yellowhouse Machinery Company for \$94,500.00 as shown on the bid tabulation attached hereto as Exhibit "A" and incorporated herein for all legal purposes;

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

SECTION ONE. That the City Manager is hereby authorized and directed to purchase the above listed asphalt distributor body from Yellowhouse Machinery Company at an estimated total price not to exceed \$94,500.00.

SECTION TWO. That the City Treasurer is hereby authorized and directed to pay Yellowhouse Machinery Company for said asphalt distributor body from funds available in the Fiscal Year 2011 – 2012 Garage Fund (750) General Services (040) Garage (0752) Other Equipment (8530) budget account upon proper receipt of invoices or statements approved by the City Manager.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, General Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

City of Midland - Bid Tabulation

BID # 5072-12 Asphalt Distributor Body OPENED May 30, 2012 Est. Cost: \$220,000.00			Yellowhouse Machinery Co 2121 E 2nd Odessa, TX 79761 Eric Schiel (432) 580-3337	
ITEM	QTY	DESCRIPTION	COST EA.	TOTAL
1	1	Asphalt Distributor Body	\$94,500.00	\$94,500.00
		Delivery	45-60 days ARO	
			*Extended warranty - 36 months	
			total coverage - \$3750.00	
			Optional 24' standard spraybar	
			with 1' controls in lieu of 24'	
			variable, deduct \$9500.00	
			Will provide an etnyre factory	
			representative for start up and	
			training with the award of the bid	
TOTALS:				\$94,500.00
TOTAL OF LOW BID ITEMS BY VENDOR:				\$94,500.00

Bidding Summary:

9 Bid requests were issued.

1 Bids listed above

0 NO BIDS were received.

8 Bidders did not respond.

Bear Cat Mfg., Bee Equipment, Conley-Lott Nichols, Cooper Equipment, Fabco, J & B Trailers, RB Everett
Sierra Machinery



City Council Agenda

Approved for Agenda:
thudson
City Manager's Office

MEETING DATE: 6/12/2012

TO: City Council / City Manager

FROM: Robert Patrick, General Services Director

SUBJECT: Consider resolution authorizing issuance of Request for Proposals for City Owned Facilities.

Purpose:

Approve issuance of Requests for Proposals (RFP's) for City Owned Facilities.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

None at this time.

Discussion:

Staff is seeking authorization to pursue proposals that would address aging City facilities for current and future staffing needs.

Therefore please consider approval for the issuance of Requests for Proposals for City Owned Facilities.

RESOLUTION NO.

**RESOLUTION AUTHORIZING THE ISSUANCE OF A
REQUEST FOR PROPOSALS FOR DEVELOPMENT OF
FACILITIES TO BE USED BY THE CITY OF MIDLAND,
OTHER GOVERNMENTAL ENTITIES AND THE
PRIVATE SECTOR**

WHEREAS, the City Council finds it to be in the public interest to authorize the issuance of a request for proposals addressing the development facilities to be used by the City of Midland, other governmental entities and the private sector;

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

THAT the City Manager, or his designee, is hereby authorized to issue a request for proposals addressing development of facilities to be used by the City of Midland, other governmental entities and the private sector.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, General Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:
thudson
City Manager's Office

MEETING DATE: 6/12/2012

TO: City Council / City Manager

FROM: Marv Esterly, Director of Airports

SUBJECT: Consider a resolution authorizing the execution of Land Lease Agreement for Airport Hangar Facility between W-THangar, LLC and the City of Midland, Texas

Purpose:

Consider a resolution authorizing the execution of Land Lease Agreement for Airport Hangar Facility between W-THangar, LLC and the City of Midland, Texas in Lot 4B, Block 11, (Lease Tract 3) Midland International Airport, Industrial Park Addition, Section 6, Midland County, Texas

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$ 9,506.25 - Annual Rent
\$ 792.19 - Monthly Rent
21,125 square feet - Total

Discussion:

W-T Hangar, LLC is requesting a Land Lease Agreement to Lease Tract #3 in the new hangar development area for the construction of a private hangar. The Airport Land Lease Agreement is our standard agreement recently approved for a term of 40 years with CIP adjustments every 36 months. Once this agreement is executed, W-T Hangar, LLC will submit building plans to both the Director of Airports and the City Building Official for approval. Once approved, a building permit will be issued and construction will begin. At the end of the 40-year term, all hangar improvements will revert to the City of Midland.

RESOLUTION NO.

**RESOLUTION AUTHORIZING THE EXECUTION OF A
LAND LEASE AGREEMENT WITH W-T HANGAR, LLC
FOR HANGAR DEVELOPMENT LOCATED ON A 0.48
ACRE TRACT OF LAND LOCATED IN LOT 4B, BLOCK
11, MIDLAND INTERNATIONAL AIRPORT,
INDUSTRIAL PARK ADDITION, SECTION 6, AN
ADDITION TO THE CITY OF MIDLAND, MIDLAND
COUNTY, TEXAS**

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

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

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

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

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

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Marv Esterly, Director of Airports

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

**MIDLAND INTERNATIONAL AIRPORT
LEASE AGREEMENT FOR AIRPORT HANGAR FACILITY**

STATE OF TEXAS

COUNTY OF MIDLAND

THIS LEASE AGREEMENT made and effective this 12th day of June, 2012, (the "Commencement Date") by and between the CITY OF MIDLAND, TEXAS, a municipal corporation, (hereinafter referred to as City), and W-T Hangar, LLC, organized and existing under and by virtue of the laws of the State of Texas (hereinafter referred to as Lessee);

WITNESSETH:

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

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

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

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

**ARTICLE 1.
DEFINITIONS**

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

**ARTICLE 2.
GRANT OF LEASE**

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

- B. **Easements:** This Agreement shall be subject to such easements, rights-of-way, drill sites, or other rights or reservations affecting the Leased Premises which are of record or are clearly visible as of the date of this Agreement, or which are shown on Exhibit B.
- C. **Acceptance of Leased Premises:** Lessee accepts the Leased Premises, improvements, including all fixtures, apparatus and equipment located therein and BY EXECUTING THIS AGREEMENT THE LESSEE AGREES AND ACKNOWLEDGES THE LESSEE IS LEASING THE LEASED PREMISES **"AS IS" WITH ANY AND ALL LATENT AND PATENT DEFECTS AND THAT THERE IS NO WARRANTY, EXPRESS OR IMPLIED BEING MADE BY THE CITY THAT THE LEASED PREMISES ARE FIT FOR A PARTICULAR PURPOSE.** LESSEE ACKNOWLEDGES THAT LESSEE IS NOT RELYING UPON ANY REPRESENTATION MADE BY THE CITY WITH RESPECT TO THE CONDITION OF THE LEASED PREMISES BUT IS RELYING UPON LESSEE'S EXAMINATION OF THE SITE. LESSEE ALSO RECOGNIZES BY EXECUTING THE LEASE, THAT THE LESSEE IS AGREEING TO LEASE THE LEASED PREMISES "AS IS" THAT LESSEE AGREES TO MAKE LESSEE'S OWN APPRAISAL OF THE LEASED PREMISES AND TO ACCEPT THE RISK THAT LESSEE MAY BE WRONG. THE CITY GIVES NO ASSURANCES, EXPRESS OR IMPLIED CONCERNING THE VALUE OR CONDITION OF THE LEASED PREMISES LEASED. IN NO EVENT SHALL A LESSEE HAVE A RIGHT TO RECOVER CONSEQUENTIAL DAMAGES. THEREFORE, THE LESSEE WILL TAKE THE LEASED PREMISES UNDER THE EXPRESS UNDERSTANDING THE LEASED PREMISES ARE ACCEPTED "AS IS" AND WITH ALL FAULTS.
- D. **Design Guide and Standards (Exhibit D)** Any and all improvements made upon the Leased Premises must be in accordance with the Design Guide and Standards for Private Hangars (Exhibit D) attached and made a part of this agreement.

**ARTICLE 3.
TEMPORARY CONSTRUCTION EASEMENT**

- A. City shall grant a temporary construction easement ("Easement") to Lessee for construction of the improvements. The Easement shall encompass only as much City property as is reasonably necessary to accomplish construction of improvements, with rights of ingress and egress for the construction. Said Easement shall automatically terminate upon completion of Lessee's construction of the improvements on the Leased Premises.
- B. In connection with any entry or work conducted by Lessee on the Leased Premises or on other Airport property, Lessee shall indemnify and hold City harmless from any loss or damage, including costs, expenses and reasonable attorney's fees resulting from such entry or work.

ARTICLE 4.
USE OF LEASED PREMISES

- A. **All uses allowed for a Privately Owned Non-Commercial Hangar Facility, as provided by the Minimum Standards (Article VIII):** Article VIII, Section 8.01 of the Airport Minimum Standards entitled 'Privately Owned Non-Commercial Hangar And Aviation Fuel Dispensing Facilities' (referred to hereafter as "Airport Minimum Standards"), a complete copy of which has been provided to Lessee is incorporated herein by reference. Such standards may be duly amended from time to time by the Midland City Council in their sole discretion. City agrees to provide Lessee with written notice not later than thirty (30) days prior to adoption of substantive changes to the Airport Minimum Standards which would apply to Lessee's operations. The determination of what is substantive is in the sole discretion of the Midland City Council. Any such changes shall apply to Lessee or the Leased Premises no sooner than sixty (60) days after written notice of final adoption of such change by the Midland City Council has been delivered to Lessee.
- B. Lessee agrees not to engage in any other activity on the Leased Premises other than those Activities specifically permitted under this Agreement, and agrees not to use, develop, or occupy the Leased Premises in any manner contrary to the Airport Minimum Standards for any purpose other than that specified in this Agreement, without the prior express written consent of City.
- C. **Prohibited Products, Services, and/or Uses: The following products, services, and/or uses are prohibited on the Leased Premises:**
- a. Commercial or retail products and/or services
 - b. Any products, services, and/or uses prohibited by law
- D. **Sponsor Grant Assurances:** In accordance with the Sponsor Grant Assurances given to the Federal and/or State government as a condition to receiving Federal and/or State funds, the granting of rights and/or privileges to engage in activities shall not be construed in any manner as affording Lessee any exclusive rights, other than the exclusive use of the Leased Premises and any land and/or improvements that may be leased to Lessee and then only to the extent provided in this Agreement. Accordingly, City reserves the right to grant to others the privilege to engage in or conduct a similar activity on other areas of the Airport property not encompassed by the Leased Premises.
- E. **Use of Airport:** Lessee may use, in common with others, the existing and future aeronautical and/or public facilities at the Airport (the "Public Facilities"), subject to and in full compliance with all applicable rules and regulations. The Public Facilities shall mean the landing areas, any extensions and additions to the landing areas,

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

- F. **Access to Airport:** City shall maintain all roads on the Airport giving access to the Leased Premises in good and adequate condition for use by cars and trucks and shall maintain free and uninterrupted access to the Leased Premises over said roads at all times; provided, however, City shall not be in default of this Agreement if access is temporarily interrupted for a period of time which is not unreasonable under the circumstances.
- G. **Right to Use Airport:** Lessee and Lessee's employees, and guests shall have the right to use that part of the Airport and its facilities not included within the Leased Premises in common with others authorized to do so. Such use shall be subject to any and all applicable federal, state or local laws, ordinances, statutes, rules, regulations, or orders of any governmental authority, lawfully exercising jurisdiction over the Airport or the activities of Lessee, including any limitations, restrictions or prohibitions affecting the aviation activities or operations of Lessee.
- H. **Vehicular Operations on the Airfield:** No vehicles of Lessee, its employees, guests or invitees will be allowed to operate on, or cross, the Runway and Taxiway movement areas and their respective safety areas of the Airport. When necessary, Airport Operations Control Center personnel will provide Lessee escorted access to and from the airfield area.
- I. **Airport Certification Rules and Regulations:** Lessee shall comply with such rules that pertain to its operation on the Airport under the Airport Certifications Rules of Federal Aviation Regulations Part 139, as amended [14 CFR Part 139], as amended.
- J. **Airport Security Rules and Regulations:** Lessee, its employees, guests and contractors shall comply with all federal and local Airport security regulations adopted by the City or the Department of Airports as such rules and regulations exist or may hereafter be amended. LESSEE AGREES TO INDEMNIFY AND HOLD HARMLESS THE CITY, ITS OFFICERS AND EMPLOYEES, from any charges, fines or penalties that may be assessed or levied by the FAA and/or TSA by reason of the NEGLIGENT OR INTENTIONAL FAILURE OF LESSEE, ITS DIRECTORS, OFFICERS, EMPLOYEES, OR CONTRACTORS to comply with such Airport security regulations.
- K. **14 C.F.R. Part 77 Requirements:** Lessee agrees to comply with the notification and review requirements set forth in Part 77 of the Federal Aviation Regulations [14 CFR Part 77] in the event any future structure, antenna or building is planned for the Leased Premises, or in the event of any planned modification of any present or future building, antenna or structure located on the Lease Premises.

- L. **Control of Structures:** Lessee shall not erect nor permit the erection of any structure or object, nor permit the growth of any tree on the Leased Premises which highest point is above a mean sea level elevation established by the FAA and City as a height limitation on such structures or objects. City reserves the right to enter upon the Leased Premises and to remove the offending structure or object or cut the offending tree, at Lessee's expense.
- M. **Aerial Approaches:** City reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstruction together with the right to prevent Lessee from erecting or permitting to be erected any building or other structure on or adjacent to the Airport which, in the opinion of the City, would limit the usefulness of the Airport or constitute a hazard to aircraft.
- N. **Right of Over-flight:** There is hereby reserved to the City, for the use and benefit of the public, a right of flight for the passage of aircraft above the surface of the Leased Premises, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used for navigation of or flight in the air, using said airspace for landing at, taking off from or operating on the Airport.
- O. **Ingress and Egress:** Lessee, its employees, guests, and invitees shall have the right of ingress and egress to and from the Leased Premises. If the rights granted by this provision adversely affect Airport operations, City shall have the right, upon prior notice to Lessee, to restrict and/or limit hours in which such rights may be exercised, provided such restrictions do not unreasonably affect Tenant's ability to access and use the Leased Premises.
- P. **Compliance with Airport Minimum Standards:** All activities conducted upon the Leased Premises, shall be in conformance with the City's Airport Minimum Standards, as such standards currently exist or as duly amended from time to time by the City Council, in their sole discretion. City agrees to provide Lessee with written notice not later than thirty (30) days prior to adoption of substantive changes to the Airport Minimum Standards which would apply to Lessee's operations. The decision to amend the Airport Minimum Standards shall be in the sole discretion of the Midland City Council. City agrees to provide Lessee with written notice not later than thirty (30) days prior to adoption of substantive changes to the Airport Minimum Standards which would apply to Lessee's operations. The determination of what is substantive is in the sole discretion of the Midland City Council. Any such changes shall apply to Lessee or the Leased Premises no sooner than sixty (60) days after written notice of final adoption of such change by the Midland City Council has been delivered to Lessee.

ARTICLE 5. TERM

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

ARTICLE 6. RENT

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

- (1) During the Lease Term, and subject to the provisions of paragraph B below, Lessee agrees to pay to City annual rent for the Leased Premises as follows: Forty Five Cents (\$0.45) per square foot (\$9,506.25 per year), payable monthly (\$792.19 per month), and due on the first day of each month. For purposes of calculating the amount of rent due under this Agreement, the amount of square footage for ground and facilities being rented is agreed by the parties to be 21,125 square feet.
- (2) Payments of rents shall be made to City monthly (in installments equal to 1/12 of the annual rent) in advance on the first (1st) day of each month without notice or demand. At its option, Lessee may pay the total annual rent due in advance on or before the anniversary of the Rent Commencement Date. Payment shall be absolutely net to City and shall be made without any abatement, deductions, reductions, set offs, or counterclaims of any kind. The rent for any partial month will be prorated.

- (3) A late charge of .5% per month shall be automatically added to any installment of rent not received by City by the close of business of the 15th day of the month in which it is due. The late charge shall become part of the rent due and owing to City. Additional late charges of .5% shall be imposed for each thirty (30) day period any payment remains due and owing. Such charges shall also become part of the rent which is due and owing to City. If these charges ever exceed any legally authorized maximum rate, then the charges shall automatically be reduced to the maximum legal rate.
- B. **Rental Adjustments:** It is agreed and understood that provision must be made herein for an adjustment of the rental rate every three years. Therefore, effective on the third (3rd) anniversary of the Rent Commencement Date, the monthly rent shall be increased only in the same proportion or percentage by which the cost of living has been increased as reflected by the Consumer Price Index for All Items, as maintained by the United States Government's Department of Labor, Bureau of Labor Statistics for the Dallas/Fort Worth SMA; such increase being measured by comparison with such cost-of-living indices at the end of the immediately preceding 36-month period of this lease, as compared with the indices at the commencement of the immediately preceding 36-month period of this lease; provided however, if such calculation results in a rental rate increase in excess of nine percent (9%) for the applicable time period, the rental adjustment shall be capped for such period at nine percent (9%). In no event shall the annual rent be less than \$0.45 per square foot (\$9,506.25). Any additional rent for applicable period shall be due within ten (10) days of Lessee's receipt from City of the calculation of the rental adjustment.
- C. All payments shall be made to City of Midland and sent to the attention of the Director of Airports, at City's address stated in Article 40. The failure to make any payment when due may result in a termination of the Agreement as provided in Article 13.

ARTICLE 7. FEES

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

ARTICLE 8. IMPROVEMENTS AND ALTERATIONS

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

- B. Within forty-five (45) days after the Commencement Date of this Agreement, Lessee shall submit to the Director of Airports and Building Official for City's approval the site plans and specifications ("Site Plans") (Exhibit "C") for the proposed Improvements. Such submission shall include, at a minimum, a site plan showing the location of the Improvements and Off-site Improvements in relation to the boundaries of Leased Premises, elevated views, architectural renderings, landscaping plans, and complete detailed construction plans, specifications, and related details and schedules.
- C. The size, scale, quality, and quantity of the Final Plans shall be in accordance with City ordinances. The Final Plans shall be consistent with any Preliminary Plans and shall provide for construction and/or alterations which are first class, safe, fire resistant, and architecturally compatible with the character of the Airport.
- D. The proposed Final Plans shall be accompanied by a certified statement by Lessee's architects and engineers indicating the expected life, use and estimated costs of the Improvements, and certifying that the Final Plans are in compliance with all applicable laws, ordinances, regulations, and codes of the City. Such statement shall be re-certified upon City's approval of the proposed Final Plans.
- E. Once the Final Plans have been approved by City and re-certified, Lessee shall, at its own cost and expense, construct the Improvements in accordance with the Final Plans and requirements of this Agreement. Lessee shall be entitled to receive a certificate of occupancy when all Improvements are completed in accordance with City ordinances and regulations.
- F. **Contractor's Insurance Bonds:** At any time construction activities are undertaken on the Leased Premises, Lessee shall require that its contractor or contractors keep in force insurance issued by a responsible insurance company or companies authorized to conduct business in the State of Texas insuring the improvements during construction under Completed Builder's All Risk Insurance, including fire, extended coverage, vandalism and malicious mischief, in an amount equal to the full insurable value of such construction as the same progresses in order to insure continuity of construction and ultimate completion despite damage or destruction suffered during the course thereof. ALL INSURANCE SHALL NAME THE CITY AS ADDITIONAL INSURED AND CO-PAYEE, AND PROVIDE FOR A WAIVER OF SUBROGATION IN FAVOR OF THE CITY. Lessee shall require all contractors performing construction work on the Leased Premises to provide payment and performance bonds issued by a responsible bonding company or companies authorized to conduct business in the State of Texas for the full amount of the cost of the construction to be performed on forms which are in compliance with Tex. Gov't Code Art. 2253, as amended with the City as a co-payee or protected party. The foregoing shall be made a part of any contract between Lessee and its contractor or contractor. In the event Lessee does not complete the construction work itself; it shall comply with the all-risk insurance provisions hereof.

- G. The construction and/or alterations shall be performed by qualified, responsible and reputable contractors, subcontractors and suppliers, all of whom shall be subject to City's approval in advance of commencing work which approval shall not be unreasonably withheld, and all work shall be secured with payment and performance bonds. Such contractors, subcontractors and suppliers at all times shall cooperate with other employees and workers at the Airport so as to avoid the occurrence of any disturbance, disruptions, or conflict in all or any part of the Airport or in connection with its operations. The construction shall be completed in a good and workmanlike manner and in compliance with all applicable laws, ordinances, regulations, and codes.
- H. Subject to subsection E above, Lessee shall, at its own expense, pay all costs associated with installation of water lines, sewer lines, telephone and telephone lines, gas lines, and any other utilities or equipment on the Leased Premises. It shall be the responsibility of City at its sole cost and expense to bring all water lines, sewer lines, telephone and telephone lines, gas lines, and any other utilities or equipment to the boundary of the Leased Premises to enable Lessee to connect the Leased Premises to such services. Lessee shall construct any required security fencing in accordance with the Midland International Airport Security Program in existence as of the Commencement Date. Lessee shall, at its own expense, procure all governmental permits and approvals required for or in connection with the construction of the Improvements.
- I. During the construction of the Improvements, Lessee shall store all materials, supplies, machinery and equipment associated therewith in a safe and orderly fashion so as to not interfere with the work and operations of Lessee and any other Airport users. Lessee shall comply with the Airport's Development Guidelines and all contractors, subcontractors, and suppliers shall comply with the Airport Minimum Standards, Rules and Regulations and all other applicable Regulatory Measures. Upon completion of the Improvements and Offsite Improvements, Lessee shall deliver one set of "as built" drawings to City. The building materials and design shall substantially conform to the graphic renderings submitted to the City during the site plan approval process.
- J. In the event that Lessee fails to comply with any of the provisions of this section of this Agreement and after delivery of any required notice and any opportunity to cure under Article 13, including a failure to construct the Improvements and Off site Improvements only in accordance with the approved Site Plan unless otherwise agreed to by City, City may, in addition to any other remedies available to City, terminate this Agreement.
- K. **Encumbrance of Leasehold Estate:** Lessee shall at no time encumber or attempt to encumber its leasehold interest in the Leased Premises by deed of trust, mortgage, security agreement or other security interest without the prior written consent of the City Council, which consent shall not be unreasonably withheld.

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

ARTICLE 9. RIGHTS AND PRIVILEGES OF LESSEE

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

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

ARTICLE 10.
RIGHTS AND PRIVILEGES OF CITY

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

- A. **City Authority:** While the Airport Director has the authority to manage the Airport (including the authority to interpret, administer, and enforce Agreements and policies and the authority to permit temporary, short-term occupancy/use of Airport land and/or Improvements), the ultimate authority to grant the occupancy/use of Airport land and/or improvements and/or the right to engage in an Aeronautical Activity at the Airport, and to approve, adopt, amend, or supplement any Agreement, policy, or practice relating thereto is expressly reserved to City through the City Council.
- B. **Airport Development:** City reserves the right, but shall not be obligated to Lessee, to develop and/or improve the landing areas and/or other portions of the Airport as it sees fit. City reserves the right to close any portion of the Airport and/or any of the facilities located thereon when it deems that such action is reasonably necessary to maintain, repair, or develop the Airport and/or facilities located thereon and/or for the safety of the general public; provided, however, that other than in times of temporary emergency, adverse weather conditions, or public calamity, City shall use its best efforts at all times to keep the Airport open with sufficient access to, and use of, the Public Facilities by Lessee, and its sublessees and assigns, to enable the permitted uses of the Leased Premises. City shall provide advance notice of any closures to the extent possible.
- C. **Aerial Approaches:** City reserves the right to take any action it considers necessary to protect the aerial approaches and/or transition surfaces of the Airport against obstruction, together with the right to prevent Lessee from erecting or permitting to be erected any building or other structure on the Airport which would limit the usefulness of the Airport and/or constitute a hazard to aircraft.
- D. **War, National Emergency, Riot, or Natural Disaster:** During time of war, national emergency, riot or natural disaster, City shall have the right to lease the Airport or any part thereof to the United States or the State of Texas for government or military use. In this case, any provisions of this Agreement which are inconsistent with the provisions of any lease with a government entity shall be suspended for the term of the lease with the government entity.
- E. **Access to the Premises:** City and/or its representatives shall have the right to enter the Leased Premises including all buildings, structures and Improvements, at all times and for any purpose necessary, incidental to, or connected with the performance of Lessee and/or City's obligations under this Agreement. City shall

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

- F. **Performance of Acts:** All acts performable under this Agreement by City or City Council may, at the option of City and without right of objection by Lessee, be performed by a representative or delegate of City.
- G. **Exercising Rights:** No exercise of any rights reserved by City herein shall be deemed or construed as an eviction of Lessee nor shall such exercise be grounds for any abatement of rents, fees or charges nor serve as the basis for any claim or demand for damages of any nature whatsoever, unless such exercise materially and substantially interferes with the rights granted Lessee in this Agreement.

ARTICLE 11. **OBLIGATIONS OF LESSEE**

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

- A. **Conduct:** Lessee shall take all reasonable measures to control the conduct, demeanor and appearance of its employees, invitees, suppliers, vendors and customers. Upon receipt of a valid complaint, Lessee shall take all reasonable steps necessary to resolve or remove the cause of the complaint in a timely manner.
- B. **Disturbance:** Lessee shall conduct its Activities and operations in an orderly and proper manner so as to not unreasonably disturb or interfere with others conducting business or other operations at the Airport. Lessee agrees that it will not intentionally interfere with the landing and taking off of aircraft at the Airport or otherwise cause a hazard.

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

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

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

- a. Lessee shall obtain City's prior express written consent. City may impose, as a condition of such consent, reasonable requirements, such as limits of the manner, time and contractors associated with such.
- b. Lessee shall comply with prudent business practices and also with all applicable federal, state and local laws, ordinances, regulations, guidelines and orders relating to health, safety and protection of persons, the public, and/or the environment.
- c. Lessee shall limit the presence of such Hazardous Material to the minimal amount reasonably necessary for Lessee's use of the Leased Premises as authorized by this Agreement.
- d. Upon the request of City, Lessee shall furnish reports, assessments or other evidence satisfactory to City showing that the Leased Premises are not being used nor have the Leased Premises been used by Lessee for any activities involving, directly or indirectly, the use, generation, treatment, storage or disposal of any Hazardous Materials other than those Hazardous Materials authorized by City.
- e. If at any time a release or danger of a release of Hazardous Materials is discovered on, at, or in the Leased Premises, the Airport, City's sewage or storm drainage system, soil, air, groundwater or any improvements, which was caused or permitted by Lessee or Lessee's officers, agents, employees, contractors, permittees, invitees, or there is the imminent danger of such release of Hazardous Materials, Lessee, at its sole cost and expense, shall ensure removal of such Hazardous Materials from the Leased Premises, the Airport, the underlying groundwater, City's soil, air, storm drainage and the sewage system, in accordance with requirements of all appropriate governmental authorities.
- f. In addition to notification of proper governmental authorities, Lessee shall immediately notify the Airport Director of any release of Hazardous Materials that exceeds the minimum amount that must be reported to a public agency.
- g. Upon discovery of any Hazardous Materials that are a direct result of Lessee's activities on, in, under or emanating from the Leased Premises, any release or threat of release of a Hazardous Materials, and/or any illness caused by exposure thereto, Lessee shall immediately, and at its sole cost and expense, take all actions necessary to remediate, abate,

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

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

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

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

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

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

- G. **Costs, Expenses, and Other Charges:** Lessee shall pay all required costs, expenses and other charges or obligations of every kind and nature whatsoever relating to the Leased Premises, the Improvements and/or the Activities conducted by Lessee, which may arise or become due during the term of this Agreement.
- H. **Maintenance:** Except as otherwise specifically provided in this Agreement, Lessee, at its own cost and expense, shall keep the interior and exterior (including all structural and non-structural) portions of the Leased Premises including, but not limited to, plumbing, heating, lighting, air conditioning and any other systems in connection therewith and all other parts of the Leased Premises in good order and condition and will make all necessary repairs to the Leased Premises both ordinary and extraordinary, foreseen and unforeseen and will make all necessary replacements of like quality when beyond repair. Lessee shall be responsible for all cleaning, custodial, janitorial and landscaping services. Lessee shall keep the Leased Premises in neat, safe, sanitary, orderly and slightly condition and in good working order at all times, and shall remove snow and ice as required for Lessee to conduct Lessee's operations during hours that the Airport is open.

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

cleaning which Lessee is required to make or perform.

- I. **Refuse Disposal:** Lessee shall immediately clean up all refuse, rubbish, scrap material and debris caused or generated by its Activities, so that the Leased Premises shall at all times present a clean, neat, sanitary and orderly appearance. Lessee shall provide and use covered receptacles for all garbage, trash and other refuse at the Leased Premises. Lessee shall not allow boxes, cartons, barrels, or other items to accumulate in or upon the Leased Premises in an unsightly manner or in a manner that may pose a safety hazard of any kind. Lessee shall ensure the proper storage and removal from the Airport of all garbage, debris and other waste materials, whether solid or liquid, generated by or arising out of its operations and activities at the Airport.
- J. **Based Aircraft Report:** Lessee shall maintain and furnish by the 1st of August each year and at any time, upon request of the Airport Director, a report identifying all aircraft based at or on the Leased Premises. The report shall identify the owner, the owner's billing address, the year of manufacture, make and model of the aircraft, the Gross Takeoff Operating Weight, Maximum Gross Landing Weight and Aircraft Registration Number.
- K. **Signage:** Lessee shall not erect, paint upon, attach, exhibit or display in, on, or about said Leased Premises any sign other than as shown on the Site Plan without the prior express written consent of the Airport Director.
- L. **Special Events:** Lessee shall not conduct or hold air shows Or any other special events, including any non-aeronautical event, at the Airport without the prior express written consent of the Airport Director.

ARTICLE 12. **OBLIGATIONS OF CITY**

- A. City covenants and agrees that at all times it will maintain and operate the Airport as a public Airport consistent with and pursuant to the Sponsor's Assurances given by City to the United States Government and/or the State of Texas under the Federal Airport Act.
- B. Encumbrance of Fee Title. If City encumbers by mortgage, deed of trust, security agreement, or other instrument in the nature thereof, any of City's right, title or interest in the Leased Premises, any such mortgage, deed of trust, or other instrument will at all times be, and will expressly state that it is, subject and subordinate to this Lease and the rights, titles and interests of Lessee and any Leasehold Mortgagee (defined below) arising by virtue of this Lease.

ARTICLE 13.
DEFAULTS AND REMEDIES

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

- A. The filing by Lessee of a voluntary petition in bankruptcy.
- B. The assignment of all or substantially all of Lessee's assets for the benefit of Lessee's creditors.
- C. A court making or entering any decree or order:
 - (i) adjudging Lessee to be bankrupt or insolvent;
 - (ii) approving as properly filed a petition seeking reorganization of Lessee or an arrangement under the bankruptcy laws or any other applicable debtor's relief law or statute of the United States or any state thereof;
 - (iii) appointing a receiver, trustee or assignee of Lessee in bankruptcy or insolvency or for its property;
 - (iv) directing the winding up or liquidation of Lessee and such decree or order shall continue for a period of (60) days.
- D. The filing of any non-consensual lien against the Leased Premises resulting from any act or omission of Lessee which is not discharged or contested in good faith as determined by City by proper legal proceedings within sixty (60) days of receipt of actual notice by Lessee, unless Lessee posts a bond within this time period equal to the amount of the lien.
- E. The voluntary abandonment by Lessee of the Leased Premises for a period of thirty (30) consecutive days or more, coupled with the failure to pay rent as provided in Article 6.
- F. The transfer of Lessee's interest in a manner not authorized herein or by other operation of law.
- G. Lessee becomes in arrears in the payment of the whole or any part of the amount(s) agreed upon herein for a period of fifteen (15) days after the time such payments become due.
- H. Intentional falsification by Lessee of any record which results in the deprivation of any rent, fee or other charge from the City granted under this Agreement.
- I. The failure by Lessee to perform any of the covenants, conditions or obligations imposed on it by this Agreement or any other Agreement with City where the failure continues for a period of thirty (30) days after written notice from City.

- J. The transfer or assignment or attempted transfer or assignment of this Agreement by Lessee, without securing prior written approval of City, such approval not to be unreasonably withheld. It shall be understood for the purpose of this provision that negotiations by Lessee for the assignment or transfer of this Agreement shall not be construed as "attempted transfer."
- K. In the event of default by Lessee that is not cured within thirty (30) days of receiving notice from City, City may, in addition to any other remedies available to City, terminate this Agreement. If the default concerns a failure to make payments to City; however, the City may terminate this Agreement if the required payments are not made within twenty (20) days of receiving notice from City of the event of default. If this Agreement is terminated, the security deposit, or any other payments made to City shall be forfeited to City and Lessee shall have no rights to recover the security deposit (if any) and payments. This forfeiture shall not diminish nor limit City's right to recover such damages as may result from the default by Lessee.
- L. Notwithstanding the foregoing, no failure of either party to perform or delay in performance which is caused by any war, civil disorder or other national emergency or which is due to an intervening act of God shall be deemed an event of default.
- M. In addition to the termination and forfeiture right described in the preceding paragraph, City shall have the following rights and remedies upon default by Lessee:
- (i) The recovery of any unpaid rent, fees and other payments due and owing at the time of termination, plus any unpaid rent and fees that would have been earned and other payments that, would have been made if the Agreement had not been breached by Lessee, subject, however to the City's duty to mitigate its damages.
 - (ii) The recovery of any damages, costs, fees and expenses incurred by City as a result of the breach of the Agreement by Lessee, but expressly excluding consequential damages, lost profits or attorneys' fees and expenses.
 - (iii) The removal of all persons from the Leased Premises and the removal and storage at Lessee's expense of all property on the Leased Premises, in accordance with the law.
 - (iv) Any other right or remedy, legal or equitable, that City is entitled to under applicable law, whether stated in this Agreement or not, subject however, to the limitations set forth in this Agreement.
- N. No termination shall relieve Lessee of the obligation to deliver and perform on all outstanding obligations and requirements prior to the effective date of the termination

and Lessee liabilities under this Agreement shall continue.

- O. In the event of any such termination as above enumerated, City shall have the right at once and without further notice to Lessee to enter and take full possession of the Leased Premises occupied by Lessee under this Agreement in accordance with the law. Upon the termination of this Agreement for any reason, Lessee shall yield up said Leased Premises, facilities and fixtures to City in the same condition as when received, reasonable and ordinary wear and tear excepted.
- P. In the event of the failure of Lessee upon termination of this Agreement to immediately remove from the Leased Premises all property owned by Lessee, City may effect such removal and store said property at Lessee's expense. Upon termination of this Agreement, Lessee covenants and agrees to pay and discharge all reasonable costs, attorney's fees and expenses that may be incurred by City in enforcing the covenants, conditions and agreements of this Agreement, re-entering and/or repossessing the Leased Premises, restoring the Leased Premises and Improvements to the condition required by this Agreement, and protecting the Leased Premises.
- Q. The failure of City to declare this Agreement terminated for any of the reasons set out above shall not bar the right of City to subsequently terminate this Agreement for any of the reasons set out above. Further, the acceptance of rents, fees or other payments due and owing to City for any period after a default of any of the terms, covenants or conditions by Lessee shall not be deemed a waiver of any right on the part of City to terminate this Agreement.

ARTICLE 14. TERMINATION BY LESSEE

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

- A. Permanent closure of the Airport.
- B. Curtailment of Airport operations, including the tower, instrument landing systems and U.S. Customs service for a period in excess of sixty (60) days, save and except curtailment which occurs as the result of Force Majeure, necessary construction and repair under rights granted herein, or during any period of involuntary suspension or termination of such Airport operations by any regulatory authority and during which period the City contests such suspension or termination until a final decision is rendered; however not during any appeals therefrom.
- C. The lawful assumption by the United States Government, or any authorized agency thereof of the operation, control or use of the Airport and/or facilities, or any substantial part of parts thereof, in such manner as to substantially restrict

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

- D. The default by City in the performance of any covenant or agreement herein required to be performed by City and the failure of City to remedy such default within ninety (90) days after receipt from Lessee of written notice to remedy same, or if such default is incapable of being remedied within such ninety (90) day period, City shall not commence such performance within the ninety (90) day period and diligently pursue the same to completion.
- E. Final decision by a Court of competent jurisdiction adjudicating a violation of a federal, state or local law, rule, regulation or order which suspends or terminates operations at the Airport and which suspension or termination materially affects the operations or rights of Lessee hereunder.
- F. Substantial damage to the Improvements which will prevent Lessee from utilizing the Leased Premises as contemplated under this Lease for a period of one hundred eighty (180) days or longer or total destruction of the Improvements located on the Leased Premises resulting from any cause whatsoever.

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

ARTICLE 15. REMEDIES CUMULATIVE

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

ARTICLE 16. NO WAIVER

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

ARTICLE 17.
COMPLIANCE WITH LAWS

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

ARTICLE 18.
LICENSES, CERTIFICATES, AND PERMITS

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

ARTICLE 19.
INSURANCE

- A. Lessee shall keep and maintain all insurance required by law including, for example and without limitation, all insurance as required under the City of Midland Code of Ordinances, and insurance as required by the workers compensation laws of the State of Texas with Employers Liability limits of \$500,000 Each Accident, \$500,000 Disease Policy Limit, and \$500,000 Disease Each Employee. All insurance required pursuant to this Agreement, except for Worker's Compensation Insurance, shall name the City as an additional insured on a claims occurred basis. All insurance required pursuant to this Agreement, including Worker's Compensation Insurance, shall provide for a waiver of subrogation as to the City.
- B. Lessee shall also, at its sole cost and expense, procure and maintain insurance in full force and effect prior to the issuance of a building permit and prior to beginning any construction in the minimum coverages and amounts specified in the Airport Minimum Standards for each Activity; provided however, notwithstanding anything to the contrary in the Airport Minimum Standards, the minimum amount of commercial general liability insurance Lessee shall maintain shall be Three Million Dollars (\$3,000,000) for personal injury and accidental death and property damage and Three Million Dollars (\$3,000,000) product/completed operations limit of liability. The insurance company underwriting the required policy(s) shall be licensed or admitted to write such insurance in the State of Texas

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

- C. All insurance which Lessee is required by City to carry and keep in force shall name City of Midland, its City Council (individually and collectively), and its representatives, officials, officers, employees, agents, and volunteers as additional named insureds which includes the Airport Board of the Midland International Airport. All liability policies shall contain or be endorsed to contain the following provisions:
- (i) "City of Midland and its City Council (individually and collectively), representatives, officers, officials, employees, agents and volunteers are to be covered as additional insured with respect to: liability arising out of Activities performed by or on behalf of Lessee; products and services of Lessee; Leased Premises and Improvements owned, leased, occupied or used by Lessee; or vehicles owned, leased, hired or borrowed by Lessee. Any insurance or self-insurance maintained by City of Midland or its City Council (individually and collectively), representatives, officers, officials, employees, agents or volunteers shall be in excess of Lessee's and shall not contribute with it."
 - (ii) "Any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to City of Midland or its City Council (individually and collectively), representatives, officers, officials, employees, agents or volunteers. Lessee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the aggregate limits of the insurer's liability."
- D. Lessee shall give written notice of any material changes affecting the coverage or policy of insurance on the Leased Premises and Improvements and shall supply City with new certificates of insurance within thirty (30) days of any change.
- E. The applicable insurance coverage shall be in full force prior to the issuance of a building permit and prior to any construction and Lessee shall provide certificates and/or policy endorsements to City to document that required insurance is in effect. Lessee shall furnish additional certificates whenever any changes are made.
- F. Lessee shall, at its sole cost and expense, insure the Leased Premises continuously against loss or damage. The Improvements shall be insured (100% of current replacement cost with no depreciation) against the perils of fire, lightning, wind, hail, flood (for any structure located in an "A" or "B" flood zone), explosion, riot, smoke and vandalism.

- G. The proceeds of any such insurance paid on account for any of the aforementioned perils, shall be used to defray the cost of repairing, restoring or reconstructing said improvements to the condition and location existing prior to the casualty causing the damage or destruction, unless a change in design or location is approved by City, in writing.
- H. Insurance coverage and policy limits are subject to periodic review and modification at the sole discretion of City.

ARTICLE 20.
DAMAGE TO LEASED PREMISES AND PROPERTY

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

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

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

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

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

- C. If Lessee opts to continue the lease and restore the Improvements, upon completion of the Restoration Lessee shall provide City:
- (i) A certification of an independent engineer or an independent architect designated by Lessee and approved by City and by the Leasehold Mortgagee(s), if any, stating that the Restoration has been finally completed in accordance with the plans and specifications therefor and in accordance with all laws, ordinances, rules regulations, specifications and standards of all Governmental Authorities.
 - (ii) Evidence satisfactory to any Leasehold Mortgagee and City that the cost of all work and materials incorporated into the Restoration has been paid in full or will be paid in full (which evidence may include fully executed and acknowledged waivers or releases of mechanic's liens, in form reasonably satisfactory to the party requesting the same, executed by all contractors, sub-contractors and materialmen which engaged in the Restoration);
 - (iii) The certification of a title company licensed to do business in the State of Texas, as of date not more than five (5) days prior to the date of the certification that there exists no filed or recorded lien, encumbrance or charge prior to or on a parity with the estate, rights and interest of City (except for a leasehold mortgage or a fee mortgage, if any), and that neither the Leased Premises nor the Improvements are subject to any filed or recorded mechanic's, laborer's, materialman's or other similar lien, encumbrance or charge for which Lessee has not provided to City adequate security for the payment thereof and, in addition to the foregoing, certificates from the Secretary of State of Texas and the County Clerk of Midland County, Texas, evidencing that fixtures in the Leased Premises are not subject to any chattel mortgage, conditional bill of sale or other title retention or security agreement except for those permitted herein and except for any chattel mortgage or security agreement delivered to City.

ARTICLE 21. INDEMNIFICATION

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

FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF LESSEE, its agents or employees, or any subcontractor, arising out of, or resulting from, Lessee's use of, or activities on, the Leased Premises, and Lessee will be required to pay any judgment with costs which may be obtained against City or any of its officers, agents or employees, including reasonable attorney's fees.

**ARTICLE 22.
SUBLEASE AND SUBCONTRACTS**

- A. Lessee shall not sublease the Leased Premises (or any part of the Leased Premises) or subcontract any operation or service it performs or is permitted to perform to any person or entity.
- B. A lease or sublease made contrary to the requirements of this section shall be null and void.

ARTICLE 23.

ASSIGNMENT

This Agreement may not be assigned, nor may any part of it be assigned, without the prior express written consent of the City Manager, which consent shall not be unreasonably withheld. Upon assignment pursuant to this Article 23, the Assignee shall assume all obligations of Lessee under this Agreement and Lessee shall be relieved of all obligations to City for the remainder of the term of the Agreement. The assignee shall not assign the Agreement without the prior express written consent of the City Manager and any assignment by Lessee shall contain a provision to this effect. Further, any assignee of Lessee shall be bound by the terms and conditions of this Agreement. Any assignment without City's prior express written consent shall be null and void and, at City's election, shall constitute a default. No assignment shall be approved unless all rent and municipal taxes are current.

**ARTICLE 24.
ENCUMBRANCES**

Lessee shall have no authority, express or implied, to create any lien, charge or encumbrance upon the Leased Premises and Lessee shall not suffer the Leased Premises, to be or become subject to any non-consensual lien (including mechanic's liens), charge or encumbrance whatsoever.

ARTICLE 25.

MORTGAGE

Lessee shall not mortgage, pledge, assign as collateral or encumber, voluntarily or otherwise, its interest in this Agreement or the Leased Premises without the prior express written consent of the City Council, which consent shall not be unreasonably withheld.

ARTICLE 26.

HOLDOVER POSSESSION

In the event that Lessee should hold over and remain in possession of the Leased Premises after the expiration of the term of this Agreement or termination for any other cause, such holding over shall be deemed not to operate as a renewal or extension of this Agreement and shall create a tenancy from month to month which may be terminated at any time by the Airport Director or Lessee by providing written notice. The rents, fees, and/or other charges paid during the holding over period shall be equal to 110% of the monthly rents, fees, and/or other charges that were being charged by City at the time the Agreement expired.

ARTICLE 27.

INDEPENDENT CONTRACTOR

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

**ARTICLE 28.
SECURITY DEPOSIT**

Upon execution of this Agreement, Lessee shall deposit with City the sum equal to three (3) month's rent and fees to be held by City as security for the faithful performance of the terms of this Agreement by Lessee. Unless it is used as permitted herein, this security deposit shall be returned to Lessee following the completion and/or payment of all of its obligations under this Agreement.

If Lessee fails to make any payment to City required by this Agreement, including charges for maintenance, repair and/or damage to property, or if Lessee otherwise defaults with respect to any provision of this Agreement, City may use, apply or retain so much of the security deposit as necessary to fulfill the payment obligation, cure the default or otherwise compensate City for damage or loss sustained by it resulting from Lessee's default. Such use of the security deposit by City in no way limits its right to pursue the remedies given to it by this Agreement.

**ARTICLE 29.
BINDING EFFECT**

This Agreement shall be binding on and shall inure to the benefit of the heirs, legal representatives, successors and assigns of the parties hereto.

**ARTICLE 30.
SUBORDINATION**

This Agreement is subject and subordinate to the provisions of any existing or future agreements between City and the United States or the State of Texas pertaining to the operation, management, maintenance, planning, and/or development of the Airport the terms and execution of which have been (or may be) required as a condition precedent to receiving federal and/or state funds for the development of the Airport and Lessee further agrees to conduct its operations under this Agreement in accordance with and be subject to all obligations (including grant assurances), existing and future, of City to any regulatory authority. Should this Agreement contain provisions in conflict therewith, the latter shall control, and the terms of this Agreement shall be modified accordingly.

**ARTICLE 31.
GOVERNING LAW**

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

Midland County, Texas. The obligations and undertakings of each of the parties to this Agreement shall be deemed to have occurred in Midland County, Texas.

**ARTICLE 32.
SEVERABILITY**

In the event that any provision in this Agreement is held to be invalid by any court of competent jurisdiction, the invalidity of any such provision shall in no way affect any other provision in this Agreement, provided that the invalidity of any such provision does not materially prejudice either City or Lessee in their respective rights and obligations contained in the valid provisions of this Agreement.

**ARTICLE 33.
COUNTERPARTS**

This Agreement has been executed in several counterparts, each of which shall be deemed an original.

**ARTICLE 34.
MODIFICATION**

Any modification, alteration, or amendment to the Agreement shall be made in writing, agreed to, and approved by both parties.

**ARTICLE 35.
ENTIRE AGREEMENT**

Entire Agreement: This Agreement embodies the entire agreement between the City and Lessee, and supersedes all prior agreements and understandings, whether written or oral, and all contemporaneous oral agreements and understandings relating to the subject matter hereof. This Agreement shall not be changed modified, discharged or extended, except by written instrument duly executed by City and Lessee. The parties agree that no representations or warranties shall be binding upon either party unless expressed in writing in the aforesaid Agreement.

**ARTICLE 36.
ATTORNEY'S FEES**

BY EXECUTING THIS AGREEMENT, LESSEE AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST THE CITY, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE AGREEMENT. THE LESSEE SPECIFICALLY AGREES THAT IF THE LESSEE BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS

AGREEMENT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET SEQ., AS AMENDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, THE LESSEE AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH LESSEE MIGHT OTHERWISE BE ENTITLED. LESSEE AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING KNOWN RIGHT. LESSEE ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THE AGREEMENT. THE LESSEE FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN THE CITY AND THE LESSEE. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF SOVEREIGN IMMUNITY.

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

ARTICLE 37. SOVEREIGN IMMUNITY

Sovereign Immunity: By executing this Agreement the City is not waiving its right of sovereign immunity except to the extent expressly provided by the Texas Tort Claims Act and Section 271.152 of the Texas Local Government Code. The City is retaining its immunity from any suit which does not arise from the rights and privileges granted to Lessee under this Agreement. The City is not granting consent to be sued by legislative resolution or action. The City does not waive any defense or limitation on damages available to a party to a contract, other than a bar against suit based on sovereign immunity as provided in Section 271.155 of the Texas Local Government Code. The City does not waive sovereign immunity to suit for a cause of action for a negligent or intentional tort except as expressly provided by the Texas Tort Claims Act.

ARTICLE 38. THIRD-PARTY BENEFICIARY

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

ARTICLE 39.
NOTICE OF ALLEGED BREACH; STATUTORY PREREQUISITES

Notice of Alleged Breach; Statutory Prerequisites: As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, Lessee or his legal representative, shall give the City Manager, or any other reasonable official of the City, notice in writing (consisting of one original and seven copies of notice attached to a copy of this agreement) of such damages, duly verified, within one hundred and eighty (180) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which the Lessee will settle, the physical and mailing addresses of Lessee at the time and date the claim was presented and the physical and mailing addresses of Lessee for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Lessee relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except the City from any liability whatsoever. The City is under no obligation to provide notice to Lessee that Lessee's notice is insufficient. City reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

ARTICLE 40.
NOTICES

Whenever any notices required by this Agreement are to be made, given or transmitted to the parties, such notice shall be hand delivered or sent by certified mail, postage prepaid, and addressed to:

City:

Mr. Courtney Sharp
City Manager
City of Midland
300 N Loraine St.
Midland, Texas 79701

with a copy to:

Mr. Marv Esterly
Director of Airports
Midland International Airport
P.O. Box 60305
Midland, Texas 79711

Lessee:

S. Javaid Anwar
W-T Hangar LLC
P.O. Box 10512
Midland, Texas 79702

All payments shall be made payable to City of Midland and sent to the attention of the Director of Airports.

The parties may, from time to time, designate to each other in writing a different address or different entity or entities to which all such notices, communications, or payments shall be given or made.

**ARTICLE 41.
MISCELLANEOUS**

- A. Quiet Enjoyment: Upon the performance of the covenants and agreements on the part of the Lessee to be performed hereunder, the Lessee shall peaceably have and enjoy the Leased Premises, appurtenances, facilities, licenses and privileges granted in this Agreement.
- B. Force Majeure: Neither the City nor Lessee shall be deemed in violation of this Agreement if it is prevented from performing any of its obligations hereunder except the obligation to pay rent by reason of strikes, boycotts, labor disputes, embargoes, shortages of materials, act of God, acts of the public enemy, act of superior governmental authority, weather conditions, floods, riots, rebellions, acts of sabotage or any other circumstances for which it is not responsible or which are not in its control.

