

CITY OF MIDLAND, TEXAS
BRIEFING SESSION AGENDA
June 25, 2013 - 9:00 AM
BASEMENT CONFERENCE ROOM
300 North Loraine
Midland, Texas

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

1. Receive an update from the Parks & Recreation Division regarding parks rebranding.
2. Receive a presentation from AMD Engineering regarding the conceptual layout for Tradewinds Boulevard Extension (Thomason Drive - Gateway Plaza Addition).

AGENDA FOR CITY COUNCIL MEETING

June 25, 2013 – 10:00 AM

Council Chamber - City Hall

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

OPENING ITEMS

1. Invocation - Pastor Randell Everett, First Baptist Church
2. Pledge of Allegiance

PRESENTATIONS

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

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 June 11, 2013.
6. Consider a resolution adding one (1) special meeting, on August 6, 2013, and two (2) regular meetings, one on August 20, 2013, and the second on August 26, 2013, to the City Council meetings scheduled for the 2013 calendar year. (FINANCE) (2013 - 177)
7. Consider a resolution approving the execution of an agreement for computer related consultation services through the Texas Department of Information Resources at a total cost of \$139,505.00; and this item was not bid but purchased through a State of Texas Cooperative Program. (GENERAL

SERVICES) (2013 - 178)

8. Consider a resolution awarding a contract for the Water, Wastewater and Fire Hydrant Taps Project to TEC Excavation, Incorporated, of Midland, Texas, at a total cost of \$500,000.00; and appropriating funds. (GENERAL SERVICES) (2013 - 179)
9. Consider a resolution authorizing issuance of a Request for Qualifications for an engineering/architectural firm to analyze and develop the Hike and Bike Trail Plan for the Community Services Department. (GENERAL SERVICES) (2013 - 180)
10. Consider a resolution authorizing the purchase of seventeen (17) mobile radios in assorted configurations, with accessories, from Holsum Bakers, Incorporated, dba Caprock Communications of Midland, Texas; said purchase was not bid but purchased as a sole source; and the costs for the radios shall be approximately \$77,579.25. (GENERAL SERVICES) (2013 - 181)
11. Consider a resolution approving plans and specifications prepared by Parkhill, Smith and Cooper, Incorporated, and authorizing advertisement for bids for the Capital Improvement Projects described as Northwest Taxiway Extension Project - Phase II (7083); Perimeter Emergency Roadway and Gates Rehabilitation (7082); and Taxiway P Run-Up (7103) at the Midland International Airport. (AIRPORTS) (2013 - 182)
12. Consider a resolution authorizing a right-of-way license between the City of Midland, Texas and Atlas Pipeline Mid-Continent WestTex; said right-of-way license is for entering the City of Midland's right-of-way for the purpose of placing, constructing, operating, repairing, maintaining, replacing and removing one (1) pipeline, for the transportation of oil and gas materials and to have the right of ingress and egress at convenient points for such purpose; the pipeline is located within the City of Midland right-of-way, Sections 9 and 10, Block 38, T-2-S, T&P RR Co. Survey, Midland County, Texas; the license term is for five (5) years, commencing with the date of this license and shall automatically renew at the end of the term for one additional five (5) year term upon 120 days written request prior to expiration. (ENGINEERING SERVICES) (2013 - 183)
13. Consider a resolution authorizing a right-of-way license between the City of Midland, Texas and Atlas Pipeline Mid-Continent WestTex; said right-of-way license is for entering the City of Midland's right-of-way for the purpose of placing, constructing, operating, repairing, maintaining, replacing and removing one (1) pipeline, for the transportation of oil and gas materials and to have the right of ingress and egress at convenient points for such purpose; the pipeline is located within the City of Midland right-of-way, Section 10, Block 38, T-2-S, T&P RR Co. Survey, Midland County, Texas; the license term is for five (5) years, commencing with the date of this license and shall automatically renew at the

end of the term for one additional five (5) year term upon 120 days written request prior to expiration. (ENGINEERING SERVICES) (2013 - 184)

14. Consider a resolution authorizing a right-of-way license between the City of Midland, Texas and Atlas Pipeline Mid-Continent WestTex; said right-of-way license is for entering the City of Midland's right-of-way for the purpose of placing, constructing, operating, repairing, maintaining, replacing and removing two (2) pipelines, for the transportation of oil and gas materials and to have the right of ingress and egress at convenient points for such purpose; the pipelines are located within the City of Midland right-of-way, Sections 4, 9, and 16, Block 37, T-3-S, T&P RR Co. Survey, Midland County, Texas; the license term is for five (5) years, commencing with the date of this license and shall automatically renew at the end of the term for one additional five (5) year term upon 120 days written request prior to expiration. (ENGINEERING SERVICES) (2013 - 185)
15. Consider a resolution authorizing a right-of-way license between the City of Midland, Texas and Atlas Pipeline Mid-Continent WestTex; said right-of-way license is for entering the City of Midland's right-of-way for the purpose of placing, constructing, operating, repairing, maintaining, replacing and removing one (1) pipeline, for the transportation of oil and gas materials and to have the right of ingress and egress at convenient points for such purpose; the pipeline is located within the City of Midland right-of-way, Sections 2 and 3, Block 37, T-3-S, T&P RR Co. Survey, Midland County, Texas; the license term is for five (5) years, commencing with the date of this license and shall automatically renew at the end of the term for one additional five (5) year term upon 120 days written request prior to expiration. (ENGINEERING SERVICES) (2013 - 186)
16. Consider a resolution authorizing a right-of-way license between the City of Midland, Texas and Atlas Pipeline Mid-Continent WestTex; said right-of-way license is for entering the City of Midland's right-of-way for the purpose of placing, constructing, operating, repairing, maintaining, replacing and removing one (1) pipeline, for the transportation of oil and gas materials and to have the right of ingress and egress at convenient points for such purpose; the pipeline is located within the City of Midland right-of-way, Section 44, Block 38, T-1-S, T&P RR Co. Survey, Midland County, Texas; the license term is for five (5) years, commencing with the date of this license and shall automatically renew at the end of the term for one additional five (5) year term upon 120 days written request prior to expiration. (ENGINEERING SERVICES) (2013 - 187)
17. Consider a resolution authorizing a right-of-way license between the City of Midland, Texas and Atlas Pipeline Mid-Continent WestTex; said right-of-way license is for entering the City of Midland's right-of-way for the purpose of placing, constructing, operating, repairing, maintaining, replacing and removing one (1) pipeline, for the transportation of oil and gas materials and to have the right of ingress and egress at convenient points for such purpose; the pipeline is located within the City of Midland right-of-way, Sections 30, 32, and 41, Block

38, T-1-S, T&P RR Co. Survey, Midland County, Texas; the license term is for five (5) years, commencing with the date of this license and shall automatically renew at the end of the term for one additional five (5) year term upon 120 days written request prior to expiration. (ENGINEERING SERVICES) (2013 - 188)

18. Consider a resolution authorizing the execution of a Public Improvement Development Agreement with SBC, LP for development of Westridge Park Addition, Section 23, City and County of Midland, Texas (Generally located at the southeast corner of Avalon Drive and Deauville Boulevard); and authorizing payment in the amount of \$26,110.00 therefor; said agreement being authorized by Section 395.081 of the Texas Local Government Code. (ENGINEERING SERVICES) (2013 - 189)

SECOND READINGS

19. Consider an ordinance on second reading temporarily closing a portion of the east/west alleys abutting the north and south boundary lines of Lot 1, Block 1, Fairgrounds Addition, from the east right-of-way line of Fairgrounds Road east to their intersection with the north/south alley at Midland Draw and the north/south alley abutting the east boundary line of Lot 1, Block 1, Fairgrounds Addition at Midland Draw in the City of Midland, Texas; 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) (9151)

PUBLIC HEARINGS

20. At approximately 10:30 A.M. 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 the intersection of Camp Street and Dakota Avenue); and making said permit subject to certain special conditions and restrictions contained herein. (DEVELOPMENT SERVICES) (2013 - 190)
21. At approximately 10:33 A.M. hold a public hearing and consider an ordinance establishing the zoning classification of the area indicated as being a 40.498-acre tract of land out of Sections 37, 38 and 48, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas, and being more specifically described by metes and bounds in Section One hereof, as an FD, Future Development District; said tract is generally located at the south extension of Avalon Drive, approximately 700 feet south of Hall of Fame Boulevard; 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) (9152)