**ARTICLE 42.
EXHIBITS AND APPENDICES**

Exhibits and Appendices attached hereto are expressly made a part hereof.

- A. Definitions
- B. Description of Leased Premises
- C. Site Plan will be provided within 45 days after execution of the agreement
- D. Design Guide and Standards for Private Hangars

WITNESS WHEREOF, the parties hereto have caused this Agreement to be legally executed in duplicate this _____ day of _____, 2012.

THE CITY OF MIDLAND, TEXAS

W-T Hangar, LLC

BY: _____
Courtney Sharp, City Manager

BY: _____
Printed Name: S. Javaid Anwar
Title: Manager

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

APPROVED AS TO CONTENT
AND COMPLETENESS:

Marv Esterly, Director of Airports

STATE OF _____ §

COUNTY OF _____ §

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

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 2012.

Notary Public, State of _____

My Commission Expires: _____

EXHIBIT A
Definitions

1. Airport means the Midland International Airport, located at 9506 La Force Blvd., Midland, Texas 79706.
2. City means the City of Midland, an incorporated home-rule Texas municipality.
3. Hazardous Materials is defined herein as that term is so defined by EPA, TCEQ, NFPA and City ordinances, inclusive.
4. Improvements means the hangar, taxi-lane with appurtenant apron, automobile, parking, security fencing and enhancements, utilities, water line, drainage channel and any related alterations located, or to be located, on the Leased Premises.
5. Leased Premises means the land only described in Exhibit B which is owned by The City and leased to Lessee.
6. Leasehold Mortgagee means the holder of a mortgage interest (including for these purposes an interest created by a deed of trust) in the Leased Premises.
7. Primary Guiding Documents is defined to include the Airport Certification Manual, Airport Leasing Policy, Airport Minimum Standards and Airport Security Program.
8. Regulatory Measures means all applicable Federal, State and Local regulations.
9. Site Plan means, for purposes of this Agreement, the area depicted in the attached Exhibit C, including hangars, taxiways, aprons, driveways, fences and drainage culverts, detention ponds and related improvements, including Off-site Improvements to be constructed by Lessee.
10. Sponsor means the City of Midland, Texas.

EXHIBIT B
Leased Premises (legal description)

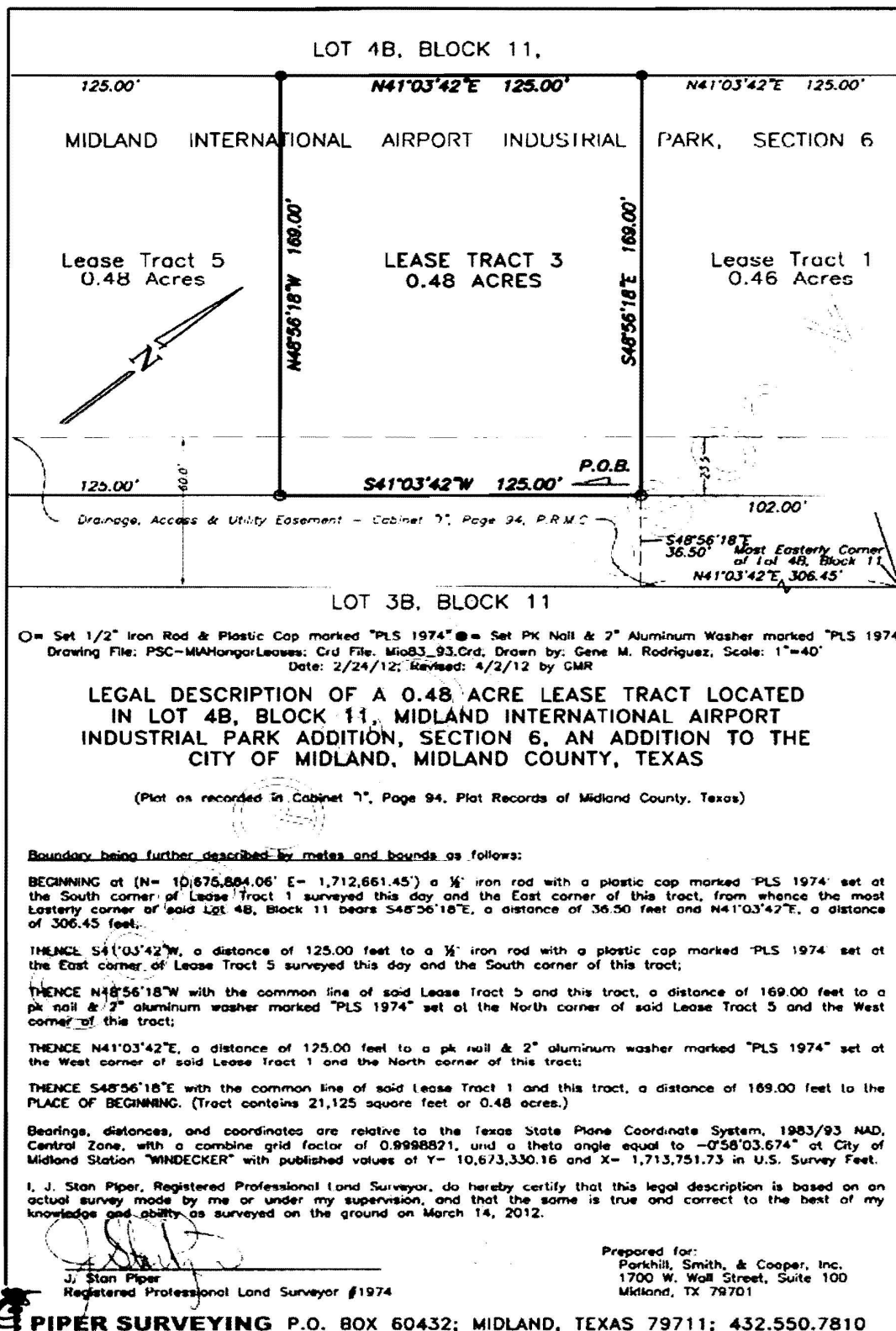


EXHIBIT C
Site Plan

EXHIBIT D
MIDLAND INTERNATIONAL AIRPORT
DESIGN GUIDE AND STANDARDS FOR PRIVATE HANGARS IN
NORTHWEST HANGAR DEVELOPMENT AREA

A. ARCHITECTURAL RESTRICTIONS

- 1.01 Style Design. Unless otherwise approved by the Director of Airports in writing, all buildings constructed upon the Property shall be contemporary in style. Elevations of all sides of the building shall be approved by the Director in writing.
- 1.02 Code Requirements. Must meet all local (Midland), State, Federal, Energy Code and Zoning Requirements.
- 1.03 Drawing 1 – Standard Site Layout. Refer to attached Drawing 1 for additional site information.
- 1.04 Building Setbacks. The following yard or building setback requirements shall apply to all leased parcels that are located within the Development.
- a. Front setback shall be a minimum of 28'-6" from lease line for large hangars and 23'-0" from lease line or small hangars.
 - b. Airside Setback shall be zero (0) feet from airside lease line.
 - c. Side Setback from lease line shall be a minimum of five (5) feet from the side of the building. Building size shall be determined by lease agreement and site plan submitted to Director of Airports for review and approval in writing. The side setback area shall be concrete paving.
- 1.05 Building Area. Must achieve a density of development which will preserve the property's design characteristics.
- 1.06 Building Materials. The exterior side walls shall be 24 GA prefinished metal panels with Kynar (20-year finish) with a 2-hour rating (metal-span "thermalsafe" or equal). The exterior airside walls shall be 24 GA prefinished metal panels with Kynar (20-year finish) with a minimum (0)-hour rating. The front public side of building exterior walls shall be 24 GA prefinished metal panels with Kynar (20-year finish) with a 2-hour rating and shall have a 4'-0" high, 4" thick stone or other approved stone material.
- 1.07 Building Roofs. Building roofs shall be 22 GA structural standing seam prefinished (Kynar finish with 20-year warranty). The Specular Gloss shall be a value of 30 plus or minus 5 at an angle of 60 degrees and meet ASTM D 5423 Specular Gloss. Roof shall be designed to meet UL90. Roof shall have gutters, downspouts and snow guards.
- 1.08 Building Elevations. All elevations of the building shall be designed in a consistent and coherent architectural manner. Changes in material, color and/or texture shall occur at points relating to the massing, fenestration and overall design concept of the building.

a. Front Elevation of Building. There shall be a concrete walk to front door with open air canopy with stone columns.

1.09 HVAC Units and Miscellaneous Equipment. Cooling towers, rooftop and ground-mounted mechanical and electrical units and other miscellaneous equipment shall either be integrated into the design of the building or screened from view. No rooftop units are allowed.

1.10 Utilities. All utilities serving any building or site shall be underground. No building or other improvement, or trees shall be erected, placed or planted within any utility easement.

1.11 Temporary Buildings. No building or structure of a temporary or prefabricated character shall be used on any lot at any time, either temporarily or permanently except for construction trailers during the period of construction.

1.12 Fencing. Fences shall not be allowed, except for fence shown on attached Drawing 1 and all fencing must have screening of service areas.

1.13 Maintenance and Landscaping. Every site on which a building shall have been placed shall be landscaped in accordance with the final development plan submitted to and approved by the Director of Airports. The setback area abutting streets should be landscaped with a combination of deciduous canopy trees, ground cover and shrubbery. All unpaved areas not utilized for parking shall be landscaped in a similar manner. Undeveloped areas proposed for future expansion shall be maintained in a weed-free condition and shall be landscaped if required by the Director of Airports. Approved landscaping shall be installed within ninety (90) days of occupancy or completion of the building, whichever occurs first, unless the Director of Airports approves in writing another completion date. After completion, such landscaping shall be maintained in excellent condition by cutting, trimming, fertilizing, watering and weeding.

Lessee shall landscape and provide irrigation to the area as shown on attached Site Layout (attached Drawing 1).

1.14 Hangar Doors. Outrigger Hangar doors are not allowed.

B. STANDARDS FOR LANDSCAPE DESIGN

1.01 Plants having similar water needs shall be grouped together.

1.02 Landscaped areas shall be designed so that trimming is easy and minimizes damage to plants and property.

1.03 Plants shall be selected based on use, soil and sun/shade conditions, adaptability to geographic and climatic conditions, and upon ability to survive, once established, on normal rainfall or minimal irrigation.

1.04 Preservation of native plants that have been identified as desirable is encouraged. Such plants shall include, but not be limited to:

a. Plants that are threatened or endangered.

b. Specimen plants or exceptional examples of particular species.

- 1.05 Plants that readily survive relocation and are useful in new or existing landscapes.
- 1.06 Irrigated turf shall be used sparingly and only in circumstances where other landscaping media will not satisfy the site's needs.
- 1.07 Use of long, narrow strips of turf is strongly discouraged.
- 1.08 Only trees of less than 12 feet in height at maturity shall be used.
- 1.09 All new construction projects shall include specifications for soil analysis and amendments, such as compost, in type and quantity necessary to enhance plant growth. All landscape planting selections must be appropriate for the soil as analyzed and amended.
- 1.10 In planted areas, mulches of two inches or more shall cover most soil surfaces.

C. STANDARDS FOR IRRIGATION DESIGN

- 1.01 Irrigation shall be designed to avoid run-off, over-spray, and under-spray.
- 1.02 Irrigation shall employ drip, trickle, micro, low-arching, low-gallonage, or other water-conserving technology when possible.
- 1.03 Irrigation shall be separated into zones according to water requirements of plants.
- 1.04 Rain and moisture sensing technology shall be used wherever possible.

D. STANDARDS FOR LANDSCAPE INSTALLATION

- 1.01 All installations shall conform to currently recommended horticultural practices.
- 1.02 All plants, materials, and equipment shall be of good quality according to current industry standards. Sources for standards shall include the latest edition of the American Standard for Nursery Stock, by the American Association of Nurserymen, and recommendations from the American Sod Producers Association.
- 1.03 To minimize water use, fall installation of landscapes is highly recommended, with winter and spring installations acceptable. Summer installation is strongly discouraged.
- 1.04 To reduce transplant shock, use of container grown trees and shrubs is recommended where possible.

E. STANDARDS FOR LANDSCAPE MAINTENANCE

- 1.01 Owner, operator, or other entity in control shall be required to keep all landscaping material in good health or repair at all times.
- 1.02 Maintenance shall begin at the commencement of installation.
- 1.03 Regular maintenance shall include checking, adjusting, and repairing irrigation systems. This includes adjusting run-time schedules based on seasons and moisture levels.
- 1.04 Regular maintenance shall include replenishing mulch.

- 1.05 Natural plant form is encouraged.
- 1.06 To minimize mechanical damage to young trees and shrubs, planting areas shall be free of weeds and shall be mulched continually.

F. DESIRABLE PLANT SPECIES

- 1.01 Plants recommended by the local Texas Agricultural Extension offices and those listed in the following publications shall be considered desirable:
 - a. "Landscape Water Conservation - Xeriscape", Texas Extension service
 - b. "A directory of water saving plants - Trees for Texas", Texas Water Development Board
 - c. "Outstanding Landscape Plants of Texas", Texas Association of Nurserymen
 - d. Plants for Dry Climates, Mary Rose Duffield and Warren B. Jones; HP Books
- 1.02. These references are provided as guides and are not intended to be exclusive. Any plant that is hardy, long-lived, and will survive on normal rainfall or minimal irrigation, and that does not pose a risk to life, health, or property, is considered desirable.

G. STANDARDS FOR SELECTION AND INSTALLATION OF TURF

- 1.01 Turfgrass selection shall be determined by facility need and geographic location. Use of different types of turf for distinctive purposes is encouraged.
- 1.02 The use of turf that can be maintained on natural rainfall is encouraged.
- 1.03 Sections of turf of high visibility and limited area can be irrigated with automatic systems using latest technologies.
- 1.04 Turf shall be irrigated separately from other plantings.

H. USE RESTRICTIONS

- 1.01 SIGNS
 - a. No billboard or advertising media such as signs, shades, awnings, searchlights, loudspeakers, amplifiers or similar devices shall be permitted other than signs identifying the name, business and products of the person or firm occupying the premises, and those offering the premises for sale or lease. The size and style of all permitted signs shall be approved by the Director of Airports in writing.
 - b. Sign locations shall be governed by the setback requirements unless written permission is given by the Director of Airports for non-conforming location.

- c. Permitted signs and identifying markings on buildings or building sites shall only be of such size, design and color as is specifically approved by the Director of Airports in writing.
- d. One (1) on-site temporary sign for the purpose of describing a construction project or advertising the sale or lease of a site or building will be permitted, provided the sign is no longer than thirty-two (32) square feet and is not permitted to remain on the site beyond the completion of such construction sale or lease.

1.02 STORAGE

Outdoor storage or operations shall not be permitted without the prior written approval of the Director of Airports.

1.03 REFUSE

No lot shall be used or maintained as a dumping ground for rubbish. Trash, Garbage, and other waste shall be kept in enclosed sanitary containers. All trash areas shall be screened so as not to be visible from any street of adjacent lots.

1.04 NUISANCES

No noxious, dangerous or offensive activity shall be conducted upon any land, lot or portion of any lot, nor shall anything be done thereon which may be or may become a hazard of nuisance to abutting properties or the area or neighborhood in general.

1.05 REPAIR OF BUILDINGS

No building or structure shall be permitted to fall into disrepair and each building and adequately painted or otherwise finished. If, in the opinion of the Director of Airports proper maintenance is not undertaken, the City, any time after thirty (30) days or written notification to the lessee and/or building owner, may contract for the completion of such maintenance work. The City shall have the right to bill the owner for such costs plus 10% thereof for administration. In the event of damage or destruction to any such building or structure, such building or structure may be repaired or reconstructed in accordance with the previously approved plans without their resubmission to the Director of Airports.

1.06 PARKING

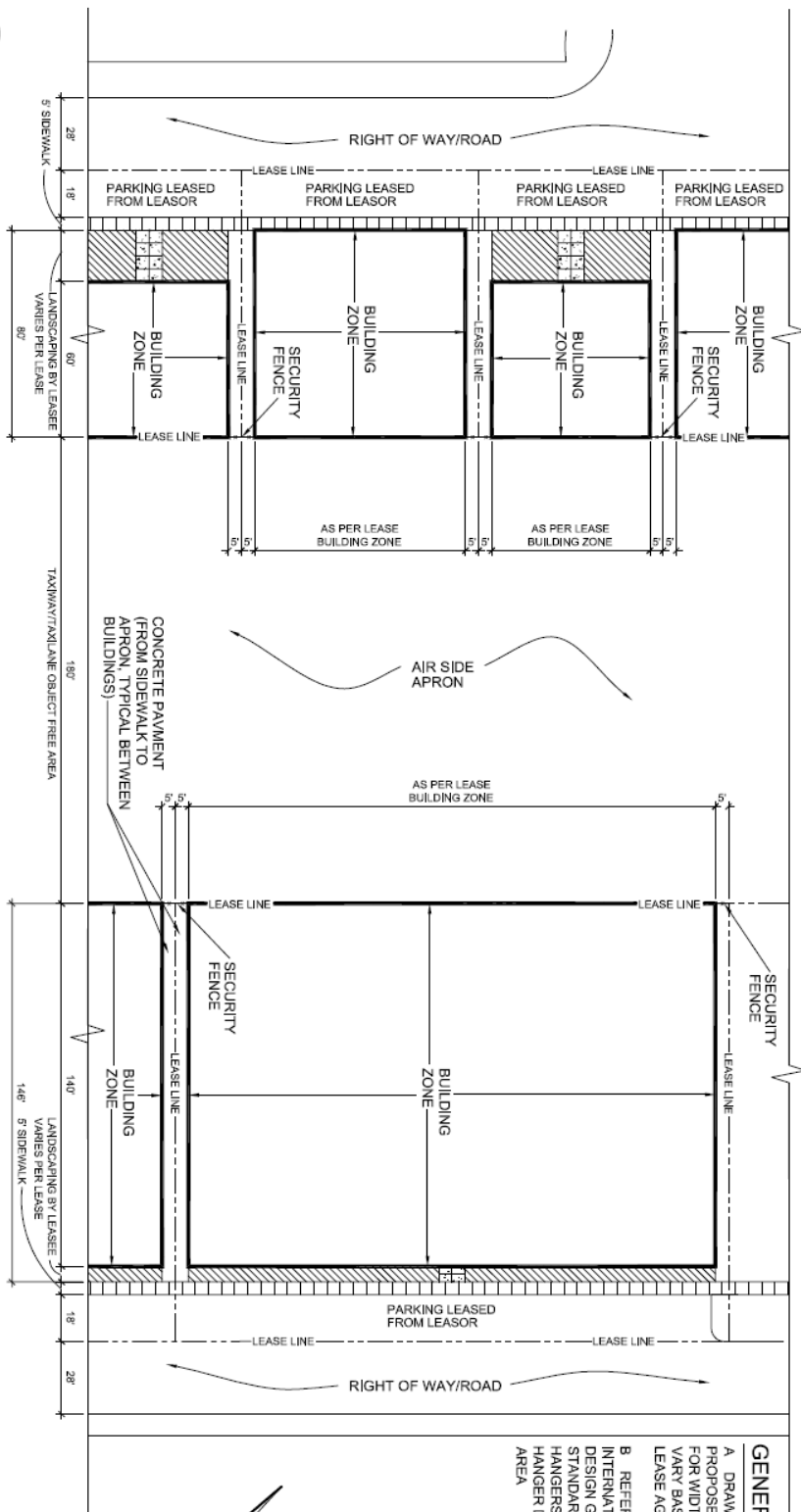
All pavement and parking areas will be installed by Lessor within the front setback of the building. No parking will be allowed on airside of building. No parking will be allowed in side setbacks unless approved by the Director of Airports. Markings and ADA marking signs ramps shall be installed. No covered parking spaces will be allowed unless approved by the Director of Airports.

1.07 VARIANCES

The Director of Airports is authorized to grant variances from any provision of this Declaration where such variations will assist in carrying out the intent and spirit of this Declaration and where strict application of the provision would result in a particular hardship to the person seeking the variance.

A1

SITE LAYOUT (EXHIBIT "D" - DRAWING 1)



GENERAL NOTES

- A. DRAWINGS SHOW PROPOSED LEASE LINES FOR WIDTHS - WIDTHS MAY VARY BASED ON ACTUAL LEASE AGREEMENT
- B. REFER TO MIDLAND INTERNATIONAL AIRPORT DESIGN GUIDE AND STANDARDS FOR PRIVATE HANGERS IN NORTHWEST HANGER DEVELOPMENT AREA

MIDLAND INTERNATIONAL
AIRPORT
PROPERTY LEASING
SITE LAYOUT

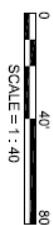
THE DRAWING IS BASED ON THE 2011
AIRPORT DESIGN GUIDE AND STANDARDS
FOR PRIVATE HANGERS. ANY CHANGES
OR MODIFICATIONS TO THE DESIGN
CONTRACT, BEFORE OR AFTER ISSUANCE



PARKHILL SMITH & COOPER

SHEET DESCRIPTION

Issue: EXHIBIT "D"
Project No:
Date: REV: 11-04-2011
Sheet: DRAWING 1





City Council Agenda

Approved for Agenda:
csharp
City Manager's Office

MEETING DATE: 6/12/2012

TO: City Council / City Manager

FROM: Courtney Sharp, City Manager

SUBJECT: Consider a resolution approving the acceptance of a bid for the purchase of real property located at 309 South Stonewall Street.

Purpose:

This resolution approves the acceptance of a bid made for the purchase of real property located at 309 South Stonewall Street. The property's legal description is Lot 7 & 8, Block 34, Greenwood Addition, City of Midland, Midland County, Texas (Tax I.D. No. R23391). The property has been off the tax rolls since 1992 when Midland County received the property in a tax suit. Although Midland County currently holds the property as trustee for the other taxing entities, each taxing entity must approve or reject the bid before Midland County may act on the bid. A majority of the taxing entities must approve the acceptance of the bid in order for Midland County to award the bid and convey the property.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

The property is currently valued by the Midland Central Appraisal District at \$1,540.00. Robert Savage has submitted a bid of \$1,500.00 for the purchase of the property.

Discussion:

By approving the acceptance of the bid received for the property, the property may be returned to the tax rolls while providing land for development by its new owner.

RESOLUTION NO.

**RESOLUTION APPROVING THE ACCEPTANCE OF A
BID MADE FOR THE PURCHASE OF REAL PROPERTY
DESCRIBED AS LOTS 7 AND 8, BLOCK 34,
GREENWOOD ADDITION, CITY OF MIDLAND,
MIDLAND COUNTY, TEXAS**

WHEREAS, the real property identified as Lots 7 and 8, Block 34, Greenwood Addition, an addition to the City of Midland, Midland County, Texas, is currently held by Midland County as Trustee for the other taxing entities; and

WHEREAS, the Midland Independent School District, the Midland Hospital District, Midland College, Midland County, and the City of Midland each have a vote on whether or not to accept a bid for the purchase of the property; and

WHEREAS, the bid for the property has been received in the total amount of \$1,500.00; and

WHEREAS, the Council finds that accepting the bid will return the property to the tax rolls; and

WHEREAS, the Council finds it in the public interest to accept the bid;

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

SECTION ONE. That the recitals as stated above are hereby adopted.

SECTION TWO. That the Council hereby approves the acceptance of Mr. Robert Savage's bid in the amount of \$1,500.00 for the purchase of Lots 7 and 8, Block 34, Greenwood Addition, an addition to the City of Midland, Midland County, Texas. Said real property is shown on Exhibit "A", which is attached hereto and incorporated herein for all purposes.

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

Council members voting "AYE":

Council members voting "NAY":

ATTEST:

W. Wesley Perry, Mayor

Amy M. Turner, City Secretary

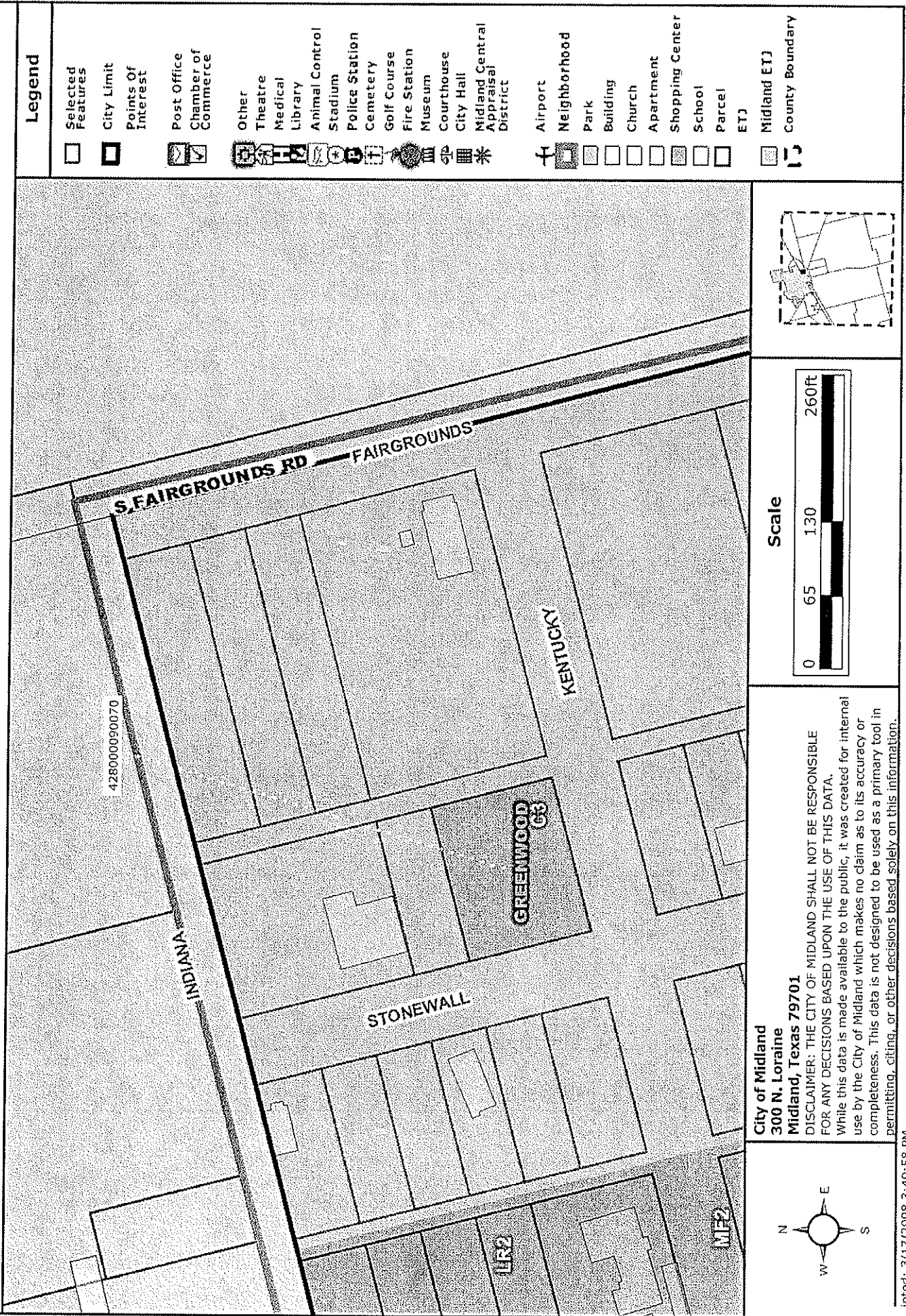
RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

R23391



Legend

- Selected Features
- City Limit
- Points Of Interest
- Post Office
- Chamber of Commerce
- Other
- Theatre
- Medical
- Library
- Animal Control
- Stadium
- Police Station
- Cemetery
- Golf Course
- Fire Station
- Museum
- Courthouse
- City Hall
- Midland Central Appraisal District
- Airport
- Neighborhood
- Park
- Building
- Church
- Apartment
- Shopping Center
- School
- Parcel
- ETJ
- Midland ETJ
- County Boundary

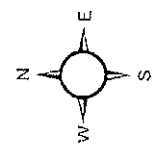


Scale



City of Midland
300 N. Loraine
Midland, Texas 79701

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Attorney at Law
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KYLE DICKSON
Attorney at Law
kdickson@pbfcml.com

April 30, 2012

City of Midland
P. O. Box 1152
Midland, Texas 79702
ATTN: Courtney Sharp

Midland Independent School District
615 W. Missouri
Midland, Texas 79701
ATTN: Ellen House
CITY MANAGER'S OFFICE
RECEIVED

MAY 01 2012

Midland Memorial Hospital
2200 W. Illinois
Midland, Texas 79701
ATTN: Rebecca Pontaski

Midland College
3600 N. Garfield St.
Midland, Texas 79705
ATTN: Rick Bender, Vice Pres.
CITY of MIDLAND, TEXAS

RE: Approval/Denial of Bid for Property Held in Trust by Midland County

Property Description: Lots 7 & 8, Block 34, Greenwood Addition, City of Midland,
Midland County, Texas (Tax I.D. No. R23391)

Bidder: Robert Savage Bid Amount: \$ 1,500.00

Judgment Date: April 13, 1992 Struck-off Date: April 20, 1993

MCAD Land Value (2011): \$ 1,540.00 Situs: 309 S. Stonewall St.

Greetings:

Our law firm represents the Midland County Tax Office in the collection of delinquent property taxes. The above property was struck off to Midland County as Trustee for the other taxing entities following the foreclosure and sale of the property for delinquent property taxes. The above bidder has submitted a bid for the purchase of the property from Midland County. Each taxing entity must approve this bid in order for the bidder to be awarded the property. Please be advised that accepting said bid would allow this property to be placed back on the tax roll, and that you may reject the bid for any reason.

Please place this item on your board's agenda for consideration. If you would like me to appear in person, please advise the time and location of your meeting.

Please send me notification of the approval or denial of the bid.

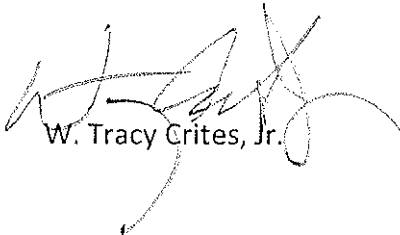
Midland County Taxing Entities

April 30, 2012

Page 2

Your help and consideration is greatly appreciated. If you have any questions or concerns, please feel free to contact me.

Sincerely,



W. Tracy Crites, Jr.

Enclosures

Copy of Bid

Map of Location

PURCHASE BID FOR MIDLAND COUNTY TRUST PROPERTY

BID INFORMATION (please print or type)

Tax ID Number of property: R23391

Legal description of property: Lot 7 & 8, Blk.34, Greenwood Addition

Midland; Acres: 0.354

Amount Bid: \$1500.00

TERMS AND CONDITIONS:

1. All bids for the purchase of real property held in trust must be approved by all applicable taxing entities prior to the issuance of a tax deed to the approved bidder.
2. No bidder who currently owes delinquent taxes can receive a tax deed until all delinquent taxes have been paid in full. A taxing entity may elect to withhold its approval of a bid until the bidder has paid his/her delinquent taxes in full.
3. In the event a bidder is notified by the taxing entity that his/her bid has been approved by the appropriate taxing entities, he/she must tender a check or money order made payable to the MIDLAND COUNTY CLERK in the amount of \$32.00 in order to cover the cost of recording the tax deed. Please note that the cost of recording is not controlled by the taxing entities and may change in the future.
4. All property held in trust by Midland County is sold AS-IS without any warranties, express or implied. ALL SALES ARE FINAL.

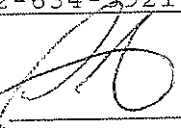
BIDDER INFORMATION

Name of Bidder: Robert Savage

Street Address: 4705 SCR 1172

City, State, Zip: Midland, Texas, 79706

Phone number: 432-634-3921

Signature of bidder: 



City Council Agenda

Approved for Agenda:
jnichols
City Manager's Office

MEETING DATE: 6/12/2012

TO: City Council / City Manager

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Consider a motion authorizing the staff to proceed with the voluntary annexation of approximately 77 acres including 76 acres in Section 37, Block 40 and a 1/2 acre tract located in Section 26, Block 40.

Purpose:

To seek Council direction to begin the annexation process for two land tracts.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

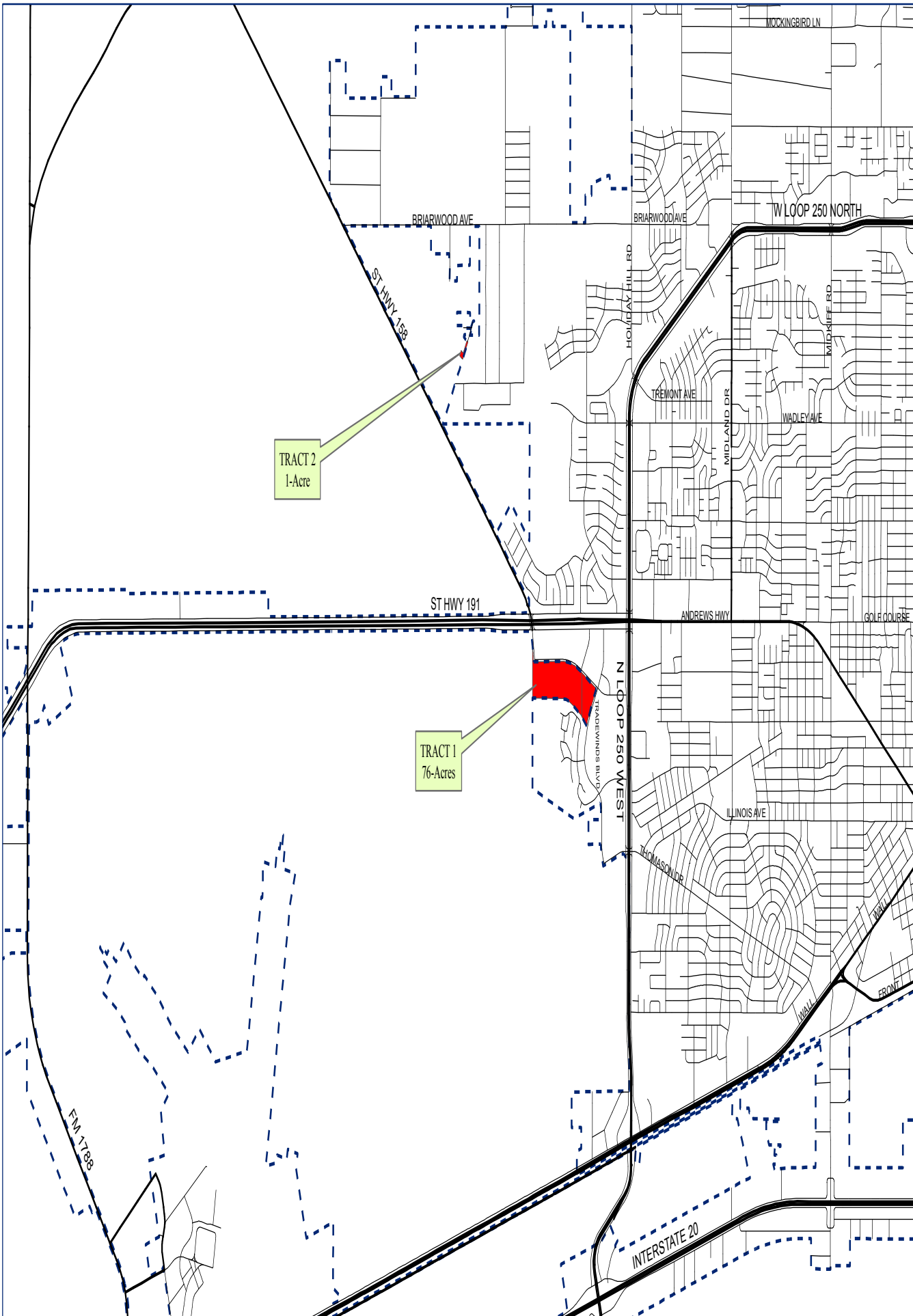
No cost to the City to proceed with annexation.

Discussion:

Staff has received two letters from property owners requesting annexation. The larger tract is 76 acres and is owned by SBC Corporation; it is intended to be developed for a large office complex and other future uses. The land is located south of SH 191, near the Deauville Blvd. corner. The other parcel is on NCR 1247 and is located on the west side adjacent to a city water line.

Proposed Annexations

May 30, 2012



LEGEND

- Streets
- City Limits
- Annexation Tracts



PLANNING DIVISION
Map by MH

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City Council Agenda

Approved for Agenda:
jnichols
City Manager's Office

MEETING DATE: 6/12/2012

TO: City Council / City Manager

FROM: David Beard,

SUBJECT: Consider a motion on a request by Newton Engineering for Southwest Baptist Church Addition, to approve items requested for deferral in the amount of \$32,804, and to enter into a development agreement to accept funds for the construction of a water main extension along the SH 191 frontage and to waive the associated public improvement guarantee. This property is positioned in the City Limits, generally located on the north side of SH 191 approximately 4 miles west of Loop 250. (District #4 - Trost)

Purpose:

Consider a motion on a request by Newton Engineering for Southwest Baptist Church, to approve items requested for deferral in the amount of \$32,804, and to enter into a development agreement to accept funds for the construction of a water main extension along the SH 191 frontage and to waive the associated public improvement guarantee. This property is positioned in the City Limits, generally located on the north side of SH 191 approximately 4 miles west of Loop 250. (District #4 - Trost)

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Total value of deferral (recommended items) \$32,804.00

Staff is developing a deferral policy consistent with the parameters reviewed by Council. We hope to have a new process in effect later this year.

Discussion:

The Southwest Baptist Church Addition is located on the north side of SH 191 approximately 4 miles west of Loop 250.

Newton Engineering is proposing to plat the property and defer all public improvements and provide a cash deposit for the construction of water distribution improvements along the SH 191 frontage. Below is a summary of the deferral request along with a discussion of public improvements related to the development of land associated with this plat:

Deferral Request

1. Wastewater Collection: The applicant is requesting deferral of wastewater collection improvement.
 - The City is currently working with Parkhill, Smith, & Cooper to provide wastewater service to the SH 191 corridor. Once complete, the property owner agrees to tie into the improvements within 180 days.
2. Sidewalk: The applicant is requesting deferral of sidewalks. Sidewalk construction is typically accomplished during the building permit phase (builder constructs the sidewalk). Currently, sidewalks will not be required along the SH 191 frontage. If sidewalks are required, they will be addressed when a building permit application is submitted.
3. Paving: Access to the site is provided along the SH 191 access road. No paving improvements are required.
4. Drainage: A Drainage Study for this site has been submitted and approved by City Staff.

Staff supports this deferral request based on the conditions outlined in the plat status below.

Public Improvements

1. Water Distribution: The City is currently working with Parkhill, Smith, & Cooper to provide water distribution improvements along the SH 191 corridor. The applicant has agreed to provide a cash deposit for the improvements along the SH 191 frontage in the amount of \$32,804.

Plat Status

1. Right-of-Way Reservation for Future Backage Road: Southwest Baptist Church has proposed and staff supports a change in the width from 35-feet to 10-feet reserved for a future right-of-way utilization. The proposed deferral request should be conditioned on the City's ability to obtain an additional 60-foot right-of-way dedication from the adjacent property owner to the north.
2. Utility Easements: The changes above will not affect easements shown on the proposed plat. The plat will retain all utility and other easements previously agreed upon by staff and Southwest Baptist Church.

Attached is a location map, along with a deferral justification, and cost estimate from Newton Engineering.

ENGINEERING SERVICES DEPARTMENT

Deferral of Public Improvements

Southwest Baptist Church

Southwest Baptist Church





City Council Agenda

Approved for Agenda:
CSharp
City Manager's Office

MEETING DATE: June 12, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Price Robinson, Chief of Police

SUBJECT: Additional HIDTA Funds

Purpose:

Accept additional grant funding in the amount of \$22,000 from the High Intensity Drug Trafficking Areas (HIDTA) Program and appropriating funds.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

That the Fiscal Year 2012 H.I.D.T.A. grant in the amount of \$22,000 is hereby accepted and directed to be deposited into the General Fund (001) of the City, and;
That the sum of \$22,000 is hereby appropriated from to the General Fund (001) Unappropriated Fund Balance (5650) to the FY'2012 H.I.D.T.A. Grant Project (7080)

Discussion:

The Midland Police Department was recently awarded an additional \$22,000 by the Southwest Border HIDTA. This amount will be directed to the FY2012 HIDTA Project 7080.

RESOLUTION NO.

RESOLUTION ACCEPTING ADDITIONAL GRANT FUNDING FROM THE SOUTHWEST BORDER HIGH INTENSITY DRUG TRAFFICKING AREAS PROGRAM IN THE AMOUNT OF \$22,000.00; THESE FUNDS WILL BE DIRECTED TO THE FISCAL YEAR 2012 HIGH INTENSITY DRUG TRAFFICKING AREAS PROJECT 7080; AND APPROPRIATING FUNDS

WHEREAS, the City of Midland, Texas, has received additional grant funds from the Southwest Border High Intensity Drug Trafficking Areas (HIDTA) program to enhance and coordinate drug control efforts among federal, state, and local law enforcement agencies; and

WHEREAS, the Southwest Border HIDTA program provides agencies with resources in the way of technology, equipment, and funding in order to better combat drug trafficking; and

WHEREAS, the City of Midland, Texas, has been awarded an additional \$22,000.00 from the Southwest Border HIDTA program which will be directed to the Fiscal Year 2012 HIDTA Project 7080; and

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

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

SECTION ONE. That the City of Midland, Texas, acting through its Mayor and City Council, hereby accepts the additional Southwest Border HIDTA grant funds in the amount of \$22,000.00 to be used for the purpose of enhancing and coordinating drug control efforts among federal, state, and local law enforcement agencies to better combat drug trafficking.

SECTION TWO. That the Mayor, Director of Finance and Chief of Police of the City of Midland, Texas, are hereby authorized and directed to evidence the City of Midland's acceptance by executing all necessary documents in order to accept said grant funds.

SECTION THREE. That the Fiscal Year 2012 H.I.D.T.A. grant in the amount of

\$22,000 is hereby accepted and directed to be deposited into the General Fund (001) of the City, and; that the sum of \$22,000 is hereby appropriated from the General Fund (001) Unappropriated Fund Balance (5650) to the FY'2012 H.I.D.T.A. Grant Project (7080).

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

Robert McNaughton, Director of Finance

APPROVED AS TO CONTENT
AND COMPLETENESS:

Price Robinson, Police Chief

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:
csharp
City Manager's Office

MEETING DATE: 6/12/2012

TO: City Council / City Manager

FROM: Price Robinson, Chief of Police

SUBJECT: Request Approval to Apply to the U.S. Department of Homeland Security Transportation Security Administration's FY2013 LEO Reimbursement Program for Partial Reimbursement for Costs Associated with the Deployment of a Law Enforcement Officer at the Airport Passenger Screening Checkpoint

Purpose:

Request Approval to Apply to the U.S. Department of Homeland Security Transportation Security Administration's FY2013 LEO Reimbursement Program for Partial Reimbursement for Costs Associated with the Deployment of a Law Enforcement Officer at the Airport Passenger Screening Checkpoint

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

The funding, if awarded, will be used to offset the cost of providing a mandated law enforcement security measure at the security passenger screening location at the Airport. The estimated FY2013 cost to the City to comply with the mandate is estimated to be \$242,247.00. The TSA will develop a maximum rate that will be used for reimbursement purposes. Reimbursement may be at this rate or at the actual cost, whichever is the lesser of the two. This maximum rate will not be determined until the application submission review process has been completed. The TSA reserves the right to modify the maximum rate during the period of performance.

Discussion:

After the events of September 11, 2001, several security mandates were issued by the Transportation Security Administration (TSA) in order to ensure the security of the traveling public and the nation's transportation system. One of these mandates (49 C.F.R. Part 1542) requires each airport operator to provide a law enforcement presence and capability at the Airport passenger screening checkpoint that is adequate to ensure the safety of the passengers. The Law Enforcement Officer (LEO) Reimbursement Program is a cooperative effort by TSA to offset the costs incurred due to mandate compliance.

RESOLUTION NO.

RESOLUTION AUTHORIZING THE SUBMISSION OF AN APPLICATION TO THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY TRANSPORTATION SECURITY ADMINISTRATION'S FISCAL YEAR 2013 LAW ENFORCEMENT OFFICER REIMBURSEMENT PROGRAM; THIS APPLICATION WILL BE FOR PARTIAL REIMBURSEMENT FOR COSTS ASSOCIATED WITH THE DEPLOYMENT OF A LAW ENFORCEMENT OFFICER AT THE AIRPORT PASSENGER SCREENING CHECKPOINT; THIS REIMBURSEMENT, IF AWARDED, WILL BE USED TO OFFSET THE COST OF PROVIDING A MANDATED LAW ENFORCEMENT OFFICER AT THE PASSENGER SCREENING CHECKPOINT AT THE MIDLAND INTERNATIONAL AIRPORT

WHEREAS, the United States Transportation Security Administration (TSA) mandates that each airport operator provide a law enforcement presence and capability at the Airport passenger screening checkpoint to ensure the safety of passengers; and

WHEREAS, the Midland Police Department wishes to submit an application for partial reimbursement to offset the cost of providing a mandated law enforcement security officer at the Airport Passenger Screening Checkpoint; and

WHEREAS, the TSA will develop a maximum rate that will be used for reimbursement purposes and TSA reserves the right to modify the maximum rate during the period of performance; and

WHEREAS, the City of Midland City Council finds it to be in the public interest to authorize the Midland Police Department to apply for such funds;

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

THAT the Chief of Police of the City of Midland, Texas, is hereby authorized to submit an application to the United States Transportation Security Administration for reimbursement to offset the cost of providing a mandated law enforcement security officer at the Airport Passenger Screening Checkpoint. Said application shall be placed on file in the City Secretary's office referenced by the number and date of this resolution.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

Robert McNaughton, Director of Finance

APPROVED AS TO CONTENT
AND COMPLETENESS:

Price Robinson, Police Chief

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:
jnichols
City Manager's Office

MEETING DATE: 6/12/2012

TO: City Council / City Manager

FROM: Morris Williams, Solid Waste Director

SUBJECT: Consider a resolution accepting grant funds from the Permian Basin Regional Planning Commission for the Backyard Composting Grant and appropriating funds.

Purpose:

Consider a resolution accepting grant funds from the Permian Basin Regional Planning Commission for the Backyard Composting Grant and appropriating funds.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

That the sum of \$8,000 is hereby appropriated from the Sanitation Fund (430) Unappropriated Fund Balance (5650) to the Backyard Composting Grant Project (7086).

Discussion:

The Permian Basin Regional Planning Commission has made grant money available in the amount of \$8,000 to the City of Midland for existing FY 12/13 programs. The grant money consists of a portion of the \$1.25 per ton tipping fee that the cities across the State collect at landfill sites. The grants are intended for projects that address solid waste issues.

The funded grant is Backyard Composting (\$8,000) that will be used to purchase composting bins and tools that are associated with composting and used by local citizens.

RESOLUTION NO.

RESOLUTION ACCEPTING A GRANT FROM THE PERMIAN BASIN REGIONAL PLANNING COMMISSION IN THE AMOUNT OF \$8,000.00 FOR BACKYARD COMPOSTING PROJECTS; AUTHORIZING THE EXECUTION OF ACCEPTANCE DOCUMENTS; AND APPROPRIATING THE GRANT FUNDS TO THE BACKYARD COMPOSTING GRANT PROJECT; THE GRANT FUNDS WILL BE USED TO PURCHASE COMPOSTING BINS AND ASSOCIATED TOOLS; AND THE GRANT FUNDS CONSIST OF A PORTION OF THE \$1.25 PER TON TIPPING FEE THAT CITIES ACROSS THE STATE COLLECT AT LANDFILLS

WHEREAS, the City of Midland, Texas, has received a grant from the Permian Basin Regional Planning Commission for backyard composting projects in the amount of \$8,000.00; and

WHEREAS, the grant funds will be used to purchase composting bins and associated tools; and

WHEREAS, the Council finds it to be in the public interest to accept the grant from the Permian Basin Regional Planning Commission and to appropriate the funds;

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

SECTION ONE. That the grant from the Permian Basin Regional Planning Commission in the amount of \$8,000.00 is hereby accepted by the City of Midland, Texas.

SECTION TWO. That the City Manager, or his designee, is hereby authorized and directed to execute, on behalf of the City of Midland, all necessary documents in order to accept the grant.

SECTION THREE. That the sum of \$8,000.00 is hereby appropriated from the Sanitation Fund (430) Unappropriated Fund Balance (5650) to the Backyard Composting Grant Project (7086).

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

City of Midland at a regular meeting on the _____ day of _____, A.D., 2012, by
the following vote:

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Morris Williams, Solid Waste Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

**PERMIAN BASIN REGIONAL PLANNING COMMISSION
SOLID WASTE INTERLOCAL AGREEMENT**

I. The Texas Commission on Environmental Quality (TCEQ) has certified that it has the authority to contract with the Permian Basin Regional Planning Commission (PBRPC) by authority granted in the Current Appropriations Act, the Interagency Cooperation Act, the Interlocal Cooperation Act and the Texas Water Code (Chapter §5.124 and §5.229) and to implement provisions of §361.014(b) of the Texas Health and Safety Code. Funds for this subcontract are provided from the Solid Waste Disposal Fee Revenue Fund in support of local and regional solid waste projects consistent with §363.064(b) of the Texas Health and Safety Code.

II. Permian Basin Regional Planning Commission has certified, and the SUBCONTRACTOR certifies that it has authority to perform the services contracted for by authority granted in "The Interlocal Cooperation Act," Texas Government Code, Chapter 791.

III. This Interlocal Agreement is entered into by and between the parties named below. Neither TCEQ nor the State of Texas is a party to this Contract.

IV. The SUBCONTRACTOR is solely responsible for insuring compliance with TCEQ rules and regulations for Grant funded items.

PROJECT NUMBER 12-09-G07

I. CONTRACTING PARTIES:

The Council of Government: Permian Basin Regional Planning Commission

The SUBCONTRACTOR: City of Midland

II. SERVICES TO BE PERFORMED:

See "Attachment A - Work Program of SUBCONTRACTOR"

III. BUDGET AND PAYMENT PROCEDURES:

See "Attachment B - Budget and Payment Procedures"

IV. SCHEDULES OF DELIVERABLES:

See "Attachment C - Schedule of Deliverables from SUBCONTRACTOR"

V. ADDITIONAL CONTRACT PROVISIONS:

See "Attachment D - Special Contract Provisions & Attachment E
General Contract Provisions"

**PERMIAN BASIN REGIONAL
PLANNING COMMISSION**

P.O.Box 60660

Midland, Texas 79711

Terri Moore

Terri Moore, Executive Director

Date 4/23/2012

**CITY OF MIDLAND
SUBCONTRACTOR**

P.O. Box 1152

Midland, Texas 79702

Morris Williams Jr.