22. At approximately 10:36 A.M. hold a public hearing and consider an ordinance establishing the zoning classification of the area indicated as being a 305.17-acre tract of land out of Section 37, Block 41, T-1-S, T&P RR Co. Survey, Midland County, Texas, and being more specifically described by metes and bounds in Section One hereof, as an LI, Light Industrial District; said tract is generally located on the north side of State Highway 191, west of North Farm-to-Market Road 1788; 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) (9153)
23. At approximately 10:39 A.M. hold a public hearing and consider an ordinance establishing the zoning classification of the area indicated as being a 2.47-acre tract of land out of Section 8, Block 40, T-2-S, T&P RR Co. Survey, Midland County, Texas, and being more specifically described by metes and bounds in Section One hereof, as an IP-2, Industrial Park District; said tract is generally located on the west side of Wright Drive, approximately 850 feet south of Loop 40; 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) (9154)
24. At approximately 10:42 A.M. hold a public hearing and consider an ordinance changing the zoning classification by amending Chapter One, Title XI, of the City Code of Midland, Texas, by permitting Lot 21, Block 3, Wydeewood Estates, Section 33, 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 south side of Wadley Avenue, approximately 450 east of Sunburst 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) (9155)
25. At approximately 10:45 A.M. hold a public hearing and consider an ordinance changing the zoning classification by amending Chapter One, Title XI, of the City Code of Midland, Texas, by permitting Lot 3, Block 3, the adjacent vacated 0.162-acre east/west alley, "A" Street Community Center, Section 3, and Lot 1C, Block 3, "A" Street Community Center, Section 7, City and County of Midland, Texas, which is presently zoned PD, Planned District for a Community Center, in part, and PD, Planned District for a Shopping Center, in part, to be used as an Amended Planned District (Generally located near the southwest corner of the intersection of West Wadley Avenue and North "A" 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) (9156)

DEVELOPMENT SERVICES

26. Consider an ordinance amending Title V, "Business Regulations", Chapter 10, "Sidewalk Sales and Selling from Fixed Locations", Section 2, "Permit and License Required if Selling from a Fixed Location", and Section 9, "Duty of Police", so as to allow licensed food vendors to sell food at a location adjacent to the Midland County Courthouse; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of five hundred dollars (\$500.00); and ordering publication. (DEVELOPMENT SERVICES) (9157)

MISCELLANEOUS

27. Consider a resolution approving the issuance of a permit to Petroplex Energy, Inc. ("Operator") to drill an oil and gas well within the City limits located 467 feet from the north line and 2,058 feet from the west line, Section 8, Block 39, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas (Generally located on the east side of the extension of North Midland Drive, approximately 1 mile north of Green Tree Boulevard); and waiving the requirement of a Road Repair Agreement. (DEVELOPMENT SERVICES) (2013 - 191)
28. Consider an ordinance extending the boundaries of the City of Midland, Texas, by adding thereto certain areas adjoining the present City limits, being a 40.498-acre tract of land out of Sections 37, 38 and 48, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas, and being more specifically described by metes and bounds in Section One hereof (Generally located at the south extension of Avalon Drive, approximately 700 feet south of Hall of Fame Boulevard); and approving a public service plan. (DEVELOPMENT SERVICES) (9158)
29. Consider an ordinance extending the boundaries of the City of Midland, Texas, by adding thereto certain areas adjoining the present City limits, being a 305.17-acre tract of land out of Section 37, Block 41, T-1-S, T&P RR Co. Survey, Midland County, Texas, and being more specifically described by metes and bounds in Section One hereof (Generally located on the north side of State Highway 191, west of North Farm-to-Market Road 1788); and approving a public service plan. (DEVELOPMENT SERVICES) (9159)
30. Consider an ordinance extending the boundaries of the City of Midland, Texas, by adding thereto certain areas adjoining the present City limits, being a 2.47-acre tract of land out of Section 8, Block 40, T-2-S, T&P RR Co. Survey, Midland County, Texas, and being more specifically described by metes and bounds in Section One hereof (Generally located on the west side of Wright Drive, approximately 850 feet south of Loop 40); and approving a public service plan. (DEVELOPMENT SERVICES) (9160)