Morris Williams, Jr., Dir. of Solid Waste

Date 04/23/2012

**Permian Basin Regional Planning Commission
Solid Waste Interlocal Agreement
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Permian Basin Regional Planning Commission
Solid Waste Interlocal Agreement

Exhibit A-1

The PBRPC hereby designates the individual below as the person to give direction to the SUBCONTRACTOR as Project Representative of PBRPC:

Thomas R. Schlegel, P.E. – Engineer/Solid Waste Coordinator
Permian Basin Regional Planning Commission
P.O. Box 60660
Midland, Texas 79711

TEL (432) 563-1061; FAX (432) 563-1728

The SUBCONTRACTOR hereby designates the individual named below as the person authorized to receive direction from the PBRPC, to manage the work being performed, and to act on behalf of the SUBCONTRACTOR as a Project Representative including all financial and fiscal matters:

Morris Williams, Jr. - Director of Solid Waste
City of Midland
P.O. Box 1152
Midland, Texas 79702

TEL (432) 685-7278; FAX (432) 685-7450

The SUBCONTRACTOR designates the following location for record access and review pursuant to Attachment A & Attachment E of this Contract or any other applicable provision:

City of Midland Solid Waste Office
1500 Orchard Lane
Midland, Texas 79702

ATTACHMENT A

Work Program of SUBCONTRACTOR

The City of Midland, with grant funds and in partnership with the City of Odessa, will continue the backyard composting program by advertising the program and purchasing compost thermometers and compost bins to provide to participants. Participants will receive compost education from the Ector/Midland County Agri-Life Extension Agent.

Objective:

- I. Advertise backyard composting events
- II. Purchase Items for participants
- III. Conduct two composting classes
- IV. City Staff to Prepare Quarterly Reports and Submit them to PBRPC to detail Progress made as well as the quantity of material removed from the waste stream

ATTACHMENT B

SUBCONTRACTOR Budget and Authorizations

BUDGET CATEGORY	GRANT FUNDING
1. Personnel/salaries	\$ 0.00
2. Fringe Benefits	\$ 0.00
3. Travel	\$ 0.00
4. Supplies	\$ 0.00
5. Equipment	\$ 0.00
6. Construction	\$ 0.00
7. Contractual (other than for construction)	\$ 0.00
8. Other	\$ 8,000.00
<i>Total direct charges (sum of 1-8)</i>	\$ 8,000.00
9. Indirect charges*	\$ 0.00
<i>Total grant funding requested (sum of 1-9)</i>	\$ 8,000.00

* All indirect charges must be in accordance with the procedures established in the current UGMS, which is available from the PBRPC. If you have an approved cost allocation plan from a federal cognizant agency or state single audit coordinating agency, please enclose documentation of your approved indirect rate. Other indirect rates may be approved by the PBRPC, in accordance with contract documents and TCEQ Administrative Procedures, upon adequate documentation.

NOTE: All expenditures under the "Equipment," "Construction," "Contractual," or/and "Other," budget categories must be approved in advance by PBRPC unless specifically spelled out in this agreement. Changes in personnel whose salaries are funded and out-of-state/out-of-region travel must be approved in advance by PBRPC. Such approval shall be given by the PBRPC in writing.

ATTACHMENT C

Schedule of Deliverables from SUBCONTRACTOR

- I. Purchase advertising and items for participants
- II. Conduct two backyard composting classes
- III. Prepare quarterly reports

Items to be purchased with funds for this contract are:

Budget Category 8: \$8,000.00 – compost bins and thermometers

Special Contract Provisions
Attachment D

Article 1 Period of Performance

The period of performance of this agreement begins 04/23/2012 and ends 8/31/2013.

Article 2 Scope of Services

All parties agree that the SUBCONTRACTOR, in consideration of compensation hereinafter described, shall provide the services specifically described in the Work Program and Special and General Provisions of this Solid Waste Interlocal Agreement.

The SUBCONTRACTOR agrees to implement the Project according to the agreed upon work program in Attachment A and the Budget shown in Attachment B of this agreement.

Article 3 PBRPC Obligations

(a). Measure of Liability

In consideration of full and satisfactory performance hereunder, PBRPC will be liable to reimburse the SUBCONTRACTOR in an amount equal to the actual costs, not to exceed the Budget in Attachment B, incurred by SUBCONTRACTOR in rendering such performance, subject to the following limitations:

1. PBRPC is not liable for expenditures made in violation of "Supplemental Funding Standards and Restrictions", TCEQ Administrative procedures Section IIIB, listed in Article 8 of this Attachment D, which outlines prohibited activities as defined by the Texas Commission on Environmental Quality (TCEQ).
2. PBRPC is not liable for any costs incurred by SUBCONTRACTOR in the performance of this agreement which have not been billed to PBRPC within thirty (30) days following termination of this agreement.
3. PBRPC is not liable to SUBCONTRACTOR for costs incurred or performance rendered by SUBCONTRACTOR for costs incurred by SUBCONTRACTOR before commencement of this agreement or after termination of this agreement.
4. The PBRPC is liable only for expenditures made in compliance with the cost principles and administrative requirements set forth in Texas Uniform Grant Management Standards (UGMS) and additional state and federal rules and laws.
5. It is the understanding of the parties that the source of funds provided by the TCEQ is the Municipal Solid Waste Disposal and Transportation Revenue Fee (MSWDTRF), Texas Health and Safety Code §363.013 and §363.014(d). Due to the demands upon the source for funds necessary to protect the health and safety of the public, it is possible that the funds will be depleted or reduced prior to completion of this agreement. The SUBCONTRACTOR agrees that all funding arranged under this agreement is subject to sufficient funds in the MSWDTRF.

(b). Method and Schedule of Payment

1. Financial reporting. Any month in which the SUBCONTRACTOR has budgeted expenses, a report should be submitted no later than the tenth day following the end of the month during the period of performance for this agreement, to PBRPC detailing allowable expenditures incurred during the previous month. Expenditures which are not allowed are set forth in Section 8 of this agreement. These reports must include copies of invoices showing receipt of the invoiced materials or services and a copy of the check or payment record showing the invoice paid.

2. Payments. Upon review and approval of each such financial report, PBRPC will make payment to SUBCONTRACTOR against PBRPC liabilities to be accrued hereunder.

(c). SUBCONTRACTOR Close Out Report

No later than thirty (30) days following the termination of this agreement, SUBCONTRACTOR must submit a PBRPC Contract Close Out Report according to written instructions from PBRPC.

Article 4 Reporting Requirements

(a). The SUBCONTRACTOR shall prepare and submit to the PBRPC, a quarterly written progress report concerning performance under this Contract documenting accomplishments and units of work performed under Attachment A of this agreement. All progress reports shall be submitted within 10 days after the end of each period so that PBRPC may submit a consolidated report to TCEQ. A final progress report shall be provided prior to the final request for payment under this Contract, but, in no case later than 30 days after the end of the Contract period. Payments (reimbursements) required under this contract may be withheld by the PBRPC until such time as any past due progress reports are received. Reports are due for each Quarter during the grant term.

(b). The SUBCONTRACTOR quarterly progress reports required under Part (a) of this Section contain descriptions of activities and costs for the PBRPC to ensure that the provisions of this Contract are being complied with. In particular, any legal research and related legal activities shall be clearly detailed in the quarterly progress reports in order to assure the PBRPC that the activities are not prohibited under Article 8 of this contract (relating to Supplementing Funding Standards). The SUBCONTRACTOR shall comply with any reasonable request by the PBRPC for additional information on activities conducted in order for the PBRPC to adequately monitor the SUBCONTRACTOR'S progress in completing the requirements of and adhering to the provisions of this Contract. Forms shall be provided by PBRPC for these reports.

(c). The SUBCONTRACTOR'S failure to comply with the requirements of this Article shall constitute a breach of this Contract.

(d). The SUBCONTRACTOR agrees to monitor the results of the project for the life of the funded program or activity. The SUBCONTRACTOR shall report results on the project goals beginning with the time the activity is operational and continuing for a minimum of 24 months or other times as specified by the PBRPC, to include additional updates that may be requested after the term of this Contract. The reports during the 24 month period shall be made quarterly on forms provided by PBRPC, and any additional requests for information by PBRPC shall be responded to in the format requested.

(e). The SUBCONTRACTOR shall be responsible for the professional quality, technical accuracy, timely completion and coordination of all services and other work furnished by the SUBCONTRACTOR under this Contract. The PBRPC may require the SUBCONTRACTOR to correct or revise any errors, omissions or other deficiencies in any reports or services provided.

Article 5 Monitoring Requirements

(a). PBRPC may periodically monitor SUBCONTRACTOR for:

1. The degree of compliance with the terms of this Contract, including compliance with applicable rules, regulations, and promulgations referenced herein; and
2. The administrative and operational effectiveness of the project.

(b). PBRPC shall conduct periodic analysis of SUBCONTRACTOR'S performance under this Contract for the purpose of assessing the degree to which contractual objectives and performance standards, as identified in this Contract or as subsequently amended, are achieved by SUBCONTRACTOR.

Article 6 Equipment and Constructed Facilities

(a). Subject to the obligations and conditions set forth in this Agreement, title to real property and equipment (together hereafter referred to in this Article as "property") acquired under this Agreement by the SUBCONTRACTOR will vest upon acquisition or construction in the SUBCONTRACTOR.

1. Subject to the provisions of this Agreement and as otherwise provided by state statutes, property acquired or replaced under this Agreement shall be used for the duration of its normally expected useful life to support the purposes of this Agreement whether or not the original projects or programs continue to be supported by state funds.

2. The SUBCONTRACTOR shall not grant or allow to a third party a security interest in any original or replacement property purchased or constructed with funds made available to the SUBCONTRACTOR under this Agreement.

3. The use of property acquired under this Agreement, both during the term of this Agreement and for the useful life of the property or until compensation is provided to the TCEQ for the applicable percentage share of the fair market value of the property, shall be in compliance with §361.014(b) of the Texas Health and Safety Code, which directs that a project or service funded under this program must promote cooperation between public and private entities and may not be otherwise readily available or create a competitive advantage over a private industry that provides recycling or solid waste services.

4. The SUBCONTRACTOR may develop and use their own property management systems, which must conform with all applicable federal, state, and local laws, rules and regulations. If an adequate system for accounting for property owned by the SUBCONTRACTOR is not in place or is not used properly, the Property Accounting System Manual issued by the State Comptroller of Public Accounts will be used as a guide for establishing such a system. The property management system used by the SUBCONTRACTOR and subgrant recipients must meet the requirements set forth in this Article.

4-1. Property records must be maintained that include a description of the property, a

serial number or other identification number, the source of the property, who holds title, the acquisition date, and the cost of the property, percentage of state participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

4-2. A physical inventory of all equipment acquired or replaced under this Agreement shall be conducted no less frequently than once every two years and the results of such inventories reconciled with the appropriate property records. Property control procedures utilized by the SUBCONTRACTOR shall include adequate safeguards to prevent loss, damage, or theft of the acquired property. Any loss, damage, or theft shall be investigated. The SUBCONTRACTOR shall develop and carry out a program of property maintenance as necessary to keep both originally acquired and any replaced property in good condition, and to utilize proper sales procedures to ensure the highest possible return, in the event such property is sold.

4-3. Certain types of equipment are classified as "controlled assets" and are subject to annual revision. In accordance with the UGMS, the SUBCONTRACTOR should contact the Texas Comptroller of Public Accounts' property accounting staff or review the Comptroller's state Property Accounting User Manual available on the Internet, for the most current listing. The following equipment with costs between \$500 and \$4,999.99 shall be maintained on the inventory system: (1) stereo systems; (2) still and video cameras; (3) facsimile machines; (4) video recorders (VCRs), laserdisc players, camcorders, and VCR/TV combinations; (5) desktop CPUs, printers, data projectors, portable CPU laptops; and, (6) cellular and portable telephones. All single unit acquisitions equal to or greater than \$5000.00 shall be maintained on the inventory system.

5. The SUBCONTRACTOR, may for the purpose of replacing property acquired under this Agreement, either trade in or sell the property and use the proceeds of such trade-in or sale to offset the cost of acquiring needed replacement property.

6. The PERFORMING PARTY agrees that if a determination is made that any property acquired with funds provided under this Agreement with a current per-unit fair market value of \$5,000 or more is no longer needed for the originally authorized purpose, the TCEQ or PBRPC has the right to require disposition of the property by the SUBCONTRACTOR in accordance with the provisions of this Article.

7. When, during the useful life of property acquired with grant funds under this Agreement by the SUBCONTRACTOR and with a current per-unit fair market value of \$5,000 or more, the property is no longer needed for the originally authorized purpose, the SUBCONTRACTOR agrees to request disposition instructions from the TCEQ and PBRPC. When property acquired by the SUBCONTRACTOR with grant funds provided by the PBRPC under this Agreement is no longer needed for the originally authorized purpose, the PBRPC agrees that a subgrant contract will require the SUBCONTRACTOR to request disposition instructions from the PBRPC or, if the PBRPC is no longer administering a Regional Solid Waste Grants Program, the TCEQ. The PBRPC shall, in turn, request authorization from the TCEQ to provide disposition instructions to the subgrant recipient. Disposition instructions shall solicit, at a minimum, information on the source and amount of funds used in acquiring the property, the date acquired, the fair market value and how the value was determined (e.g., by appraisal, bids, etc.), and the proposed use of the proceeds. The assessment of whether to authorize the proposed disposition of the property must include a determination that

the disposition plan will comply with the private industry provisions of §361.014(b) of the Texas Health and Safety Code. In cases where the SUBCONTRACTOR fails to take appropriate disposition actions, the TCEQ or PBRPC may direct the SUBCONTRACTOR to take excess and disposition actions. The disposition instructions may provide for one of the alternatives as set forth in this Article.

7-1. Retain title, sell, or otherwise disposed of with no obligation to compensate the TCEQ or PBRPC.

7-2. Retain title after compensating the TCEQ or the PBRPC. If the PBRPC is compensated by the SUBCONTRACTOR for property acquired using funds provided under this Agreement, the PBRPC will in turn compensate the TCEQ or, upon authorization by the TCEQ, use those funds for other projects or activities that support this or similar future programs conducted by the TCEQ. The amount due will be computed by applying the percentage of state-funded participation in the cost of the original purchase to the fair market value of the property.

7-3. Sell the property and compensate the TCEQ or the PBRPC. If the PBRPC is compensated by the SUBCONTRACTOR for property acquired using funds provided under this Agreement, the PBRPC will in turn compensate the TCEQ or, upon authorization by the TCEQ, use those funds for other projects or activities that support the goals of this or similar future programs conducted by the TCEQ. The amount due will be calculated by applying the TCEQ's percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the grant is still active, the net proceeds from sale may be offset against the original cost of the property. When the SUBCONTRACTOR is directed to sell property, sales procedures shall be followed that provide for competition to the extent practicable and result in the highest possible return.

7-4. Transfer title to the TCEQ or the PBRPC, or to a third-party designated/approved by the TCEQ. If the SUBCONTRACTOR participated financially in the original purchase of the property, the SUBCONTRACTOR may be authorized payment from the receiving party of an amount calculated by applying the percentage of the participation in the original purchase of the property to the current fair market value of the property.

8. Items of property with a current per-unit fair market value of less than \$5,000 may be retained, sold or otherwise disposed of by the SUBCONTRACTOR with no further obligation to the TCEQ. Methods used to determine per-unit fair market value must be documented, kept on file and made available to the TCEQ upon request.

9. Real property must be maintained on an Inventory and is subject to the requirements of UGMS, Part III, Subpart C, §.31. Subject to the obligations and conditions set forth in this Agreement, title to real property acquired under this Agreement by the SUBCONTRACTOR will vest upon acquisition or construction in the SUBCONTRACTOR respectively.

Article 7 Compliance with Applicable Laws

The SUBCONTRACTOR shall give all notices and comply with all laws, ordinances, rules, regulations and order of any public authority bearing on the performance of this Agreement,

including, but not limited to, the laws referred to in this Agreement. If the SUBCONTRACTOR or PBRPC observes that this Contract is at variance therewith in any respect, the observing party shall promptly notify the other party in writing, and any necessary changes shall be adjusted by appropriate Agreement modifications. On request, the SUBCONTRACTOR shall furnish PBRPC modification.

If the SUBCONTRACTOR performs any work knowing or having reason to know that it is contrary to Laws or Regulations, the SUBCONTRACTOR shall bear all claims, costs, losses and damages caused by, arising out of or resulting therefrom.

The provisions of Uniform Grant and Contract Management Act, Texas Government Code, Chapter 783 apply to this agreement. Compliance with the conditions and requirements contained therein is necessary for the satisfactory performance of the services and work required under this agreement.

Neither the PBRPC's review, approval or acceptance of, nor payment for any of the services shall be construed to operate as a waiver of any rights under this Contract; the SUBCONTRACTOR shall be, and remain, liable in accordance to with applicable laws for all damages caused by the SUBCONTRACTORS' negligent performance of any of the services furnished under this agreement.

Article 8 Supplemental Funding/Project Standards

Unless authorization is specifically provided in accordance with the provisions of this Attachment or in accordance with Attachment D of this Contract, the SUBCONTRACTOR shall ensure that funds provided under this contract are used for the following activities, programs, or projects:

Supplemental Funding Standards and Restrictions

1. The provisions of the Uniform Grant Management Standards (UGMS) issued by the Office of the Governor apply to the use of these funds, as well as the supplement financial administration provided in the program Administrative Procedures.
 2. Recipients of funds under this Contract, including the COG, subgrant recipients, and subcontractors shall comply with all applicable state and local laws and regulations pertaining to the use of state funds, including laws concerning the procurement of goods and services and competitive purchasing requirements.
 3. Funds may not be provided through a subgrant recipient or subcontract to any public or private entity that is barred from participating in state contracts by the Texas General Services Commission, under the provisions of §2155.077, Government Code, and 1 TAC §113.02, GSC Regulations.
 4. Public and private entities subject to payment of state solid waste disposal fees and whose payments are in arrears may not receive funds under this Contract through either a subgrant or subcontract.
 5. In accordance with §361.014(b), Texas Health and Safety Code, and 30 TAC §330.649(d),
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TCEQ Regulations, a project or service funded under this Contract must promote cooperation between public and private entities and may not be otherwise readily available or create a competitive advantage over a private industry that provides recycling or solid waste services. Under this definition, the term private industry included non-profit and not-for-profit non-governmental entities.

6. All equipment and facilities purchased or constructed with funds provided under this Contract shall be used for the purposes identified under the application for the term of this Contract, and for 100% municipal solid waste related activities for the life of the equipment.
7. A project or service funded under this Contract must be consistent with the COG's RSWMP, and must be intended to implement the goals, objectives, and priorities established in the regional plan.
8. Funds may not be used to acquire land or an interest in land.
9. Funds may not be used to supplant existing funds. In particular, staff positions where the assigned functions will remain the same and that were active at the time of the funding application or proposal, and were funded from a source other than a previous solid waste grant, may not be funded.
10. Funds may not be used for food or entertainment expenses, including refreshments at meetings and other functions. This provision does not apply to authorized employee per diem expenses for food costs incurred while on travel status.
11. Funds may not be used for payment of salaries to any employee who uses alcoholic beverages on active duty. Funds may not be used for the purchase of alcoholic beverages, including travel expenses reimbursed with these funds.
12. Funds may not be used for employment, contracts for services of a lobbyist, or for dues to an organization, which employs or otherwise contracts for the services of a lobbyist.
13. Funds may only be used for projects or programs for managing municipal solid waste.
14. Except as may be specifically authorized, funds may not be used for projects or facilities that require a permit from the TCEQ and/or that are located within the boundaries of a permitted facility, including landfills, wastewater treatment plants, or other facilities. This restriction may be waived by the TCEQ, at its discretion, for recycling and other eligible activities that will take place within the boundaries of a permitted facility. The applicant and/or the COG must request a preliminary determination from the TCEQ as to the eligibility of the project prior to the project being considered for funding by the COG.
15. Projects or facilities requiring a registration from the TCEQ, and which are otherwise eligible for funding, must have received the registration before the project funding is awarded.
16. Except as may be specifically authorized, funds may not be used for activities related to the collection or disposal of municipal solid waste. This restriction includes: solid waste collection and transportation to a disposal facility; waste combustion (incineration or waste-to-energy); processing for reducing the volume of solid waste which is to be disposed of; landfills and landfill-related facilities, equipment, or activities, including closure and post-closure care of a permitted landfill unit; or other activities and facilities associated with the disposal of municipal

solid waste.

17. Funds may not be used to assist an entity or individual to comply with an existing or pending federal, state, or local judgment or enforcement action. This restriction includes assistance to an entity to comply with an order to clean up and/or remediate problems at an illegal dumpsite. However, the TCEQ may waive this restriction, at its discretion and on a limited case-by-case basis, to address immediate threats to human health or the environment, and where it is demonstrated that the responsible party does not have the resources to comply with the order.
18. Funds may not be used to pay penalties imposed on an entity for violation of federal, state, or local laws and regulations. This restriction includes expenses for conducting a supplemental environmental project (SEP) under a federal or state order or penalty. Funds may be used in conjunction with SEP funds to support the same project.

PROJECT STANDARDS

Local Enforcement

19. As provided by the current General Appropriations Act funds may not be provided to any law enforcement agency regulated by Chapter 1701 Texas Occupational Code, unless: (a) the law enforcement agency is in compliance with all rules on Law Enforcement Standards and Education; or (b) the Commission on Law Enforcement Officer Standards and Education certifies that the requesting agency is in the process of achieving compliance with such rules.
 20. When funding is to be provided for salaries of local enforcement officers, the funds recipient must certify that at least one of the officers has attended or will attend within the term of the funding the TCEQ's Criminal Environmental Law Enforcement Training or equivalent training.
 21. Local enforcement vehicles and related enforcement equipment purchased entirely with funds provided under this Contract may only be used for activities to enforce laws and regulations pertaining to littering and illegal dumping, and may not be used for other code enforcement or law enforcement activities. Vehicles and equipment that are only partially funded must be dedicated for use in local enforcement activities for a percentage of time equal to the proportion of the purchase expense funded.
 22. Entities receiving funds for a local enforcement officer, enforcement vehicles, and/or related equipment for use by an enforcement officer, must investigate major illegal dumping problems, on both public and private property, in addition to investigating general litter problems on public property.
 23. Entities receiving funds to conduct a local enforcement program must cooperate with the TCEQ's regional investigative staff in identifying and investigating illegal dumping problems. Lack of cooperation with the TCEQ staff may constitute a reason to withhold future funding to that entity for local enforcement activities.
 24. Funds may not be used for investigation and enforcement activities related to the illegal dumping of industrial and/or hazardous waste. Instances where industrial or hazardous waste is discovered at a site do not preclude the investigation of that site, so long as the intent and focus of the investigation and enforcement activities are on the illegal dumping of municipal solid waste.
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25. Funds may not be used for purchase of weapons, ammunition, and/or HazMat gear.

Litter and Illegal Dumping Cleanup and Community Collection Events

26. Lake and Waterway Cleanup events must be coordinated with the TCEQ's Small Business and Environmental Assistance Division/or the Keep Texas Beautiful organization, which is contracted by the TCEQ to administer the Lake and Waterway Cleanup program.
27. Projects funded to clean up litter or illegal dumping on private property must be conducted through a local government sponsor or the COG. Funds may not be provided directly to a private landowner or other private responsible party for cleanup expenses. The local government sponsor or the COG must either contract for and oversee the cleanup work, or conduct the work with its own employees and equipment.
28. The costs for cleanup of hazardous waste that may be found at a municipal solid waste site must be funded from other sources, unless a waiver from this restriction is granted by the TCEQ to deal with immediate threats to human health or the environment.
29. The costs for cleanup of Class 1 nonhazardous industrial waste that may be found at a municipal solid waste site must be funded from other sources, unless a waiver from this restriction is granted by the TCEQ to deal with immediate threats to human health or the environment. The cleanup of Class 2 and 3 nonhazardous industrial wastes that may be found at a municipal solid waste site may be funded in conjunction with the cleanup of the municipal solid waste found at a site.
30. All notification, assessment, and cleanup requirements pertaining to the release of wastes or other chemicals of concern, as required under federal, state, and local laws and regulations, including 30 TAC Chapter 330, TCEQ's MSW Regulations, and 30 TAC Chapter 350, TCEQ's Risk Reduction Regulations, must be complied with as part of any activities funded under this Contract.
31. All materials cleaned up using grant funds must be properly disposed of or otherwise properly managed in accordance with all applicable laws and regulations. To the extent feasible, it is recommended that materials removed from a site be reused or recycled. For projects to clean up large amounts of materials, the COG should consider withholding at least ten (10) percent of the reimbursements under a pass-through grant or subcontract, until documentation is provided that the cleanup work has been completed and the materials properly managed.
32. Periodic community collection events, to provide for collection and proper disposal of non-recyclable residential waste materials for which there is not a readily-available collection alternative, may be funded. This type of project may not include regular solid waste collection activities, such as weekly waste collection. Funded collection events may be held no more frequently than four times per year, and must only be intended to provide residents an opportunity to dispose of hard-to-collect materials, such as large and bulky items that are not picked up under the regular collection system, and might otherwise be illegally dumped by residents. To the extent practicable, community collection events should make every effort to divert wastes collected from area landfills, e.g., contain a recycling component.

Source Reduction and Recycling

33. Any program or project funded with the intent of demonstrating the use of products made from recycled and/or reused materials shall have as its primary purpose the education and training of residents, governmental officials, private entities, and others to encourage a market for using these materials.

Local Solid Waste Management Plans

34. All local solid waste management plans funded under this Contract must be consistent with the COG's RSWMP, and prepared in accordance with 30 TAC Subchapter O, Chapter 330, TCEQ Regulations, and the Content and Format Guidelines provided by the TCEQ.
35. In selecting a local solid waste management plan project for funding, the COG shall ensure that at least one year is available for the completion and adoption of the local plan.

Citizens' Collection Stations and "Small" Registered Transfer Stations

36. The design and construction of citizens' collection stations, as those facilities are defined under 30 TAC Chapter 330, TCEQ Regulations, may be funded. The costs associated with operating a citizens' collection station once it is completed may not be funded.
37. The design and construction of small municipal solid waste and liquid waste transfer stations that qualify for registration under 30 TAC 330, MSW Rules, may be funded. Other permitted or registered transfer stations may not be funded. A municipal solid waste transfer facility may be eligible for a registration if it serves a municipality with a population of less than 50,000, or a county with a population of less than 85,000, or is used in the transfer of 125 tons or less of municipal solid waste per day. A liquid waste transfer station may qualify for a registration if it will receive less than 32,000 gallons or less per day. The costs associated with operating a transfer station once it is completed may not be funded. The following MSW facilities may be funded:
- Notification tier municipal solid waste transfer stations that qualify under 30 TAC 330.11(g).
 - Registered municipal solid waste transfer stations that qualify under 30 TAC 330.9(b)(1) through (3), or (f).
 - Notification tier citizens' collection stations that qualify under 30 TAC 330.11(e)(1).
 - Exempt local government recycling facilities as provided for under 30 TAC 328(a)(1).
 - Notification tier recycling facilities that qualify under 30 TAC 330.11(e)(2).
 - Notification tier composting facilities which qualify under 30 TAC 332.21 – 332.23.
 - Notification tier liquid waste temporary storage facilities which qualify under 30 TAC 330.11(e)(5).
 - Liquid waste transfer stations which qualify for registration in 30 TAC 330.9(g) and (o).
 - Notification tier used oil collection facilities which qualify under 30 TAC 324.71(1) or (3).

Household Hazardous Waste Management

38. All household hazardous waste collection, recycling, and/or disposal activities must be coordinated with the TCEQ's HHW program staff, and all applicable laws, regulations, guidelines, and reporting requirements must be followed.

Technical Studies

40. All technical studies funded must be consistent with the COG's regional solid waste management plan, and prepared in accordance with Administrative Procedures provided by the TCEQ.

Educational and Training Projects

41. Educational and training programs and projects funded under this Contract must be primarily related to the management of municipal solid waste, and funds applied to a broader education program may only be used for those portions of the program pertaining to municipal solid waste.

Other Types of Projects

42. If the TCEQ authorizes the COG to fund additional types of projects, the authorization incorporated into the grant Contract may include additional standards and restrictions that will apply to use of funds for that project or type of project.

Article 9 Authorized Representatives

- (a). The PBRPC hereby designates the person in Exhibit A-1, Project Representative, as the individual authorized to give direction to the SUBCONTRACTOR for the purposes of this Contract.
- (b). Immediately upon receiving the Purchase Order or Notice of Award, the SUBCONTRACTOR shall identify, as its Project Representative, the person authorized to receive direction from the PBRPC, to manage the work being performed, and to act on behalf on the SUBCONTRACTOR. The SUBCONTRACTOR'S Project Representative shall be deemed to have authority to bind the SUBCONTRACTOR in contract unless the SUBCONTRACTOR, in writing, specifically limits or denies such authority to the SUBCONTRACTOR'S Project Representative.
- (c). Either party may change its Project Representative. In addition, the Project Representative of either party may further delegate his or her authority as necessary, including any delegation of authority to a new Project Representative. The party making the change in Project Representative shall provide written notice of the change to the other party.
- (d). The SUBCONTRACTOR shall ensure that its Project Representative, or his or her delegate, is available at all times for consultation with the PBRPC.

Permian Basin Regional Planning Commission
Solid Waste Interlocal Agreement
General Contract Provisions

Attachment E

Article 1 Legal Authority

The SUBCONTRACTOR warrants and assures PBRPC that it possesses adequate legal authority to enter into this Agreement. The SUBCONTRACTOR'S governing body where applicable has authorized the signatory official(s) to enter into this Agreement and bind the SUBCONTRACTOR to the terms of this Agreement and any subsequent amendments hereto. The SUBCONTRACTOR agrees to adhere to all applicable laws and regulations, including but not limited to the provisions of the following standards:

- (1) §361, §363, and §364 of the TEXAS HEALTH and SAFETY CODE
- (2) Title 30 TAC §330, Subchapter O, TCEQ Rules
- (3) Title 30 TAC §14, TCEQ Rules
- (4) The Uniform Grant and Contract Management Act; TEXAS GOV'T CODE, §§783.001 et. seq., and the Uniform Grant Management Standards, 1 TAC §5.141-5.167 (Collectively, "UGMS").

Article 2 Scope of Services

The services to be performed by the SUBCONTRACTOR are herewith outlined in the General Provisions and Change Orders which are hereby incorporated into and made a part of this Agreement as if set out word-for-word herein.

Article 3 Purpose

(a). The purpose of this Contract (Agreement) is to accomplish the goals of House Bill 3072, 74th Texas Legislature (1995), as they relate to distributing solid waste fee revenue funds to support local and regional solid waste projects consistent with the regional solid waste management plans approved by the TCEQ and to update and maintain those plans.

(b). Under the overall goals of the funding program established under House Bill 3072, the more specific purposes of this Agreement are:

1. To enable the COG to carry out or conduct various municipal solid waste management-related services and support activities within the PBRPC's regional jurisdiction; and
2. To administer an efficient and effective, region-wide, pass-through (subgrantee) assistance grants program and/or, where authorized by the PBRPC in accordance with Article 4 of this Attachment, to conduct various PBRPC - managed projects.

(c) Funds provided by the PBRPC pursuant to this agreement that are paid to the SUBCONTRACTOR shall be used solely to satisfy the purposes of the agreement.

Article 4 Licenses, Permits and Laws

The SUBCONTRACTOR shall, except as otherwise provided in this Contract, be responsible for obtaining any necessary licenses and permits, and for complying with any applicable Federal, State, and Municipal laws, codes and regulations, in connection with the work required by this Contract.

Article 5 Assignability

This Contract is not transferable or otherwise assignable by the SUBCONTRACTOR without the written consent of the PBRPC. Any attempted transfer is void without written consent of the PBRPC.

Article 6 Examination of Records and Financial Administration

(a). The SUBCONTRACTOR shall maintain and make available for review, inspection and/or audit books, records, documents, and other evidence reasonably pertinent to performance on all work under this Agreement, including negotiated changes or amendments thereto, in accordance with accepted professional practice, appropriate accounting procedures and practices at the SUBCONTRACTORS' Texas Office. The SUBCONTRACTOR shall also maintain and make available at its Texas office the financial information and data used by the SUBCONTRACTOR or its designee (including independent financial auditors) in the preparation or support of any cost submission or cost (direct or indirect), price or profit analysis for this Contract or any negotiated subagreement or change order and a copy of the cost summary submitted to PBRPC. PBRPC, the Texas Commission on Environmental Quality, the Texas State Auditor's Office, or any of PBRPC's duly authorized representatives, shall have access to such books, records, documents, and other evidence for the purpose of review, inspection, and/or audit. During the conduct of any such review, audit, or inspection, the SUBCONTRACTORS' books, records, and other pertinent documents may, upon prior conference with the SUBCONTRACTOR, be copied by the PBRPC or any of its duly authorized representatives. All such information shall be handled by the parties in accordance with good business ethics. The SUBCONTRACTOR shall provide proper facilities within the State of Texas for such access and inspection.

(b) Audits conducted pursuant to this provision shall be in accordance with State law, regulations and policy, and generally accepted auditing standards and established procedures and guidelines of the reviewing or audit agency(ies).

(c) The SUBCONTRACTOR agrees to the disclosure of all information and reports resulting from access to records pursuant to section (a) above to the PBRPC. Where the audit concerns the SUBCONTRACTOR, the auditing agency will afford the Subcontractor an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report.

(d) Records under Section (a) above shall be maintained and made available during the entire period of performance of this Contract and until three (3) years from the date of final PBRPC payment for the project. In addition, those records which relate to any dispute, litigation, or the settlement of claims arising out of such performance, or costs or items to which an audit exception has been taken shall be maintained and made available until completion of such action and resolution of all issues which arise from it, or until the end of the regular three (3) year period, whichever is later.

(e) Access to records is not limited to the required retention periods. The authorized representatives designated by the PBRPC shall have access to records at any reasonable time for as long as the records are maintained.

(f) This audit/access to records Article applies to financial records pertaining to all subcontracts and all subcontract change orders and amendments. In addition, this right of access applies to all records pertaining to all subcontracts, subcontract change orders and subcontract amendments; to the extent the records reasonably pertain to subcontract performance; if there is any indication of fraud, gross abuse or corrupt practices may be involved; or if the subcontract is terminated for default or for convenience.

(g) The PBRPC reserves the right to require the reimbursement of any over-payments determined as a result of any audit or inspection of records kept by the SUBCONTRACTOR on the work performed under this Contract.

(h) The SUBCONTRACTOR agrees to establish and administer a financial management program to ensure that the expenditures connected to this Agreement are in fact incurred and are reasonable and necessary to the project. The SUBCONTRACTOR shall have an accounting system which accounts for costs in accordance with generally accepted accounting standards or principles and complies with applicable State law, regulations, or policies relating to accounting standards or principles. The SUBCONTRACTOR shall adhere to the specific standards and requirements set forth in this Section, except that the requirements and processes may be more stringent than outlined below:

- (1) The SUBCONTRACTOR shall establish a process to make payments for authorized expenses.
- (2) The SUBCONTRACTOR shall use either a cash or an accrual basis for requesting reimbursement of expenses, as defined and authorized under the UGCMA. A cost must have been incurred and either paid or incurred by the last day of the time period indicated on a request for reimbursement form and liquidated no later than forty-five (45) days after the end of that time period.
- (3) The SUBCONTRACTOR shall utilize a standard reimbursement and supplemental financial status report forms supplied by PBRPC to request funds.
- (4) The SUBCONTRACTOR shall maintain records and documentation materials consistent with the records listed below:

- | | | |
|-----|----------------|---|
| (a) | SALARY/WAGES - | Time sheets that have been signed and approved. |
| (b) | TRAVEL - | Documentation which, at a minimum is consistent with State Travel Regulations. The purpose of the travel should be documented and supported with actual receipts for hotel accommodations, public transportation receipts, airline receipts, food and beverage receipts, etc. |
| (c) | EQUIPMENT - | Purchase orders, invoices, check, and (canceled check if requested). |
| (d) | SUPPLIES - | Purchase orders (if issued), invoices, check, and (canceled check if requested). |
| (e) | CONTRACTUAL - | All of the above plus documentation that the costs were reasonable and necessary. The same standards should be applicable to subcontractors. |
| (f) | OTHER - | All of the above apply. |
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5. If requested by the PBRPC or TCEQ the SUBCONTRACTOR agrees to provide the additional expense records and documentation materials listed above in a reasonable and timely manner.

(i) The SUBCONTRACTOR agrees that all data and other information developed under this agreement shall be furnished to the PBRPC or TCEQ and shall be public data and information except to the extent that is exempted from public access by the Texas Public Information Act. Upon termination of this agreement, copies of data and information shall be furnished, at no charge, to the PBRPC and TCEQ, upon request, to include data bases prepared using funds provided under this agreement. Except as otherwise provided by the agreement or the Texas Public Information Act, the SUBCONTRACTOR shall not provide data generated or otherwise obtained in the performance of its responsibilities under this agreement to any party other than the State of Texas and its authorized agents.

(j) The SUBCONTRACTOR shall be responsible for requiring subcontractors and subgrantees to maintain and supervise all necessary safety precautions and programs in connection with the work. The SUBCONTRACTOR shall take all necessary safety precautions.

(k) The SUBCONTRACTOR shall have an accounting system which accounts for costs in accordance with generally accepted accounting standards or principles and complies with applicable State law, regulations, and policies relating to accounting standards or principles. The SUBCONTRACTOR must account for costs in a manner consistent with such standards or principles.

Article 7 Independent Financial Audit

The SUBCONTRACTOR engage an independent financial auditor and conduct an annual audit of the SUBCONTRACTORS' financial statements in accordance with the Single Audit provisions of UGMS and those items set forth in this section.

(a) All terms used in connection with audits in this agreement shall have the definitions and meanings assigned in the Single Audit Circular in UGMS.

(b) Provisions of the Single Audit Circular in Part IV of UGMS shall apply to all non-state entities expending the funds of this grant, whether they are recipients or subrecipients. In addition, the SUBCONTRACTOR shall require the independent auditor to supply all audit work papers substantiating the work performed, at the request of the PBRPC, the TCEQ or its designee.

Article 8 Hazardous Substances, Waste Disposal and Manifests

SUBCONTRACTOR must comply with all applicable Laws and Regulations, including but not limited to those relating to hazardous substances, waste disposal and manifests.

Article 9 Conflict of Interests

SUBCONTRACTOR shall notify the PBRPC immediately upon discovery of any potential or actual conflict of interest. SUBCONTRACTOR agrees that the PBRPC and TCEQ have discretion to determine whether a conflict exist and that the PBRPC and TCEQ may terminate the agreement at any time, on the grounds of actual or apparent conflict of interest.

Article 10 Insurance and Liability

SUBCONTRACTOR shall maintain insurance coverage for work performed or services rendered under this contract as specified in the Special Provisions. SUBCONTRACTOR understands and agrees that it shall be liable to repay and shall repay upon demand to PBRPC any amounts determined by PBRPC, its independent auditors, or any agency of state or federal governments to have been paid in violation of the terms of this Agreement.

Article 11 Amendments to Contract

Any alterations, additions, or deletions to the terms of this contract which are required by changes in Federal Law or Regulations are automatically incorporated into this Agreement without written amendment hereto, and shall become effective on the date designated by such law or regulation, provided if the SUBCONTRACTOR may not legally comply with such change, SUBCONTRACTOR may terminate its participation herein as authorized by Article 9.

PBRPC may, from time to time, require changes in the Scope of the Services of the SUBCONTRACTOR to be performed hereunder. Such changes that are mutually agreed upon by and between PBRPC and the SUBCONTRACTOR in writing shall be incorporated into this Agreement.

SUBCONTRACTOR must require prior approval of items not specifically approved in this Agreement. Any change in personnel whose salaries will be funded under this Agreement must be approved prior to submission for reimbursement.

Article 12 Termination of Contract

The SUBCONTRACTOR acknowledges that this Agreement may be terminated under the following circumstances:

(a). Convenience

PBRPC may terminate this Agreement in whole or in part without cause at any time by written notice by certified mail to the contractor whenever for any reason PBRPC determines that such termination is in the best interest of PBRPC. Upon receipt of notice of termination, all services hereunder of the SUBCONTRACTOR and its employees and subcontractees shall cease to the extent specified in the notice of termination. In the event of termination in whole, the SUBCONTRACTOR shall prepare a final invoice within 30 days of such termination reflecting the services actually performed pursuant to the Agreement and to the satisfaction of the Executive Director or his designee which has not appeared on any prior invoice. PBRPC agrees to pay the SUBCONTRACTOR, in accordance with the terms of the Agreement, for services actually performed and accruing to the benefit of PBRPC compensation previously paid.

The SUBCONTRACTOR may cancel or terminate this Agreement upon thirty (30) days written notice by certified mail to PBRPC. The SUBCONTRACTOR may not give notice of cancellation after it has received notice of default from PBRPC. In the event of such termination prior to completion of the contract provided for herein, PBRPC, agrees to pay services herein specified on a prorated bases for work actually performed and invoiced in accordance with the terms of this Agreement, less payment of any compensation previously paid.

(b). Default

Permian Basin Regional Planning Commission may, by written notice of default to the SUBCONTRACTOR, terminate the whole or any part of the Agreement in any one of the following circumstances:

1. If the SUBCONTRACTOR fails to perform the services herein specified within the time specified herein or any extension thereof; or
2. If the SUBCONTRACTOR fails to perform any of the other provisions of this Agreement for any reason whatsoever, or so fails to make progress or so violates the Agreement in a manner which significantly endangers substantial performance of the Agreement or completion of the services herein specified within a reasonable time, and in either of these two instances does not cure such failure within a period of ten (10) days (or such longer periods of time as may be authorized by PBRPC in writing) after receiving written notice by certified mail of default from PBRPC. In the event of such termination, all services of the SUBCONTRACTOR and its employees and subconsultants shall cease and the SUBCONTRACTOR shall prepare a final invoice reflecting the services actually performed pursuant to the Agreement and to the satisfaction of the Executive Director of PBRPC or his designee which has not appeared on a prior invoice. PBRPC agrees to pay the SUBCONTRACTOR, in accordance with the terms of this Agreement, for services actually performed and accruing to the benefit of PBRPC as reflected on said invoices, less payment of any compensation previously paid and less any costs or damages incurred by PBRPC as a result of such default, including an amount agreed to in writing by PBRPC and the SUBCONTRACTOR to be necessary to complete the services herein specified, in addition to that which would have been required had the SUBCONTRACTOR completed the services herein specified as required herein.

Article 13 Severability

All parties agree that should any provision of this Agreement be determined to be invalid or unenforceable, such determination shall not affect any other term of this Agreement, which shall continue in full force and effect.

Article 14 Notice

All notices, requests, reports, and other communications under this Contract shall be sent to the PBRPC Representative. All such notices and communications shall be deemed to be duly given if hand-delivered, delivered by nationally recognized courier service, or mailed by certified or registered mail, return receipt requested.

Article 15 Venue and Governing Law

The Parties to this Contract shall be governed by the laws of the State of Texas.

Nothing in this Contract is intended as any waiver by the PBRPC of any immunity from suit to which it is entitled under Texas law.

Article 16 Intellectual Property Requirements

For the purposes of this Contract, "intellectual property" refers to

1. Any discovery or invention for which patent rights may be acquired, and
2. any photographs, graphic designs, plans, drawings, specifications, computer programs, technical reports, operating manuals, or other copyrightable materials, and
3. any other materials in which intellectual property rights may be obtained.

If the SUBCONTRACTOR first conceives of, actually puts into practice, discovers, invents, or produces any intellectual property during the course of its work under this Contract, it shall report that fact to the PBRPC.

The SUBCONTRACTOR may obtain governmental protection for rights in the intellectual property. However, the PBRPC and the TCEQ hereby reserves a nonexclusive, royal-free and irrevocable license to use, publish, or reproduce the intellectual property for sale or otherwise, and to authorize others to do so.

In performing work under this Contract, the SUBCONTRACTOR shall comply with all laws, rules, and regulations relating to intellectual property, and shall not infringe on any third-party's intellectual property rights. It shall hold the PBRPC harmless for, and to the extent permitted by the laws and Constitution of the State of Texas, defend and indemnify the PBRPC against, any claims for infringement related to its work under this Contract.

Article 17 Identification of the Funding Source

The SUBCONTRACTOR shall acknowledge the financial support of the Texas Commission on Environmental Quality and the PBRPC whenever work funded, in whole or in part, by this Contract is publicized or reported in news media or publications. All reports and other documents completed as a part of this Contract, other than documents prepared exclusively for internal use, shall carry the following notation on the front cover or title page:

PREPARED IN COOPERATION WITH THE
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Article 18 Schedule of Remedies

In accordance with Chapter §2261, Texas Government Code, the following Schedule of Remedies applies to this contract in the event of substandard performance or other failure to conform to the requirements of the contract or applicable law as set forth in this section.

- (a) Reject substandard performance and request corrections without charge to the PBRPC.
 - (b) Issue notice of substandard performance or other non-conforming act or omission.
 - (c) Reject reimbursement request and suspend payment pending accepted revision of substandard performance or non-conformity.
 - (d) Request and receive return of any overpayments or inappropriate payments.
 - (e) Suspend all or part of the work and/or payments pending accepted revision of substandard performance or non-conformity.
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(f) Reject reimbursement requested and withhold all or partial payments. Funds may be retained by the PBRPC for recovery or administrative costs or returned to the funding source as authorized by agreements with the funding source and by state or federal law.

(g) Terminate the contract, demand and receive: return of all equipment purchased of contract funds, return of all unexpended funds, and repayment of expended funds.

Article 19 Cumulative Remedies

The PBRPC may avail itself of any remedy or sanction provided in this agreement or in law to recover any losses rising from or caused by the SUBCONTRACTORS' substandard performance or any non-conformity with the agreement or the law. The remedies and sanctions available to the PBRPC under this agreement shall not limit the remedies available to the PBRPC under law.

The duties and obligations imposed by this agreement and the rights and remedies available hereunder to the parties hereto, are in addition to, and not to be in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available, by laws or regulations, by special warranty or guarantee or by other provisions of the agreement.

Article 20 Dispute Resolution

Any and all disputes concerning questions of fact or of law arising under this Agreement which are not disposed of by Agreement shall be decided by the Executive Director of PBRPC or his designee, who shall reduce his decision to writing and provide notice thereof to the SUBCONTRACTOR. The decision of the Executive Director or his designee shall be final and conclusive unless, within thirty (30) days from the date of receipt of such copy, the SUBCONTRACTOR requests a rehearing from the Executive Director of PBRPC. In connection with any rehearing under this Article, the SUBCONTRACTOR shall be afforded an opportunity to be heard and offer evidence in support of its position. The decision of the Executive Director after any such rehearing shall be final and conclusive. Pending final decision of a dispute hereunder, the SUBCONTRACTOR shall proceed diligently with the performance of the Agreement and in accordance with PBRPC's final decision.

Article 21 Oral and Written Agreements

All oral or written agreements between the parties hereto relating to the subject matter of this Contract which were developed and executed prior to the execution of this Contract have been reduced to writing and are contained herein.

Article 22 ADA Requirements

The SUBCONTRACTOR shall comply with all applicable requirements of the Americans with Disabilities Act of 1990 [ADA], Title 42, Chapter 126 U.S.C., beginning at § 12101; Title 47, Chapter 5 U.S.C. and any subsequent revisions or amendments.

Article 23 Utilization of Historically Underutilized Business Enterprises

The SUBCONTRACTOR agrees that qualified Historically Underutilized Businesses (HUB) shall have opportunity to participate in the performance of this Agreement.

Article 24 Equal Employment Opportunity and Nondiscrimination

The SUBCONTRACTOR agrees that in the performance of this agreement, it will not discriminate against any employee or applicant because of race, color, sex, age, or national origin and it will comply with Executive Order 11246, entitled "Equal Employment Opportunity", as amended by Executive Order 11375, and as supplemented in Department of Labor Relations (41 CFR Part 60). The SUBCONTRACTOR assures that no person will, on the grounds of race, creed, color, handicap, national origin, sex, political affiliation or beliefs, be excluded from, be denied the benefit of, or be subject to discrimination under any program or activity funded in whole or part under this agreement.

The SUBCONTRACTOR shall comply with all applicable state and federal statutes relating to nondiscrimination which include, but are not limited to, those listed in the Uniform Grant Management Standards.

Article 25 Subcontractors, Suppliers, and Others

All contractual expenditures using funds provided under this agreement shall meet all procurement laws and regulations applicable to the SUBCONTRACTOR and the Uniform Grant and Contract Management Act and the Uniform Grant Management Standards. Note that competitive bidding will generally be required.

The SUBCONTRACTOR shall be responsible for the management and fiscal monitoring of all subcontractors. The SUBCONTRACTOR shall monitor its subcontractors as necessary to ensure that the subcontractors are operating consistently with applicable laws and regulations, applicable contracting policies, and this agreement. The SUBCONTRACTOR shall ensure that all subcontractors comply with all record keeping and access requirements as set forth in this agreement. The PBRPC reserves the right to perform an independent audit of all subcontractors.

The SUBCONTRACTORS' contractual costs must comply with allowable costs requirements. SUBCONTRACTORS' which are governmental entities must engage in contractor selection on a competitive basis in accordance with their established policies. If the SUBCONTRACTOR has no competitive procurement policy, the SUBCONTRACTOR must generally select contractors by evaluation and comparison of price, quality of goods and services and past performances. All subgrants awarded by the SUBCONTRACTOR shall be in accordance with Subpart C. Sec. 37, subsection (b) of the State Uniform Administrative Requirements for Grants and Cooperative Agreements.

Article 26 Force Majeure

To the extent that either party to this Agreement shall be wholly or partially prevented from the performance within the term specified of any obligation or duty placed on such party by reason of or through strikes, stoppage of labor, riot, fire, flood, acts of war, insurrection, accident, order of any court, act of God, or specific cause reasonably beyond the parties' control and not attributable to its neglect or nonfeasance, in such event, the time for the performance of such obligation or duty shall be suspended until such disability to perform is removed. Determination of force majeure shall rest solely with the Permian Basin Regional Planning Commission.