31. Consider an ordinance vacating and abandoning a 0.13-acre portion of alley right-of-way adjacent to Lots 18-21, Block 166, a 0.25-acre portion of alley right-of-way adjacent to Lots 1-15, Block 165, a 0.14-acre portion of alley right-of-way adjacent to Lots 1-4, Block 167, a 1.78-acre portion of Leslie Drive right-of-way, and a 0.64-acre portion of Kristie Lane right-of-way, all out of Wilshire Park Addition, Section 11, City and County of Midland, Texas (Generally located on the southeast corner of the intersection of Leisure Drive and Beal Parkway); adopting the appraisal by the City Manager of \$192,073.50; and ordering recordation by the City Secretary. (DEVELOPMENT SERVICES) (9161)
32. Consider a motion directing staff to begin the process of annexation for approximately 36 acres of land per the terms of an Agriculture Exemption Agreement which the owner now wishes to develop. (DEVELOPMENT SERVICES)
33. Continued consideration of an ordinance changing the zoning classification by amending Chapter One, Title XI, of the City Code of Midland, Texas, by permitting a 1.011-acre tract of land being the north 141 feet of Block 1, Harrison Tract, City and County of Midland, Texas, and more specifically described in Section One hereof, which is presently zoned PD, Planned District for an Office Center, to be used as a PD, Planned District for a Transition District (Generally located on the east side of North Midland Drive, approximately 160 feet north of Shell 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) (9149)
34. Discuss the City's legislative agenda in the 83rd Regular Session of the Texas Legislature. (CITY ATTORNEY'S OFFICE)
35. Consider a motion making appointments to various Boards and Commissions.
36. 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

37. Pursuant to Texas Government Code §551.101, the Council will hold an Executive Session which is closed to the public to discuss the following matters as permitted under the following Texas Government Code Sections:
 - a. Section 551.087 Deliberate Economic Development Negotiations
 - a.1. Discuss business prospects that the City seeks to have, locate,

stay, or expand in or near the City of Midland, Texas, and discuss possible incentives.

Respectfully Submitted,

Courtney B. Sharp
City Manager

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

**MIDLAND CITY COUNCIL
MINUTES
June 11, 2013**

BRIEFING SESSION

The City Council convened in a Briefing Session in the basement conference room, City Hall, Midland, Texas, at 9:00 a.m. on June 11, 2013.

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

Council Members absent: Council Member Michael Trost (District 4).

Staff members present: City Manager Courtney Sharp, City Attorney Keith Stretcher, Deputy City Manager Tommy Hudson, Assistant City Manager Jim Nichols, City Secretary Amy Turner, Community Services Director Tina Jauz, Engineering Services Director Jose Ortiz, Downtown Development Director Genora Young, Solid Waste Director Morris Williams, City Engineer David Beard, Acting Planning Division Manager Ken VanDyne, Building Official Steve Thorpe, Animal Services Manager Paul O'Neill, Public Information Officer Sara Higgins, Assistant Code Administration Manager Ron Jenkins, Transportation Manager Gary Saunders, and Senior Engineering Technician Troy Clabaugh

1. Receive an update from staff on the status of Lamesa roadway improvements.

City Engineer David Beard provided an overview of the work that has been completed to date on the Lamesa roadway and reviewed the future timelines noting the City is currently about two months behind schedule. The entire project is expected to be complete by the end of 2014.

2. Receive a presentation from Dunaway Associates regarding the conceptual layout for the Mockingbird Lane Extension from Holiday Hill Road to Midland Drive.

Brooks Baca and Steve James of Dunaway Associates introduced themselves. Mr. James noted the subject area located northwest of downtown is a one mile stretch and a major arterial. He provided pictures of existing conditions and shared plans for the future development. The lanes will be 11 feet, which will help calm traffic, and will include two lanes in each direction and a bike lane on each side. Another traffic calming device is to use a roundabout and explained how they work.

City Engineer David Beard reported he would like to proceed with the raised median in the center on the east half of the project to slow traffic down. He also plans to have public meetings to get public buy-in on the project.

Discussion ensued about the cost of a regular intersection versus a traffic circle. A suggestion was made to include Parks & Recreation in the design of hike and bike trails.