Article 27 Entire Contract

This Agreement represents the entire Contract between the contracting parties and supersedes any and all prior contracts between the parties, whether written or oral.

Article 28 Survival of Obligations

All representations, indemnifications, warranties and guarantees made in, required by or given in accordance with the agreement, as well as continuing obligations indicated in the agreement, will survive final payment, completion and acceptance of the work and termination or completion of the agreement.



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: June 12, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: M-12-004, Subdivision Code Amendment

Purpose:

Consider an ordinance on second reading on a City-Initiated Subdivision Code amendment to delete the requirement that septic permits may only be issued to platted property.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

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

Discussion:

In 2008 the Planning Division recommended a Subdivision Code amendment that prohibited issuing a septic permit to unplatted land. Our goal was to reduce the number of land subdivisions occurring in Midland's ETJ that occurred outside of the platting process prescribed by State and local legislation. Unfortunately, this process proved unsuccessful.

By the time a property owner requested the septic permit, the land subdivision had already occurred, and in most cases, a building was in place. The Staff believes that it is in the public interest to delete regulations that cannot realistically be enforced. The City Council approved this ordinance on May 8, 2012. It is now appropriate for this ordinance to be considered on second and final reading.

Attachments:

Location Map
Proposed Ordinance



City Council Agenda

Approved for Agenda:
jnichols
City Manager's Office

MEETING DATE: 5/22/2012
TO: City Council / City Manager
FROM: Jim Compton, Senior Planner
SUBJECT: Subdivision Code Amendment

Purpose:

Hold a public hearing at approximately 10:30 a.m. and consider an ordinance on a City-initiated proposal to delete Section 11-2-1(E) 9 of the Subdivision Code.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

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

Discussion:

State law provides for the extension of the Subdivision Code regulations into Midland's ETJ, which currently extends 3.5 miles beyond the City limit. Sometimes, the enforcement of these regulations is very difficult. Within the City limit, the Code requires a property to be platted prior to the issuance of a building permit. State and local laws prohibit public utility companies from serving unplatted land. Thus, enforcement within the City is very effective. However, Midland does not provide water and sewer service in the ETJ, and the City cannot regulate other utility providers. In an effort to reduce the number of improper ETJ subdivisions, the City Council adopted Section 11-2-1(E) 9, which prohibits the issuance of septic permits to unplatted land. Unfortunately, such requests occur too late in the development process. By the time a septic permit is requested, the land is already subdivided, a structure is in place and utility services, especially electric service, are available. Due to the poor success in preventing land subdivisions outside the platting process, staff recommends deleting this section. The Planning and Zoning Commission recommended unanimous approval on April 16, 2012.

Attachment:
Proposed Ordinance

ORDINANCE NO.

AN ORDINANCE AMENDING TITLE XI, “PLANNING AND DEVELOPMENT”, CHAPTER 2, “PLATS AND SUBDIVISIONS”, SECTION 1, “GENERAL PROVISIONS”, SUBSECTION (E), “JURISDICTION”, OF THE CITY CODE OF MIDLAND, TEXAS, BY REPEALING PARAGRAPH 9, WHICH PROHIBITS THE ISSUANCE OF A SEPTIC PERMIT FOR A NEW OR EXPANDED SEPTIC SYSTEM FOR PROPERTY FOR WHICH A PLAT HAS NOT BEEN APPROVED; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE; AND ORDERING PUBLICATION

WHEREAS, the City Council finds it to be in the public interest to amend the Midland City Code as it relates to the regulation of septic permits; and

WHEREAS, the City Council finds that the public health, safety and general welfare will be best served by repealing the prohibition of the issuance of a septic permit for a new or expanded septic system for property for which a plat has not been approved;

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

SECTION ONE. That Title XI, “Planning and Development”, Chapter Two, “Plats and Subdivisions”, Section 1, “General provisions”, Subsection (E), “Jurisdiction”, Paragraph 9 of the City Code of Midland, Texas, is hereby repealed.

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 law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2012; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2012.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Rick Crownover, Director of Development
Services

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

**Planning and Zoning Commission
Minutes
April 16, 2012**

M-12-004 – Consider a City-Initiated proposal to delete Section 11-2-1(E)9 of the **Subdivision Code**.

Senior Planner Jim Compton gave an overview of Section 11-2-1 (E)9 and stated the City has basically not had an overwhelming success with this section. Staff was not aware of a single instance in which this regulation had stopped an illegal land sale. Staff recommended that Section 11-2-1(E)9 of the Subdivision Code be stricken.

Following discussion, a motion for approval was made by Commissioner Watkins; seconded by Commissioner Norris. The motion carried by the following vote: AYE: Ferguson, Gatten, Wolf, Watkins, Norris and Carrillo. NAY: None. ABSTAIN: None. ABSENT: Lanning, Wilton, Woodruff and York

PLANNING AND ZONING COMMISSION

April 16, 2012

CASE: M-12-004.

REQUEST: Consider a City-Initiated proposal to delete Section 11-2-1(E)9 of the Subdivision Code.

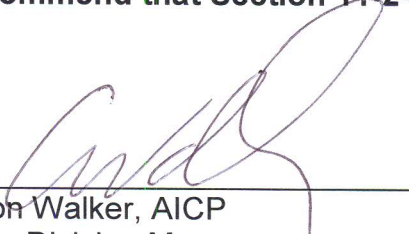
DETAILS OF REQUEST:

1. The State enabling legislation that authorizes municipalities to regulate the subdivision of land requires all owners of land within the City to receive approval of a subdivision plat before land can be subdivided into two or more parts. This same legislation applies to Midland's Extra Territorial Jurisdiction, or ETJ. This is an area located outside the City limit, but within 3.5 miles thereof. Midland's Subdivision Code includes a condition that prohibits the issuance of a building permit to unplatted property. Both State and local law also prohibit the connection of any public utility service to unplatted land. Thus, the staff has little difficulty in enforcing subdivision regulations on land inside the City limit. However, for land in the ETJ, building permits are not required, and the City does not sell water and sewer services beyond the City limits. We have no ability to require other public utility companies to refrain from providing services to unplatted land. Once a land owner acquires a physical address from the Midland Emergency Communication District, the owner is able to receive electric service. This means he can run a water well pump, and can get a permit to install a septic system. With electricity, water and a septic system, an owner is able to establish a residence or business without ever platting their land. Having a physical address is the key that allows land to be developed. Given these conditions, it is virtually impossible for the City of Midland to oversee the frequent ETJ land subdivisions that are occurring.
2. In an effort to enhance the enforcement of subdivision regulations in the ETJ, the staff recommended, and the City Council agreed, to add a section to the Subdivision Code. Section 11-2-1(E)9 prohibits the issuance of a permit for a septic system to unplatted land, either inside the City or in the ETJ. Since the City's Health Department issues septic permits both inside the City and in the ETJ, we were hoping we could curtail some of the illegal subdivisions in the ETJ. Unfortunately, the installation of a septic system is one of the last things a land owner does before setting up housekeeping. The subdivision of land has already occurred, the land has been sold to a new owner, the water well is dug and the residential structure is in place before City staff learns of the illegal subdivision.

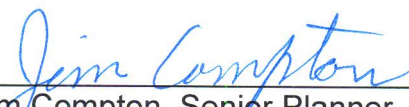
3. The reality is that this regulation has not been successful. The issuance of a septic permit occurs too late in the development process. We are not aware of a single instance in which this regulation has stopped an illegal land sale, either inside the City limit or in the ETJ. For this reason, the staff is now recommending that this regulation be stricken from the Subdivision Code. (In an effort to stop the sale of land earlier in the development process, for several years the staff has been working with Midland Emergency Communications District, who issues addresses to land outside the City. When they receive an address request, they allow the Planning staff to review each case to determine whether the land is platted, and if not, whether there is a public benefit in requiring the land to be platted before an address is issued. Again, we have had little success. Once someone purchases land in the ETJ, it is virtually impossible to mandate that the property owner file a plat on his property.)

STAFF RECOMMENDATION:

We recommend that Section 11-2-1(E)9 of the Subdivision Code be stricken.



Cameron Walker, AICP
Planning Division Manager
Department of Development Services



Jim Compton, Senior Planner
Department of Development Services



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: June 12, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Z-12-015, Glen Miller Homes.

Purpose:

Consider an ordinance on second reading on a request by Glen Miller Homes for a zone change from PD, Planned District for a Housing Development to Amended Planned District.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

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

Discussion:

Mr. Miller owns all but three lots on Quicksand Cove, a short cul-de-sac street. Letters have been received from the other three owners requesting to be a part of this request. The current Planning District requires development in accordance to the regulations of the 1F-2 District except that the front yard setback is reduced from 20 feet to 15 feet. Mr. Miller is requesting a further reduction in front yard setback to 10 feet. Following a Planning and Zoning Commission recommendation for approval, the City Council approved this request on May 22, 2012. No opposition to this request has been received. The ordinance is now ready for consideration on second and final reading.

Attachments:

Proposed Ordinance



City Council Agenda

Approved for Agenda:
jnichols
City Manager's Office

MEETING DATE: 5/22/2012

TO: City Council / City Manager

FROM: Jim Compton, Senior Planner

SUBJECT: Glenn Miller Homes

Purpose:

Hold a public hearing at approximately 10:33 a.m. and consider an ordinance on a request by Glen Miller Homes for a zone change from PD, Planned District for a Housing Development to Amended Planned District.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

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

Discussion:

The subject property consists of 22 single-family lots located along Quicksand Cove, a short cul-de-sac street. The current zoning is Planned District for a Housing Development, subject to 1F-2 District regulations, except that the front yard setback is reduced from 20 feet to 15 feet. Mr. Miller is requesting a further reduction to 10 feet. He states that his request is being driven by his clients, who claim reduced landscape maintenance and watering, along with an opportunity for either a larger back yard or larger home. There are numerous instances where the City Council has approved front yard setback reductions to 15 feet when short streets are involved, and even two instances where five-foot front yards have been approved. The attached ordinance also prohibits front entry driveways. The Planning and Zoning Commission voted 6-1 to recommend approval, and the Staff concurs.

Attachments:

April 30, 2012 P&Z Staff Report
Proposed Ordinance

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOTS 10A-29A, AND LOTS 31 AND 32, BLOCK 5, GREATHOUSE ADDITION, SECTION 8, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT, TO BE USED AS AN AMENDED PLANNED DISTRICT (GENERALLY LOCATED ON BOTH SIDES OF QUICKSAND COVE, WEST OF SPENCE DRIVE); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

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

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

SECTION ONE. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned PD, Planned District for a Housing Development, and it shall be used as an Amended Planned District, subject to the special conditions and restrictions hereinafter set out, said property being described as follows:

Lots 10A-29A, and Lots 31 and 32, Block 5, Greathouse Addition, Section 8, City and County of Midland, Texas.

SECTION TWO. That said property shall be subject to the following special conditions and restrictions:

1. That this property shall continue to be subject to the conditions and regulations contained in City of Midland Ordinance No. 8505, except as otherwise stated below.
2. That the minimum front yard setback for all lots in this planned district shall be ten feet.
3. That none of the lots in this planned district shall have front entry garages; all garage access shall be from the alleys at the rear of the lots.
4. That City of Midland Ordinance No. 8604 is hereby repealed.

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

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

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

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

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

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the ____ day of _____, A.D., 2012; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the ____ day of _____, A.D., 2012, at a regular meeting of the City Council:

Council members voting “AYE”:

Council members voting “NAY”:

PASSED AND APPROVED THIS _____ day of _____, A.D., 2012.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Rick Crownover, Director of Development
Services

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

Planning and Zoning Commission
Minutes
April 30, 2012

Z-12-015 - Hold a public hearing and consider a request by **Glen Miller Homes** for a *zone change* from PD, Planned District for a Housing Development to Amended Planned District on Lots 10A through 29A and Lots 31 and 32, Block 5, Greathouse Addition, Section 8, City and County of Midland, Texas. (Generally located on both sides of Quicksand Cove, west of Spence Drive.)

Applicant yielded to staff. Senior Planner Jim Compton gave an overview of the request and stated the applicant wished to reduce the 15-foot front yard setback to 10 feet. There are already three lots developed with a 15-foot front yard setback and the owners indicated they wish to join in the 10-foot setback. Staff recommended approval of the zone change subject to conditions A-D.

Chairman Ferguson opened the public hearing.

With no one speaking in favor of the request, Chairman Ferguson called for anyone speaking in opposition of the request.

Susan Mauter, Midland Texas stated she moved into the area about four months ago and wanted more information what the hearing was about.

Cameron Walker explained that the residences are looking to re-zone in order to reduce the front yard. He stated homeowners wish to build a larger home and would like less lawn maintenance. No more lots are being created in the cul-de-sac and that only the homes in the cul-de-sac were being affected.

Glen Miller of Glenn Miller Homes stated the request was due to owners wanting to build larger homes.

There being no one else wishing to speak in favor or in opposition to the item, Chairman Ferguson closed the public hearing.

A motion for approval subject to conditions A-D was made by Commissioner Watkins; seconded by Commissioner Norris. The motion carried by the following vote: AYE: Ferguson, Gatten, Wolf, Watkins, Norris, York and Carrillo. NAY: None. ABSTAIN: None. ABSENT: Lanning, Wilton, and Woodruff.

PLANNING AND ZONING COMMISSION

April 30, 2012

CASE: Z-12-015.

REQUEST: Hold a public hearing and consider a request for a zone change from PD, Planned District for a Housing Development to Amended Planned District.

APPLICANT/OWNER: Glen Miller Homes, Calvin Wood, Jerry Watson and David Rayle.

LEGAL DESCRIPTION: Lots 10A through 29A, and Lots 31 and 32, Block 5, Greathouse Addition, Section 8, City and County of Midland, Texas.

LOCATION: Both sides of Quicksand Cove, west of Spence Drive.

CURRENT ZONING: PD, Planned District for a Housing Development.

DETAILS OF REQUEST:

1. The lots on this street were originally zoned Planned District for a Housing Development, subject to the standards of the 1F-2 District. Additionally, a site plan was approved to screen the alley between Holiday Hill Road and the lots. These conditions are contained in Ordinance 8505. Later, Ordinance 8604 was adopted that reduced the front yard setbacks from 20 feet to 15 feet. Additionally, front-entry driveways are prohibited except for circular driveways with at least 65 feet of street frontage; the garage door is setback 20 feet from the front property line; or where the driveways curve 90 degrees to create a parking pad parallel to Quicksand Cove such that no portion of a parked vehicle extends into the public right-of-way. The applicant has now submitted a zone change request to reduce the 15-foot front yard to 10 feet. He has also provided signed letters from the owners of three lots that are already developed with a 15-foot front yard setback, indicating a desire to join Mr. Miller in this rezoning request.

SURROUNDING ZONING AND LAND USE:

2. Quicksand Cove is a short cul-de-sac street that contains 22 lots. The area to the north is also zoned Planned District for a Housing Development, subject to 1F-2 District regulations (20-foot front yards). The land to the south is zoned LR-2 District, and the land to the southeast is zoned FM-1 District, both of which are

vacant. The area west, across Holiday Hill Road, was just annexed into the City limit, and is zoned for retail and apartment uses.

ANALYSIS:

3. The applicant claims the additional reduction in front yard setback is desired by his clients. To them, it represents less lawn watering and maintenance, and the opportunity for a slightly larger home and/or larger rear yards. The City Council has generally approved reductions to 15 feet along short streets that carry very little traffic, since only the respective homeowners are affected. In two instances, a reduction to five-foot front yards has been approved by the Council. One example is the Grandridge Park subdivision, located west of Lowe's Home Improvement. This subdivision is surrounded with a masonry screening wall, again to limit any impacts to the affected homeowners. Because of these precedents, combined with the fact that Quicksand Cove is a short, cul-de-sac street where rear entry garages are predominant, we have no objection to this rezoning request.

STAFF RECOMMENDATION:

We recommend approval of this request for a zone change from PD, Planned District for a Shopping Center, subject to the following regulations:

- A. That the development of this property shall be subject to the regulations 8505, except as otherwise stated below.
- B. That the minimum front yard setback for lots within this platted district shall be ten (10) feet.
- C. That front driveway access for all lots in this planned district shall be prohibited.
- D. That Ordinance 8604 is expressly repealed.


Cameron Walker, AICP
Planning Division Manager
Department of Development Services


Jim Compton, Senior Planner
Department of Development Services

Attachments:

Application
Maps

Case Number: 212-015

CITY OF MIDLAND
Planning Division

APPLICATION TO AMEND A PLANNED DISTRICT

Applicant: Glenn Miller Homes 413 2877
Address: PO Box 8021 694-2877
Street Address (Phone/e-mail)
City Midland State Zip Code 79708
Property Owner: (same)
Address: _____
Street Address (Phone/e-mail)
City _____ State _____ Zip Code _____

Street address and Legal Description of Planned District (complete Lot, Block, and Subdivision Name description below, or, if not in a recorded plat, attach a sealed Metes and Bounds Description:

Lots 10A-29A, and Lots 31 & 32, Block 5, Greathouse, Sec. 8

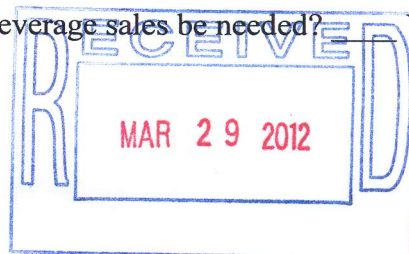
Current PD Classification: PDHP

Requested PD Classification: Amended Planned District - 10' Front Set Back
(List by tracts if more than one zoning district is requested)

Reason for amendment request: Reduced Yard area, water conservation

Describe how conditions affecting the property have changed since it was designated its present zone: ① Our current drought & ② I have customers wanting larger homes.

Will a Specific Use Permit with Term for alcoholic beverage sales be needed? Yes ☒ No ☐



FEES:

Single, Planned District amendment: \$550. Multiple, PD proposal: add \$75 per district.

SUBMITTALS:

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

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

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

Property Owner (signature): [Signature] Date: 3/28/12

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

STATE of TEXAS

COUNTY OF MIDLAND

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

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

Authorized Agent (signature)

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

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

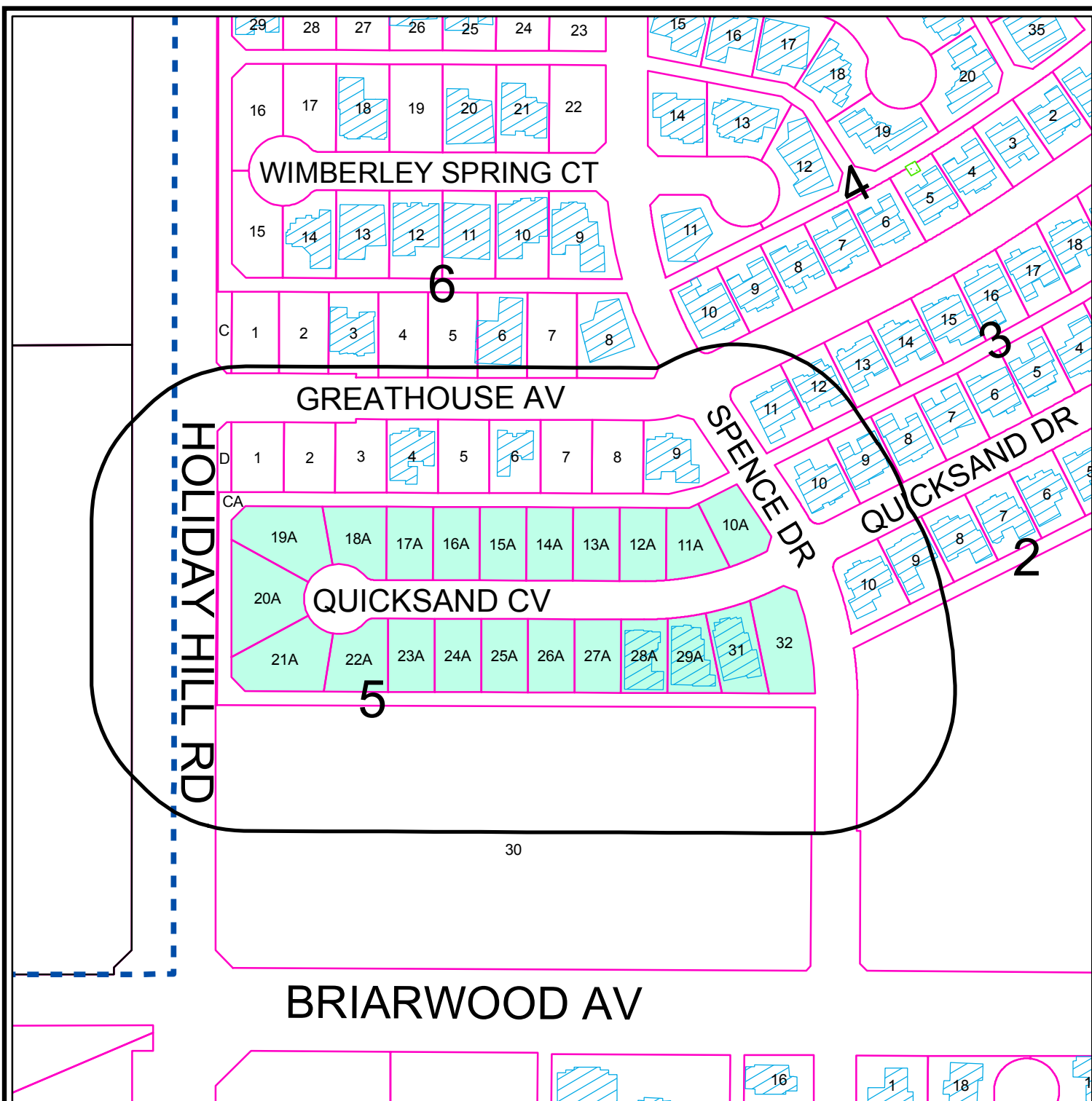
FOR OFFICE USE ONLY

Rec'd By: JC Date: 3/29/12

Assigned: KV

For: Pd 2 On: 4/30/12

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



PROPERTY OWNER NOTIFICATION MAP

Z - 12 - 015

Scale: 1" = 200'

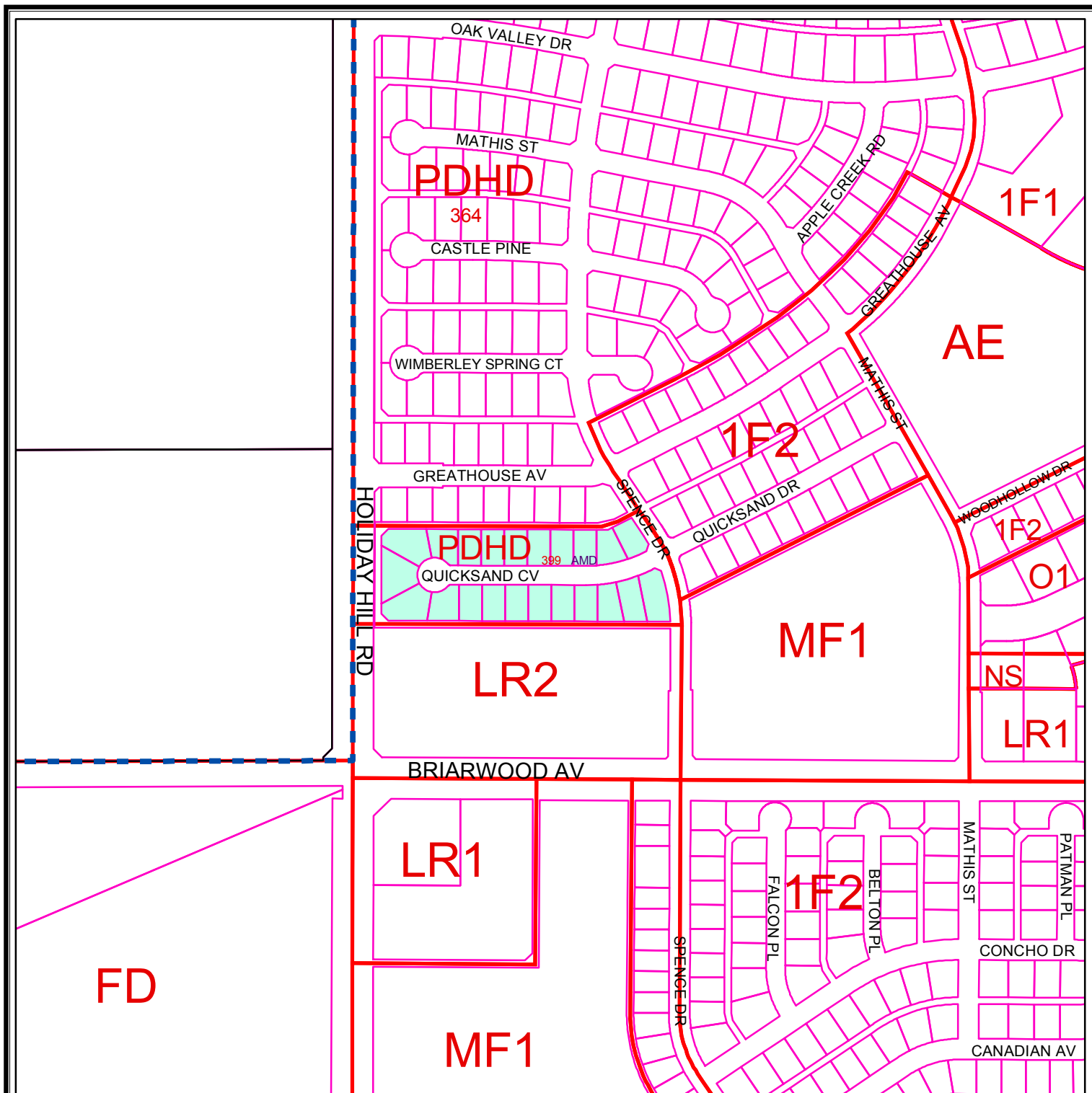
Consider a request for a zone change from PD, Planned District for a Housing Development, to an Amended Planned District on Lots 10A thru 29A and Lots 31 and 32, Block 5, Greathouse Addition, Section 8, City and County of Midland, Texas.

LEGEND

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



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ZONING MAP

Z - 12 - 015

Scale: 1" = 400'

Consider a request for a zone change from PD, Planned District for a Housing Development, to an Amended Planned District on Lots 10A thru 29A and Lots 31 and 32, Block 5, Greathouse Addition, Section 8, City and County of Midland, Texas.

LEGEND

 ZONING	 CITY PARCELS
 CITY LIMITS	 COUNTY PARCELS

ZONING DISTRICTS:

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

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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: June 12, 2011

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Z-12-016, Mockingbird Oaks Development

Purpose:

Consider an ordinance on second reading on a request by Mike Jackson for a zone change from FD, Future Development District to 1F-3, One-Family Development District and TH, Townhouse District.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

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

Discussion:

Mike Jackson is proposing to expand the Los Patios subdivision, located west of Holiday Hill Road. The current zoning is FD District. He has received preliminary plat approval that includes lots for single-family development. These lots conform to this associated zone change request to a 1F-3 District and a TH District. Following a recommendation for approval by the Planning and Zoning Commission, the City Council approved this ordinance on first reading on May 22, 2012. The ordinance is now ready for second reading and final consideration.

Attachments:

Location Map
Proposed Ordinance



City Council Agenda

Approved for Agenda:
jnichols
City Manager's Office

MEETING DATE: 5/22/2012

TO: City Council / City Manager

FROM: Jim Compton, Senior Planner

SUBJECT: Mockingbird Oaks Development

Purpose:

Hold a public hearing at approximately 10:36 a.m. and consider an ordinance on a request by Mockingbird Oaks Development for a zone change from FD, Future Development District to 1F-3, One-Family Development District and TH, Townhouse Development District.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

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

Discussion:

Mike Jackson has submitted a preliminary plat named Los Patios, Section 3. It is located west of Holiday Hill Road and 450 feet south of Briarwood Avenue, and contains 135 residential lots. This property must be rezoned from the current FD District before development can occur. He is proposing a four acre tract to be zoned TH District, which is located adjacent to Holiday Hill Road; the balance of the property (36.81 acres) is proposed to be zoned 1F-3 District. The density of these districts is consistent with the existing Los Patios neighborhood as well as the Comprehensive Plan. The Planning and Zoning Commission recommended approval of this request, and the staff concurs.

Attachments:

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 36.81-ACRE TRACT OF LAND WHICH IS PRESENTLY ZONED FD, FUTURE DEVELOPMENT DISTRICT, TO BE USED AS A 1F-3, ONE-FAMILY DWELLING DISTRICT; BY PERMITTING A 3.98-ACRE TRACT OF LAND WHICH IS PRESENTLY ZONED FD, FUTURE DEVELOPMENT DISTRICT, TO BE USED AS A TH, TOWNHOUSE DISTRICT; SAID TRACTS BEING LOCATED IN SECTION 25, BLOCK 40, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS; SAID TRACTS BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS MADE A PART HEREOF; SAID TRACTS ARE GENERALLY LOCATED ON THE WEST SIDE OF HOLIDAY HILL ROAD, APPROXIMATELY 450 FEET SOUTH OF BRIARWOOD AVENUE; 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 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, and a TH, Townhouse 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, subject to the special conditions and restrictions hereinafter set out, said property being described as follows:

A 36.81-acre tract of land out of Section 25, 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 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 TH, Townhouse District, subject to the special conditions and restrictions hereinafter set out, said property being described as follows:

A 3.98-acre tract of land out of Section 25, 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 "B", which is attached hereto and incorporated herein.

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

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

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

SECTION SIX. The penalty for violation of this ordinance shall be in accordance

with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

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

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2012; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2012.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Rick Crownover, Director of Development
Services

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

PLANNING AND ZONING COMMISSION

April 30, 2012

CASE: Z-12-016.

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 and TH, Townhouse District.

APPLICANT: Mockingbird Oaks Development, LLC.

OWNER: SBC.

LEGAL DESCRIPTION: A 40.27-acre tract out of Section 25, Block 40, T-1-S, T&P RR Company Survey, Midland County, Texas.

LOCATION: West side of Holiday Hill Road, between Los Patios Drive and Briarwood Avenue.

CURRENT ZONING: FD, Future Development District.

ASSOCIATED CASE: P-12-018, Los Patios, Section 2.

DETAILS OF REQUEST:

1. This property was annexed into the City limits in 2009. Since there was no development plan at that time, it was zoned FD District. We have now received a development plan consisting of a preliminary plat application and this zone change application. The owner plans to continue the style of development begun by the Los Patios neighborhood to the south. The applicant is proposing about four acres of townhouse development, and almost 37 acres of single-family detached homes. The associated preliminary plat application is also scheduled on the April 30th agenda. The Planning and Zoning Commission must first support the zone change request before it can consider the associated plat.

SURROUNDING ZONING AND LAND USE:

2. The land to the south is zoned for single-family in the form of townhouse development and several planned districts for single-family development. The area to the north is vacant and is zoned FD District, but we anticipate additional retail development at the intersection of Holiday Hill Road and Briarwood Avenue. The area east across Holiday Hill road is developed with single-family homes and an apartment complex. The area to the east is vacant, but is beginning to experience residential growth at this time.

ANALYSIS:

3. The Comprehensive Plan identifies this area as suitable for residential development. The Los Patios neighborhood is developed at a slightly higher density than what has been constructed in the recent past. However, there appears to be a strong market for moderate sized residential development, and the density is in line with the Comprehensive Plan recommendations. The staff sees this proposal as an extension of what has been a successful development concept, and would expect this proposal would experience the same.

STAFF RECOMMENDATION:

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

Cameron Walker, ACIP
Planning Division Manager
Department of Development Services

Jim Compton, Senior Planner
Department of Development Services

Attachments:

Application
Maps

Case Number: Z-12-016

CITY OF MIDLAND
Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

Mockingbird Oaks Development, LLC (432) 697-3402

Applicant Name	Contact #s
3902 CALDERA BLVD.	79705
Address	Zip Code

SBC CORPORATION

Property Owner Name	Contact #s
----------------------------	-------------------

Address	Zip Code
John M. Newton	(432) 438-7784

Representative Name	Contact #s
4908 N. MIDKIFF RD.	79705

Address	Zip Code
---------	----------

Street address and Legal Description of property (complete Lot, Block, and Subdivision, or if unplatted, attach a Metes and Bounds description with surveyor's seal). Describe by tracts if more than one zoning district is requested:

See attached. REQUESTING 36.79 ACRES TO BE ZONED FOR 1F-3 AND
3.98 ACRES TO BE ZONED TH.

PRESENT ZONE: FD REQUESTED ZONE: 1F-3 AND TH
(List by tracts if more than one district is requested)

Reason for Zone Change or PD Amendment: To conform to development

Present Use of Property: Pasture

Proposed Use of Property: Residential

How will zone change affect the public health, safety and welfare? _____

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

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

APPLICATION FEES:

- Single, standard zone change: **\$400**. Multiple, standard zone change: add **\$100** per district.
- Single PD, Planned District zone change: **\$550**. Multiple PD proposal: add **\$100** per district.
80% of fee will be refunded if no P&Z public hearing is called; if no City Council public hearing is called, then 30% of fee will be refunded.
- If a Traffic Impact Analysis is required, a fee of up to \$500.00 will be assessed.

SITE PLAN SUBMITTALS (if applicable):

16 copies of the PD site plan: _____

Site Plan on a CD in .pdf and .jpg format: _____

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

Property Owner (signature): John M. Watson Date: 4-2-2012

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

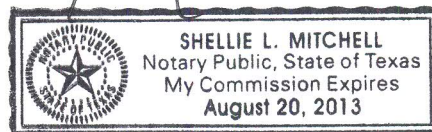
John M. Watson who, being by me duly sworn, upon oath says: That (s)he is authorized by Mike Jackson, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney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

John M. Watson
Authorized Agent (signature)

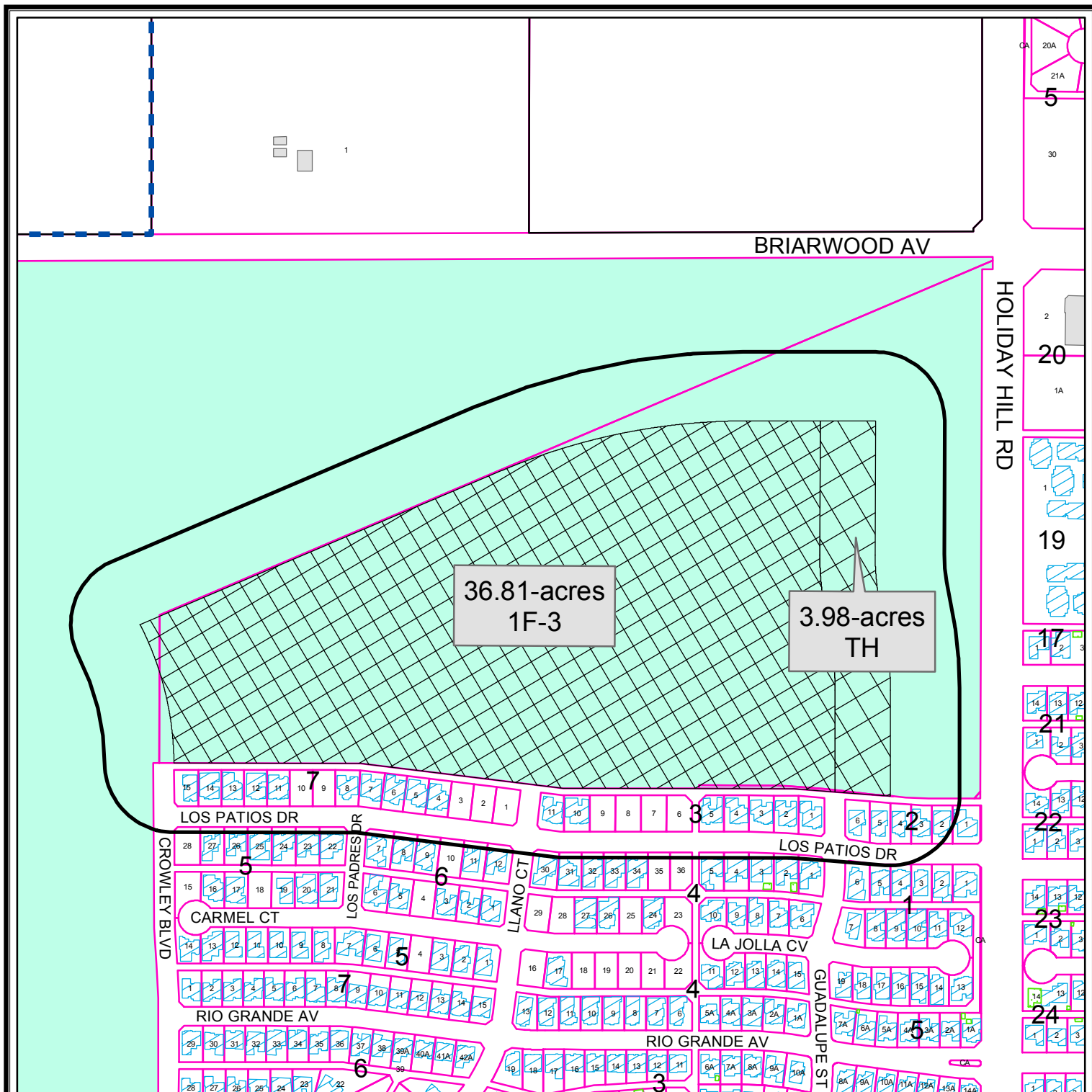
Subscribed and sworn to before me, this 2 day of April, 20 12, to certify which witness my hand and seal of office.

Shellie L. Mitchell
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: <u>RS</u>	Date: <u>4/2/12</u>
Assigned: _____	
For: _____	On: _____



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



PROPERTY OWNER NOTIFICATION MAP

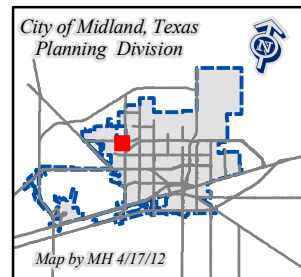
Z - 12 - 016

Scale: 1" = 400'

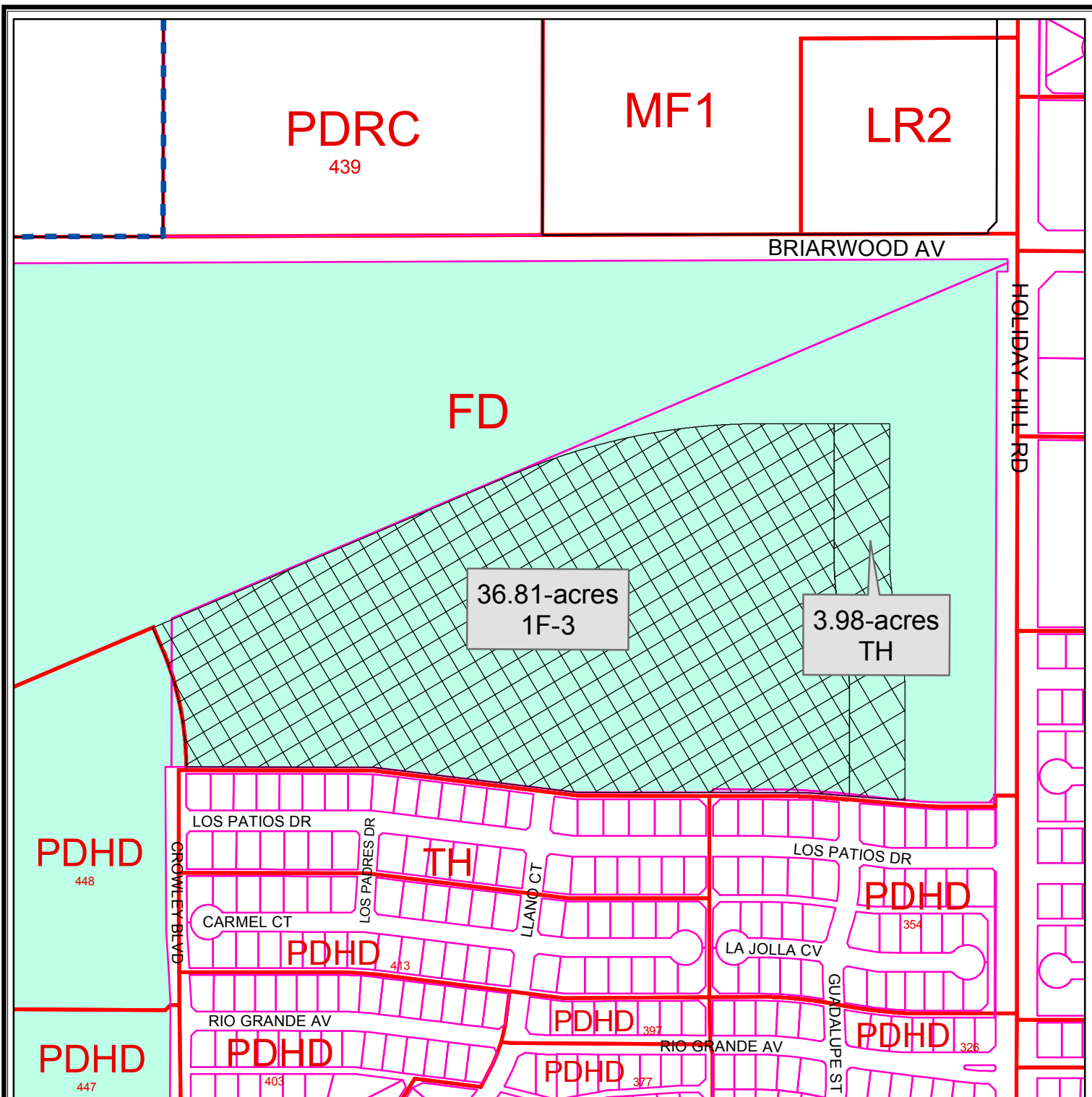
Consider a request for a zone change from FD, Future Development District, to TH, Townhouse Dwelling District on 3.98-acre tract of land and to 1F-3, One-Family Dwelling District on a 36.81-acre tract of land all out of Section 25, Block 40, T-1-S, T & P RR Co. Survey, Midland County, Texas.

LEGEND

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



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ZONING MAP

Z - 12 - 016

Scale: 1" = 400'

Consider a request for a zone change from FD, Future Development District, to TH, Townhouse Dwelling District on 3.98-acre tract of land and to 1F-3, One-Family Dwelling District on a 36.81-acre tract of land all out of Section 25, Block 40, T-1-S, T & P RR Co. Survey, Midland County, Texas.

LEGEND

— CITY LIMITS

— 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: June 12, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: V-12-003, ROW Vacation

Purpose:

Consider an ordinance on second reading for the vacation of a 0.032-acre portion of W. Louisiana Avenue right-of-way, adjacent to the north 75 feet of the east half of Block 29, Homestead Addition, City and County of Midland, Texas.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

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

Discussion:

Duke Edwards is proposing to construct a restaurant on the land abutting the subject right-of-way. A 10-foot wide vacation is proposed, containing 1,400 square feet, which will be used for off-street parking. The right-of-way is valued by the Midland Central Appraisal District at \$1/square foot. We have received payment from Mr. Edwards of \$1,400. The City Council approved this application on first reading on May 22, 2012. With the receipt of payment, it is appropriate for this ordinance to be considered on second and final reading.

Attachments:

Location Map
Proposed Ordinance



City Council Agenda

Approved for Agenda:
jnichols
City Manager's Office

MEETING DATE: 5/22/2012

TO: City Council / City Manager

FROM: Ken Van Dyne,

SUBJECT: Duke Edwards - Consider an ordinance on request for the vacation of right-of-way

Purpose:

Consider an ordinance on a request by Duke Edwards for the vacation of the 0.032-acre portion of the right-of-way of W. Louisiana Avenue adjacent to the north 75 feet of the east half of Block 29, Homestead Addition, City and County of Midland, Texas.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

There is no cost to the City associated with this application.

Discussion:

Andrew Mellen of the West Company is representing Duke Edwards concerning the replatting of the north 75 feet of the east half of the block located at the northeast corner of Colorado Street and Louisiana Avenue. They are requesting the vacation of the above described right-of-way to allow for the future development of this portion of the block for additional parking space for a new restaurant. This property is located east of the Subway Restaurant that fronts Big Spring St. The south portion of the property has a single family residence with the north area undeveloped.

The area to be vacated is approximately eight feet behind the Louisiana Ave. curb edge and has not been used for public travel. The area is approximately 1,400 square feet and is valued at \$1.00 per square foot which establishes its value at \$1,400.00. While the City has no utilities in this right-of-way, the applicant will have to dedicate an easement for existing utilities (ONCOR Electric) which will be covered in the platting phase. A payment to the City in the amount of \$1,400.00 must be received prior to second reading.

ORDINANCE NO.

AN ORDINANCE VACATING AND ABANDONING A 0.032-ACRE PORTION OF WEST LOUISIANA AVENUE RIGHT-OF-WAY ADJACENT TO THE NORTH 75 FEET OF THE EAST HALF OF BLOCK 29, HOMESTEAD ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTHWEST CORNER OF THE INTERSECTION OF WEST LOUISIANA AVENUE AND NORTH COLORADO STREET); ADOPTING THE APPRAISAL BY THE CITY MANAGER OF \$1,400.00; AND ORDERING RECORDATION BY THE CITY SECRETARY

WHEREAS, it has been determined by the Midland City Council that a 0.032-acre portion of West Louisiana Avenue right-of-way adjacent to the north 75 feet of the east half of Block 29, Homestead Addition, City and County of Midland, Texas, is no longer needed for public use; and

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

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

WHEREAS, the City Manager has appraised the value of the City's property interest in the right-of-way at \$1,400.00 , as shown in Exhibit "B" attached hereto and incorporated herein by reference; and

WHEREAS, the Council finds it to be in the public interest to abandon and vacate the right-of-way described herein;

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

SECTION ONE. That the 0.032-acre portion of West Louisiana Avenue right-of-way adjacent to the north 75 feet of the east half of Block 29, Homestead Addition, City and County of Midland, Texas, as described in Exhibit "A" attached hereto and made a part

hereof for all legal purposes, is hereby vacated and abandoned for all public purposes. Provided, however, that the City is hereby only abandoning the public interest in said property and this ordinance in no way affects any private easement or access easement which abutting property owners may have in said right-of-way.

SECTION TWO. That this Ordinance shall not be effective until the City of Midland has received from the property owner(s) the sum of \$1,400.00.

That the Director of Development Services shall ensure that all necessary utility easements are properly noted on the plat of this property.

SECTION THREE. That upon the City's receipt of the sum set forth in Section Two hereof, the City Secretary is hereby authorized and directed to file a certified copy of this Ordinance with the County Clerk of Midland County, Texas, for purposes of recording in the Official Records of Midland County, Texas.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2012; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2012.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Rick Crownover, Director of Development
Services

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

Case Number: N-12-003

CITY OF MIDLAND
Planning Division

APPLICATION TO VACATE RIGHT-OF-WAY

- I. Application is hereby made to the City Council to vacate the following public right-of-way or easement:
10' X 140' EASEMENT ALONG LOUISIANA AVE.
- II. Reason for Request: EXTEND SIZE OF LOT FOR COMMERCIAL BUILDING
- III. Reasons, in applicant's opinion, why the requested vacation will not adversely affect the public welfare or will contribute to it in a positive way:
DOES NOT AFFECT CITY TRANSPORTATION

IV. REQUIRED ITEMS:

1. Applicant(s) Information: (Attach extra sheets as necessary.)

Name: DUKE EDWARDS

Address: P.O. BOX 51108

Street

MIDLAND

City

TX

State

Phone: _____

79710

Zip Code

2. Metes and bounds description of property to be vacated.
3. Map showing property to be vacated and its relationship to the applicant's property.
4. Letter(s) of Concurrence signed by adjacent property owner(s). (See attached)
5. Application Fee: **\$300.00** ✓

Required items Attached? Date Received: 1. _____ 2. _____ 3. _____ 4. _____ 5. _____

- V. Clearance is needed from the following utility companies: City of Midland / Atmos Energy

Caprock Energy / TXU Electric / AT&T / Suddenlink Cable TV Co. / Grande Communications

The City will route the request to these companies, but it is the applicant's responsibility to ensure clearance has been obtained and to work out any issues that may arise.

VI. Policies:

1. If the vacation request involves only a portion of a section right-of-way, such that approval would not affect the public's ability to travel along said right-of-way, then the request will be scheduled for consideration by the City Council. No public hearing will be needed.
2. If the vacation request involves an entire section of right-of-way, such that approval would cause the public to lose all rights to use it, then the following procedures apply:
 - a. Nearby land owners who have a reasonable expectation to use said right-of-way, as determined by the Planning Division, must first agree to the proposed vacation. It is the applicant's responsibility to obtain a letter of concurrence signed by the affected land owners.
 - b. If all letters are received indicating that the affected land owners agree to the request, then a public hearing before the City Council will be scheduled. Public notice of the hearing will be mailed by the Planning Division to land owners within 1,000 feet of the affected right-of-way.
 - c. If a request is approved, the right-of-way shall be divided into two equal parts, with each half becoming the property of the respective abutting owner. If the applicant desires to own the entire width, he or she must negotiate with the opposite land owner.

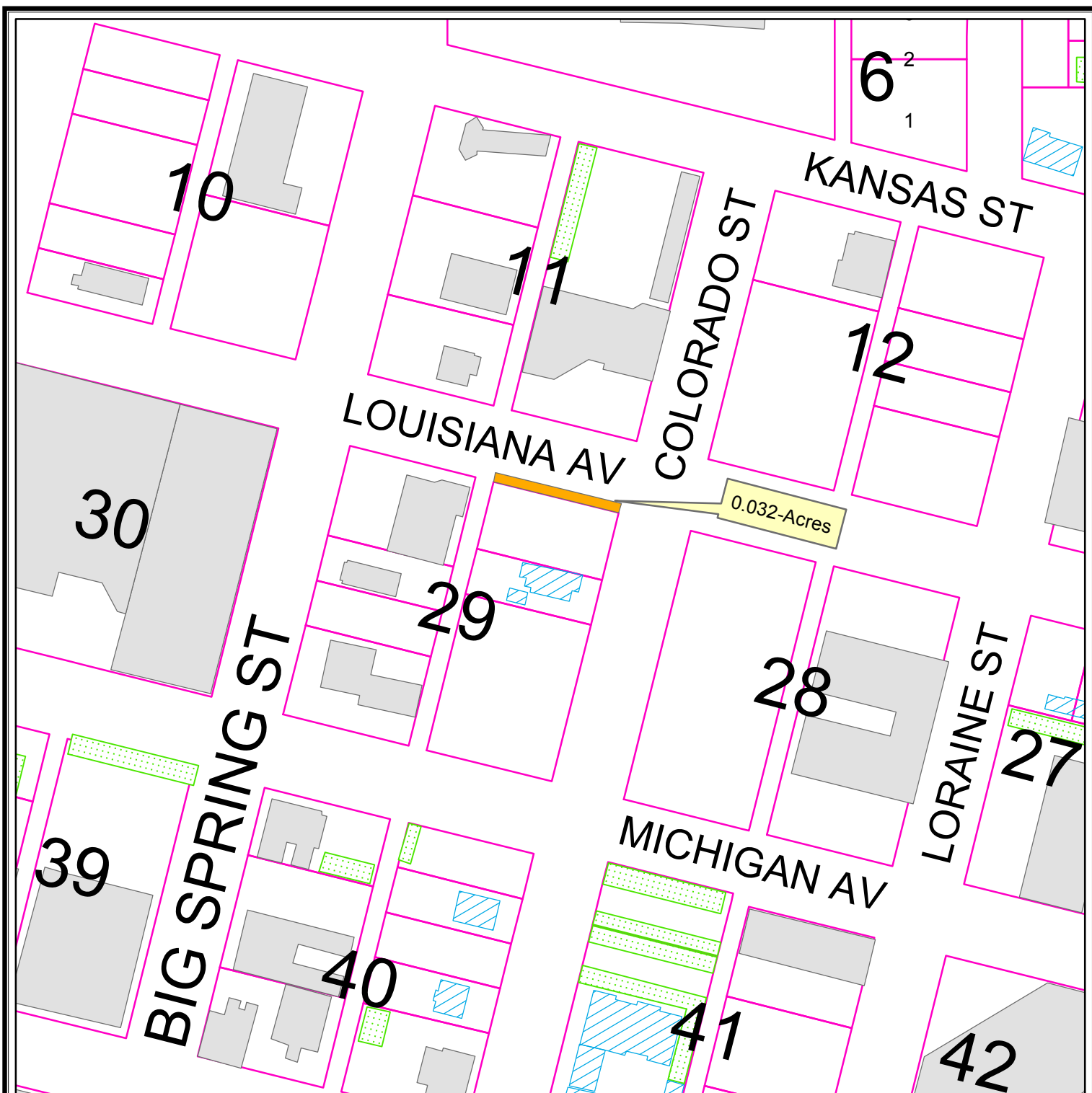
Signature of applicant: _____ Date: _____

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

To be completed by City of Midland staff:

According to the policy guidelines outlined above, a public hearing will ____ will not ____ be required.

FOR OFFICE USE ONLY	
Rec'd. By: <u>VP</u>	Date: <u>3/29/12</u>
Assigned: <u>KV</u>	
For: <u>CC</u>	On: <u>5/22/12</u>



LOCATION MAP

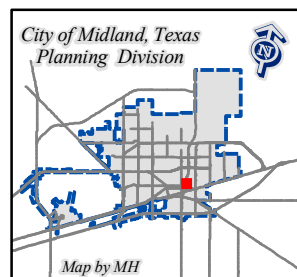
V - 12 - 003

Scale: 1" = 200'

Consider a request for the vacation of a 0.032-acre portion of the right-of-way of W. Louisiana Avenue adjacent to the north 75 feet of the east half of Block 29, Homestead Addition, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



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CITY OF MIDLAND

ORDINANCE REQUEST FORM

DATE: May 10, 2012 **SUBJECT:** V-12-003
Duke Edwards

TO: Keith Stretcher, City Attorney

FROM: Cameron Walker, AICP
Planning Division Manager

MEETING

DATE: May 22, 2012 **TIME:** Miscellaneous Items
City Council Meeting

Please prepare the appropriate legal instrument on the above-mentioned subject to be heard before the City Council as indicated.

LEGAL DESCRIPTION: A 0.032-acre portion of the right-of-way of W. Louisiana Avenue adjacent to the north 75 feet of the east half of Block 29, Homestead Addition, City and County of Midland, Texas.

LOCATION: Generally located on the southwest corner of the intersection of W. Louisiana Avenue and N. Colorado Street.

CURRENT ZONING: C-1, Central Area District

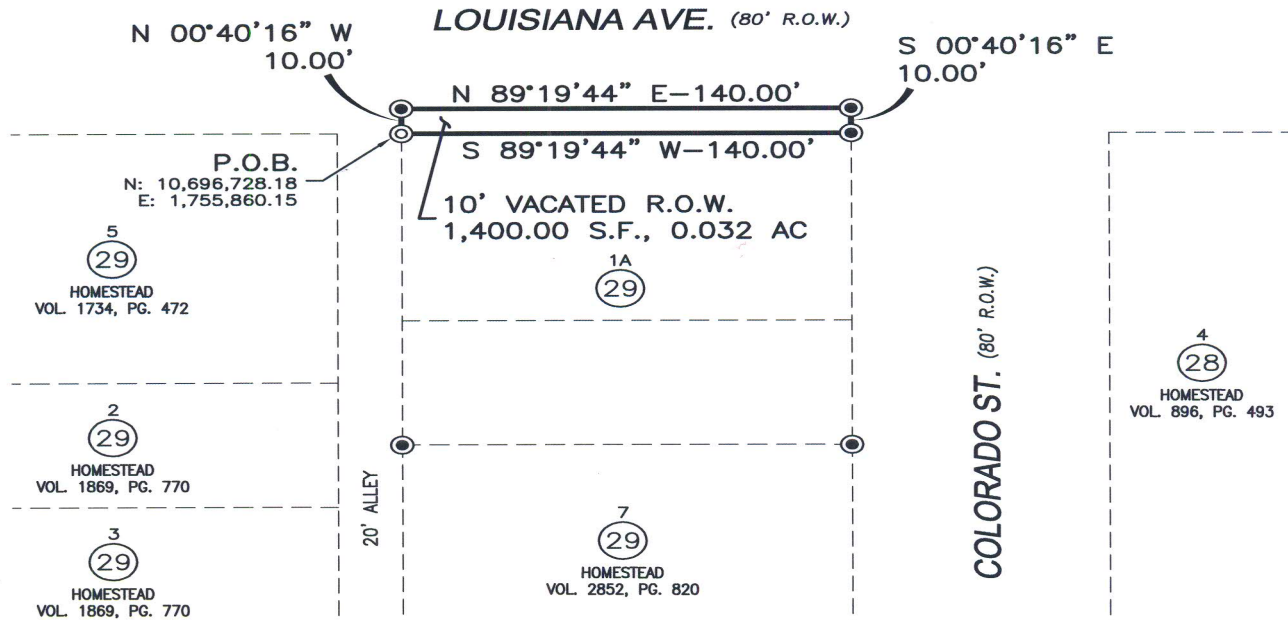
DEPARTMENT COMMENTS:

- A. Please prepare an ordinance to vacate and abandon the public right-of-way described in the attached Land Survey. Easements for existing franchise utilities (electric) shall be noted on the plat;**
- B. That the sum of the land value at a total of \$1,400.00 shall be paid to the City of Midland prior to the approval of 2nd reading on this item.**

Attachments:

Application
Map
Land Survey

ABANDONED RIGHT OF WAY EXHIBIT LOUISIANA AVE.



LEGAL DESCRIPTION of a 0.032 acre tract of Louisiana Avenue Right-of-Way out of Homestead Addition to the City of Midland, Texas as recorded in Volume 596, Page 811 of the Deed Records of Midland County, Texas and being in Section 26, Block 39, T-1-S, T&P RR Co. Survey Midland County, Texas. Subject tract being more particularly described as follows:

BEGINNING at (N: 10,696,728.18, E: 1,755,860.15) a found 1/2 inch iron rod, said point being the Northwest corner of Lot 1, Block 29, Homestead Addition to the City of Midland, for the Southwest corner of this tract;

THENCE N 00°40'16" W across Louisiana Avenue a distance of 10.00 feet to a set 1/2 inch iron rod with red plastic cap marked "West Co. Midland" set for the Northwest corner of this tract;

THENCE N 89°19'44" E a distance of 140.00 feet to a 1/2 inch iron rod with red plastic cap marked "West Co. Midland" set for the Northeast corner of this tract;

THENCE S 00°40'16" E across Louisiana Avenue a distance of 10.00 feet to a 1/2 inch iron rod with red plastic cap marked "West Co. Midland" set for the Northeast corner of said Lot 1, Block 29, for the Southeast corner of this tract;

THENCE S 89°19'44" W with the Southerly Right-of-Way line of Louisiana Avenue, a distance of 140.00 feet to the POINT OF BEGINNING;

Subject Tract containing a total of 0.032 acres (1,400 s.f.) of land.

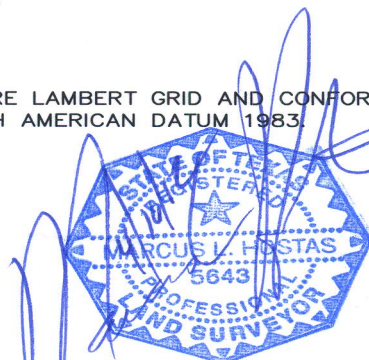
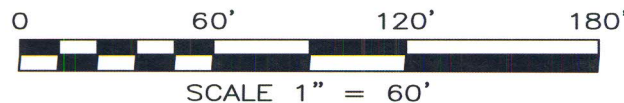
NOTE:
COORDINATES, BEARINGS, DISTANCES AND AREAS SHOWN HEREON ARE LAMBERT GRID AND CONFORM TO THE "TEXAS COORDINATE SYSTEM", TEXAS CENTRAL ZONE, NORTH AMERICAN DATUM 1983.

© COPYRIGHT 2012 WEST COMPANY OF MIDLAND



LEGEND

- DENOTES SET 1/2-INCH IRON ROD W/RED PLASTIC CAP MARKED "WEST CO. MIDLAND"
- DENOTES FOUND 1/2-INCH IRON ROD
- DENOTES BOUNDARY LINE



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

T: /CIVIL DRAWINGS/2012/2012-0533/EXHIBIT/2012-0533 LOUISIANA ROW EXHIBIT.dwg

LAND SURVEY

CASE NO. V-12-003 24.11



Office of
City Manager

300 N. Loraine
P.O. Box 1152
Midland, TX 79702-1152

432.685.7203
Fax 432.686.1600

May 11, 2012

Midland City Council
City of Midland, Texas

RE: Request for vacation of a 0.032-acre portion of West Louisiana Avenue right-of-way adjacent to the north 75 feet of the east half of Block 29, Homestead 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 \$1,400.00. The property can be vacated and recorded in the Midland County Clerk's office when the City of Midland has received this amount from the adjoining property owner(s).

Very truly yours,

Courtney Sharp
City Manager

Exhibit "B"



City Council Agenda

Approved for Agenda:
jnichols
City Manager's Office

MEETING DATE: 6/12/2012

TO: City Council / City Manager

FROM: Sylvester Cantu, Community Development Manager

SUBJECT: At approximately 10:30 am conduct a Public Hearing for the 2012/13 Community Development Block Grant (CDBG) Program.

Purpose:

At approximately 10:30 am conduct a Public Hearing for the 2012/13 Community Development Block Grant (CDBG) Program.

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 purpose of this public hearing is to allow citizen input on the proposed distribution of 2012/13 CDBG funds. The Council CDB G Committee met on May 16, 2012 and made the attached proposed preliminary distribution of CDBG funds (See attachment). The 2012/13 CDBG entitlement grant will be \$699,035. A total of \$22,336 is also recommended for reallocation into FY 2012/13. Also, we expect to receive \$104,400 in owner occupied housing loan payments that will be used by the same program. Therefore, the total CDBG budget will be \$825,771.

The Council may make adjustments to the proposed distribution of CDBG funds. After the meeting, the Community Development staff will prepare a draft 2012/13 Action Plan to the City's Consolidated Plan for Community Development and Housing Funds. The Plan will be subjected to a 30-day public review period. Then, the Council will be asked to approve the Action Plan on July 24, 2012. The Plan will then be submitted to HUD by the required August 15 deadline.

WORK SHEET FOR PRELIMINARY DISTRIBUTION OF 2012/13 CDBG FUNDS

Proposed Project/Program	Administering Agency	2010/11 Funding	2011/12 Funding	Amount Requested		Amt. Proposed	Con. Plan Priority
Owner Occupied Housing - Reconstruction	City	\$138,000	\$125,000	\$315,600		\$315,600	High
Owner Occupied Housing - Minor Repairs	City	\$100,000	\$80,000	\$80,000		\$80,000	High
Homebuyer Assistance Program	City	\$50,000	\$115,000	\$40,000		\$40,000	High
CDBG Administration	City	\$170,000	\$161,000	\$140,000	#	\$160,000	
Demolition Program	City	\$75,000	\$65,000	\$65,000		\$0	High
Lot Clearing Program	City	\$40,000	\$24,500	\$50,000	*	\$35,000	High
SE Senior Nutrition Program	Community & Senior Services	\$53,000	\$45,000	\$45,000	*	\$45,000	High
Home Cleaning Program	Casa de Amigos	\$25,000	\$25,000	\$30,000	*	\$25,000	High
Child Care Local Match Program	no funds requested for this	\$30,000	\$30,000	n/a		n/a	
Sidewalk Improvements	no funds requested for this	n/a	\$135,000	n/a		n/a	
Sparks Park Target Area Infrastructure	no funds requested for this	\$492,939	n/a	n/a		n/a	
Washington Park Improvements	no funds requested for this	\$100,000	n/a	n/a		n/a	
Contingency		\$7,986	\$24,512	\$0		\$20,771	
		\$1,281,925	\$830,012	\$765,600		\$721,371	
BASE GRANT FOR 2012/13 is \$699,035. TOTAL AVAILABLE IS:				\$721,371			
The above total available includes the following to be re-allocated from prior years:				\$22,336			
* = project is a public service activity. Maximum allowed is \$104,855.		# = Maximum allowed for administration is \$139,807.					
Program income of prior year and the current year can also be used to calculate the above maximums.							

NOTE: CDBG Council Committee members Vicky Hailey and Michael Trost met with City Staff on 5/16/2012 to arrive at the recommendation.

PRELIMINARY DISTRIBUTION OF 2012/13 CDBG FUNDS

Proposed Project/Program	Administering Agency	Amount
Owner Occupied Housing Major Projects	City	\$315,600
Owner Occupied Housing Minor Repairs	City	\$80,000
Homebuyer Assistance Program	City	\$40,000
SE Senior Nutrition Program	Community & Senior Services	\$45,000 *
Home Cleaning Program	Casa de Amigos	\$25,000 *
Lot Clearing Program	City	\$35,000 *
CDBG Administration	City	\$160,000
Contingency		\$20,771
	TOTAL	\$721,371

* means project is a public service activity.

Total available funds does not include \$104,400 in program income that will be used by the source program - owner occupied housing major projects.

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



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: June 12, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Z-12-017, Mike Jackson Zone Change

Purpose:

Hold a public hearing at 10:33 a.m. and consider an ordinance on a request by Mike Jackson for a Zone Change from PD, Planned District for a Housing Development to Amended Planned District.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

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

Discussion:

Mr. Jackson recently received approval of a subdivision plat, Mockingbird Oaks, located on the north side of Mockingbird Lane, 700 feet west of Garfield Street. This plat contains 80 single-family lots that are subject to the 1F-2 District regulations. He is now requesting a zone change to allow a reduction in front yard setback from 20 feet, as specified in the 1F-2 District, to 15 feet. His basis for this request is to reduce landscape watering and maintenance. This subdivision is accessed only from a short looped street. The City Council has previously approved five-foot reductions in front yard setback when the affected streets are relatively short. In this case, only the owners in the subdivision will be affected by this proposed reduction. The Planning and Zoning Commission voted unanimously to recommend approval of this request, and no opposition has been noted.

Attachments:

May 14, 2012 P&Z Staff Report
Proposed Ordinance

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOTS 1-33, BLOCK 1, AND LOTS 1-51, BLOCK 2, MOCKINGBIRD OAKS, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT, TO BE USED AS AN AMENDED PLANNED DISTRICT (GENERALLY LOCATED ON THE NORTH SIDE OF MOCKINGBIRD LANE, 700 FEET WEST OF GARFIELD STREET); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

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

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

SECTION ONE. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned PD, Planned District for a Housing Development, and it shall be used as an Amended Planned District, subject to the special conditions and restrictions hereinafter set out, said property being described as follows:

Lots 1-33, Block 1, and Lots 1-51, Block 2, Mockingbird Oaks, City and County of Midland, Texas.

SECTION TWO. That said property shall be subject to the following special conditions and restrictions:

1. That this property shall continue to be subject to the conditions and regulations contained in City of Midland Ordinance No. 8858, except as otherwise stated below.
2. That the minimum front yard setback for all lots shall be 15 feet.

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

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

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

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

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

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the ____ day of _____, A.D., 2012; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the ____ day of _____, A.D., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2012.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Jim Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

**Planning and Zoning Commission
Minutes
May 14, 2012**

Z-12-017 - Hold a public hearing and consider a request by **Mike Jackson** for a *zone change* from PD, Planned District for a Housing Development to an Amended Planned District on Lots 1 through 33, Block 1 and Lots 1 through 51, Block 2, Mockingbird Oaks, City and County of Midland, Texas. (Generally located on the north side of Mockingbird Lane, approximately 700 feet west of N. Garfield Street.)

Applicant yielded to staff. Senior Planner Jim Compton gave an overview of the request and stated the applicant wished to reduce the 15-foot front yard setback to 10 feet. There are already three lots developed with a 15-foot front yard setback and the owners indicated they wish to join in the 10-foot setback. Staff recommended approval of the zone change subject to conditions A-D.

Vice-Chairman Gatten opened the public hearing.

There being no one wishing to speak in favor or in opposition to the item, Vice-Chairman Gatten closed the public hearing.

A motion for approval subject to conditions A-G was made by Commissioner Wolf; seconded by Commissioner Watkins. The motion carried by the following vote: AYE: Gatten, Wolf, Watkins, Norris, Wilton and York. NAY: Carrillo. ABSTAIN: None. ABSENT: Ferguson and Woodruff.

PLANNING AND ZONING COMMISSION

May 14, 2012

CASE: Z-12-017.

REQUEST: Hold a public hearing and consider a request for a zone change from PD, Planned District for a Housing Development to Amended Planned District.

APPLICANT: Mike Jackson.

OWNER: Mockingbird Oaks Development, LLC.

LEGAL DESCRIPTION: Lots 1-33, Block 1 and Lots 1-51, Block 2, Mockingbird Oaks, City and County of Midland, Texas.

LOCATION: North side of Mockingbird Lane, approximately 700 feet west of Garfield Street.

DETAILS OF REQUEST:

1. Mr. Jackson received approval of the subdivision plat of Mockingbird Oaks on April 30, 2012. The associated planned district zoning was approved on January 10, 2011. The current zoning requires that lots conform to the regulations of the 1F-2 District. A planned district was needed to regulate the character of the screening fence along Mockingbird Lane. The 1F-2 District requires a minimum front yard setback of 20 feet. Mr. Jackson is requesting a reduction to 15 feet.

SURROUNDING ZONING AND LAND USE:

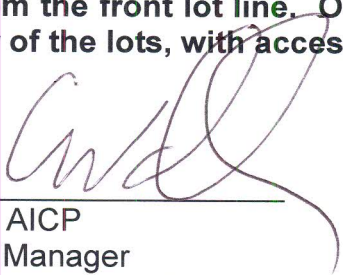
2. This property is located on the north side of Mockingbird Lane, an arterial street. There is a single looped street, along with some cul-de-sacs, that serve the lots in this subdivision. The land to the east is zoned Planned District for a Shopping Center and 1F-1 District, both of which are vacant. The area to the south is zoned AE District and is mostly vacant land. The Midland Classical Academy is located to the west.

ANALYSIS:

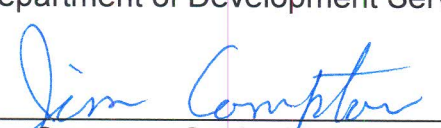
3. There are two points of ingress and egress for this 44-acre subdivision. These are where Mockingbird Oaks Boulevard, a looped street, intersects Mockingbird Lane. Because of this street design, the majority of persons driving on this street will be residents of the subdivision. Where short local streets are involved, the City Council has a recent history of approving front yard setback reductions. The proposed five-foot reduction would allow homeowners to reduce the maintenance and watering requirements in the front yards, and to enjoy either a larger home or larger rear yard, which most families use more than front yard. For these reasons, the staff believes that this request is reasonable.

STAFF RECOMMENDATION:

- A. We recommend approval of this request for a reduction in front yard setback from 20 feet to 15 feet, except as otherwise stated below.
- B. Any front-entry garage door must observe a minimum front yard setback of 20 feet from the front lot line. Otherwise, all garage doors must be located at the rear of the lots, with access from the alley.



Cameron Walker, AICP
Planning Division Manager
Department of Development Services



Jim Compton, Senior Planner
Department of Development Services

Attachments:

Application
Maps

Case Number: Z-12-017

CITY OF MIDLAND
Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

Mike Jackson 559 3486
Applicant Name (Phone/e-mail)
3209 Caldera 79705
Address Zip Code

Mockingbird Oaks Development LLC same
Property Owner Name (Phone/e-mail)
3209 Caldera 79705
Address Zip Code

Mike Jackson
Representative Name (Phone/e-mail)
same
Address Zip Code

Street address and Legal Description of property (complete Lot, Block, and Subdivision Name or if unplatted, attach a Metes and Bounds description with surveyor's seal). Each district must be described separately. Lots 1-51, Block 2, Lots ~~1-33~~ Block 1

Mockingbird Oaks 1-33

PRESENT ZONE: TF1 REQUESTED ZONE: PDHD
(List by tracts if more than one district is requested)

Reason for Zone Change Request: To have 15' Front setbacks

Present Use of Property: residential subdivision

Proposed Use of Property: same

How will zone change affect the public health, safety and welfare? no adverse affects

Describe how conditions affecting the property have changed since present zoning designation:
Need to reduce water usage.

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

APPLICATION FEES:

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

SITE PLAN SUBMITTALS (if applicable):

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

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

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

Property Owner (signature): Nile Jackson Date: 4-17-12

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

STATE of TEXAS
COUNTY OF MIDLAND

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

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

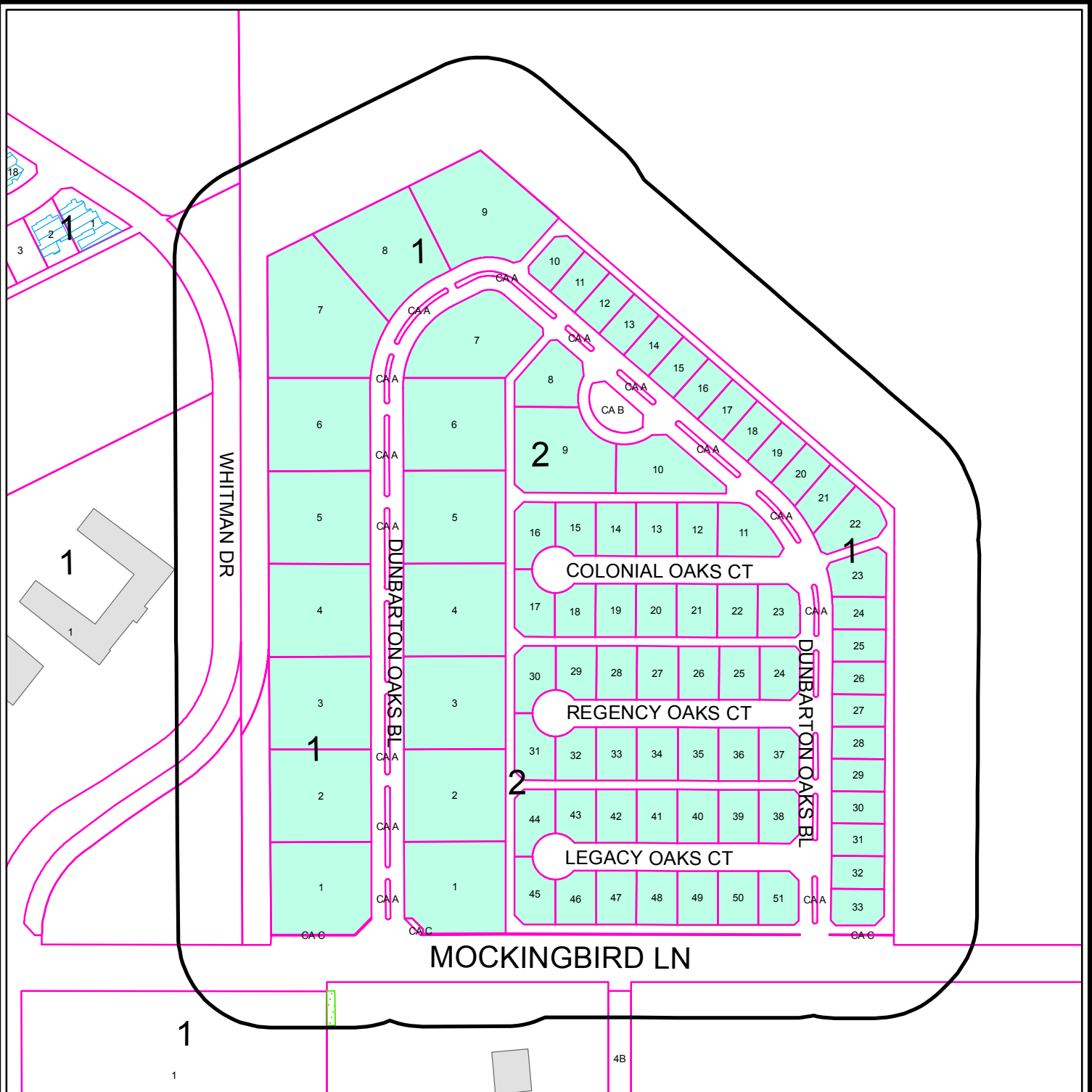
Authorized Agent (signature)

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>4-17-12</u>
Assigned: <u>JC</u>	
For: <u>pdz</u>	On: <u>5-14-12</u>

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



PROPERTY OWNER NOTIFICATION MAP

Z - 12 - 017

Scale: 1" = 300'

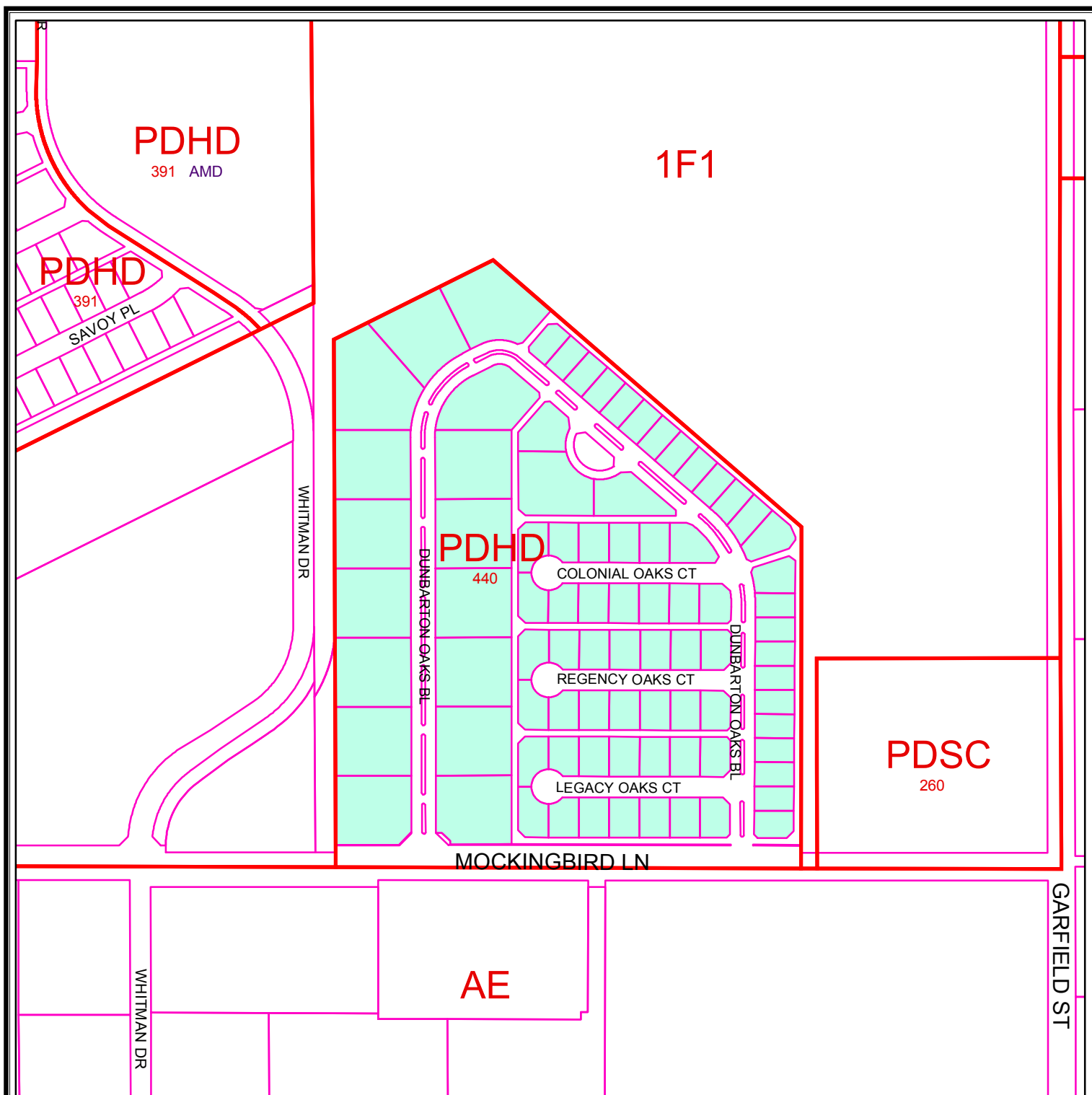
Consider a request for a zone change from PD, Planned District for a Housing Development, to an Amended Planned District on Lots 1 thru 33, Block 1 and Lots 1 thru 51, Block 2, Mockingbird Oaks, City and County of Midland, Texas.

LEGEND

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



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ZONING MAP

Z - 12 - 017

Scale: 1" = 400'

Consider a request for a zone change from PD, Planned District for a Housing Development, to an Amended Planned District on Lots 1 thru 33, Block 1 and Lots 1 thru 51, Block 2, Mockingbird Oaks, 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: June 12, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: M-12-011, San Miguel Archangel Catholic Church

Purpose:

Hold a public hearing at approximately 10:36 and consider an ordinance on a request by San Miguel Archangel Catholic Church for a Temporary Land Use Permit for a Church Fair.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

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

Discussion:

San Miguel Archangel Catholic Church wishes to hold its annual fund raiser fair on their property located at 1100 Camp Street (southwest corner of Dakota Avenue and Camp Street). The event is planned for July 21st and 22nd, 2012, from Noon until Midnight on Saturday and from Noon until 10:00 p.m. Sunday. Outdoor music is planned during this event, using the City's Showmobile located adjacent to McKenzie Street. Food and game booths will be set up, and bingo is planned inside one of the buildings, as illustrated on Exhibit A. No alcohol sales are proposed. Five security guards will be present during this event, and eight restrooms will be available. This is the first year for a church fair at this location, so there is no historical information. No letters of opposition have been received.

Attachments:

Exhibit A, Site Plan

RESOLUTION NO.

**RESOLUTION AUTHORIZING THE TEMPORARY USE
OF LAND FOR A CHURCH FAIR ON LOT 1A, BLOCK
19, MIDLAND HEIGHTS ADDITION, SECTION 4, CITY
AND COUNTY OF MIDLAND, TEXAS (GENERALLY
LOCATED ON THE SOUTHWEST CORNER OF CAMP
STREET AND DAKOTA AVENUE); AND MAKING SAID
PERMIT SUBJECT TO CERTAIN SPECIAL
CONDITIONS AND RESTRICTIONS CONTAINED
HEREIN**

WHEREAS, pursuant to Section 11-1-6(D) of the City Code of Midland, Texas, Our San Miguel Arcangel Catholic Church has applied for authorization to temporarily use land for a Church Fair on Lot 1A, Block 19, Midland Heights Addition, Section 4, City and County of Midland, Texas; and

WHEREAS, the Council finds and determines that such temporary use shall be allowed;

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

SECTION ONE. That San Miguel Arcangel Catholic Church is hereby authorized by the City Council to have a Church Fair on the following described land:

Lot 1A, Block 19, Midland Heights Addition, Section 4, City and County of Midland, Texas.

SECTION TWO. That said temporary use shall be allowed within the area designated herein, subject to the following conditions and restrictions:

- A. That the days and hours of operations shall be limited to the following:

Saturday, July 21, 2012 from noon to midnight; and
Sunday, July 22, 2012 from noon to 10:00 p.m.
- B. That the operation of this fair site shall conform to the site plan attached hereto as Exhibit "A" and incorporated herein for all purposes.
- C. That live music shall be allowed during all operating hours of the fair.
- D. That a minimum of five (5) certified peace officers shall be provided during all operating hours of the fair.
- E. That the event must comply with all requirements of the Fire Code. The applicant must call for an inspection by the Fire Marshal prior to commencing

operation of the fair.

SECTION THREE. The City Council reserves at all times the full right and power to revoke said temporary use for violation of any of its terms or any misrepresentations contained in the application, after a hearing of which the holder of said temporary use has been given at least one (1) day notice.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

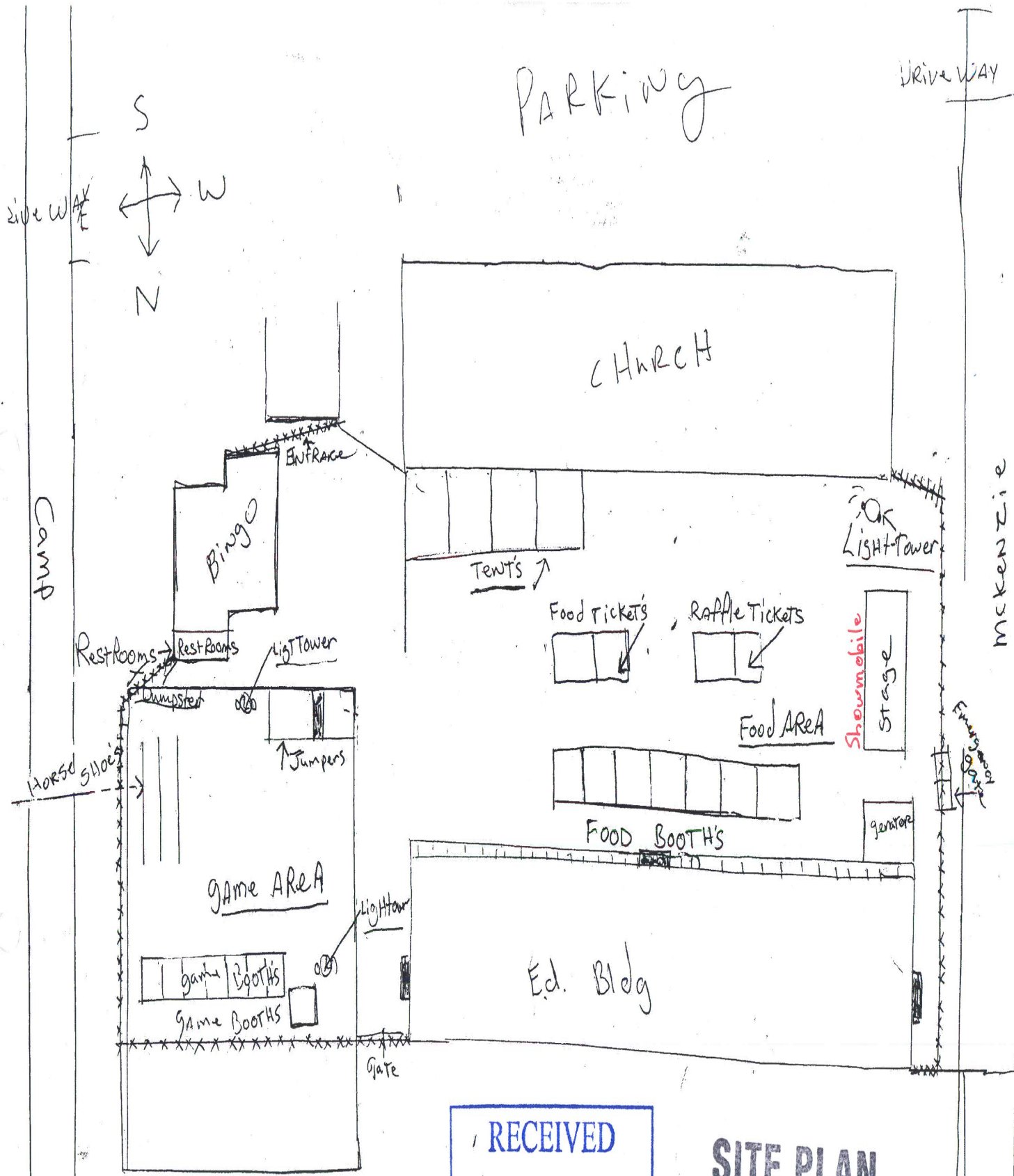
Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Jim Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



RECEIVED

MAY 1 2012

CITY OF MIDLAND
PLANNING DIVISION OFFICE

SITE PLAN

CASE NO. M12011

Case No.:

M-12-011

CITY OF MIDLAND, TEXAS Planning Division

TEMPORARY LAND USE PERMIT APPLICATION

Submission Requirements: Application shall be submitted to the Planning Division not less than twenty-eight (28) days prior to the City Council meeting at which action is desired.

Application is hereby made to the City Council for a Temporary Land Use Permit:

Name of Applicant: San Miguel Arcangel Catholic Church Phone: 432-570-0952
E-mail: Sanmiguel@bscglobal.net

Applicant's Address: 1100 Camp Midland, Texas

Property Owner: Rev. Michael D. Pfeifer Phone: 325-651-7500
E-mail: _____

Owner's Address: P.O. Box 1829 San Angelo, TX 76905

Other required information:

1. Street address and legal description of property: 1100 Camp St.
Lot 1A Blk. 19 Midland Height Addition
2. Zoning District: _____
3. Type of temporary use requested: Temporary Land Permit
4. Duration of temporary use: Annual Family Fair
If more than One (1) day and is located within any residential district or is located within 1000 feet of any residential district, then a public hearing is required.
5. Proposed days and hours: July 21-22, 2012 ^{in down} 12:00 PM - 12:00 A.M. (SAT)
and 12:00 PM - 10:00 P.M. (SUN)
6. Will alcoholic beverages be sold? _____ Yes ☒ No Music will be turn down 30 min before closing.
7. A detailed Site Plan is required (16 copies needed (FOLDED), plus digital - .jpg and .pdf). Show existing buildings, parking, access arrangements, surrounding streets, activity areas, areas of alcoholic beverage sales, proposed street closures, etc.
Site Plan received: ☒ Yes _____ No

8. Are you requesting the temporary closure of any streets? _____ Yes ☒ No

If yes, you must:

A. Obtain and complete the "Special Event and Street Closure Application", available in the Transportation Division office (5th Floor, City Hall).

B. Provide the City with a **general liability insurance certificate**, naming the City as an **Additional Insured**, in the amount of one million dollars (\$1,000,000) for the term of the closure.

9. Other information: Number of security guards provided: 5

Number of restrooms provided: 8

Type of music (carnival, live, etc.): Live

Showmobile requested 2 Days and hours 12:00 - 12:00 P.M. (Sat)
1:30 - 9:00 P.M. (Sun)

10. A **\$500.00 Clean-up Deposit** and a **\$500.00 Damage Deposit** are required for all events. Checks need to be dated day of event. Inspection of site after the event for trash and damage is a City responsibility. The deposits, or a portion thereof, may be refunded following inspection.

Clean-up Deposit received: ☒ (Y) ☐ (N) Clean-up Deposit refunded: ☐ (Y) ☐ (%) ☐ (N)

Damage Deposit received: ☒ (Y) ☐ (N) Damage Deposit refunded: ☐ (Y) ☐ (%) ☐ (N)

11. A **\$200 Application Review fee** is required. Fee received: ☒ Yes ☐ No
\$25.00 for each additional event date.

Owner or Operator (if other than Applicant) responsible for ensuring that the conditions of this permit will be observed:

Dr Mike LaMonica 1100 Camr 79701 570-0952
Printed Name of Owner/Operator Address Zip Phone

Dr Mike LaMonica 4-26-12
Signature of Owner/Operator Date

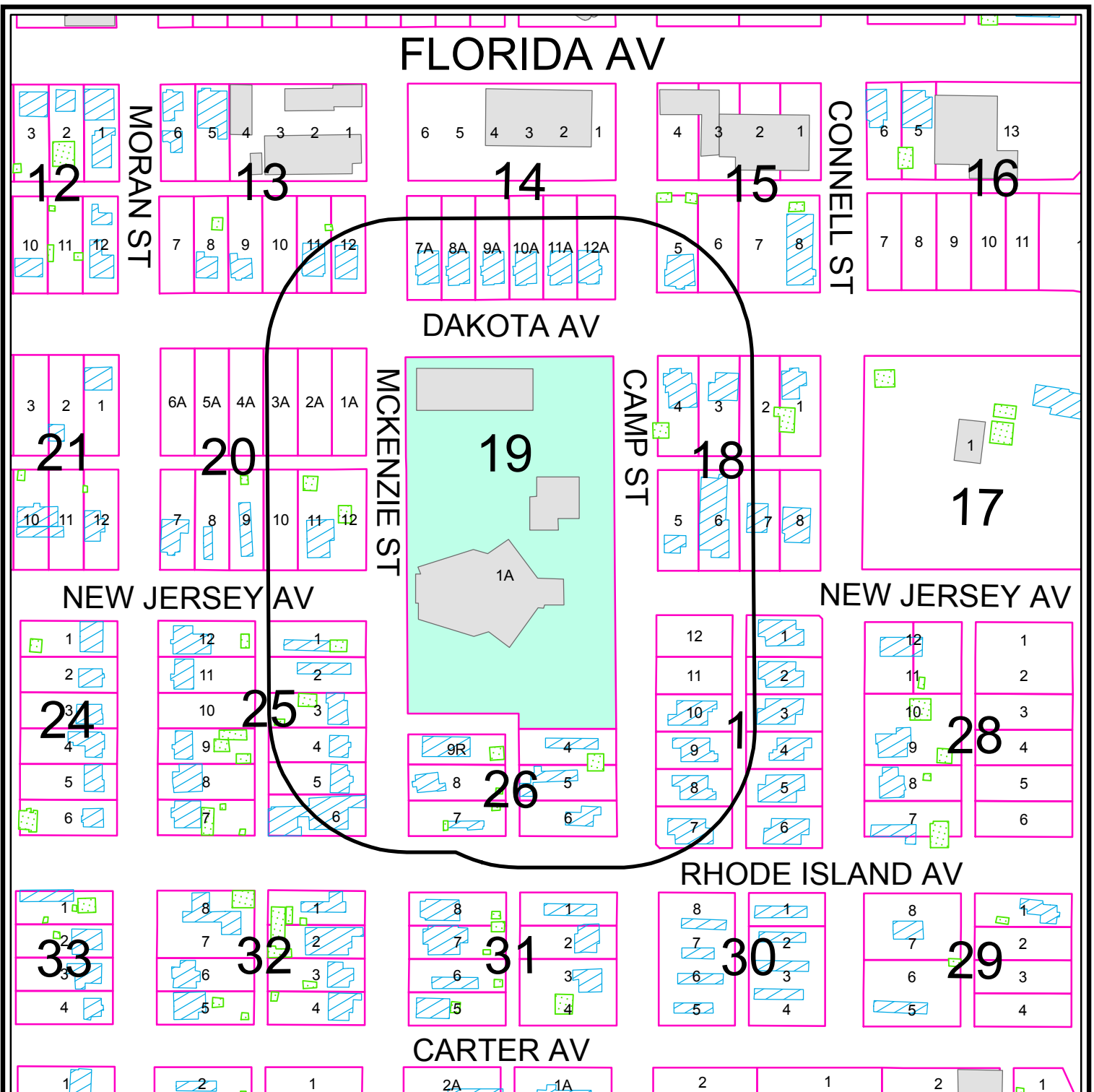
Temporary FINANCIAL ADMINISTRATOR

Signature of Applicant Date

Signature of Property Owner, if other than Applicant Date

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

FOR OFFICE USE ONLY	
Received By: <u>JP</u>	Date: <u>5/2/2012</u>
Assigned: <u>JC</u>	
For: <u>CC</u>	On: <u>6-12-12</u>



PROPERTY OWNER NOTIFICATION MAP

M - 12 - 011

Scale: 1" = 200'

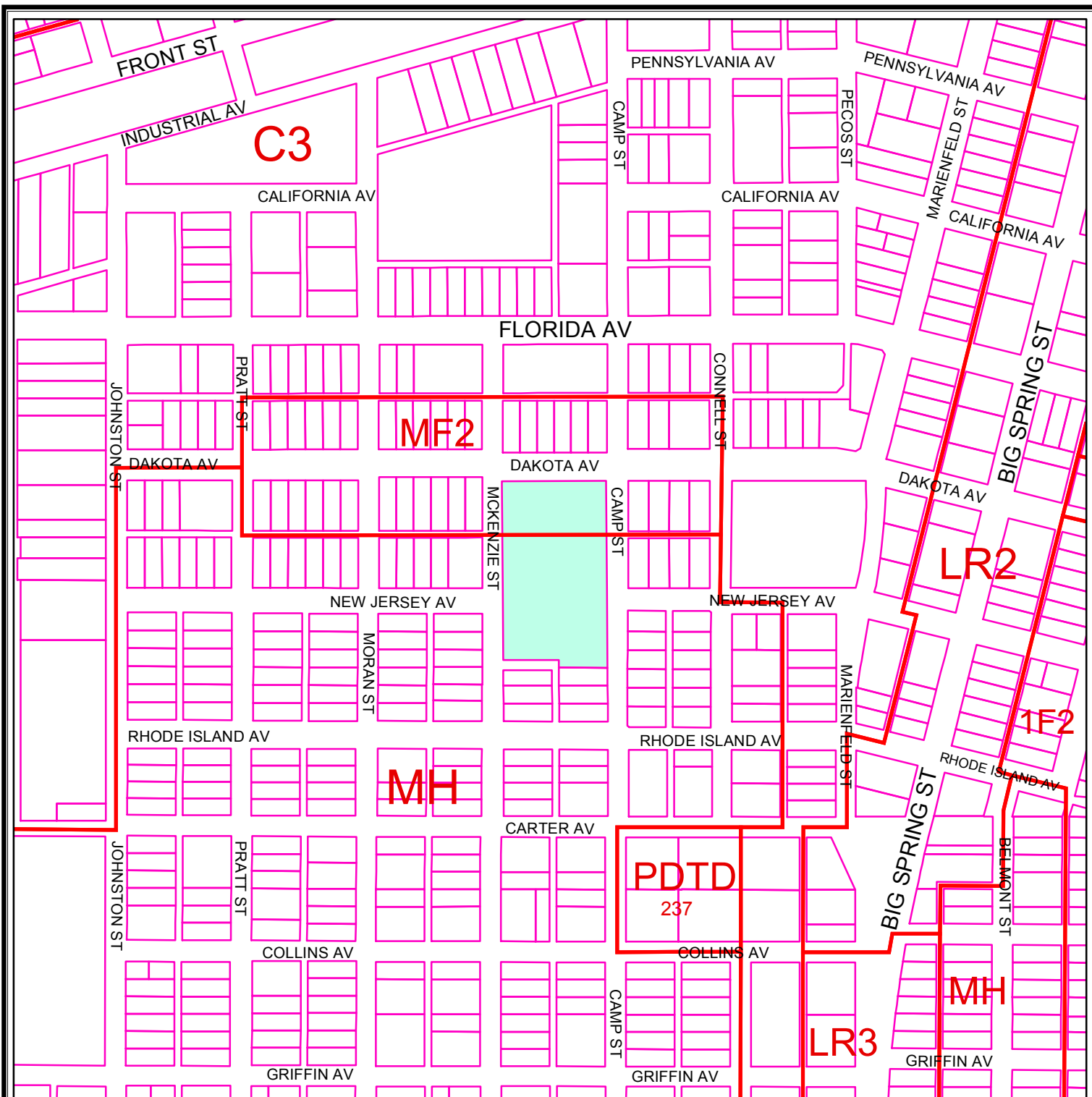
Consider a request for a Temporary Land Use Permit for a Church Fair on Lot 1A, Block 19, Midland Heights Addition, Section 4, City and County of Midland, Texas.

LEGEND

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



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ZONING MAP

M - 12 - 011

Scale: 1" = 400'

Consider a request for a Temporary Land Use Permit for a Church Fair on Lot 1A, Block 19, Midland Heights Addition, Section 4, City and County of Midland, Texas.

LEGEND

ZONING PARCELS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	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: June 12, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Consider a resolution approving the issuance of a permit to Bluestem Energy Holdings, LLC (Operator), *to Drill an Oil and Gas Well within the City Limits*, (Evans M 1) located 1,949 feet from the south line and 1,927 feet from the west line located in Section 8, Block "X", H.P Hilliard Survey, City and County of Midland, Texas. (Generally located on the east side of N. Midland Drive, approximately 1/3 mile north of Mockingbird Lane.)

Purpose:

To consider a resolution approving the issuance of a permit to Bluestem Energy Holdings, LLC (Operator), to Drill an Oil and Gas Well within the City Limits, (Evans M 1) located 1,949 feet from the south line and 1,927 feet from the west line located in Section 8, Block "X", H.P Hilliard Survey, City and County of Midland, Texas. Council held a public hearing on April 10, 2012. The required 30-day period for public comment has passed and the Council may consider this request. Staff received six letters of objection citing health and safety, noise, and affect on property values as reasons for objection. Per Council instructions Bluestem Energy conducted a meeting with the neighborhood on May 3, 2012 at Midland College.