3. Receive an update from the Humane Coalition of Midland regarding the Adoption Program at PetSmart and future initiatives.

Community Services Director Tina Jauz introduced LuAnn Morgan noting she works with PetSmart Charities and the Midland Humane Coalition.

Ms. Morgan recognized her other partners who were present. She explained that in 2010 there was concern about the number of pets that were being dumped in the County as well as the number of pets being euthanized. As a result, the Midland Humane Coalition, a non-profit group was created. They opened an adoption center inside PetSmart in November 2011. They have had about 40 pets die at the center due to illnesses, have spent \$4,000 a month to get pets well, and have a goal of adopting 20 pets per week. She explained their current challenge in finding a location to house the pets in the interim prior to adoption. They felt the perfect location would be next to the Animal Services building and shared examples of buildings that could be placed on the site. They would need a minimum of \$150,000 to do the work. She asked the Council to consider cost sharing and giving permission to have a building placed on City property.

Deputy City Manager Tommy Hudson noted if Council gives the okay, then staff would move forward with the item. Mayor Perry suggested that staff suggest recommendations of how to proceed.

The foregoing agenda items were discussed by the City Council with no formal action taken. The Briefing Session was adjourned at 9:48 a.m.

REGULAR SESSION

The City Council convened in regular session in the Council Chamber, City Hall, Midland, Texas, at 10:00 a.m., June 11, 2013.

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

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

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

OPENING ITEMS

1. Invocation - 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. Council Member Dufford presented the Proclamation for Midland Christian Track & Field Team Day.
 - b. Council Member Dufford presented the Proclamation for Midland Christian Lady Mustang Track & Field Team Day.

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.

Tom Miller, 4311 Valley Drive, reported a recent incident of nuisance water. He also noted he is the Executive Director of Family Promise and asked the Council to address rent gouging, citing a recent case of a single mother's rent being raised from \$670 to \$1300.

Glenda Southerland, 728 Beckley, asked the Council continue to work on properties with accumulation of debris.

Joy Hanson, 2106 Geraldine Street, spoke regarding Agenda Item 25 stating she would be affected by the zone change.

CONSENT AGENDA

Council Member Trost moved to approve Consent Agenda items 5 - 20 excluding 9, 10, 15, 16, 17; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

5. Approved a motion approving the following minutes:
 - a. Regular meeting of May 28, 2013.
 - b. Special meeting of May 29, 2013.
6. Approved a resolution authorizing the sale of Lots 3-A, 4-A and 5-A, Block 3, Midland International Airport Industrial Park Addition, City of Midland, Midland County, Texas to the single bidder Mr. Jarnail Sihota dba Sherhospitality of Calgary, Alberta, Canada. (GENERAL SERVICES)

RESOLUTION NO. 2013 - 160

RESOLUTION AUTHORIZING THE SALE OF THE REAL PROPERTY DESCRIBED AS BEING LOTS THREE A (3A), FOUR A (4A) AND FIVE A (5A), BLOCK THREE (3), MIDLAND INTERNATIONAL AIRPORT INDUSTRIAL PARK, AN ADDITION TO THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS TO JARNAIL SIHOTA OF

CALGARY, ALBERTA, CANADA, FOR \$435,000.00; AND AUTHORIZE THE CITY MANAGER TO MAKE MODIFICATION TO THE SPECIAL WARRANTY DEED; AND ORDERING RECORDATION BY THE CITY SECRETARY; CLOSING SHALL BE CONDUCTED AT LONE STAR ABSTRACT & TITLE CO., INC. OF MIDLAND, TEXAS

7. Approved a resolution approving plans and specifications and authorizing advertisement for bids for a request for proposals for the purchase of parking meters for downtown Midland. (GENERAL SERVICES)

RESOLUTION NO. 2013 - 161

RESOLUTION AUTHORIZING ISSUANCE OF A REQUEST FOR PROPOSALS FOR THE PURCHASE, TRAINING AND SECURE COMMUNICATIONS OF APPROXIMATELY THREE HUNDRED AND TEN (310) SINGLE-SPACE, CREDIT-CARD-CAPABLE PARKING METERS