Recommended City Council Action

X Approve Deny Direction/Informational

Fiscal Impact:

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

Discussion:

The Oil and Gas Advisory Committee has reviewed this well site in detail and recommends approval subject to the landscaping being installed within two years of well completion. Since the last public meeting Bluestem Energy has made the following changes to their application:

- * Changed the company's contact representative on application page to match recent amended well permit changes
- * Survey changed- rotating pad location so that the reserve pit is further away from the Mockingbird Heights neighborhood.
- * Added a Sound Impact Assessment- 16 foot barrier placed on North, West and South Sides of drilling pad (460 linear feet), Rig Floor – 8 foot barrier placed on the perimeter of rig floor to the West, North, south side protected by "Dog House".
- * Hospital Grade Mufflers will be used on the drilling rig.
- * Change the access route to enter from North Midkiff instead of Mockingbird Lane.
- * Will be using a polymer or Pac additive water loss control agent during the period that the well is being drilled to address foul odors from the pit.
- * Included changed pad site and drainage plan for tank battery facility and tank battery schematic to match the recent amendments of prior wells and updated changes.

Attachments: Application; Location map; Exhibit E- Drill site location/entry to location, Exhibit G - 16 ft sound barrier.

RESOLUTION NO.

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO BLUESTEM ENERGY HOLDINGS, LLC (“OPERATOR”) TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 1,949 FEET FROM THE SOUTH LINE AND 1,927 FEET FROM THE WEST LINE, SECTION 8, BLOCK “X”, H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF NORTH MIDLAND DRIVE, APPROXIMATELY 1/3 OF A MILE NORTH 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 10, 2012; 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 1,949 feet from the south line and 1,927 feet from the west line, Section 8, 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., 2012, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Jim 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 June 12, 2012, considered the application of Bluestem Energy Holdings, LLC, dated February 15, 2012, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with the Midland City Code, Ordinance 8769, to drill an oil and gas well, in the application of Bluestem Energy Holdings, LLC, dated February 15, 2012, and filed with the Oil & Gas Compliance Officer and incorporated herein for all legal purposes.

The location of Bluestem Energy Holdings, LLC, Evans M 1 oil and gas well shall be 1949 feet from the south line and 1927 feet from the west line, Section 8, Blk X, H.P. Hilliard Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in that application of Bluestem Energy Holdings, LLC, 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 June 12, 2012, through June 12, 2013, and so long thereafter as oil or gas is produced or until such time as the permittee has permanently abandoned the operations of the well or facility for which this permit is issued.

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts the permittee from its responsibilities or obligations as to third parties. The issuance of this permit only means that the permittee has, at this time, complied with Ordinance No. 8769 and that the Midland City Council, as a regulatory body, will allow the permittee to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize the recipient to act with impunity as to third parties, nor does it insulate the permittee from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize the permit holder from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a “negative pronouncement” that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. The permittee has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield the permittee from third party tort liability stemming from the consequences of the permitted activity.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, utility and drainage rights-of-way.

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

CITY OF MIDLAND, TEXAS

BY: _____

W. Wesley Perry, Mayor

UNDERSTOOD AND AGREE THIS _____ day of June, 2012.

Bluestem Energy Holdings, LLC

By: _____

James C. Gresham, Jr., CPL

Vice President - Land

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.
-------------	---

\$10,000,000	Excess, if the Operator does not have a stand-alone EPL policy. Coverage must include an endorsement for sudden or accidental pollution. If Seepage and Pollution coverage is written on a "claims made" basis, the Operator must maintain continuous coverage and purchase Extended Coverage Period when necessary.
--------------	--

d.

Environmental Pollution Liability Coverage.

Operator shall purchase and maintain in force for the duration of any Oil and Gas Well Permit issued hereunder, insurance for environmental pollution liability applicable to bodily injury, property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense or settlement of claims; all in connection with any loss arising from the insured site.

Coverage shall be maintained in an amount of at least \$1,000,000 per loss, with an annual aggregate of at least \$10,000,000.

Coverage shall apply to sudden and accidental pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids or gases, refuse material or other irritants, contaminants or pollutants.

e.

Workers Compensation and Employers Liability Insurance.

i.

Workers Compensation benefits shall be Texas Statutory Limits.

ii.

Employers Liability shall be a minimum of \$1,000,000.00 per accident.

iii.

Such coverage shall include a waiver of subrogation in favor of the City of Midland and provide coverage in accordance with applicable State and Federal laws.

f.

Automobile Liability Insurance.

i.

Combined single limit of \$1,000,000.00 per occurrence for bodily injury and property damage.

ii.

Coverage must include all owned, hired and not-owned automobiles.

g.

Certificates of Insurance.

i.

The company must be licensed or authorized to do business in the State of Texas.

ii.

The insurance set forth by the insurance company must be underwritten on forms that have been approved by the Texas State Board of Insurance or ISO or an equivalent policy form acceptable to the City, with the exception of environmental pollution liability and control of well coverage.

iii.

Set forth all endorsements and insurance coverage according to requirements and instructions contained herein.

iv.

Shall specifically set forth the notice of cancellation, termination, or change in coverage provisions to the City. All policies shall be endorsed to read "THIS POLICY WILL NOT BE CANCELLED OR NON-RENEWED WITHOUT THIRTY (30) DAYS ADVANCE WRITTEN NOTICE TO THE OWNER AND THE CITY, EXCEPT WHEN THIS POLICY IS BEING CANCELLED FOR NONPAYMENT OF PREMIUM, IN WHICH CASE, TEN (10) DAYS ADVANCE WRITTEN NOTICE IS REQUIRED".

v.

Original endorsements affecting coverage required by this section shall be furnished with the certificates of insurance.

vi.

At the request of an Operator, the Council may grant a variance to insurance requirements if the Council determines that the insurance procured by the Operator is sufficient to protect the City. A variance of this type may be required because of a change in underwriting policies of admitted insurance carriers.

Indemnification.

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

Notice.

The notices provided in this permit may be served in person or by registered or certified mail. Operator shall within ten (10) days notify the City Manager in writing of any change in such agent or mailing address unless operations in the City are discontinued and abandonment is complete.

Notice addresses are as follows:

City of Midland
Attn: Office of the City Manager
P. O. Box 1152
Midland, Texas 79702

OPERATOR: _____
James C. Gresham, Jr., CPL, Vice President of Land

Bluestem Energy Holdings, LLC
400 W. Illinois, Ste. 900
Midland, Texas 79701
(432)770-8322

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: _____
James C. Gresham, Jr., CPL, Vice President of Land

Bluestem Energy Holdings, LLC
400 W. Illinois Ave, Ste. 900
Midland, Texas 79701
(432) 770-8322



APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information		
Date 02/15/2012	Operator Name (must match W-1) Bluestem Energy Holdings, LLC	Operator Address 400 W. Illinois Ave, Ste. 900 Midland, Texas 79701
Representative Name Jim Mason	Representative Address (within Midland City Limits) 400 W. Illinois Ave, Ste. 900 Midland, Texas 79701	Rep. Tele. (432) 770-8322 Rep. Fax (817) 872-9888
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: Jim Mason, No. 1 (432) 770-8322, No. 2 (432) 685-0134 24/7 Answering Services - No. 1 (Tele.): _____ No. 2 (Tele.): _____ Option B: Jim Mason, No. 1 (432) 770-8322, No. 2 (432) 685-0134 Company Compliance Representative (Name, Address, Local Telephone) (ATTACH STATEMENT AS EXHIBIT A): Emergency Contact Representative (Name, Address, 24-Hour Tele. No.): Same as above		
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. Evans Resources, LP, P.O. Box 7962, Midland, TX 79708		
2. Joy D. Anguish Trust and David D. Anguish Trust, P.O. Box 2749, Longview, TX 75606		
3. Anguish Partnership, P.O. Box 63, Midland, TX 79702		
ATTACHED AS EXHIBIT C is (a Title Opinion by <u>Robert Rendall</u> , 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):		
Farming		
ATTACHED AS EXHIBIT D is (a Title Opinion by <u>Robert Rendall</u> , 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: Evans M 1

Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary)[See § J(11) and § L(4)]:

See attached Exhibit V

Legal Description of Proposed Well Site:

1949' FSL and 1927' FWL, Sec. 8, Blk. X, Hilliard 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)].

ATTACHED AS EXHIBIT N is the Concept Plan depicting the proposed Operations Site (which includes tanks, roads, power lines, and pipeline routes). [See § J(32)].

Description of Public Utilities required during (1) drilling and (2) operations:

(1) Drilling: none

(2) Operations: Oncor is the electricity transmission provider. The actual electricity provider will be a function of the best available rates and reliability of the provider.

Description of water source to be used during Drilling:

Evans water wells located in N/2 of Sec. 8, Blk. X, Hilliard Survey

Description of all electric lines to production facilities (reference exhibits as necessary) [See § L(10)]:

All electric lines will be overhead for the immediate future. Ultimately, electrical lines will be buried in the proposed corridors as shown on Exhibit N, in accordance with the Surface Agreement dated November 3, 2010 between Operator and the Surface Owner.

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)].

Bluestem Energy Holdings, LLC

[NAME OF COMPANY]

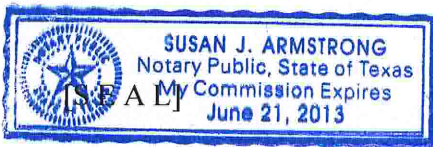
By Jim Mason

Its District Production Manager

State of Texas

County of Midland

Jim Mason, 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.



Susan J. Armstrong
Notary Public, State of Texas

1F1

SEC 8, BLK 39, T-1-S

PDHD

204

AE

SEC 8, BLK X, H P HILLIARD

PDHD

53

1927' FWL

1949' FSL

PDHD 395

PDHD 395

1F1

SEC 5, BLK X, H P HILLIARD

LOCATION AND ZONING MAP

O - 12 - 004

Scale: 1" = 600'

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 1949' FSL and 1927' FWL, Section 8, Block "X", H. P. Hilliard Survey, Midland County, Texas.

Evans "M" #1

LEGEND

 CITY PARCELS	 PUBLIC BLDGS	 CITY LIMITS
 SURVEY SEC.	 PRIVATE BLDGS	 860 FT. BUFFER
 ZONING	 ACCESSORY BLDGS	

ZONING DISTRICTS:

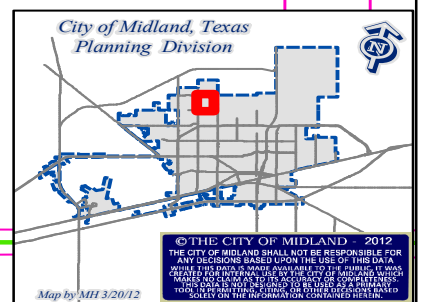
FD
PD
AE
1F1, 1F2, 1F3
MH
TH
2F
MF1, MF2

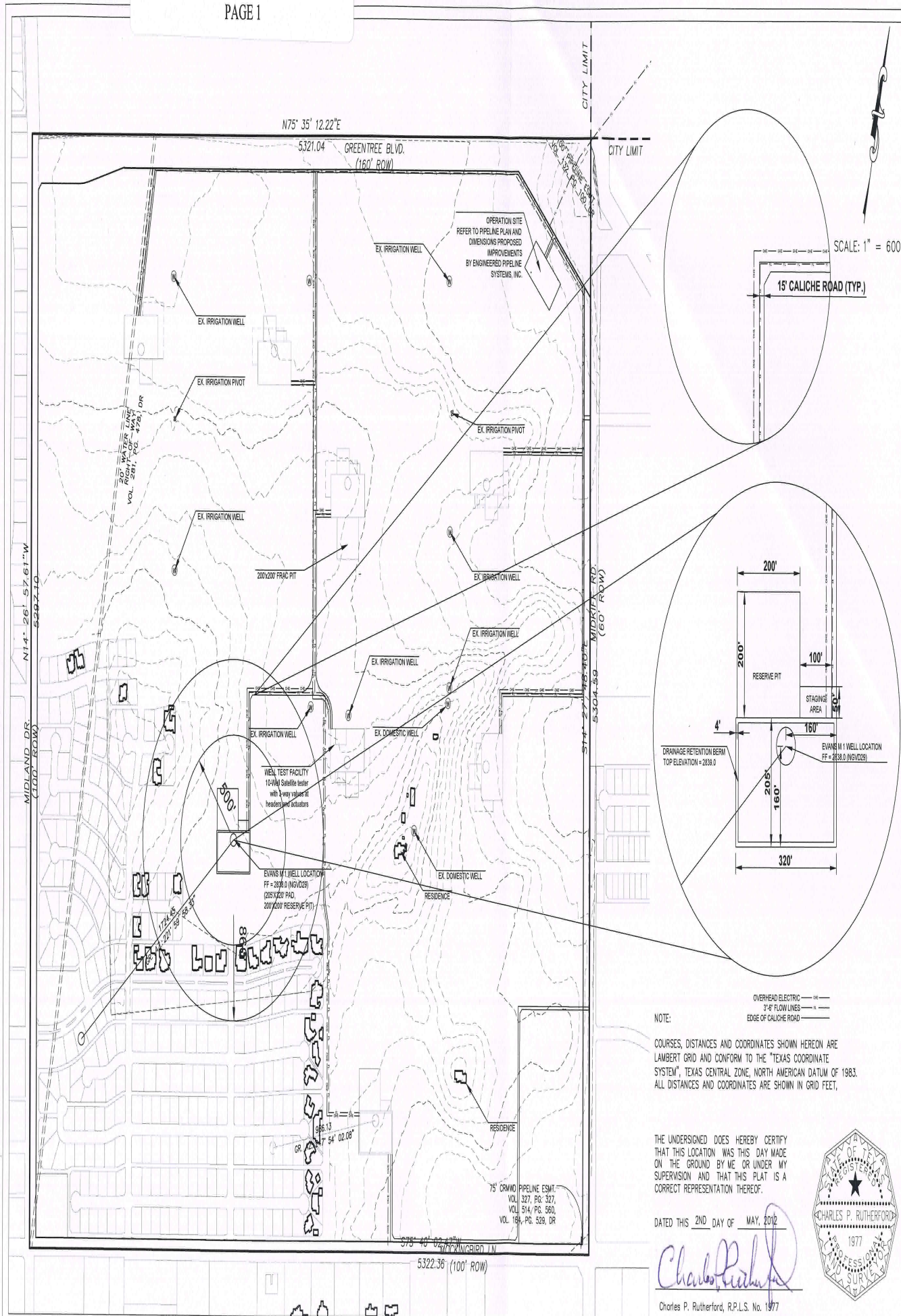
FUTURE DEVELOPMENT
PLANNED DISTRICT
AGRICULTURE ESTATE
ONE-FAMILY DWELLING
MOBILE HOME DWELLING
TOWNHOUSE DWELLING
TWO-FAMILY DWELLING
MULTIPLE FAMILY DWELLING

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

28.42





SITE PLAN

BLUESTEM ENERGY HOLDINGS, LLC
WELL NO. EVANS M 1
1949 FEET FROM THE SOUTH AND
1927 FEET FROM THE WEST LINE
SECTION 8, ABSTRACT 17, BLOCK X,
H.P. HILLIARD SURVEY, MIDLAND
COUNTY, TEXAS

NEWTON ENGINEERING, PC
2000 N. MIDLAND
Midland, Texas 79705
(432) 770-0499



JOB NO: 11-ME0007

SCALE: 1" = 600'

15' CALICHE ROAD (TYP.)

NOTE:
OVERHEAD ELECTRIC ———
3" FLOW LINES ———
EDGE OF CALICHE ROAD ———

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.

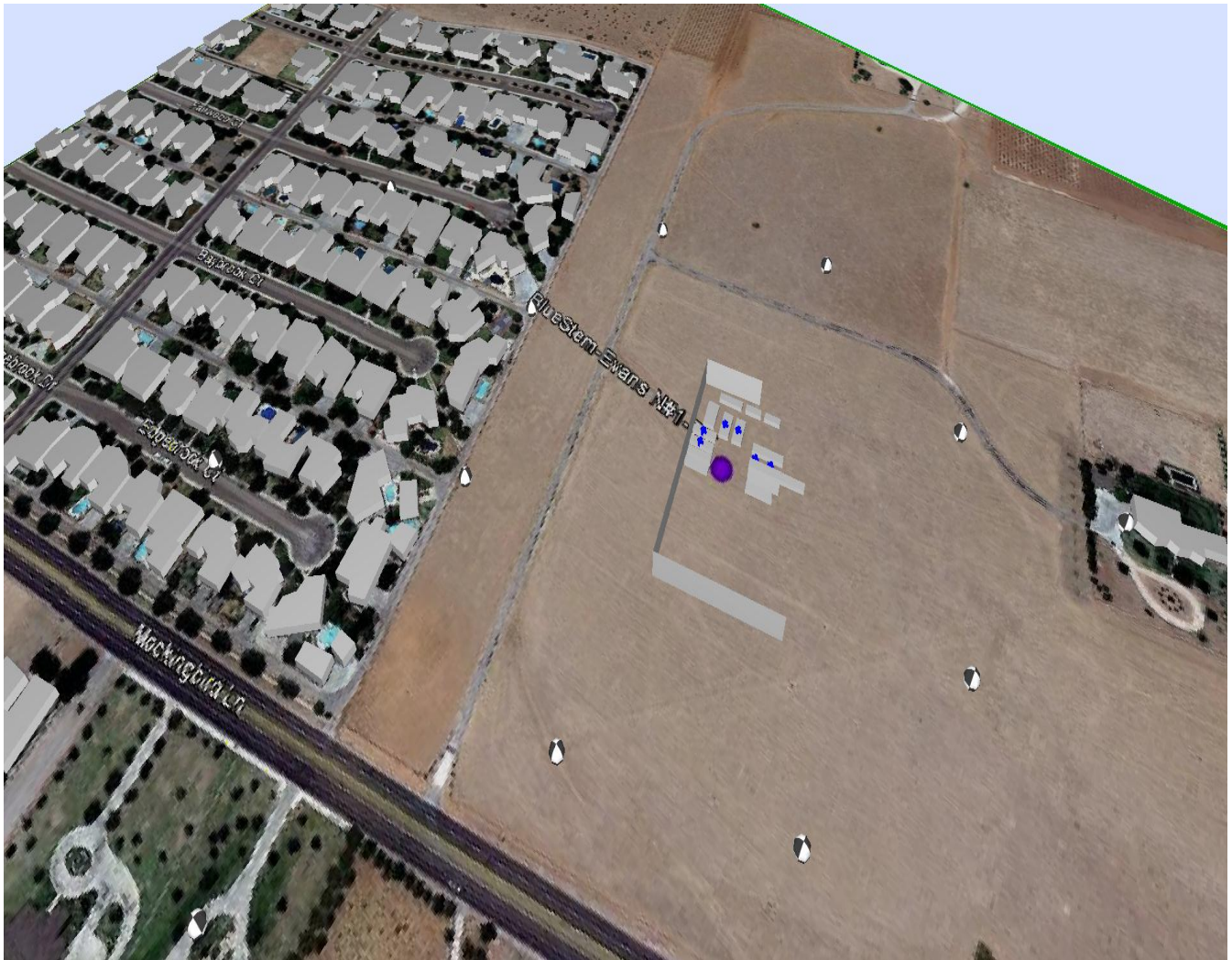
DATED THIS 2ND DAY OF MAY, 2012

Charles P. Rutherford

Charles P. Rutherford, R.P.L.S. No. 1977



Evans N#1 Pad: Isometric View of UDI Drill with 16 foot Wall





City Council Agenda

Approved for Agenda:
jnichols
City Manager's Office

MEETING DATE: 6/12/2012

TO: City Council / City Manager

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Consider a resolution approving the issuance of a permit to Bluestem Energy Holdings, LLC (Operator), to Drill an Oil and Gas Well within the City Limits, (Evans N 1) located 623 feet from the south line and 2,035 feet from the east line located in Section 8, Block "X", H.P Hilliard Survey, City and County of Midland, Texas. (Generally located on the west side of N. Midkiff Road, approximately 625 feet north of Mockingbird Lane.)

Purpose:

To consider a resolution approving the issuance of a permit to Bluestem Energy Holdings, LLC (Operator), to Drill an Oil and Gas Well within the City Limits, (Evans N 1) located 623 feet from the south line and 2,035 feet from the east line located in Section 8, Block "X", H.P Hilliard Survey, City and County of Midland, Texas. Council held a public hearing on April 10, 2012. The required 30-day period for public comment has passed and the Council may consider this request. Staff received nine letters of objection and a petition with 94 signatures citing health and safety, noise, odor and affect on property values as reasons for objection. Per Council instructions Bluestem Energy conducted a meeting with the neighborhood on May 3, 2012 at Midland College.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

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

Discussion:

The Oil and Gas Advisory Committee has reviewed this well site in detail and recommends approval subject to the landscaping being installed within two years of well completion. Since the last public meeting Bluestem Energy has made the following changes to their application:

- * Changed the company's contact representative on application page to match recent amended well permit changes
- * Survey changed- rotating pad location so that the reserve pit is further away from the Mockingbird Heights neighborhood.
- * Added a Sound Impact Assessment- 16 foot barrier placed on North, West and South Sides of drilling pad (460 linear feet), Rig Floor – 8 foot barrier placed on the perimeter of rig floor to the West, North, south side protected by "Dog House".
- * Hospital Grade Mufflers will be used on the drilling rig.
- * Change the access route to enter from North Midkiff instead of Mockingbird Lane.
- * Will be using a polymer or Pac additive water loss control agent during the period that the well is being drilled to address foul odors from the pit.
- * Included changed pad site and drainage plan for tank battery facility and tank battery schematic to match the recent amendments of prior wells and updated changes.

Attachments: Application; Location map; Exhibit E- Drill site location/entry to location, Exhibit G - 16 ft sound barrier.

RESOLUTION NO.

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO BLUESTEM ENERGY HOLDINGS, LLC (“OPERATOR”) TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 623 FEET FROM THE SOUTH LINE AND 2,035 FEET FROM THE EAST LINE, SECTION 8, BLOCK “X”, H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF NORTH MIDKIFF ROAD, APPROXIMATELY 625 FEET NORTH 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 10, 2012; 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 623 feet from the south line and 2,035 feet from the east line, Section 8, 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., 2012, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Jim 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 June 12, 2012, considered the application of Bluestem Energy Holdings, LLC, dated February 15, 2012, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with the Midland City Code, Ordinance 8769, to drill an oil and gas well, in the application of Bluestem Energy Holdings, LLC, dated February 15, 2012, and filed with the Oil & Gas Compliance Officer and incorporated herein for all legal purposes.

The location of Bluestem Energy Holdings, LLC, Evans N 1 oil and gas well shall be 623 feet from the south line and 2035 feet from the east line, Section 8, Blk X, H.P. Hilliard Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in that application of Bluestem Energy Holdings, LLC, 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 June 12, 2012, through June 12, 2013, and so long thereafter as oil or gas is produced or until such time as the permittee has permanently abandoned the operations of the well or facility for which this permit is issued.

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts the permittee from its responsibilities or obligations as to third parties. The issuance of this permit only means that the permittee has, at this time, complied with Ordinance No. 8769 and that the Midland City Council, as a regulatory body, will allow the permittee to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize the recipient to act with impunity as to third parties, nor does it insulate the permittee from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize the permit holder from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a “negative pronouncement” that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. The permittee has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield the permittee from third party tort liability stemming from the consequences of the permitted activity.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, utility and drainage rights-of-way.

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

CITY OF MIDLAND, TEXAS

BY: _____

W. Wesley Perry, Mayor

UNDERSTOOD AND AGREE THIS _____ day of June, 2012.

Bluestem Energy Holdings, LLC

By: _____

James C. Gresham, Jr., CPL

Vice President - Land

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: _____
James C. Gresham, Jr., CPL, Vice President of Land

Bluestem Energy Holdings, LLC
400 W. Illinois, Ste. 900
Midland, Texas 79701
(432)770-8322

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: _____
James C. Gresham, Jr., CPL, Vice President of Land

Bluestem Energy Holdings, LLC
400 W. Illinois Ave, Ste. 900
Midland, Texas 79701
(432) 770-8322



APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information		
Date 02/15/2012	Operator Name (must match W-1) Bluestem Energy Holdings, LLC	Operator Address 400 W. Illinois Ave, Ste. 900 Midland, Texas 79701
Representative Name Jim Mason	Representative Address (within Midland City Limits) 400 W. Illinois Ave, Ste. 900 Midland, Texas 79701	Rep. Tele. (432) 770-8322 Rep. Fax (817) 872-9888
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: Jim Mason, No. 1 (432) 770-8322, No. 2 (432) 685-0134 24/7 Answering Services - No. 1 (Tele.): _____ No. 2 (Tele.): _____ Option B: Jim Mason, No. 1 (432) 770-8322, No. 2 (432) 685-0134 Company Compliance Representative (Name, Address, Local Telephone) (ATTACH STATEMENT AS EXHIBIT A): Emergency Contact Representative (Name, Address, 24-Hour Tele. No.): Same as above		
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. Evans Resources, LP, P.O. Box 7962, Midland, TX 79708		
2. Joy D. Anguish Trust and David D. Anguish Trust, P.O. Box 2749, Longview, TX 75606		
3. Anguish Partnership, P.O. Box 63, Midland, TX 79702		
ATTACHED AS EXHIBIT C is (a Title Opinion by <u>Robert Rendall</u> , 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): Farming		
ATTACHED AS EXHIBIT D is (a Title Opinion by Robert Rendall, 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: Evans N 1

Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary)[See § J(11) and § L(4)]:

See attached Exhibit V

Legal Description of Proposed Well Site:

623' FSL and 2035' FEL, Sec. 8, Blk. X, Hilliard 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)].

ATTACHED AS EXHIBIT N is the Concept Plan depicting the proposed Operations Site (which includes tanks, roads, power lines, and pipeline routes). [See § J(32)].

Description of Public Utilities required during (1) drilling and (2) operations:

(1) **Drilling:** none

(2) **Operations:** Oncor is the electricity transmission provider. The actual electricity provider will be a function of the best available rates and reliability of the provider.

Description of water source to be used during Drilling:

Evans water wells located in N/2 of Sec. 8, Blk. X, Hilliard Survey

Description of all electric lines to production facilities (reference exhibits as necessary) [See § L(10)]:

All electric lines will be overhead for the immediate future. Ultimately, electrical lines will be buried in the proposed corridors as shown on Exhibit N, in accordance with the Surface Agreement dated November 3, 2010 between Operator and the Surface Owner.

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)].

Bluestem Energy Holdings, LLC

[NAME OF COMPANY]

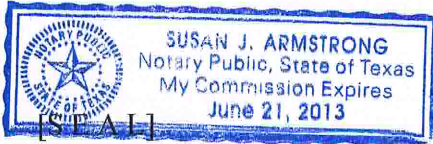
By Jim Mason

Its District Production Manager

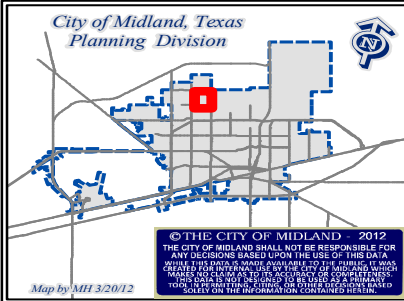
State of Texas

County of Midland

Jim Mason, 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.

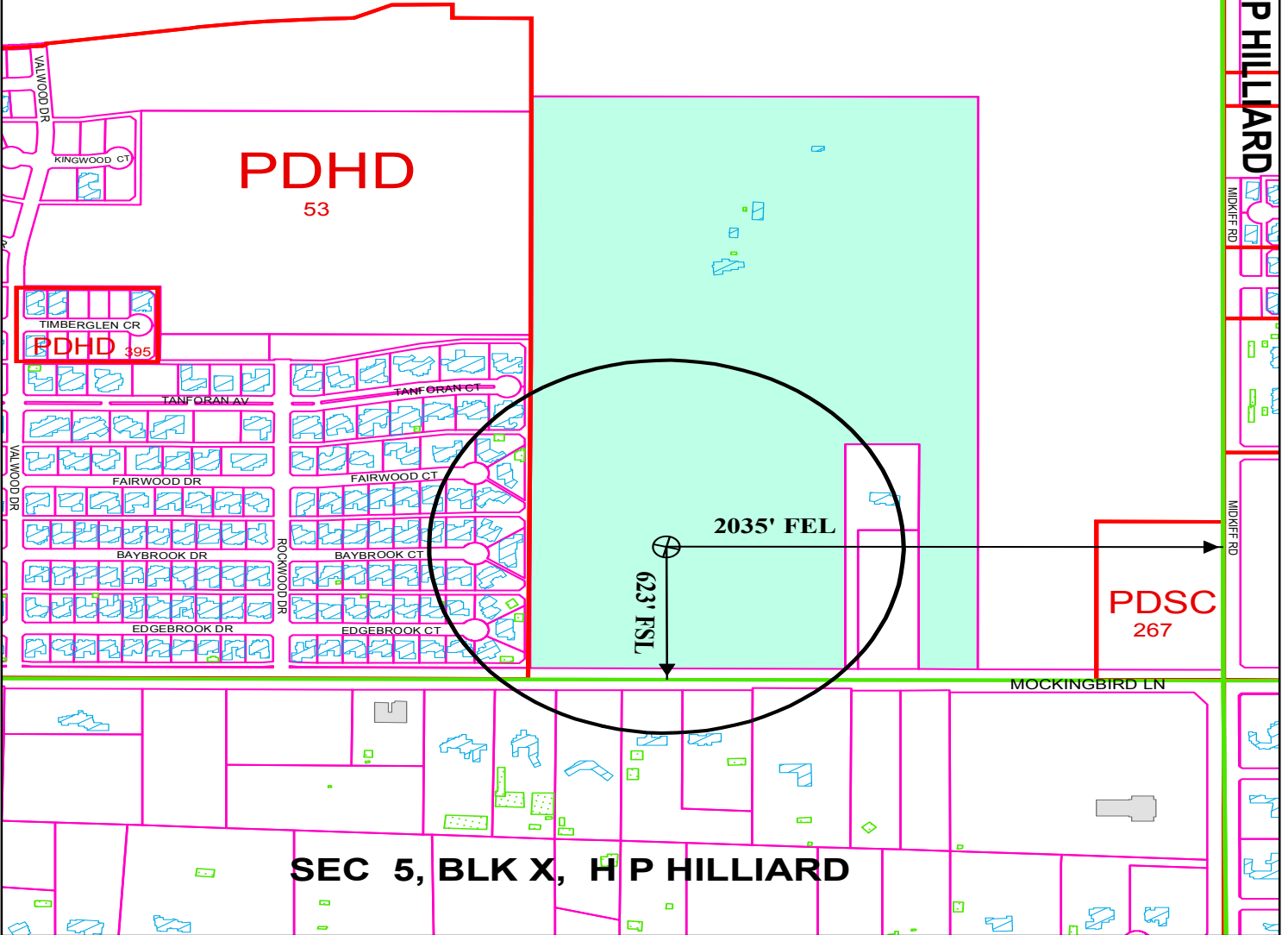


Susan J. Armstrong
Notary Public, State of Texas



AE

SEC 8, BLK X, H P HILLIARD



SEC 5, BLK X, H P HILLIARD

LOCATION AND ZONING MAP

O - 12 - 005

Scale: 1" = 600'

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 623' FSL and 2035' FEL, Section 8, Block "X", H. P. Hilliard Survey, Midland County, Texas.

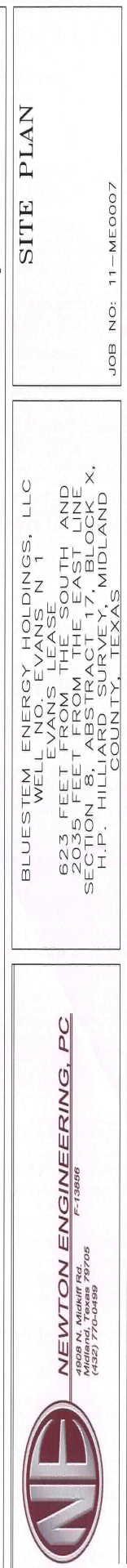
Evans "N" #1

LEGEND

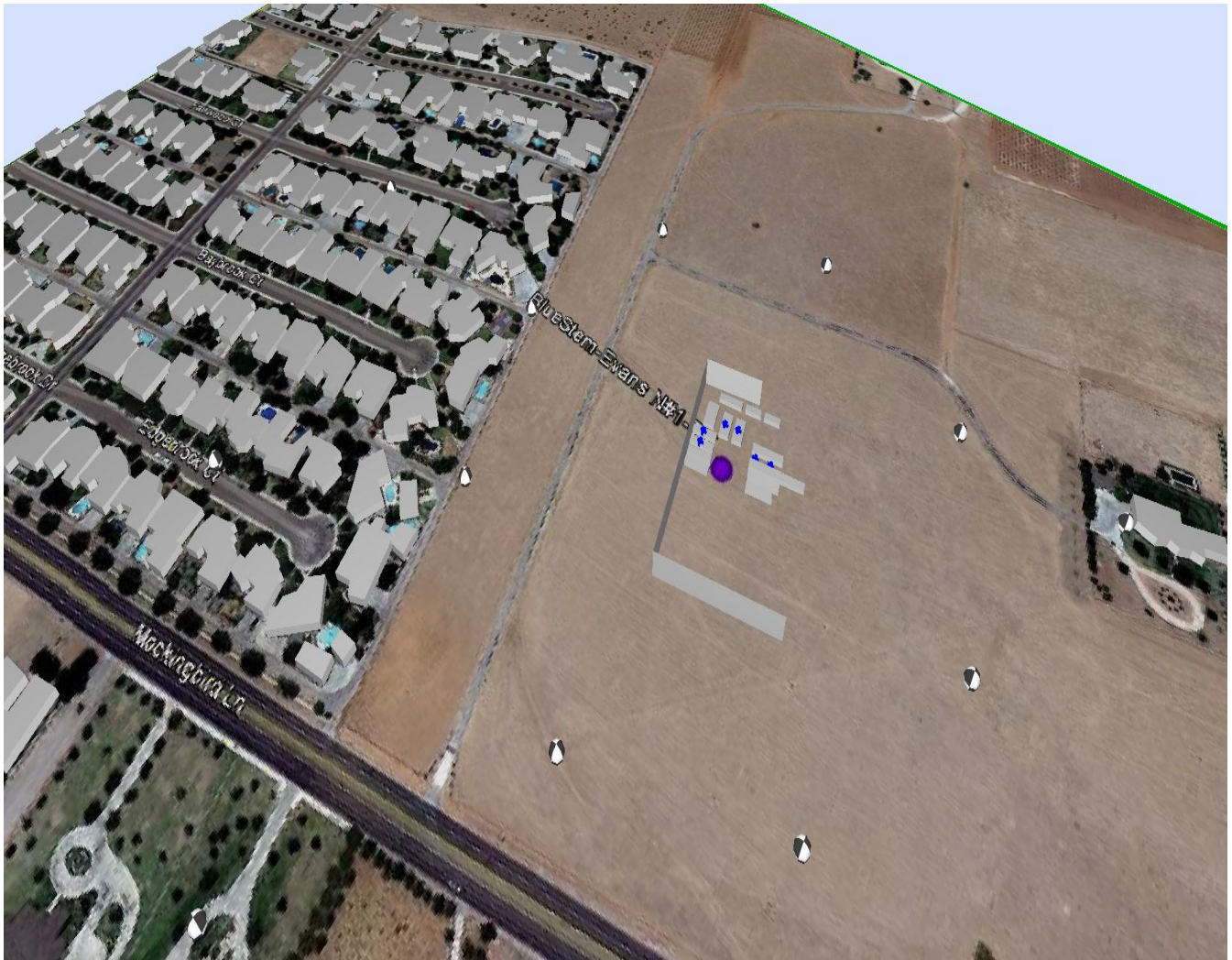
CITY PARCELS	PUBLIC BLDGS	CITY LIMITS
SURVEY SEC.	PRIVATE BLDGS	860 FT. BUFFER
ZONING	ACCESSORY BLDGS	

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, O2	OFFICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	NS	NEIGHBORHOOD SERVICE
MH	MOBILE HOME DWELLING	LR1, LR2, LR3	LOCAL RETAIL
TH	TOWNHOUSE DWELLING	C1, C2, C3	COMMERCIAL
2F	TWO-FAMILY DWELLING	IP, JP1, IP2, IP3	INDUSTRIAL PARK
MF1, MF2	MULTIPLE FAMILY DWELLING	LI	LIGHT INDUSTRY
		HI	HEAVY INDUSTRY



Evans N#1 Pad: Isometric View of UDI Drill with 16 foot Wall





City Council Agenda

Approved for Agenda:
jnichols
City Manager's Office

MEETING DATE: 6/12/2012

TO: City Council / City Manager

FROM: Steve Thorpe, Acting Assistant Development Services Director

SUBJECT: Notification regarding no legal action filed pertaining to dilapidated structures ordinance 8907, approved March 20, 2012.

Purpose:

Notification to City Council that no suits have been filed by any property owner or interested parties against the City related to the structures deemed dangerous, dilapidated and public nuisances on March 20, 2012 (Ordinance 8907) and demolitions will proceed.

Recommended City Council Action

☐ Approve ☐ Deny ☒ Directional / Informational

Fiscal Impact:

The anticipated cost of demolition and clean-up of the structures will be \$79,976.00. The funds to complete these demolitions will be taken from the CDBG demolition budget. The current amount available in this fund is \$196,469.00. All proposed demolitions meet the criteria to use CDBG funds.

Discussion:

This notification is to satisfy the new requirements related to demolition of structures after the Stewart v Dallas case and the Texas Supreme Court findings. Ordinance 8907 was approved by second reading on March 20, 2012. The ordinance was published in the Midland Reporter Telegram and certified copies of the signed ordinance were mailed via certified mail to the property owner and any identified interested parties on April 20, 2012. No legal action regarding these structures has been presented to the Building Official, Development Services Director, City Manager or City Attorney as of May 28, 2012. The Texas Supreme Court finding allowed for a 30 day filing opportunity from notice of determination of dilapidated structure. Therefore with no legal action being pursued regarding these structures, Code Administration will proceed with having the structures demolished. The addresses of the structures being demolished: 701 North Calhoun Street, 408 North Lee Street, 506 South Baird Street, 700 South Benton Street, 806 South Loraine Street, 1211 Belmont Street, 907 South Dallas Street, 909 South Dallas Street, 911 South Dallas Street, 200 East Longview Avenue and 2100 South Fort Worth Street.



City Council Agenda

Approved for Agenda:
jnichols
City Manager's Office

MEETING DATE: 6/12/2012

TO: City Council / City Manager

FROM: Gary Saunders, Transportation Manager

SUBJECT: Ordinance establishing No Parking except by Permit - Faulkner Drive and Melville Drive (District 1 – Jeff Sparks)

Purpose:

Consider an ordinance prohibiting parking except by permit on a portion of the north side of Faulkner Drive between Whitman Drive and Chapel Hill Drive and a portion of the east and west side of Melville Drive north of Faulkner Drive.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Approximately \$2,250.00 for installation cost of signs and posts including materials, equipment and labor.

Discussion:

The Legal Department has prepared an ordinance on a request from adjacent property owners and tenants, prohibiting parking on a portion of the north side of Faulkner Drive beginning at a point 185 feet west of the centerline of Melville Drive and continuing east a distance of 640 feet to the north/south alley and on the east and west side of Melville Drive beginning at the centerline of Faulkner Drive and continuing north a distance of 130 feet to the east/west alley. The parking restriction is exclusive to residents whose property abuts this portion of Faulkner Drive and Melville Drive and have obtained a valid parking permit. This portion of Faulkner Drive and Melville Drive is within City Council District 1.

Attached is a map indicating location of the proposed parking restriction.

Staff recommends approval of this ordinance.

ORDINANCE NO.

AN ORDINANCE PROHIBITING PARKING ON THE NORTH SIDE OF FAULKNER DRIVE FROM A POINT 185 FEET WEST OF THE CENTERLINE OF MELVILLE DRIVE AND CONTINUING EAST A DISTANCE OF 640 FEET TO THE NORTH/SOUTH ALLEY AND THE EAST AND WEST SIDES OF MELVILLE DRIVE BEGINNING AT THE CENTERLINE OF FAULKNER DRIVE AND CONTINUING NORTH A DISTANCE OF 130 FEET TO THE EAST/WEST ALLEY EXCEPT TO RESIDENTS WHOSE PROPERTY ABUTS SUCH STREET AND HAVE OBTAINED A VALID PARKING PERMIT; AUTHORIZING AND DIRECTING THE TRAFFIC ENGINEER TO ERECT APPROPRIATE SIGNS; DECLARING ANY VEHICLE IN VIOLATION OF THE PROVISIONS OF THIS ORDINANCE A NUISANCE AND PROVIDING FOR THE REMOVAL OF SAME; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO HUNDRED DOLLARS (\$200.00); AND ORDERING PUBLICATION

WHEREAS, the Council finds that in order to expedite the orderly flow of traffic, to eliminate traffic congestion, to promote traffic safety, and to preserve the residential character of neighborhoods in the area of certain streets, it is in the public interest to regulate and restrict parking in the manner and on the portions of those streets described herein;

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

SECTION ONE. That on any of the streets or places described in Section Two hereof, no person shall stop, stand or park a motor vehicle. However, the owner or operator of a motor vehicle who resides on property immediately adjacent to said street or place and who has affixed to such vehicle a valid parking permit issued pursuant to the provisions of this ordinance shall not be prohibited from parking on any of the streets or places described in Section Two. It shall be an exception to the provisions of this ordinance that such person stopped or parked said vehicle because it was necessary to avoid conflict with other traffic or in compliance with law or the directions of a police officer or traffic control device.

SECTION TWO. The streets or places which are restricted by the terms of this ordinance are as follows:

- a. Faulkner Drive – on the north side of Faulkner Drive from a point 185 feet west of the centerline of Melville Drive, and continuing east a distance of 640 feet to the north/south alley.
- b. Melville Drive – on the east and west sides of Melville Drive beginning at the centerline of Faulkner Drive and continuing north a distance of 130 feet to the east/west alley.

SECTION THREE. A parking permit shall be issued by the Chief of Police or his designee upon application and payment of the fee authorized in Section Four hereof, only to the owner or operator of a motor vehicle who resides on property immediately adjacent to the street or place described in Section Two hereof.

SECTION FOUR. The Chief of Police is authorized to establish an annual residential parking permit fee to cover only the administrative costs of permits issued pursuant to the provisions of this ordinance.

SECTION FIVE. That all existing ordinances, or any part thereof, in conflict with this ordinance are hereby expressly repealed.

SECTION SIX. The repeal of the ordinances, or parts of ordinances, effectuated by the enactment of this ordinance shall not be construed as abating any actions pending under or by virtue of such ordinances; or as discontinuing, abating, modifying or altering any penalty accruing or to accrue; or as affecting the liability of any person, firm or corporation; or as waiving any right of the municipality under any section or provision existing at the time of the passage of this ordinance.

SECTION SEVEN. That in the event any vehicle shall be found parked in violation of the provisions of this ordinance, the same shall be a nuisance per se, and shall be removed by any police officer and taken to some place designated by the Chief of Police for such purpose, and be kept by such officer until the application for its redemption shall be made by the owner or his duly authorized agent, who shall be entitled to the possession thereof upon payment to the City of Midland of the charges specified in Section 2 of Chapter 3 of Title VI of the City Code of Midland, Texas. In the event any vehicle so impounded should not be redeemed by the owner or his duly authorized agent after notice as provided in Section 4 of Chapter 3 of Title VI of said Code, then such vehicle shall be disposed of in accordance with Sections 3 and 8 of Chapter 3 of Title VI of said Code.

SECTION EIGHT. When any vehicle is parked in violation of the provisions of this ordinance, such fact shall be prima facie evidence that the person in whose name said vehicle is registered is guilty of a violation of the parking provision herein contained.

SECTION NINE. That the Traffic Engineer is hereby authorized and directed to erect appropriate signs and markings at the designated locations, in conformance with the

State Highway Department's manual and specifications, where applicable, indicating and carrying out the provisions of this ordinance.

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

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

SECTION TWELVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two hundred dollars (\$200.00).

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

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2012; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2012, at a regular

meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2012.

W. Wesley Perry, Mayor

ATTEST:

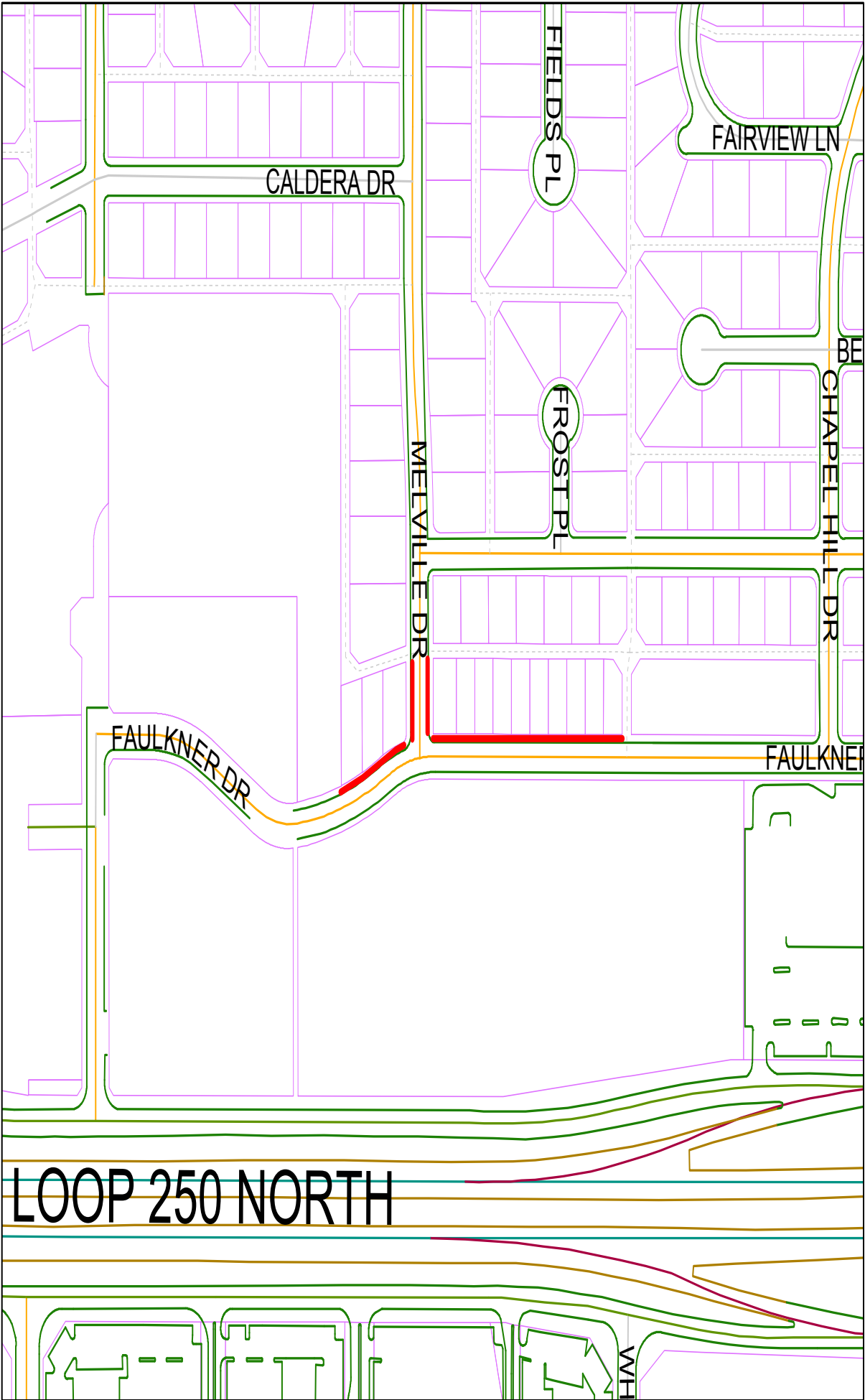
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Gary Saunders, Transportation Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



TRANSPORTATION
DIVISION

Proposed
permit parking
only



Map by TC 05/02/12



City Council Agenda

Approved for Agenda:
jnichols
City Manager's Office

MEETING DATE: 6/12/2012

TO: City Council / City Manager

FROM: Gary Saunders, Transportation Manager

SUBJECT: Ordinance - Stop Signs

Purpose:

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

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Approximately \$900.00 for installation cost of signs including materials, equipment and labor.

Discussion:

The Legal Department has prepared an ordinance authorizing the installation of stop signs at various intersections within the City of Midland. This ordinance has been requested to assign right-of-way for the motorist at each intersection in compliance with the Texas Manual on Uniform Traffic Control Devices. The intersections are as follows:

On Community Ln. at "J" St. for east/west bound traffic.

On Fielder St. @ Crestgate Ave. for north bound traffic.

On Hickory Ave. @ Tyler St. for east and west bound traffic.

On Kelly St. at Travis Ave. for north bound traffic

On League Dr. @ Crowley Blvd. for west bound traffic.

On Onyx Dr. @ FM 1788 for east bound traffic.

Attached is a map indicating the location of each proposed stop sign.

Staff recommends approval of this ordinance.

ORDINANCE NO.

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

WHEREAS, the Council finds that the unusual character and volume of traffic on various intersecting streets within the City require that operators of motor vehicles traveling along said streets to stop before entering said intersections; and

WHEREAS, the Council finds it to be in the public interest to authorize and require the establishment of stop signs at said intersections;

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

SECTION ONE. In addition to all other stop signs, stop signs at the intersections enumerated in the following list are hereby ordered to be erected and are hereby validated and fully authorized, whether the same have already been placed and are existing upon said intersections, or shall be placed there hereafter, and all persons operating vehicles upon or over the streets of the City of Midland shall obey such stop signs. All streets located in the column under the word “On” are the streets on which stop signs are hereby ordered and authorized at their intersection with the streets listed on the same line and in the column immediately to the right headed by the word “At”.

ON

“A” St.
“A” St.
“A” St.
Aberdeen Dr.
Adams St.
Adams St.
Adams St.
Advance Ave.
Ainslee St.
Ainslee St.

AT

Indiana Ave.
Mockingbird Ln.
Soloman Ln.
Spraberry Dr.
Indiana Ave.
Pennsylvania Ave.
Wall St.
Industrial Ave.
Bedford Dr.
Cuthbert Ave.

ON

Ainslee St.
Ainslee St.
Ainslee St.
Airport 20 Rd.
Alice St.
Alice St.
Alice St.
Almont Pl.
Alpine St.
Alpine St.
Andrews Hwy. Frontage
Andover Ave.
Anetta Dr.
Anetta Dr.
Anetta Dr.
Anetta Dr.
Angelina Dr.
Apache Dr.
Apperson Dr.
Apperson Dr.
Apple Creek Rd.
Apple Creek Rd.
Arapahoe Rd.
Arbor Cir.
Arroyo Dr.
Ashwood Ct.
Aspen Dr.
Aster Ave.
Aster Ave.
Atlanta St.
Atlanta St.
Auburn Ct.
Auburn Dr.
Aurora Ln.
Aurora Ln.
Austin St.
Austin St.
Avalon Dr.
Avondale Dr.
Avondale Dr.
"B" St.
"B" St.
"B" St.
"B" St.
"B" St.
"B" St.
"B" St.
Baird St.
Baird St.
Baird St.
Baird St.

AT

Kansas Ave.
Louisiana Ave.
Princeton Ave.
La Force Blvd.
Barkley Ave.
Delano Ave.
Franklin Ave.
Gunnison Dr.
Cuthbert Ave.
Louisiana Ave.
Godfrey St.
Ward St.
Eisenhower Dr.
Raymond Rd.
Spraberry Dr.
Waverly Dr.
Haynes Ave.
Waverly Dr.
Maxwell Ave.
Whitney Dr.
Mathis St.
Oak Valley Dr.
Elkins Rd.
Sunshine Pkwy.
Haynes Ave.
Heritage Blvd.
Mark Ln.
Avalon Dr.
Golden Gate Dr.
Gist Ave.
Hicks Ave.
Ward St.
Whitney Dr.
McDonald Dr.
Suncrest Ave.
Bedford Dr.
Cuthbert Ave.
Briarwood Ave.
McDonald Dr.
Raymond Dr.
Cuthbert Ave.
Harvard Ave.
Indiana Ave.
Kansas Ave.
Louisiana Ave.
Michigan Ave.
Missouri Ave.
California Ave.
Hicks Ave.
Indiana Ave.
Kentucky Ave.

Baird St.
Baird St.
Baird St.
Baird St.
Baird St.
Baird St.
Baird St.
Baird St.
Baldwin St.
Baldwin St.
Baldwin St.
Baltic Ave.
Baltic Ave.
Banks Dr.
Banks Dr.
Barber St.
Barber St.
Barber St.
Barber St.
Barkley Ave.
Barkley Ave.
Baumann Ave.
Baybrook Dr./Ct.
Baybrook Dr./Pl.
Bedford Ave.
Bedford Ave.
Bedford Ave.
Bedford Ave.
Bedford Ave.
Bedford Ave.
Bedford Ave.
Bedford Dr.
Bedford Ave.
Bedford Ave.
Bedford Ave.
Bedford Ave.
Bedford Dr.
Bedford Ave.
Bedford Ave.
Belair Dr.
Bellechasse Ct.
Belmont St.
Belmont St.
Belmont St.
Benton St.
Benton St.
Benton St.
Benton St.
Bentwood Dr.
Bentwood Dr.
Bentwood Dr.
Bentwood Dr.

Longview Ave. (northbound)
 Longview Ave. (southbound)
 Louisiana Ave.
 Main St.
 Michigan Ave.
 New Jersey Ave.
 New York Ave.
 Taylor Ave.
 Brunson Ave.
 Holloway Ave.
 Kentucky Ave.
 Dormard Ave.
 Pacific Ave.
 La Force Blvd.
 Sloan Field Blvd.
 Dormard Ave.
 Golf Course Rd.
 Magnolia Ave.
 Shandon Ave.
 Crestview Rd.
 Powell St.
 Alpine St.
 Rockwood Dr.
 Valwood Dr.
 Alpine St.
 Austin St.
 Delmar St.
 E. Broadway St.
 "G" St.
 Godfrey St. (westbound)
 Idlewilde Dr.
 Lanham St.
 Maberry St.
 Manor St.
 McDonald St.
 Mogford St.
 "N" St.
 Tarleton St.
 Stonybrook Dr.
 Chapel Hill Dr.
 Gist Ave.
 Griffin Ave.
 Hicks Ave.
 Golf Course Rd.
 Indiana Ave.
 New York Ave.
 Oak Ave.
 Crescent Dr.
 Cuthbert Ave.
 Graceland Dr.
 Ric Dr.

ON

Billingsley Blvd.
Bishops Castle Dr.
Bluebird Ln.
Blue Bonnet Ave.
Blue Bonnet Ave.
Boeing Dr.
Boeing Dr.
Bonham St.
Boulder Dr.
Bowie Dr.
Boyd Ave.
Boyd Ave.
Boyd Ave.
Boyd Ave.
Boeing Dr.
Boyd Ave.
Brazos Ave.
Breckenridge Dr.
Brentwood Dr.
Broadway St.
Brookdale Dr.
Brookdale Dr.
Brooks Dr. (both intersections)
Brownwood Dr.
Bryant St.
Burchill Dr.
Burchill Dr.
Burchill Dr.
Burchill Dr.
Burleson St.
Burleson St.
Burleson St.
Butler Ave.
Butler Ave.
Butternut Ln.
Butternut Ln.
“C” St. (northbound traffic)
“C” St.
“C” St.
“C” St.
“C” St. (southbound traffic)
“C” St.
“C” St.
“C” St.
Calhoun St.
California Ave.
California Ave.
California Ave.
California Ave.
California Ave.
Camarie Ave.

AT

Caldera Blvd.
Castleford Rd.
Midkiff Rd.
Avalon Dr.
Golden Gate Dr.
Neely Ave.
Sentinel Dr.
Cuthbert Ave.
Haynes Ave.
Bentwood Dr.
Godfrey St.
Lanham St.
Mogford St.
“N” St.
Fannin Ave.
Tarleton St.
Amistad Dr.
Durango Dr.
Homestead Blvd.
Cuthbert Ave.
Anetta Dr.
Eisenhower Dr.
Raymond Rd.
Bentwood Dr.
Humble Ave.
Anetta Dr.
Erie Dr.
Parkdale Dr.
Pasadena Dr.
Brunson Ave.
Kentucky Ave.
Washington Ave.
Baird St.
Main St.
Jackson St.
Oak Ave.
College Ave.
Cuthbert Ave.
Golf Course Rd.
Gulf Ave.
Indiana Ave.
Louisiana Ave.
Michigan Ave.
Missouri Ave.
Indiana Ave.
Carver St.
Main St.
Marienfeld St.
Tilden St.
Webster St.
Lanham St.

ON

Camarie Ave.
Camarie Ave.
Camarie Ave.
Camarie Ave.
Camp St.
Camp St.
Camp St.
Camp St.
Canadian Ave.
Canemont Dr.
Cantebury Dr.
Canyon Dr. (both intersections)
Canyon/Devonian Dr.
Cardinal Ln.
Carlton St.
Carnation Ave.
Carnation Ave.
Carrizo St.
Carrizo St.
Carrizo St.
Carrizo St.
Carrizo St.
Carrizo St.
Carrizo St.
Carrizo St.
Carter Ave.
Carver St.
Carver St.
Carver St.
Castle Pine Rd.
Castleford Rd.
Castleford Rd.
Castleford Rd.
Castleford Rd.
Castlerock Ct.
Cedar Ave.
Cedar Ave.
Cedar Ave.
Cedar Spring Dr.
Cedar Spring Dr.
Cessna Dr.
Cessna Dr.
Cessna Dr.
Cessna Dr.
Cessna Dr.
Chapel Hill Dr.
Chapel Hill Dr.
Chatham Ct.
Cherokee Dr.
Cherry Ln.
Cherrywood Dr.

AT

Mogford St.
Tarleton St.
Ward St.
Whitney Dr.
Carter Ave.
Dakota Ave.
Griffin Ave.
Industrial Ave.
Amistad Dr.
Tremont Ave.
Polo Pkwy.
Raymond Rd.
Spraberry Dr.
Oriole Dr.
Kentucky Ave.
Avalon Dr.
Golden Gate Dr.
Cuthbert Ave.
Louisiana Ave.
Michigan Ave.
Missouri Ave.
Nobles Ave.
Ohio Ave.
Storey Ave.
Tennessee Ave.
Garfield St.
Dormard Ave.
Golf Course Rd.
Indiana Ave.
Spence Dr.
Lancashire Rd.
Los Alamitos Rd.
Melville Dr.
Polo Pkwy.
Durango Dr.
Cottonwood Ave.
Main St.
Tyler St.
Devonian Dr.
Raymond Rd.
Fannin Ave.
Neely Ave.
Sentinel Dr.
Shell Ave.
Stanolind Ave.
Bluebird Ln.
Keswick Rd.
Ward St.
Eisenhower Dr.
Carver St.
Lemonwood Dr.

ON

Cherrywood Dr.
Cherrywood Ct.
Chestnut Ave.
Cimmaron Ave.
Cimmaron Ave.
Cimmaron Ave.
Cimmaron Ave.
Cimmaron Ave.
Cimmaron Ave.
Cimmaron Ave.
Cimmaron Ave.
Cimmaron Ave.
Cimmaron Ave.
Cimmaron Ave.
Cimmaron Ave.
Cimmaron Ave.
Cindy Pl.
Claremont Dr.
Clarewood Dr.
Clarewood Dr.
Clark St.
Clark St.
Clay St.
Cloudercroft Ct.
Club Dr.
Co. Rd. 1220 S.
Co. Rd. 83
Collins Ave.
Colorado St.
Colorado St.
Colorado St.
Colorado St.
Colorado St.
Colorado St.
Colorado St.
Colorado St.
Colorado St.
Colorado St.
Colorado St.
Colorado St.
Commerce Dr.
Commerce Dr.
Community Ln.
Community Ln.
Community Ln.
Compton Dr.
Concho Dr.
Concord Ave.
Connell St.
Connell St.
Conroe Ct.

AT

Northcrest Dr.
Oriole Dr.
Carver St.
Dengar Ave.
"I" St.
Mogford St.
Lanham St.
Mark Ln.
McDonald Dr.
Racquet Club Dr.
Shandon Ave.
Tarleton St.
Ward St.
Wedgewood St.
Ward St.
Whitney Dr.
Wydeewood Dr.
Tremont Ave.
Greenville Cir.
Wood Dr.
Brunson Ave.
Kentucky Ave.
Indiana Ave.
Mark Ln.
Nobles Ave.
Industrial Ave.
Co. Rd. 1162
Main St.
Cuthbert Ave.
Dakota Ave.
Francis Ave.
Gist Ave.
Hicks Ave.
Kansas Ave.
Louisiana Ave.
Michigan Ave.
New Jersey Ave.
New York Ave.
Pennsylvania Ave.
Rhode Island Ave.
I-20 N. Frontage Rd.
Industrial Ave.
"H" St.
"J" St.
"N" St.
Haynes Ave.
Amistad Dr.
Lanham St.
Carter Ave.
Industrial Ave.
Rio Grande Dr.

Conroe St.
Conroe St.
Cotton Flat Rd.
Cottonwood Ave.
Cottonwood Ave.
Country Club Dr.
Country Club Dr.
Country Club Dr.
Country Club Dr.
Country Club Dr.
Country Club Dr.
Country Club Dr.
Country Club Dr.
Country Club Dr.
Country Club Dr.
Country Club Dr.
Country Club Dr.
Country Club Dr.
Cowden Ave.
Cowden Ave.
Cowden Ave.
Cowden Ave.
Cranston Pl.
Crenshaw Dr.
Crescent Dr.
Crescent Dr.
Crescent Dr.
Crest Dr.
Crestdale St.
Crested Butte Ct.
Crestfield St.
Crestgate Ave.
Crestgate Ave.
Crestgate Ave.
Crestgate Ave.
Crestmont Dr.
Crestmont Dr.
Crestview Rd.
Crestview Rd.
Crestview Rd.
Crestview Rd.
Crestview Rd.
Crestview Rd.
Crestview Rd.
Crestview Rd.
Crestview Rd.
Crestview Rd.
Crestview Rd.
Crestway Ln.
Crista Ln.
Crista Ln.
Crockett Ave.
Crockett Ave.
Crockett Ave.

Lavaca Ave.
Rio Grande Dr.
Industrial Ave.
Golf Course Rd.
Main St.
E. Broadway St.
W. Broadway St.
"D" St.
Delmar St.
"G" St.
Idlewilde Dr.
"L" St.
Lanham St.
Mogford St.
"N" St.
Ward St.
Carver St.
Dallas St.
Edwards St.
Main St.
Crowley Blvd.
Palmer Dr.
Bentwood Dr.
Eisenhower Dr.
Glenwood Dr.
Club Dr.
Crestgate Ave.
Gunnison Dr.
Crestgate Ave.
Crestdale St.
Crestfield St.
Crestway Ln.
Gateway St.
Tremont Ave.
Whittle Way
Delano Ave.
Kansas Ave.
Kessler Ave.
Louisiana Ave.
Mariana Ave.
Michigan Ave.
Ohio Ave.
Roosevelt Ave.
Storey Ave.
Travis Ave.
Crestgate Ave.
Bluebird Ln.
Caldera Blvd.
Bentwood Dr.
Edgewood Dr.
Goliad Dr.

ON

Crowley Blvd.
Crowley Blvd.
Crowley Blvd.
Crowley Blvd.
Crowley Blvd.
Culver Dr.
Culver Dr.
Cumberland Dr.
Cumberland Dr.
Cunningham Dr.
Cunningham Dr.
Cuthbert Ave.
Cuthbert Ave.
Cuthbert Ave.
Cuthbert Ave.
“D” St.
“D” St.
“D” St.
“D” St.
“D” St.
“D” St.
“D” St.
“D” St.
“D” St.
“D” St.
Dahlia Ave.
Dahlia Ave.
Dakota Ave.
Dakota Ave.
Dakota Ave.
Dakota Ave.
Dallas St.
Dallas St.
Dallas St.
Dallas St.
Dallas St.
Dallas St.
Dallas St.
Dallas St.
Dallas St.
Dallas St.
Dallas St.
Dartmouth Dr.
Daventry Rd.
Daventry Rd.
Davis Ave.
Davis Ave.
Davis Ave.
Dawn Cir. (both intersections)
Deeanna Ln.
Deeanna Ln.

AT

Grassland Blvd.
Hereford Blvd.
Heritage Blvd.
Highland Blvd.
Wadley Ave.
Neely Ave.
Sentinel Dr.
Neely Ave.
Ventura Ave.
Holly Dr.
Howard Dr.
Carver St.
Maberry St.
Main St.
Mogford St.
College Ave.
Cuthbert Ave.
Douglas Ave.
Golf Course Rd.
Harvard Ave.
Humble Ave.
Louisiana Ave.
Michigan Ave.
Missouri Ave.
Neely Ave.
Avalon Dr.
Golden Gate Dr.
Johnston St.
Main St.
Marshall St.
Weatherford St.
Cuthbert Ave.
Garden Ln.
Golf Course Rd.
Hicks Ave.
New Jersey Ave.
New York Ave.
Louisiana Ave.
Nobles Ave.
Ohio Ave.
Parker Ave.
Taylor Ave.
Culpepper Dr.
Castleford Rd.
Lancashire Rd.
Carver St.
Lamesa Rd.
Lee St.
Haynes Ave.
Crowley Blvd.
Hereford Blvd.

ON

Deer Run Ave.
Delano Ave.
Delano Ave.
Delano Ave.
Delano Ave.
Delano Ave.
Delmar Dr.
Delmar Dr.
Delmar Dr.(northbound only)
Delmar St.
Dengar Ave.
Dengar Ave.
Dengar Ave.
Dengar Ave.
Dengar Ave.
Dengar Ave.
Dengar Ave.
Dengar Ave.
Dengar Ave.
Dengar Ave.
Dengar Ave.
Dengar Ave.
Denterest Dr.
Denterest Dr.
Denterest Dr. (southern most intersection)
Denton St.
Denton St.
Desta Dr. (both intersections)
Devlin Pl.
Devonian Dr.
Devonian Dr.
Devonian Dr.
Devonian Dr.
Dormard Ave.
Dormard Ave.
Dormard Ave.
Dormard Ave.
Douglas Ave.
Douglas Ave.
Douglas Ave.
Douglas Ave.
Douglas Ave.
Douglas Ave.
Douglas Ave.
Douglas Ave.
Douglas Ave.
Douglas Ave.
Douglas Ave.
Douglas Ave.
Douglas Ave.

AT

Hilltop Dr.
E. Circle Dr.
Holly Dr.
Powell St.
Roosevelt Dr.
Tanner Dr.
Leddy Dr.
Cuthbert Ave.
Lockheed Ave.
Storey Ave.
Barber St.
Edwards St.
"I" St.
Lanham St.
Loma Dr.
Main St.
Mark Ln.
Neely Ave.
Pecos St.
Tarleton St.
Ward St.
Whitney Dr.
Wydewood Dr.
Tremont Ave.
Whittle Way
Whittle Way
Cuthbert Ave.
Douglas Ave.
Smith Rd.
Crowley Blvd.
Cedar Spring Rd.
Monty Dr.
Raymond Rd.
Tanner Dr.
Boardwalk
Edwards St.
Loma Ave.
Main St.
Alpine St.
"B" St.
"D" St.
Delmar Ave.
"H" St.
"J" St.
"L" St.
McDonald St.
"N" St.
Tarleton St.
Ward St.
Whitney Dr.
Northrup Dr.

ON

Dowdle Dr.
Dowdle Dr.
Downing Ave.
Drexel Ct.
Dunbar St.
Durant Dr.
Durant Dr.
Durant Dr.
Dyer Cir.
"E" St.
"E" St.
"E" St.
"E" St.
E. Broadway St.
E. Broadway St.
E. Broadway St.
E. Broadway St.
E. Circle Dr.
E. Industrial Loop
Earhart Dr. (both intersections)
Edgewood Dr.
Eastview Dr.
Eastwood Dr.
Edgebrook Dr./Ct.
Edgebrook Dr./Pl.
Edgemont Dr.
Edgemont Dr.
Edgewood Dr.
Edgewood Dr.
Edgewood Dr.
Edwards St.
Edwards St.
Edwards St.
Edwards St.
Edwards St.
Edwards St.
Edwards St.
Edwards St.
Edwards St.
Edwards St.
Edwards St.
Eisenhower Dr.
Eisenhower Dr.
Eisenhower Dr.
Elm Ave.
Elma Dr.
Elma Dr.
Elma Dr.
Emerson Dr.
Emerson Ln.
English Dr.
English Dr.

AT

Neely Ave.
Ventura Ave.
Norwood St.
Heritage Blvd.
Cuthbert Ave.
Maxwell Dr.
Ward St.
Whitney Dr.
Haynes Ave.
College Ave.
Indiana Ave.
Missouri Ave.
Washington Ave.
Cuthbert Ave.
Harvard Ave.
Louisiana Ave.
Michigan Ave.
Delano Ave.
Industrial Ave.
La Force Blvd.
Monty Dr.
Bluebird Ln. (northbound)
Ric Dr.
Rockwood Dr.
Valwood Dr.
Tremont Ave.
Whittle Way
Cuthbert Ave.
Dewberry Dr.
Eisenhower Dr.
Cedar Ave.
Cuthbert Ave.
Dormard Ave.
Golf Course Rd.
Mississippi Ave.
Oak Ave.
Parker Ave.
Pecan Ave.
Pine Ave.
Spruce Ave.
Anetta Dr.
Edgewood Dr.
Industrial Ave.
Main St.
Aspen Dr.
Whittle Way
Wydewood Dr.
Ward St.
Ward St.
Benton St.
Golf Course Rd.

ON

Erie Dr.
Erie Dr.
Estes Ave.
Estes Ave.
Estes Ave.
Estes Ave.
Estes Ave.
Evergreen Ave.
Evergreen Ave.
Exeter Ave.
“F” St.
“F” St.
“F” St.
“F” St.
“F” St.
“F” St.
Fairbanks Dr.
Fairfax Ct.
Fairgate Dr.
Fairhaven Ct.
Fairview Ln.
Fairwood Dr./Ct.
Fairwood Dr./Pl.
Fannin Ave.
Fannin Ave.
Fannin Ave.
Fannin Ave.
Fannin Ave.
Fannin Ave.
Fannin Ave.
Fannin Ave.
Fannin Ave.
Fargo Ave.
Fargo Ave.
Fargo Ave.
Fasken Dr.
Fern Ave.
Fern Ave.
Fieldcrest Ln.
Fielder St.
Fisher St.
Fort Worth St.
Fort Worth St.
Fort Worth St.
Fort Worth St.
Fort Worth St.
Fort Worth St.
Fort Worth St.
Fort Worth St.
Fort Worth St.
Fort Worth St.

AT

Eisenhower Dr.
Meadow Dr.
Carver St.
Main St.
Marienfeld St.
Pecos St.
Whitaker St.
Avalon Dr.
Golden Gate Dr.
Ward St.
College Ave.
Cuthbert Ave.
Kentucky Ave.
Louisiana Ave.
Michigan Ave.
Missouri Ave.
Mark Ln.
Ward St.
Mark Ln.
Whittle Way
Chapel Hill Dr.
Rockwood Dr.
Valwood Dr.
Dengar Ave.
Lanham St.
Mark Ln.
McDonald Dr.
Mogford St.
Tarleton St.
Ward St.
Whitney Dr.
Boulder Dr.
Norwood St.
Stillmeadow Dr.
Anetta Dr.
Avalon Dr.
Golden Gate Dr.
Northfield Dr.
Crestgate Ave.
Francis Ave.
Cuthbert Ave.
Gist Ave. (northbound)
Golf Course Rd.
Hicks Ave.
Indiana Ave.
Longview Ave. (northbound)
Louisiana Ave.
Michigan Ave.
Mississippi Ave.
New Jersey Ave.
New York Ave.

ON

Fort Worth St.
Fort Worth St.
Fort Worth St.
Fort Worth St.
Fort Worth St.
Fort Worth St.
Fort Worth St.
Fort Worth St.
Fort Worth St.
Fox Hollow Ct.
Francis Ave.
Francis Ave.
Francis Ave.
Franklin Ave.
Franklin Ave.
Fredna Pl.
Fredna Pl.
Fringewood Dr.
Frontier Dr.
Frontier Dr.
Frontier Dr.
Frontier Dr.
"G" St.
"G" St.
"G" St.
"G" St.
"G" St.
"G" St.
"G" St.
"G" St.
"G" St.
Garden Ln.
Garden Ln.
Garfield St.
Garfield St.
Gaston Dr.
Gaston Dr.
Gateway St.
George Ave.
Geraldine St.
Gist Ave.
Gist Ave.
Gist Ave.
Gladewood Dr.
Gladewood Dr.
Gladiola Ave.
Gladiola Ave.
Glen Mist Dr.
Glen Mist Dr.
Gleneagles Ct.
Gleneagles Dr.

AT

Parker Ave.
Peck Ave. (southbound)
Stokes Ave. (northbound)
Stokes Ave. (southbound)
Summit Ave. (northbound)
Summit Ave. (southbound)
Taylor Ave.
Wolcott Ave. (northbound)
Wolcott Ave. (southbound)
Greenbriar Dr.
Camp Dr.
Colorado St.
Main St.
E. Circle Dr.
Williams St.
Dengar Ave.
Neely Ave.
Homestead Blvd.
Fannin Ave.
Lanham St.
Ward St.
Whitney Dr.
Bedford Ave.
Community Ave.
Cuthbert Ave.
Douglas Ave.
Golf Course Rd.
Harvard Ave.
Louisiana Ave.
Michigan Ave.
Missouri Ave.
Dallas St.
Terrell St.
Bluebird Ln.
Carter Ave.
Delano Ave.
Raymond Rd.
Caldera Blvd.
Marienfeld St.
Neely Ave.
E. Industrial Loop
Main St.
Terrell St.
Homestead Blvd.
Prairie Ridge Dr.
Avalon Dr.
Golden Gate Dr.
Fringewood Dr.
Gladewood Dr.
Greenbriar Dr.
Greenbriar Dr.

ON

Gleneagles Dr.
Goddard Dr.
Goddard Pl.
Godfrey Ct.
Godfrey St.
Godfrey St.
Godfrey St.
Godfrey St.
Godfrey St.
Godfrey St.
Godfrey St.
Godfrey St.
Godfrey St.
Godfrey St.
Golden Gate Dr.
Golf Course Rd.
Golf Course Rd.(westbound)
Goliad Dr.
Goliad Dr.
Goode St.
Goode St.
Gossett St.
Graceland Dr.
Graceland Dr.
Graham Dr.
Grassland Blvd.
Grassland Blvd.
Greathouse Ave.
Greathouse Ave.
Greathouse Ave.
Greenbriar Ave.
Greenbriar Dr.
Greenbriar Dr.
Greenbriar Dr.
Greenridge
Greenville Dr.
Griffin Ave.
Griffin Ave.
Griffin Ave.
Griffin Ave.
Griffin Ave.
Guadalupe St.
Gulf Ave.
Gulf Ave.
Gulf Ave.
Gulf Ave.
Gulf Ave.
Gulf Ave.
Gulf Ave.
Gulf Ave.
Gulf Ave.

AT

Mark Ln.
Ward St.
Whitney Dr.
Godfrey St.
Cuthbert Ave.
Douglas Ave.
Haynes Ave.
Louisiana Ave.
Neely Ave.
Northfield Dr.
Roosevelt Ave.
Shandon Ave.
St. Andrews Dr.
Tanner Dr.
Briar Wood Ave.
Main St.
Scharbauer Dr.
Crockett Ave.
Cuthbert Ave.
Carter Ave.
Francis Ave.
Missouri Ave.
Bentwood Dr.
Eisenhower Dr.
Palmer Dr.
Crowley Blvd.
W. Heritage Blvd.
Hilltop Dr.
Mathis St.
Spence Dr.
Hyde Park Ave.
Radcliff Ct.
Springfield Ct.
St. Andrews Dr.
Heritage Blvd.
Valwood Dr.
Dallas St.
Goode St.
Johnston St.
Main St.
Weatherford St.
Rio Grande Ave.
Cessna Dr.
Culver Dr.
Godfrey St.
"I" St.
"L" St.
Lanham St.
McDonald Dr.
Mark Ln.
Mogford St.

ON

Gulf Ave.
Gulf Ave.
Gulf Ave.
Gulf Ave.
Gulf Ave.
“H” St.
“H” St.
“H” St.
“H” St.
“H” St.
“H” St.
“H” St.
“H” St.
Hamby Ave.
Hamby Ave.
Hamby Ave.
Hamby Ave.
Harlowe Dr.
Hart Ave.
Hart Ave.
Harvard Ave.
Harvard Ave.
Harvard Ave.
Harvard Ave.
Harvard Ave.
Harvard Ave.
Harvard Ave.
Harvard Ave.
Hathaway Ct.
Haynes Ave.
Haynes Ave.
Haynes Ave.
Haynes Ave.
Haynes Ave.
Haynes Dr.
Haynes Dr.
Haywood Dr.
Heartland Ave.
Heartland Ave./Ct.
Henderson St.
Hereford Blvd.
Hereford Blvd.
Heritage Blvd.
Heritage Blvd.
Heritage Blvd.
Heritage Blvd.
Hickory Ave.
Hickory Ave.
Hickory Ave.

AT

“N” St.
Northrup Dr.
Tarleton Dr.
Ward St.
Whitney Dr.
College Ave.
Golf Course Rd.
Humble Ave.
Indiana Ave.
Michigan Ave.
Missouri Ave.
Neely Ave.
Ohio Ave.
Princeton Ave.
Carver St.
Main St.
Marienfeld St.
Tyler St.
Devonian Dr.
Main St.
Marienfeld St.
“D” St.
Delmar St.
“H” St.
Idlewilde Dr.
“L” St.
Lanham St.
Maberry St.
“N” St.
Whitney Dr.
Heritage Blvd.
Godfrey St.
Lanham St.
Norwood St.
Skyline Dr.
Ward St.
Ward St.
Whitney Dr.
Prairie Ridge Dr.
Hereford Blvd.
Heritage Blvd.
Rochester St.
Crowley Blvd.
Grassland Blvd.
Crowley Blvd.
Grassland Blvd.
Heartland Ave./Ct.
Highland Blvd.
Benton St.
Lincoln St.
Tyler St.

ON

Hicks Ave.
Hicks Ave.
Hicks Ave.
Highland Blvd.
Hill Ave.
Hillcrest Ct.
Hillcrest Ct.
Hilltop Dr.
Hodges St.
Hodges St.
Hollandale Dr.
Hollandale Dr.
Holloway Ave.
Holloway Ave.
Holly Dr.
Holly Dr.
Holmsley St.
Holmsley St.
Homestead Blvd.
Howard Dr.(both intersections)
Hoya Dr.
Hughes St.
Humble Ave.
Humble Ave.
Humble Ave.
Humble Ave.
Humble Ave.
Humble Ave.
Humble Ave.
Huntington St.
Hyde Park Ave.
Hyde Park Ave.
Hyde Park Ave.
"I" St.
"I" St.
"I" St.
"I" St.
"I" St.
"I" St.
"I" St.
Idlewilde Dr.
Idlewilde Dr.
Illinois Ave.
Illinois Ave.
Illinois Ave.
Imperial Ave.
Imperial Ave.
Indiana Ave.
Indiana Ave.

AT

Jefferson St.
Main St.
Terrell St.
Heritage Blvd.
Holly Dr.
Hereford Pl.
Heritage Blvd.
Oriole Dr.
Community Ln.
Neely Ave.
Carver St.
Parkway Dr.
"G" St.
"H" St.
Raymond Rd.
Travis Ave.
Marienfeld St.
Pecos St.
Hereford Blvd.
Raymond Rd.
Sunshine Pkwy.
Neely Ave.
Godfrey St.
"I" St.
"L" St.
Lanham St.
Mark Lane
"N" St.
Tarleton St.
Western Dr.
Neely Ave.
Godfrey St.
Greenbriar Dr.
Tarleton St.
Cimmaron Ave.
College Ave.
Golf Course Rd.
Holloway Ave.
Indiana Ave.
Kentucky Ave.
Missouri Ave.
Neely Ave.
Cuthbert Ave.
Preston Dr.
Carver St.
Lee St.
Terrell St.
Godfrey St.
Tarlton St.
Carver St.
"G" St.

ON

Indiana Ave.
Indiana Ave.
Indiana Ave.
Idlewilde Dr.
Industrial Ave.
Industrial Ave.
Industrial Ave.
Industrial Ave.
Inwood Ct.
Island Dr.
Island Dr.
Island Dr.
"J" St.
"J" St.
"J" St.
"J" St.
"J" St.
"J" St.
Jackson St.
Jackson St.
Jackson St.
Jacotte Cir. (both intersections)
Jadewood Dr.
Jax Ave.
Jax Ave.
Jax Ave.
Jefferson St.
Jefferson St.
Jefferson St.
Jefferson St.
Johnston St.
Johnston St.
Jordan Ave.
"K" St.
"K" St.
"K" St.
"K" St.
"K" St.
"K" St.
"K" St.
Kansas Ave.
Kansas Ave.
Kansas Ave.
Kansas Ave.
Kansas Ave.
Kansas Ave.
Kansas Ave.
Kansas Ave.
Kansas Ave.
Kansas Ave.

AT

"L" St.
Lee St.
Marienfeld St.
Ric Dr.
Carver St.
Lee St.
Main St.
Marienfeld St.
Ward St.
Greentree Blvd.
Island Circle/Dr.
Rustic Tr.
College Ave.
Community Ave.
Golf Course Rd.
Harvard Ave.
Holloway Ave.
Missouri Ave.
Chestnut Ave.
Golf Course Rd.
Indiana Ave.
Golf Course Rd.
Homestead Blvd.
Carver St.
Main St.
Marienfeld St.
Gist Ave.
Indiana Ave.
New Jersey Ave.
Wall St.
Carter Ave.
Industrial Ave.
Godfrey Ct.
College Ave.
Community Ln.
Cuthbert Ave.
Francis Ave.
Golf Course Rd.
Missouri Ave.
Washington Ave.
Alpine St.
Baird St.
E. Broadway
Carrizo St.
"D" St.
"F" St.
Godfrey St.
McDonald St.
Main St.
Marienfeld St.
Pecos St.

Kansas Ave.
Kansas Ave.
Keith St.
Keith St.
Keith St.
Keith St.
Kelly St.
Kent St.
Kent St.
Kent St.
Kentucky Ave.
Kentucky Ave.
Kentucky Ave.
Kentucky Ave.
Kentucky Ave.
Kentucky Ave.
Kentucky Ave.
Kentucky Ave.
Kentucky Ave.
Kessler Ave.
Kessler Ave.
Keswick Rd.
Key St.
Key St.
Keystone Ct.
Kimbrough St.
King Richards Row
Kingwood Ct.
Kiowa Dr.
“L” St.
“L” St.
“L” St.
“L” St.
“L” St.
“L” St.
“L” St.
“L” St.
“L” St.
“L” St.
“L” St.
“L” St.
“L” St.
“L” St.
“L” St.
“L” St.
La Force Blvd.
La Salle Cir.
Lamesa Rd.
Lancashire Rd.

Terrell St.
W. Broadway
Cowden Ave.
Humble Ave.
Nobles Ave.
Parker Ave.
Travis Ave.
Kansas Ave.
Louisiana Ave.
Michigan Ave.
Bankhead Hwy.
Carver St.
"G" St.
"K" St.
Lamesa Rd.
Lee St.
Main St.
Marienfeld St.
Pecos St.
Tilden St.
Crestview Rd.
Powell St.
Melville Dr.
Brunson Ave.
Kentucky Ave.
Gunnison Dr.
Delano Ave.
Oriole Dr.
Valwood Dr.
Eisenhower Dr.
Bedford Dr.
Carter Ave.
Cimmaron Ave.
College Ave.
Community Ave.
Cuthbert Ave.
Holloway Ave.
Humble Ave.
Louisiana Ave.
Michigan Ave.
Missouri Ave.
Neely Ave.
Shell Ave.
Sinclair Ave.
Stanolind Ave.
Warwick Pl.
Washington Ave.
Sloan Field Blvd.
Mark Ln.
Indiana Ave.
Castleford Rd.

ON

Lancashire Rd.
Lanham St.
Lanham St.
Lanham St.
Lanham St.
Lanham St.
Lanham St.
Lanham St.
Lanham St.
Lanham St.
Lanham St.
Lanham St.
Lanham St.
Laura Dr.
Laura Dr.
Lavaca Ave.
Lavaca Ave.
Lawson Ave.
League Dr.
Learmont Dr.
Leddy Dr.
Leddy Dr.
Leddy Dr.
Lee St.
Lee St.
Lee St.
Lehigh Dr.
Leisure Dr.
Leisure Dr.
Liddon Ave.
Liddon Ave.
Liddon Ave.
Lincoln St.
Lincoln St.
Lincoln St.
Lincoln St.
Lincoln St.
Lincoln St.
Lindbergh Dr.
Lindbergh Dr.
Lindbergh Dr.
Lindora Way
Lindora Way
Livingston St.
Lockheed Dr.
Lockheed Dr.
Lockheed Dr.
Lockheed Dr.
Lockheed Dr.
Loma Dr.

AT

Polo Parkway
Cimmaron Ave.
Cuthbert Ave.
Fannin Ave.
Haynes Ave.
Kansas Ave.
Louisiana Ave.
Maxwell Dr.
Neely Ave.
Princeton Ave.
Shandon Ave.
Shell Ave.
Storey Ave.
Ward St.
Bentwood Dr.
Edgewood Dr.
Conroe St.
Spence Dr.
“H” St.
Crowley Blvd.
Chapel Hill Dr.
Cedar Spring Dr.
Harlowe Dr.
Mercedes Dr.
New York Ave.
South Ln.
Walnut Ln.
Norwood St.
Bentwood Dr.
Eisenhower Dr.
Bryant St.
Keith St.
Marienfeld St.
Indiana Ave.
New York Ave.
Oak Ave.
Orchard Ln.
Pecan Ave.
Pine Ave.
Banks Dr.
Windecker St.
Wright Dr.
Sinclair Ave.
Sunshine Pkwy.
Rio Grande Ave.
Boeing Dr.
Cessna Dr.
Lanham St.
Ward St.
Whitney Dr.
Neely Ave.

ON

Loma Dr.
Longview Ave.
Longview Ave.
Longview Ave.
Loop 250 E. Frontage Rd.
Loraine St.
Loraine St.
Loraine St.
Loraine St.
Loraine St.
Loraine St.
Loraine St.
Loraine St.
Loraine St.
Loraine St.
Loraine St.
Los Alamitos Dr.
Louisiana Ave.
Louisiana Ave.
Louisiana Ave.
Louisiana Ave.
Louisiana Ave.
Lynn Ave.
Lynn Ave.
McClintic St.
McClintic St.
McDonald Dr.
McDonald Dr.
McDonald Dr.
McDonald Dr.
McDonald Dr.
McDonald Dr.
McDonald Dr.
McDonald Dr.
McDonald Dr.
McDonald Dr.
McDonald Dr.
McDonald Dr.
McDonald Dr.
McDonald St.
McGarvey St.
McKenzie St.
McKenzie St.
"M" St.
"M" St.
"M" St.
"M" St.
"M" St.
"M" St.
Maberry St.
Maberry St.
Maberry St.
Maberry St.
Maberry St.

AT

Pecan Ave.
Baird St. (eastbound)
Baird St. (westbound)
Terrell St. (eastbound)
Industrial Ave.
California Ave.
Cuthbert Ave.
Dakota Ave.
Gist Ave.
Hicks Ave.
Kansas Ave.
Louisiana Ave.
Michigan Ave.
New Jersey Ave.
Pennsylvania Ave.
Lancashire Rd.
Alpine St.
Delmar St.
Lamesa Rd.
Main St.
McDonald Dr.
Cottonwood Ave.
Tyler St.
Community Ave.
Neely Ave.
Bedford Ave.
Cedar Spring Dr.
Cimmaron Ave.
Cuthbert Ave.
Gulf Ave.
Neely Ave.
Ohio Ave.
Kansas Ave.
Shell Ave.
Spraberry Dr.
Tanner Dr.
Greenbriar Dr.
Kentucky Ave.
Carter Ave.
Francis Ave.
Holloway Ave.
Indiana Ave.
Louisiana Ave.
Michigan Ave.
Missouri Ave.
Washington Ave.
Country Club Dr.
Cuthbert Ave.
Kansas Ave.
Neely Ave.
Storey Ave.

ON

Madison St.
Madison St.
Madison St.
Madison St.
Magnolia Ave.
Magnolia Ave.
Main St.
Main St.
Main St.
Mann St.
Manor Ct.
Manor St.
Manor St.
Maple Ave.
Maple Ave.
Maple Ave.
Mariana Ave.
Mariana Ave.
Marienfeld St.
Marienfeld St.
Marienfeld St.
Marienfeld St.
Marienfeld St.
Marienfeld St.
Marienfeld St.
Mark Ln.
Mark Ln.
Mark Ln.
Mark Ln.
Mark Ln.
Market St.
Market St.
Marmon Dr.
Marmon Dr.
Marshall St.
Marshall St.
Marshall St.
Marshall St.
Mathis St.
Mathis St.
Mathis St.
Maxwell Dr.
Maxwell Dr.
Maxwell Dr.
Mayfield Pl.
Meadow Dr.
Meadow Dr.
Meadow Dr.
Meadow Dr.
Meadowbrook Dr.

AT

Indiana Ave.
New York Ave.
South Ln.
Wall St.
Benton St.
Lincoln St.
Cuthbert Ave.
Gist Ave.
Golf Course Rd.
Kentucky Ave.
Douglas Dr.
Cuthbert Ave.
Douglas Dr.
Benton St.
Lincoln St.
Tyler St.
Michigan Ave.
Ohio Ave.
Carter Ave.
Cowden Ave.
Cuthbert Ave.
Louisiana Ave.
Michigan Ave.
Nobles Ave.
Ohio Ave.
Parker Ave.
Dengar Ave.
Neely Ave.
Sinclair Ave.
St. Andrews Dr.
Whittle Way
I-20 N. Frontage Rd.
Industrial Ave.
St.
Whitney Dr.
Gist Ave.
Hicks Ave.
Indiana Ave.
Wall St.
Briarwood Ave.
Canadian Ave.
Spence Dr.
Lanham St.
Ward St.
Whitney Dr.
Mockingbird Ln.
Anetta Dr.
Comanche Dr.
Erie Dr.
Pasadena Dr.
Moss Ave.

ON

Meadowlark Ln.
Meadowridge Dr.
Melville Dr.
Melville Dr.
Mercedes Dr.
Merrill Dr.
Mesquite Ln.
Mesquite Ln.
Metz Ct.
Metz Dr.
Metz Dr.
Michigan Ave.
Michigan Ave.
Michigan Ave.
Michigan Ave.
Michigan Ave.
Michigan Ave.
Michigan Ave.
Midkiff Rd.
Midkiff Rd.
Midland Dr.
Mineola St.
Mineola St.
Mineola St.
Mineola St.
Mineola St.
Mineola St.
Mineola St.
Mission Ct.
Mississippi Ave.
Mississippi Ave.
Missouri Ave.
Missouri Ave.
Missouri Ave.
Missouri Ave.
Mitchell St.
Mockingbird Ln.
Mockingbird Ln.
Mockingbird Ln.
Mogford St.
Mogford St.
Mogford St.
Mogford St.
Mogford St.
Mogford St.
Mogford St.
Mogford St.
Mogford St.
Mogford St.

AT

Oriole Dr.
Skyline Dr.
Bluebird Ln.
Faulkner Dr.
Eisenhower Dr.
Norwood St.
Lee St.
Tyler St.
Ward St.
Ward St.
Whitney Dr.
Alpine St.
Delmar St.
Godfrey St.
Lamesa Rd.
Main St.
McDonald St.
Powell St.
Terrell St.
Bluebird Ln.
Mockingbird Ln.
U.S. 80 Service Rd.
Gist Ave.
Hicks Ave.
Indiana Ave.
Kentucky Ave.
New Jersey Ave.
New York Ave.
Wall St.
Godfrey St.
Baird St.
Dallas St.
Carver St.
"G" St.
Lee St.
Main St.
Delano Ave.
"A" St.
Midkiff Rd.
Oriole Dr.
Cimmaron Ave.
Cuthbert Ave.
Dengar Ave.
Fannin Ave.
Kansas Ave.
Louisiana Ave.
Michigan Ave.
Neely Ave.
Princeton Ave.
Shandon Ave.
Storey Ave.

[illegible]

Main St.
Leddy Dr.
McDonald St.
Mercedes Dr.
Raymond Rd.
Carter Ave.
Dakota Ave.
Griffin Ave.
Industrial Ave.
Golf Course Rd.
Ward St.
Whitney Dr.
Madison St.
Princeton Ave.
Bedford Dr.
Brunson Ave.
College Ave.
Community Ln.
Cuthbert Ave.
Harvard Ave.
Holloway Ave.
Humble Ave.
Indiana Ave.
Louisiana Ave.
Michigan Ave.
Missouri Ave.
Neely Ave.
Seaboard Ave.
Sinclair Ave.
Washington Ave.
Godfrey St.
Tarleton St.
Whittle Way
Wydewood Dr.
Cumberland Dr.
“D” St.
Oaklawn Dr.
Camp St.
Johnston St.
Main St.
Marshall St.
McKenzie St.
Terrell St.
Carver St.
Industrial Ave.
Main St.
Marienfeld St.
Tilden St.
Carver St.
Edwards St.
Main St.

Nobles Ave.
Noel Ave.
Norman
Normandy Ln.
North Service Rd.
Northcrest Dr.
Northfield Ct.
Northfield Dr.
Northfield Dr.
Northgate Ave.
Northgate Ave.
Northrup Dr.
Northrup Dr.
Northrup Dr.
Northtown Pl.
Norwood St.
Norwood St.
"O" St.
Oak Ave.
Oak Ave.
Oak Valley Dr.
Oak Valley Dr.
Oak Valley Dr.
Oaklawn Dr.
Oaklawn Dr.
Oakmont Dr.
Ohio Ave.
Ohio Ave.
Ohio Ave.
Ohio Ave.
Ohio Ave.
Ohio Ave.
Ohio Ave.
Ohio Ave.
Ohio Ave.
Ohio Ave.
Ohio Ave.
Ohio Ave.
Ohio Ave.
Ohio Ave.
Ohio Ave.
Ohio Ave.
Ohio Ave.
Ohio Ave.
Ohio Ave.
Onyx Dr.
Orchard Ln.
Orchard Ln.
Oriental Ave.
Oriole Dr.
Oriole Dr.
Oriole Dr.
Osage St.
Pacific Ave.

Pecos St.
 Ward St.
 Bankhead Hwy.
 Polo Pkwy.
 Windecker St.
 Hilltop Dr.
 Godfrey St.
 Godfrey St.
 Skyline Dr.
 Briarwood Ave.
 Northcrest Dr.
 Neely Ave.
 Princeton Dr.
 Sentinel Dr.
 Whitney Dr.
 Lehigh Dr.
 St. Andrews Dr.
 Missouri Ave.
 Butternut Ln.
 Main St.
 Greathouse Ave.
 Oriole St.
 Spence Dr.
 Neely Ave.
 Ventura Ave.
 Tremont Ave.
 Alpine St.
 Baird St.
 "C" St.
 "D" St.
 Delmar St.
 "F" St.
 Fort Worth St.
 "G" St.
 Godfrey St.
 "L" St.
 Main St.
 Marienfeld St.
 Mineola St.
 "N" St.
 Powell St.
 Weatherford St.
 Farm-to-Market Rd. 1788
 Carver St.
 Lee St.
 Ventnor Ave.
 Mockingbird Ln.
 Tanforan Ave.
 Teakwood Trc.
 Spruce Ave.
 Boardwalk

ON

Pacific Ave.
Pagewood Dr.
Palmer Dr.
Park Ln.
Parker Ave.
Parker Ave.
Parkwood Dr.
Pasadena Dr.
Pasadena Dr.
Peach St.
Pecan Ave.
Pecan Ave.
Pecan Ave.
Pecan Ave.
Pecan Ave.
Pecan Ave.
Peck Ave.
Peck Ave.
Pecos St.
Pecos St.
Pecos St.
Pecos St.
Pecos St.
Pecos St.
Pecos St.
Pecos St.
Pecos St.
Pecos St.
Pecos St.
Pecos St.
Pecos St.
Pennsylvania Ave.
Pennsylvania Ave.
Pennsylvania Ave.
Pennsylvania Ave.
Pennsylvania Ave.
Pennsylvania Ave.
Peterson St.
Peterson St.
Pilot Ave.
Pilot Ave.
Pine Ave.
Pine Ave.
Pine Ave. (westbound only)
Pine Ave.
Pine Ave.
Pine Ave.
Pine Ave.
Pine Ave.
Pinemont Dr.
Plaza St.

AT

Carver St.
Prairie Ridge Dr.
Nicklaus St.
Holly Dr.
Carver St.
Main St.
Brownwood Dr.
Eisenhower Dr.
Spraberry Dr.
Kessler Ave.
Cumberland Dr.
“D” St.
“I” St.
“L” St.
Main St.
Oaklawn Dr.
Baird St. (westbound)
Terrell St. (eastbound)
Boyd Ave.
Cuthbert Ave.
Dormard Ave.
Indiana Ave.
Industrial Ave.
Louisiana Ave.
Michigan Ave.
Missouri Ave.
Neely Ave.
Ohio Ave.
Spruce Ave.
Storey Ave.
Tennessee Ave.
Carver St.
Lamesa Rd.
Main St.
Marienfeld St.
Tilden St.
Tyler St.
Oak Ave.
Pecan Ave.
La Force Blvd.
Wright Dr.
Cumberland Dr.
“I” St.
“L” St.
Loma Dr.
Main St.
Neely Ave.
Oaklawn Dr.
Pecos St.
Tremont Ave.
E. Circle Dr.

Pleasant Dr.
Pleasant Dr.
Pleasant Dr.
Pliska Dr.
Polo Club Dr.
Polo Club Dr.
Polo Parkway
Powell St.
Powell St.
Powell St. (northern most intersection only)
Prairie Ridge Dr.
Pratt St.
Pratt St.
Preston Dr.
Preston Dr.
Preston Dr.
Preston Dr.
Princeton Ave.
Princeton Ave.
Princeton Ave.
Princeton Ave.
Princeton Ave.
Princeton Ave.
Princeton Ave.
Princeton Ave.
Princeton Ave.
Princeton Ave.
Princeton Ave.
Princeton Ave.
Princeton Ave.
Princeton Ave.
Princeton Ave.
Princeton Ave.
Quicksand Dr.
Quicksand Dr.
Racquet Club Dr.
Racquet Club Dr.
Radcliff Ct.
Rainbow Rd.
Raymond Rd.
Raymond Rd. (southernmost intersection)
Redwood Run
Rees Ln.
Rees Ln.
Reeves Cir.
Rhode Island Ave.
Rhode Island Ave.
Ric Dr.
Ric Dr.
Ric Dr.
Ric Dr.

Bentwood Dr.
Eisenhower Dr.
Raymond Rd.
North Service Rd.
Bluebird Ln.
Polo Pkwy.
Lancashire Dr.
Kansas Ave.
Louisiana Ave.
Mariana Ave.
Jadewood Dr.
Carter Ave.
Francis Ave.
Aspen Dr.
Sunburst Dr.
Whittle Way
Wydewood Dr.
Alpine St.
Boeing Dr.
"D" St.
Delmar St.
"G" St
Godfrey St.
Idlewilde Dr.
"J" St.
"L" St.
Maberry St.
McDonald St.
"N" St.
Tarleton St.
Ward St.
Whitney Dr.
Woodcrest Dr.
Mathis St.
Spence Dr.
Cimmaron Dr.
Neely Ave.
Greenbriar Dr.
Idlewilde Dr.
Anetta Dr.
Canyon Dr.
Teakwood Trc.
Dengar Ave.
Neely Ave.
Anetta Dr.
Colorado St.
Johnston St.
Bentwood Dr.
Edgewood Dr.
Stoneybrook Dr.
Storey Ave.

ON

Ridgemont Pl.
Ridgemont Ct.
Ridglea Dr.
Ridglea Dr.
Rio Grande Dr.
Rio Grande Dr.
Riverside Dr.
Riverside Dr.
Robin Ln.
Rochester St.
Rockwood Dr.
Roosevelt Ave.
Roosevelt Ave.
Roosevelt Dr.
Roosevelt Dr.
Roosevelt Dr.
Roosevelt Dr.
Rosemont Dr.
Rosewood Dr.
Rosewood Dr.
Rosewood Dr.
Ruby Rd.
Ruidoso Ct.
Russell Dr.
Rustic Trail

Sage St.
Sagemont Dr.
San Angelo St.
San Angelo St.
San Angelo St.
San Antonio Ave.
Scharbauer Dr.
Seaboard Ave.
Seaboard Ave.
Seaboard Ave.
Seaboard Ave.
Seaboard Ave.
Seaboard Ave.
Seaboard Ave.
Seaboard Ave.
Secor St.
Seminole Dr.
Sentinel Dr.
Sentinel Dr.
Sentinel Dr.
Sequoia St.
Shadylane Dr.
Shadyview Pl.
Shandon Ave.

AT

Hereford Blvd.
Heritage Blvd.
Cuthbert Ave.
Nobles Ave.
Amistad Dr.
Conroe St.
Hilltop Dr.
Oak Valley Dr.
Oriole Dr.
Bankhead Hwy.
Tanforan Ave./Ct.
Mitchell St.
Powell St.
Crestview Rd.
Leddy Dr.
McDonald Dr.
Raymond Rd.
Tremont Ave.
Lemonwood Dr.
Northcrest Dr.
Oriole Dr.
Raymond Rd.
Mark Ln.
Norwood St.
Greentree Blvd. (at east and west intersections)
Hollandale Dr.
Tremont Ave.
Louisiana Ave.
Michigan Ave.
Tennessee Ave.
Amistad Dr.
Main St.
Godfrey St.
"H" St.
"I" St.
"L" St.
Lanham St.
Mogford St.
"N" St.
Tarleton St.
Whitney Dr.
Ohio Ave.
Eisenhower Dr.
Maberry St.
Murray St.
Whitney Dr.
Green Tree Blvd.
Bentwood Dr.
Tanforan Ave.
Cimmaron Ave.

ON

Shandon Ave.
Shandon Ave.
Shandon Ave.
Shandon Ave.
Shandon Ave.
Shandon Ave.
Shandon Ave.
Shandon Ave.
Shell Ave.
Shell Ave.
Shell Ave.
Shell Ave.
Shell Ave.

Shell Ave.
Shell Ave.
Shirley Ln.
Shirley Ln.
Shirley Ln.
Sinclair Ave.
Sinclair Ave.
Sinclair Ave.
Sinclair Ave.
Sinclair Ave.
Sinclair Ave.
Sinclair Ave.
Sinclair Ave.
Sinclair Ave.
Sinclair Ave.
Sinclair Ave.
Sinclair Ave.
Skyline Dr.
Skyline Dr.
Smith Rd. (both intersections)
Soloman Ln.
Solomon Ln.
South St.
South St.
Sparks St.
Spartan Dr.
Spartan Dr.
Spence Dr.
Spence Dr.
Spence Dr.
Spraberry Dr.
Spraberry Dr.
Spraberry Dr.
Spraberry Dr.
Springfield Ct.
Spring Meadow Ln.
Spring Meadow Ln.
Spruce Ave.

AT

Godfrey St.
Lanham St.
Loma Dr.
Main St.
Mogford St.
Tarleton St.
Ward St.
Whitney Dr.
Godfrey St.
"I" St.
"L" St.
"N" St.
McDonald St. (westernmost intersection)
Tarleton St.
Upland St.
"D" St.
Oaklawn Dr.
Cumberland Dr.
Culver Dr.
Godfrey St.
Hughes St.
Huntington St.
Lanham St.
Lindora Way
"N" St.
Northrup Drive
Tarleton St.
Ward St.
Wydewood Dr.
Haynes Ave.
Northfield Dr.
Desta Dr.
"A" St.
Lamesa Rd.
Carver St.
Lamesa Rd.
Princeton Ave.
Fannin Ave.
Neely Ave.
Canadian Ave.
Hilltop Dr.
Rio Grande Ave.
Anetta Dr.
Canyon/Devonian Dr.
Pleasant Dr.
Raymond Rd.
Greenbriar Dr.
Meadowpark Dr.
Pine Meadow Dr.
Loma Dr.

ON

Spruce Ave.
Spruce Ave.
Spruce Ave.
Spur Dr.
St. Andrews Ct.
St. Andrews Dr.
St. Andrews Dr.
St. Andrews Dr.
Stanolind Ave.
Stanolind Ave.
Stanolind Ave.
Stanolind Ave.
Stanolind Ave.
Stanolind Ave.
Stanolind Ave.
Stanolind Ave.
Stanolind Ave.
Stanolind Ave.
Stanolind Ave.
Stanolind Ave.
Sterling Pl.
Sterling Ct.
Stewart Ave.
Stillmeadow Dr.
Stokes Ave.
Stokes Ave.
Stonecrest
Stonecrest
Stoneleigh Rd.
Stonewall St.
Stonewall St.
Stoneybrook Dr.
Stoneybrook Dr.
Storey Ave.
Storey Ave.
Storey Ave.
Storey Ave.
Storey Ave.
Storey Ave.
Storey Ave.
Storey Ave.
Storey Ave.
Storey Ave.
Storey Ave.
Storey Ave.
Stutz Ct.
Stutz Dr.
Stutz Dr.

AT

Main St.
Neely Ave.
Pecos St.
I-20 N. Frontage Rd.
Godfrey St.
Godfrey St.
Mark Ln.
Norwood St.
"D" St.
Godfrey St.
"H" St.
"I" St.
"L" St.
Lanham St.
Mark Ln.
McDonald Dr.
Mogford St.
Tarleton St.
Wedgewood St.
Western Dr.
Whitney Dr.
Crowley Blvd.
Heritage Blvd.
Tarleton St.
Fargo Ave.
Baird St. (westbound)
Terrell St. (eastbound)
Hereford Blvd.
Windrift
Lancashire Rd.
Indiana Ave.
New York Ave.
Ric Dr.
Shadylane Dr.
"B" St.
Bentwood Dr.
"D" St.
Edgewood Dr.
"F" St.
"G" St.
Godfrey St.
Lanham St.
Maberry St.
Marienfeld St.
McDonald St.
Powell St.
Stoneybrook Dr.
Ward St.
Ward St.
Ward St.
Whitney Dr.

ON

Summit Ave.
Summit Ave.
Sunburst Dr.
Sunburst Dr.
Suncrest Ave.
Sundance Pl.
Sundance Ct.
Sunnyside Dr.
Sunset Blvd.
Sunset Blvd.
Sunshine Pkwy.
Sunshine Pkwy.
Sweetbriar Dr.
Sycamore Ave.
Tanforan Ave.
Tanforan Ave.
Tanner Dr.
Tanner Dr.
Tanner Dr.
Tanner Dr.
Tarleton St.
Tarleton St.
Tarleton St.
Taylor Ave.
Taylor Ave.
Taylor Ave.
Taylor Ave.
Teakwood Tr.
Tejas
Telluride Dr./Ct.
Tennessee Ave.
Tennessee Ave.
Tennessee Ave.
Tennessee Ave.
Tennessee Ave.
Tennessee Ave.
Tennessee Ave.
Tennessee Ave.
Tennessee Ave.
Tennessee Ave.
Tennessee Ave.
Tennessee Ave.
Tennessee Ave.
Tennessee Ave.
Tennessee Ave.
Terrace Ave.
Terrace Ave.
Terrell St.
Terrell St.
Terrell St.

AT

Baird St. (westbound)
Terrell St. (eastbound)
Preston Dr.
Sunshine Pkwy.
Dengar Ave.
Crowley Blvd.
Heritage Blvd.
Stonybrook Dr.
Michigan Ave.
Ohio Ave.
Idlewilde Dr.
Wydewood Dr.
Ric Dr.
Holly Dr.
Oriole Dr.
Widener Strip
Devonian Dr.
Leddy Dr.
McDonald St.
Raymond Rd.
Cuthbert Ave.
Neely Ave.
Shandon Ave.
Main St.
Marshall St.
Mineola St.
Terrell St.
Oriole Dr.
Shawnee
Durango Dr.
Baird St.
"C" St.
Colorado St.
"D" St.
E. Broadway St.
"F" St.
Fort Worth St.
"G" St.
Loraine St.
"L" St.
"M" St.
Main St.
Marienfeld St.
"N" St.
Terrell St.
W. Broadway
Neely Ave.
Ward St.
Cuthbert Ave.
Gist Ave.
Golf Course Rd.

ON

Terrell St.
Terrell St.
Terrell St.
Terrell St.
Terrell St.
Texas Ave.
Texas Ave.
Thames Ct.
Thomas Ave.
Thomas Ave.
Tilden St.
Tilden St.
Tilden St.
Timberglen Pl./Cir.
Travis Ave.
Travis Ave.
Travis Ave.
Tremont Ave.
Tremont Ave.
Tremont Ave.
Tremont Ave.
Tremont Ave.
Trinity Dr.
Trinity Ct.
Trinity Meadows Dr.
Trinity Meadows Pl.
Truman St.
Truman St.
Truman St.
Tyler St.
Tyler St.
Tyler St.
Tyler St.
Tyler St.
Tyler St.
Tyler St.
Tyler St.
Tyler St.
Tyler St.
Tyler St.
U.S. 80 Service Rd.
U.S. 80 Service Rd.
U.S. 80 Service Rd.
Upland St.
Upland St.
Upland St.
Upland St.
Upland St.
Upland St.
Upland St.
Upland St.

AT

Hicks Ave.
Illinois Ave.
Louisiana Ave.
Parker Ave.
Taylor Ave.
Carver St.
Lee St.
Lancashire Rd.
Crestview Rd.
Raymond Rd.
Golf Course Rd.
Indiana Ave.
Orchard Ln.
Valwood Dr.
Crestview Rd.
Holly Dr.
Waverly Dr.
Dentcrest Dr.
Edgemont Dr.
Mark Ln.
Sagemont Dr.
Whittle Way
Godfrey St.
Greenbriar Dr.
Skyline Dr.
Skyline Dr.
Delano Ave.
Franklin Ave.
Mariana Ave.
Cuthbert Ave.
Garden Ln.
Golf Course Rd.
Hamby Ave.
Illinois Ave.
Indiana Ave.
Oak Ave.
Orchard Ln.
Pine Ave.
South Ln.
Wall St.
County Rd. 1162
Elkins Rd.
Todd Rd.
Baumann Ave.
Bedford Ave.
Cuthbert Ave.
Kansas Ave.
Louisiana Ave.
Michigan Ave.
Ohio Ave.
Princeton Ave.

ON

Valley Dr.
Valwood Dr.
Ventnor Ave.
Ventnor Ave.
Ventura Ave.
Ventura Ave.
Vermont Ave.
Versailles Dr.
Versailles Dr.
Versailles Dr.
Versailles Dr.
Virginia Ave.
Vista West Pkwy.
Vista West Pkwy.
W. Broadway St.
W. Broadway St.
W. Broadway St.
W. Broadway St.
W. Circle Dr.
W. Industrial Loop
Walcott Ave.
Wall St.
Wall St.
Walnut Ln.
Ward St.
Ward St.
Ward St.
Ward St.
Ward St.
Ward St.
Ward St.
Ward St.
Ward St.
Ward St.
Warehouse Rd.
Washington Ave.
Washington Ave.
Washington Ave.
Washington Ave.
Washington Ave.
Washington Ave.
Washington Ave.
Washington Ave.
Washington Ave.
Washington Ave.
Watson St.
Watson St.
Waverly Dr.
Waverly Dr.
Weatherford St.

AT

Haynes Ave.
Tanforan Ave.
Boardwalk
Carver St.
"I" St.
"L" St.
Pacific Ave.
Burchill Dr.
Devonian Dr.
Eisenhower Dr.
Meadow Dr.
Pacific Ave.
Bluebird Ln.
Caldera Blvd.
Cuthbert Ave.
Harvard Ave.
Louisiana Ave.
Michigan Ave.
Delano Ave.
Industrial Ave.
Main St.
Carver St.
Lee St.
Carver St.
Auburn Dr.
Cuthbert Ave.
Fannin Ave.
Haynes Ave.
Haynes Dr.
Louisiana Ave.
Michigan Ave.
Neely Ave.
Princeton Ave.
Sentinel Dr.
Industrial Ave.
"B" St.
"C" St.
Carver St.
"D" St.
"G" St.
"L" St.
Lee St.
Main St.
"N" St.
Pecos St.
Tilden St.
Cuthbert Ave.
Pecos St.
Anetta Dr.
Raymond Rd.
Cuthbert Ave.

ON

Weatherford St.
Weatherford St.
Weatherford St.
Weatherford St.
Weatherford St.
Weatherford St.
Weatherford St.
Weatherford St.
Weatherford St.
Weatherford St.
Webster St.
Webster St.
Wedgewood Ct.
Wedgewood St.
Wedgewood St.
Wedgewood St.
Wedgewood St.
Western Dr.
Western Dr.
Western Dr.
Westminster Dr.
Westview Dr.
Whitaker St.
Whitaker St.
Whitman Dr.
Whitney Dr.
Whitney Dr.
Whitney Dr.
Whitney Dr.
Whittle Way
Whittle Way
Whittle Way
Willingham Dr.
Wilshire Dr.
Wilshire Dr.
Wilshire Dr.
Wimberley Spring Ct.
Windecker St.
Windecker St.
Windecker St.
Windridge Cr.
Windrift
Winfield Rd.
Winfield Rd.
Winfield Rd.
Wolcott Ave.
Wolcott Ave.
Wolcott Ave.
Wood Dr.
Wood Dr.
Woodbar Ct.

AT

Golf Course Rd.
Hicks Ave.
Indiana Ave.
Kentucky Ave.
Louisiana Ave.
Michigan Ave.
Mississippi Ave.
New Jersey Ave.
New York Ave.
Taylor Ave.
Indiana Ave.
New York Ave.
Godfrey St.
Godfrey St.
Humble Ave.
Neely Ave.
Shell Ave.
Golf Course Rd.
Neely Ave.
Stanolind Ave.
Norwood St.
Bluebird Ln. (northbound)
Cuthbert Ave.
Kansas Ave.
Bluebird Ln.
Haynes Dr.
Maxwell Dr.
Moss Ave.
Neely Ave.
Preston Dr.
Sunshine Pkwy.
Tremont Ave.
McDonald St.
Eisenhower Dr.
Graceland Dr.
Parkdale Dr.
Spence Dr.
La Force Blvd.
Sloan Field Blvd.
Wright Dr.
Mockingbird Ln. (both intesections)
Crowley Blvd.
Humble Ave.
"I" St.
"L" St.
Baird St.
Terrell St. (eastbound)
Main St.
Oriole Dr.
Valwood Dr.
Northcrest Dr.

Woodcrest Dr.
Woodcrest Dr.
Woodcrest Dr.
Woodhaven Ct.
Woodhaven Dr.
Woodhollow Dr.
Woodhollow Dr.
Woodhollow Dr.
Woodhollow Dr.
Woodland Park Ave.
Woodland Park Ave.
Woodland Park Ave.
Wright Dr.
Wydewood Dr.
Wydewood Dr.
Wydewood Dr.
Wydewood Dr.

Cuthbert Ave.
Princeton Ave.
Ric Dr.
Skyline Dr.
Skyline Dr.
Hilltop Dr. / Lemonwood Dr.
Mathis St.
Northcrest Dr.
Oriole Dr.
“A” St.
Breckenridge Dr.
Gunnison Dr.
Sloan Field Blvd.
Dengar Dr.
Everglade Ave.
Neely Ave.
Sinclair Ave.

SECTION TWO. That the Traffic Engineer is hereby authorized and directed to erect and install appropriate signs and markings at the designated locations in conformance with the State Highway Department’s Manual and Specifications, indicating and carrying out the provisions of this ordinance.

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

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

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two hundred dollars (\$200.00).

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

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2012; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2012.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Gary Saunders, Transportation Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

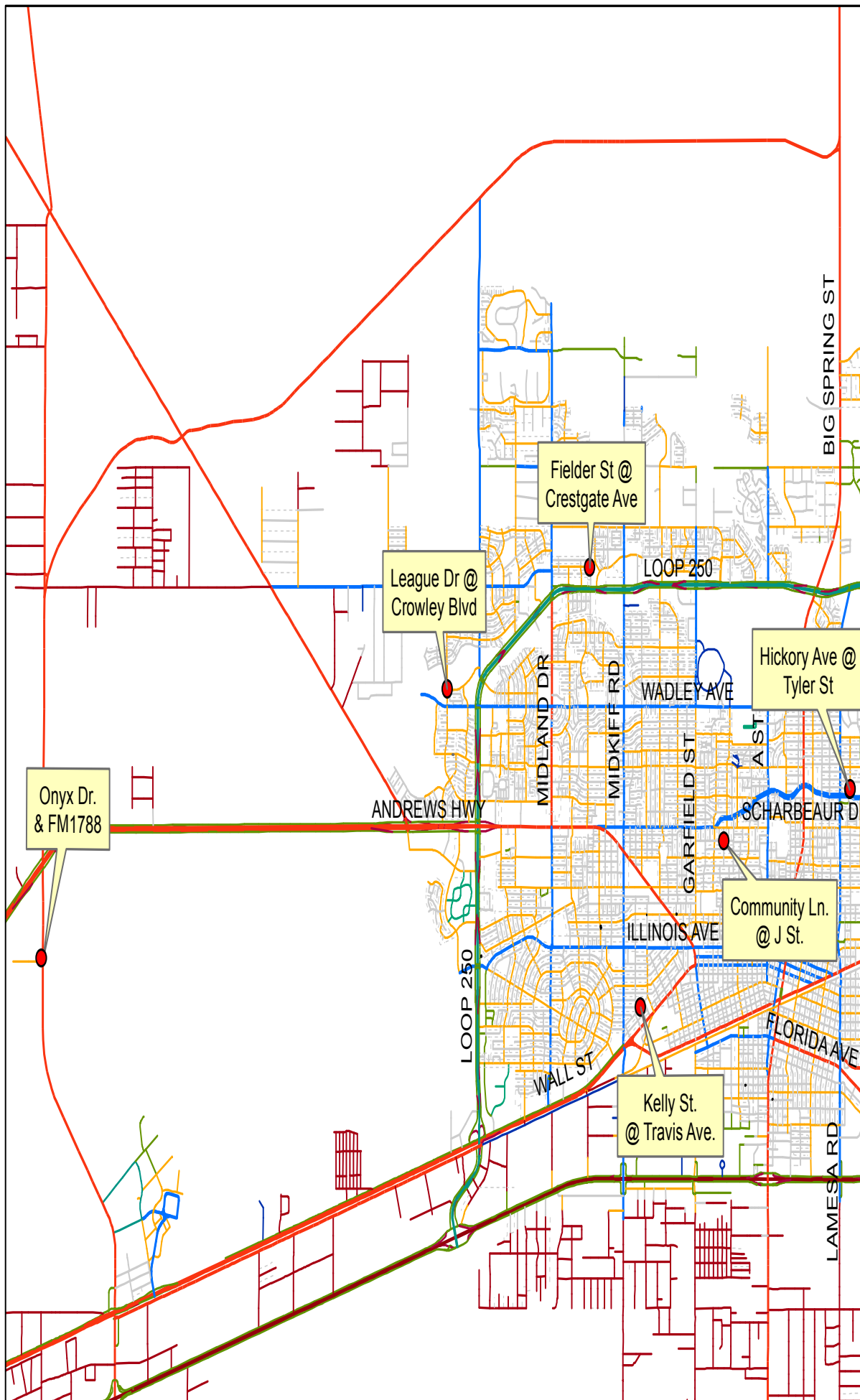
TRANSPORTATION DIVISION

● Proposed stop
sign installations



Map by TC 4/24/12

32.38





City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: June 12, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: V-12-005; BRW Investments

Purpose:

Consider an ordinance on a request by BRW Investments for the vacation of a 0.08-acre portion of the rights-of-way of W. Louisiana Avenue and N. Colorado Street adjacent to the south 200 feet of the west half of Block 12, Homestead Addition, City and County of Midland, Texas.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

There is no cost to the City associated with this application. A payment to the City for one-half the assessed value, being \$1742.40, must be received prior to second reading.

Discussion:

Andrew Mellen of the West Company is representing BRW Investments concerning the replatting of the south 200 feet of the west half of the block located at the northeast corner of Colorado Street and Louisiana Avenue. They are requesting the vacation of the above described right-of-way to improve site development and lot size for a new office building.

This property is currently vacant, as is the entire block, with the exception of a small office on the lot to the north. This property is located to the southeast of the YMCA that fronts Big Spring Street.

The area to be vacated is a 10' wide strip that abuts the property line rather than the roadside and has not been used for public travel. If vacated, the new lot line will still be approximately nine feet behind the Louisiana Ave. and Colorado St. curb edges. The area is approximately 3484.80 square feet and is valued at \$1.00 per square foot which establishes its value at \$3484.80. As there are existing utilities in this right-of-way, the applicant will have to dedicate this area as an easement which will be covered in the platting phase. Therefore, a payment to the City for one-half the assessed value, being \$1742.40, must be received prior to second reading.

Attachments:

Application, Map, Land Survey

ORDINANCE NO.

AN ORDINANCE VACATING AND ABANDONING A 0.08-ACRE PORTION OF WEST LOUISIANA AVENUE RIGHT-OF-WAY AND NORTH COLORADO STREET RIGHT-OF-WAY ADJACENT TO THE SOUTH 200 FEET OF THE WEST HALF OF BLOCK 12, HOMESTEAD ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTHEAST CORNER OF NORTH COLORADO STREET AND WEST LOUISIANA AVENUE); ADOPTING THE APPRAISAL BY THE CITY MANAGER OF \$1,742.40; RETAINING A GENERAL UTILITY EASEMENT; AND ORDERING RECORDATION BY THE CITY SECRETARY

WHEREAS, it has been determined by the Midland City Council that a 0.08-acre portion of West Louisiana Avenue right-of-way and North Colorado Street right-of-way adjacent to the south 200 feet of the west half of Block 12, Homestead Addition, City and County of Midland, Texas, is no longer needed for public use; and

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

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

WHEREAS, the City Manager has appraised the value of the City's property interest in the right-of-way at \$1,742.40 , as shown in Exhibit "B" attached hereto and incorporated herein by reference; and

WHEREAS, the Council finds it to be in the public interest to abandon and vacate the right-of-way described herein, and to retain a general utility easement;

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

SECTION ONE. That the 0.08-acre portion of West Louisiana Avenue right-of-way and North Colorado Street right-of-way adjacent to the south 200 feet of the west half of Block 12, Homestead Addition, City and County of Midland, Texas, as described in Exhibit

“A” attached hereto and made a part hereof for all legal purposes, is hereby vacated and abandoned for all public purposes. Provided, however, that the City is hereby only abandoning the public interest in said property and this ordinance in no way affects any private easement or access easement which abutting property owners may have in said right-of-way.

SECTION TWO. That this Ordinance shall not be effective until the City of Midland has received from the property owner(s) the sum of \$1,742.40.

SECTION THREE. That the City herein retains a general utility easement along, on, under, above and across said right-of-way.

SECTION FOUR. That upon the City’s receipt of the sum set forth in Section Two hereof, the City Secretary is hereby authorized and directed to file a certified copy of this Ordinance with the County Clerk of Midland County, Texas, for purposes of recording in the Official Records of Midland County, Texas.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2012; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2012, at a regular meeting of the City Council:

Council members voting “AYE”:

Council members voting “NAY”:

PASSED AND APPROVED THIS _____ day of _____, A.D., 2012.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Jim Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

Case Number: V-12-005

CITY OF MIDLAND
Planning Division

APPLICATION TO VACATE RIGHT-OF-WAY

- I. Application is hereby made to the City Council to vacate the following public right-of-way or easement:
EAST 10' OF COLORADO STREET RIGHT-OF-WAY AND
NORTH 10' OF LOUISIANA AVENUE RIGHT-OF-WAY
- II. Reason for Request: IMPROVE SITE DEVELOPMENT AND LOT SIZE
- III. Reasons, in applicant's opinion, why the requested vacation will not adversely affect the public welfare or will contribute to it in a positive way:
ADEQUATE RIGHT-OF-WAY FOR PUBLIC TRANSPORTATION

IV. REQUIRED ITEMS:

1. Applicant(s) Information: (Attach extra sheets as necessary.)

Name: ANDREW L. MELLON, P.E. / BRW Investments

Address: 110 W. LOUISIANA AVE. STE. 110 Phone: 687-0865

Street

MIDLAND

City

TX

State

79701

Zip Code

2. ☒ Metes and bounds description of property to be vacated.
3. ☒ Map showing property to be vacated and its relationship to the applicant's property.
- NA. Letter(s) of Concurrence signed by adjacent property owner(s). (See attached)

5. Application Fee: \$300.00

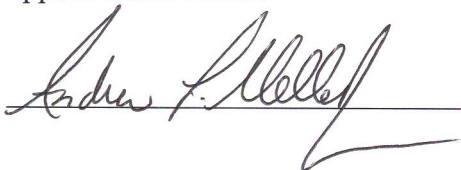
Required items Attached? Date Received: 1. _____ 2. _____ 3. _____ 4. _____ 5. _____

- V. Clearance is needed from the following utility companies: City of Midland / Atmos Energy
Caprock Energy / TXU Electric / AT&T / Suddenlink Cable TV Co. / Grande Communications

The City will route the request to these companies, but it is the applicant's responsibility to ensure clearance has been obtained and to work out any issues that may arise.

VI. Policies:

1. If the vacation request involves only a portion of a section right-of-way, such that approval would not affect the public's ability to travel along said right-of-way, then the request will be scheduled for consideration by the City Council. No public hearing will be needed.
2. If the vacation request involves an entire section of right-of-way, such that approval would cause the public to lose all rights to use it, then the following procedures apply:
 - a. Nearby land owners who have a reasonable expectation to use said right-of-way, as determined by the Planning Division, must first agree to the proposed vacation. It is the applicant's responsibility to obtain a letter of concurrence signed by the affected land owners.
 - b. If all letters are received indicating that the affected land owners agree to the request, then a public hearing before the City Council will be scheduled. Public notice of the hearing will be mailed by the Planning Division to land owners within 1,000 feet of the affected right-of-way.
 - c. If a request is approved, the right-of-way shall be divided into two equal parts, with each half becoming the property of the respective abutting owner. If the applicant desires to own the entire width, he or she must negotiate with the opposite land owner.

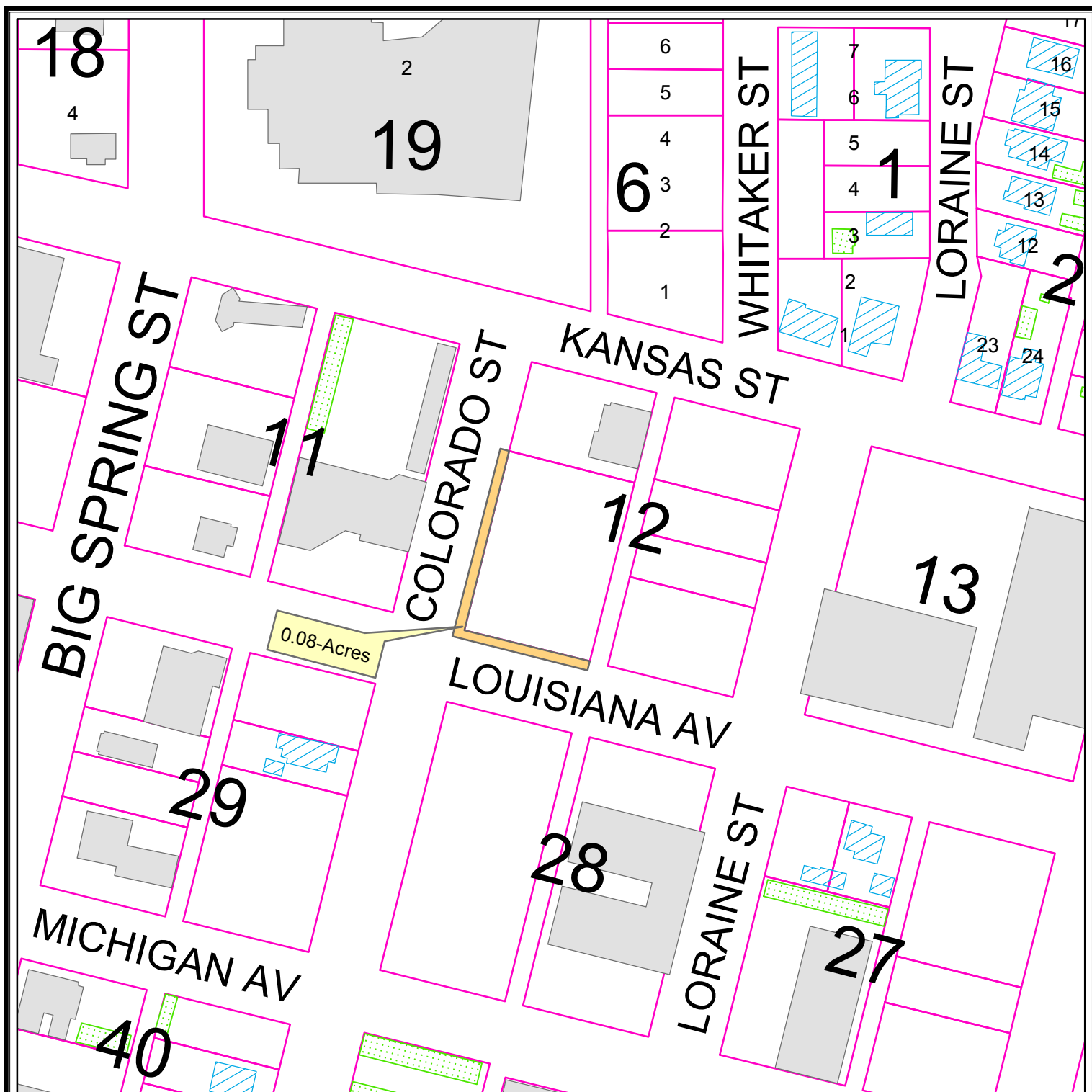
Signature of applicant:  Date: 4/13/12

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

To be completed by City of Midland staff:

According to the policy guidelines outlined above, a public hearing will ____ will not ____ be required.

FOR OFFICE USE ONLY	
Rec'd. By: <u></u>	Date: <u>4/13/12</u>
Assigned: <u>KV</u>	
For: _____	On: _____



LOCATION MAP

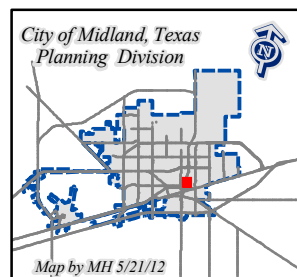
V - 12 - 005

Scale: 1" = 200'

Consider a request for the vacation of a 0.08-acre portion of the rights-of-way of W. Louisiana Avenue and N. Colorado Street adjacent to the south 200 feet of the west half of Block 12, Homestead Addition, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



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Office of
City Manager

300 N. Loraine
P.O. Box 1152
Midland, TX 79702-1152

432.685.7203
Fax 432.686.1600

June 4, 2012

Midland City Council
City of Midland, Texas

RE: Request for vacation of a 0.08-acre portion of West Louisiana Avenue right-of-way and North Colorado Street right-of-way adjacent to the south 200 feet of the west half of Block 12, Homestead 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 \$1,742.40. The property can be vacated and recorded in the Midland County Clerk's office when the City of Midland has received this amount from the adjoining property owner(s).

Very truly yours,

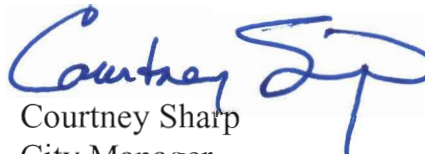

Courtney Sharp
City Manager

Exhibit "B"

L:\Ordinances\Planning\Vacate & Abandon\2012\Louisiana Avenue & Colorado Street, Blk 12, Homestead Addition Appraisal Letter.wpd

City of Midland
City Secretary's Office
Interoffice Memorandum

Date: June 7, 2012
To: The Honorable Mayor Perry and Council
From: Amy M. Turner, City Secretary
Subject: Membership - Boards and Commissions

Attached is an updated membership listing for the City's Boards and Commissions effective June 12, 2012. Remaining expirations and vacancies are listed below:

CONSTRUCTION BOARD OF ADJUSTMENTS AND APPEALS –Two terms expired on September 30, 2011 and two vacancies for Alternate terms expired on September 30, 2007.

MIDLAND FOOTBALL-SOCCER AND BASEBALL COMPLEX DEVELOPMENT CORPORATION – Two terms expired in November 2011.

MIDLAND HIGHER EDUCATION FACILITIES CORPORATION – Three vacancies expired on January 1, 2007, one term expired on January 1, 2009, two terms expired on January 1, 2010 and one term expired on January 1, 2012.

MIDLAND HOUSING FINANCE CORPORATION –One vacancy expired on September 30, 2010 and two terms expired on September 30, 2011.

MIDLAND MUNICIPAL MANAGEMENT DISTRICT BOARD – One vacancy.

PARKS AND RECREATION COMMISSION –One term expired on September 30, 2011.

PERMIAN BASIN AIRPORT BOARD – Two terms expired on September 30, 2010 (Carlsbad and Hobbs New Mexico) and three terms expired on September 30, 2011.

PERMIAN BASIN COMMUNITY CENTER FOR MENTAL HEALTH AND MENTAL RETARDATION – One term expiring in June 2012.

PLANING AND ZONING COMMISSION – One term expired on September 30, 2011.

TAX INCREMENT REINVESTMENT ZONE BOARD – One term expired on March 20, 2009 (one College representative), seven terms expired on March 20, 2010, two terms expired March 20, 2011 and two terms expired on March 20, 2012. (Four City representatives, two Hospital representatives, two County representatives and one College representative.)

ZONING BOARD OF ADJUSTMENT AND AIRPORT ZONING BOARD OF ADJUSTMENT- Two terms expired on September 30, 2011, one vacancy for Alternate term expired on September 30, 2006 and one vacancy for Alternate term expired September 30, 2009.

BOARDS AND COMMISSIONS OF THE CITY OF MIDLAND

June 12, 2012

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 2012	Sept 30 2015
Mike Owen	10/07	Sept 30 2013	Sept 30 2013
Gregory F. Baiano	09/10	Sept 30 2013	Sept 30 2016
John T. Echols	09/10	Sept 30 2013	Sept 30 2016
Dallas L. Smith	09/10	Sept 30 2013	Sept 30 2016
Earl Erdmann, Chairman	09/08	Sept 30 2014	Sept 30 2014
Brooks Smith	11/11	Sept 30 2014	Sept 30 2017
Don "Woody" Woodward	11/11	Sept 30 2014	Sept 30 2017

Ex-Officio members are Harry Spannaus, the City Manager and the City Attorney. The Secretary is the Director of Aviation.

ANIMAL SERVICES ADVISORY COMMISSION

(Advisory)

(Membership - 6; Terms - 4 Years)

	<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

* Indicates appointment to an unexpired term.

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>
Vicky Hailey	09/10	Sept 30 2012	Sept 30 2014
Reggie Lawrence	09/10	Sept 30 2012	Sept 30 2014
Lena Margita	10/09	Sept 30 2013	Sept 30 2013
Alonda Massey	11/11	Sept 30 2013	Sept 30 2015
Tim Bryson	11/11	Sept 30 2013	Sept 30 2015

CONSTRUCTION BOARD OF ADJUSTMENTS AND APPEALS

(Decision Making)

(Membership - 7; Terms - 4 Years expiring 2-2-2-1)

To sunset December 31, 2011

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Joe Molina, Jr.	09/03	Sept 30 2011	Sept 30 2011
James W. Rigger (Architect)	09/99	Sept 30 2011	Sept 30 2011
Don Woodward (At Large)	11/11*	Sept 30 2012	Sept 30 2020
Richard D. Dunham	10/05	Sept 30 2013	Sept 30 2013
Greg Turner	03/11*	Sept 30 2013	Sept 30 2021
Chris Repman	10/07*	Sept 30 2014	Sept 30 2018
Jay K. Bradford	09/10	Sept 30 2014	Sept 30 2018

ALTERNATES:

Vacancy	Sept 30 2007
Vacancy	Sept 30 2007

HOTEL/MOTEL TAX ADVISORY BOARD

(Advisory)

(Membership - 7; Terms - 2 Years Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Tyler Wolfe	04/11*	Sept 30 2012	Sept 30 2012
Jon S. Blair	02/09*	Sept 30 2012	Sept 30 2014
Karmen Hendrix Bryant	02/12*	Sept 30 2013	Sept 30 2017
David Baur	09/10	Sept 30 2013	Sept 30 2014
Lisa Grissom	9/09	Sept 30 2013	Sept 30 2013
Steve Jones	02/09*	Sept 30 2013	Sept 30 2013
Alex Singh-Hotel/Motel Assn. Rep.	09/09	Dec 31 2013	Assn. Appt.
Vicky Hailey (Liaison Officer)			

* Indicates appointment to an unexpired term.

HOUSING AUTHORITY COMMISSION

(Membership - 5; Terms - 2 Years expiring 2 even & 3 odd.)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Rosie Gransberry	06/08*	Oct 2012	Oct 2012
Norma Duran	11/08*	Oct 2012	Oct 2014
Gregory Maes	11/11	Oct 2013	Oct 2015
Carla Repman, Vice Chairman	09/09	Oct 2013	Oct 2013
James A. Blischke	01/10	Oct 2013	Oct 2013

ALTERNATES:

Dennis Bade	11/11	Oct 2013	Oct 2015
-------------	-------	----------	----------

JOINT ECONOMIC DEVELOPMENT TASK FORCE

(Ad Hoc)

	<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	01/02
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.

• Indicates appointment to an unexpired term.

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
Greg Turner	(CC)	12/11	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>
Michael Trost	02/11*	Jan 14 2013	Jan 14 2019
Cary J. Love	12/09	Jan 14 2013	Jan 14 2016
Gary Douglas	11/11*	Jan 14 2013	Jan 14 2019
Laura Roman	01/08	Jan 14 2014	Jan 14 2014
Robert Rendall, Chairman	01/09*	Jan 14 2014	Jan 14 2017

- Indicates appointment to an unexpired term.

MIDLAND FRESH WATER SUPPLY DISTRICT #1

(Ad Hoc)

(3 Non Voting Members)

	<u>Appt Date</u>
Wes Perry	05/12
Gary Harris	05/12
Wayne Merritt	05/12

**MIDLAND FOOTBALL-SOCCER AND BASEBALL COMPLEX
DEVELOPMENT CORPORATION**

(Decision Making)

Membership - 7; Terms - 2 Years)

	<u>Appt Date</u>	<u>Eligibility Term Expires</u>	<u>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 2012	Jan 1 2012

- 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
Raymond McCarthy	09/08	Sept 30 2012	Sept 30 2012
Michael Trost	09/08	Sept 30 2012	Sept 30 2012
John H. James	09/09	Sept 30 2013	Sept 30 2013
Karen York	06/09*	Sept 30 2013	Sept 30 2013
Guy McKenize	03/11*	Sept 30 2013	Sept 30 2015

- 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>
Richard D. Dunham (Realtor/Petro Eng.)	01/10	Sept 30 2013	Sept 30 2016
D. Patrick Darden (Petroleum Eng.)	02/10	Sept 30 2012	Sept 30 2015
Don Eubank (Drilling Eng.)	04/10	Sept 30 2012	Sept 30 2015
Paul Brown	11/11	Sept 30 2014	Sept 30 2017
David Rosen	11/11	Sept 30 2014	Sept 30 2017

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>
Berry Simpson	09/10*	Sept 30 2011	Sept 30 2017
Amanda McCann	11/11*	Sept 30 2012	Sept 30 2018
David Ham	09/06	Sept 30 2012	Sept 30 2012
Charles A. Spence	01/10*	Sept 30 2013	Sept 30 2016
Susan Nichols	02/06*	Sept 30 2013	Sept 30 2013
Eric L. West	10/07	Sept 30 2013	Sept 30 2013
Kenny Harper	03/12*	Sept 30 2013	Sept 30 2019
P. Lourcey Sams	09/08	Sept 30 2014	Sept 30 2014
Tina Corbett	09/08	Sept 30 2014	Sept 30 2014

PERMIAN BASIN AIRPORT BOARD

(Advisory)

(Membership - 30; Terms - 1 year.)

	<u>Appt. Date</u>	<u>Term Expires</u>
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10 Members of the Airport Planning and Development Board

Bob Forrest (Carlsbad, NM)	10/04	Sept 30 2010
Larry Shed (Hobbs, NM)	10/01	Sept 30 2010
Larry Gill (Abilene)	10/10	Sept 30 2011
Isabelle Blanchard (Pecos)	10/10	Sept 30 2011
David Harrell (Snyder)	10/07	Sept 30 2011
Elvin Brownlee III (Andrews)	12/10*	Sept 30 2012
Jim Little (Big Spring)	09/03	Sept 30 2012
David Hardwick (Ft. Stockton)	10/07	Sept 30 2012
Don Bethel (Lamesa)	02/91	Sept 30 2012
Henry Cutbirth (Monahans)	09/05	Sept 30 2012

- Indicates appointment to an unexpired term.

PERMIAN BASIN AIRPORT BOARD CON'T

	<u>Appt. Date</u>	<u>Term Expires</u>
Willie Taylor (Odessa)	02/00	Sept 30 2012
Gloria Pena (Odessa)	03/03*	Sept 30 2012
Barbara Graff (Odessa)	06/10*	Sept 30 2012
Luis E. Elguezabal (San Angelo)	10/07	Sept 30 2012
Lex Hinds (Seminole)	10/08	Sept 30 2012
Glenn Wortham (Sweetwater)	10/07	Sept 30 2012
Lance Goodrich (Artesia, NM)	09/09	Sept 30 2012
Larry Fry (Roswell, NM)	09/00	Sept 30 2012

Ex-Officio members are the City Manager and the City Attorney. The Secretary is the Director of Aviation.

**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 2012	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

- Indicates appointment to an unexpired term.

PLANNING AND ZONING COMMISSION

(Advisory & Decision Making)

(Membership - 9; Terms - 3 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Becky Ferguson, Chairman	03/04*	Sept 30 2011	Sept 30 2011
Kevin Wilton	09/08*	Sept 30 2012	Sept 30 2015
Bill Woodruff	02/05*	Sept 30 2012	Sept 30 2012
Royce Watkins	02/08*	Sept 30 2012	Sept 30 2015
Karen York	01/10*	Sept 30 2012	Sept 30 2018
Jane Wolf	03/09*	Sept 30 2013	Sept 30 2016
Cindy Lanning	09/10	Sept 30 2013	Sept 30 2016
Jay Norris	11/11	Sept 30 2014	Sept 30 2017
Galen Gatten, Vice Chairman	09/08	Sept 30 2014	Sept 30 2014

ALTERNATES:

Tony Carrillo	11/11	Sept 30 2014	Sept 30 2017
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TAX INCREMENT REINVESTMENT ZONE BOARD

(Decision Making)

(Membership - 12; Terms - 2 Years, or 3 Years if appointed after 3/1/07)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Neil Florer (College)	07/01	Mar 20 2009	Mar 20 2009
Dan Rush (City)	07/01	Mar 20 2010	Mar 20 2010
Mark T. Wellen (City), Vice Chairman	07/01	Mar 20 2010	Mar 20 2010
Jay Reynolds (Hospital)	03/02	Mar 20 2010	Mar 20 2010
Ralph Way (College)	07/01	Mar 20 2010	Mar 20 2010
Jimmy Davis (Hospital)	03/07	Mar 20 2010	Mar 20 2013
Randy Prude (County)	03/07	Mar 20 2010	Mar 20 2013
Judge Mike Bradford (County)	01/07*	Mar 20 2010	Mar 20 2014
C. Mark Wheeler (City), Treasurer	04/08	Mar 20 2011	Mar 20 2014
Bob Lanier (City), Secretary	04/03	Mar 20 2011	Mar 20 2011
Brent Kennedy (City)	06/09	Mar 20 2012	Mar 20 2015
John L. Kennedy (City)	10/09*	Mar 20 2012	Mar 20 2018

Ex-Officio member is President, Board of Trustees, Midland Independent School District

- Indicates appointment to an unexpired term.

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>
Trudi Edwards	10/07	Sept 30 2011	Sept 30 2011
Manny Ribera	10/07	Sept 30 2011	Sept 30 2011
Todd Byars	02/08*	Sept 30 2012	Sept 30 2014
Ken Morgan	01/10*	Sept 30 2012	Sept 30 2014
Carla Repman	01/10*	Sept 30 2013	Sept 30 2015

ALTERNATES: (not applicable to Airport Zoning)

Vacancy		Sept 30 2006	
Vacancy		Sept 30 2009	
Annabel Holguin	11/11	Sept 30 2013	Sept 30 2015
Greg Turner	11/11	Sept 30 2013	Sept 30 2015

- * Indicates appointment to an unexpired term.

MINUTES OF THE REGULAR COUNCIL MEETING

CITY OF SNYDER

NOVEMBER 7, 2011

A Regular Meeting of the City Council of the City of Snyder, Texas was called to order at 5:30 p.m. p.m. by Mayor Terry Martin with the following members present:

Councilmember Bill Harris
Councilmember Vernest Tippens
Councilmember Marjann Morrow
Councilmember Lanny Covey
Councilmember Duane Summers

and the following absent:

Councilmember Stephanie Ducheneaux

ITEM I. INVOCATION:

The invocation was given by Councilmember Bill Harris.

ITEM II. RECOGNIZE EMPLOYEE OF THE MONTH:

Mayor Terry Martin recognized David Yandrich as the Employee of the Month.

ITEM III. RECOGNIZE VISITORS:

Mayor Terry Martin recognized the following visitors:

Bill Lavers, DCOS; Joe Coronado, DCOS; Dennis Westmoreland, DCOS; Jeff Ulmann, Knight & Partners; Melissa Elam, Chamber of Commerce; Daniel Schlegel, Scurry County Museum; Bill Crist, Snyder Daily News; Marianne Randals, Scurry County Commissioner.

ITEM IV. VISITORS/CITIZENS FORUM:

Daniel Schlegel, Scurry County Museum announced that Friday, November 11th, Veterans Day, the Museum will have its 2nd Annual Veterans Day Visit and invited the public to attend.

ITEM V. PUBLIC HEARING: Consider Councilmember district populations and boundaries based on the 2010 census.

1. Open. Time: 5:36 p.m.
2. Discussion: None.
3. Close. Time: 5:37 p.m.

ITEM VI. MINUTES:

1. Councilmember Marjann Morrow made the motion to approve the minutes of the Regular Council Meeting, October 3, 2011.

The motion was seconded by Councilmember Bill Harris and passed with the following vote:

10. Councilmember Bill Harris made the motion to approve Resolution R111107D setting standards for a Juvenile Case Manager as captioned below:

A RESOLUTION ADOPTING ETHICAL AND TRAINING STANDARDS FOR JUVENILE CASE MANAGERS EMPLOYED BY THE CITY OF SNYDER, PROVIDING FOR IMPLEMENTATION OF SAID STANDARDS, AND PROVIDING FOR PERIODIC REVIEW TO ENSURE IMPLEMENTATION OF THE REQUISITE STANDARDS

The motion was seconded by Councilmember Marjann Morrow and passed with the following vote:

Ayes: All members present voted yes.
Noes: None.

11. Councilmember Bill Harris made the motion to approve Resolution R111107E accepting Texas CDBG Program Contract Number 710871 and authorizing final payment to Whitewater Construction, Inc.

The motion was seconded by Councilmember Vernest Tippens and passed with the following vote:

Ayes: All members present voted yes.
Noes: None.

12. Councilmember Marjann Morrow made the motion to approve the investment report for quarter ending September 30, 2011.

The motion was seconded by Councilmember Lanny Covey and passed with the following vote:

Ayes: All members present voted yes.
Noes: None.

13. Councilmember Duane Summers made the motion to approve on first reading Ordinance No. 1040 amending budget Ordinance No. 1029 as captioned below:

AN ORDINANCE AMENDING ORDINANCE NO. 1029 AND MAKING APPROPRIATION FOR THE SUPPORT TO THE CITY GOVERNMENT FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2011 AND ENDING SEPTEMBER 30, 2012.

The motion was seconded by Councilmember Marjann Morrow and passed with the following vote:

Ayes: All members present voted yes.
Noes: None.

14. Councilmember Lanny Covey made the motion to approve the asset forfeiture report by Snyder Police Department.

The motion was seconded by Councilmember Bill Harris and passed with the following vote:

Ayes: All members present voted yes.
Noes: None.

15. Councilmember Bill Harris made the motion to approve the appointment of Mr. John Rogotzke to the Permian Basin Airport Board.



The motion was seconded by Councilmember Duane Summers and passed with the following vote:

Ayes: All members present voted yes.

Noes: None.

ITEM IX. EXECUTIVE SESSION: Time: _____

Council may act in Open Session on the following item:

1. Personnel Matters. (Section 551.074) Evaluation of City Manager.

ITEM X. RECONVENE IN OPEN SESSION: Time: _____

1. Councilmember Lanny Covey made the motion to table the Executive Session until the next meeting.

The motion was seconded by Councilmember Marjann Morrow and passed with the following vote:

Ayes: All members present voted yes.

Noes: None.

ITEM XI. INFORMATION:

1. Monthly cash disbursement report.
2. Monthly personnel report.
3. The Annual Fireman's Thanksgiving Award Ceremony will be Tuesday, November 22nd at 6:30 p.m. at Martha Ann Woman's Club.
4. The Annual Christmas Party and Awards Ceremony will be Friday, December 16, at 6:30 p.m. at Martha Ann Woman's Club.
5. Next Regular Meeting is December 5, 2011.

ITEM XII. ADJOURNMENT:

1. Councilmember Bill Harris made the motion to adjourn.

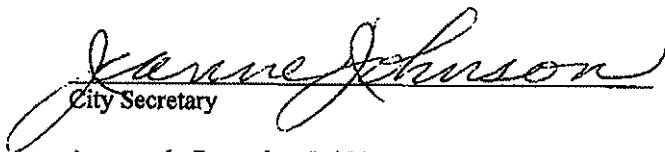
The motion was seconded by Councilmember Lanny Covey and passed with the following vote:

Ayes: All members present voted yes.

Noes: None.


Mayor

ATTEST:


City Secretary

Approved: December 5, 2011.