8. Approved a resolution approving plans and specifications and authorizing advertisement for bids for a request for proposals for a parking meter collection, enforcement and maintenance service for downtown Midland. (GENERAL SERVICES)

RESOLUTION NO. 2013 - 162

RESOLUTION AUTHORIZING ISSUANCE OF A REQUEST FOR PROPOSALS FOR THE MANAGEMENT, OPERATION, MAINTENANCE AND ENFORCEMENT OF A DOWNTOWN SINGLE-SPACE PARKING METER SYSTEM

11. Approved a resolution approving the purchase of new system switches for the infrastructure of the computer network from Solid IT Networks through DIR contract DIR-SDD-1878 for the Communication and Information Systems Department. (GENERAL SERVICES)

RESOLUTION NO. 2013 - 165

RESOLUTION APPROVING THE PURCHASE OF NEW SYSTEM SWITCHES FOR THE INFRASTRUCTURE OF THE COMPUTER NETWORK FROM SOLID IT NETWORKS, INCORPORATED, THROUGH THE TEXAS DEPARTMENT OF INFORMATION RESOURCES AT A TOTAL COST OF \$90,042.61; AND THIS ITEM WAS NOT BID BUT PURCHASED THROUGH A STATE OF TEXAS COOPERATIVE PROGRAM

12. Approved a resolution approving the purchase of 500 - 3 cubic yard refuse containers, 500 - 3.5 cubic yard refuse containers and 6 - 30 cubic yard open top roll-off containers for the Solid Waste Department. (GENERAL SERVICES)

RESOLUTION NO. 2013 - 166

RESOLUTION APPROVING THE PURCHASE OF FIVE HUNDRED (500) THREE CUBIC YARD REFUSE CONTAINERS, FIVE HUNDRED (500) THREE AND ONE-HALF CUBIC YARD REFUSE CONTAINERS, AND SIX (6) THIRTY CUBIC YARD OPEN TOP ROLL-OFF CONTAINERS FROM WASTEQUIP MANUFACTURING COMPANY, L.L.C., OF STATESVILLE, NORTH CAROLINA, AT A TOTAL COST OF \$472,870.00

13. Approved a resolution approving the purchase of three new virtual servers and

additional network storage from Dell through a DIR contract for the Communication and Information Systems Department. (GENERAL SERVICES)

RESOLUTION NO. 2013 - 167

RESOLUTION APPROVING THE PURCHASE OF THREE (3) NEW VIRTUAL SERVERS WITH ADDITIONAL NETWORK STORAGE THROUGH THE TEXAS DEPARTMENT OF INFORMATION RESOURCES AT A TOTAL COST OF \$107,127.45; AND THIS ITEM WAS NOT BID BUT PURCHASED THROUGH A STATE OF TEXAS COOPERATIVE PROGRAM

14. Approved a resolution authorizing the execution of Amendment #4 to Parkhill, Smith & Cooper's Professional Services Agreement to include Passenger Facility Charge Application and Amendments, and appropriate necessary funds. (AIRPORTS)

RESOLUTION NO. 2013 - 168

RESOLUTION AUTHORIZING THE EXECUTION OF AMENDMENT NUMBER FOUR 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: PASSENGER FACILITY CHARGE APPLICATION AND AMENDMENTS; AND APPROPRIATING \$15,000.00

18. Approved a motion approving an amendment to an oil and gas well drilling permit from Bluestem Energy Holdings, LLC (Operator), within the City Limits, (Evans P 1) located 490 feet from the south line and 565 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 North Midkiff Drive, approximately 490 feet north of Mockingbird Lane.) (DEVELOPMENT SERVICES)
19. Consider items related to a request by SMCB, Inc. (Steve Sanchez) for the Midland Heights Addition (610 W. Florida Avenue). (ENGINEERING SERVICES)
 - a. Approved a motion on a request by SMCB, Inc. (Steve Sanchez) for the Midland Heights Addition (610 W. Florida Ave.) to approve items requested for deferral in the amount of \$8,466, waive the public improvement guarantee, and enter into an agreement to accept funds in lieu of constructing public infrastructure. This subdivision is generally located at the northeast corner of the intersection of Florida Avenue and Connell Street.
 - b. Approved a resolution authorizing the execution of a Public Improvement Development Agreement with SMCB, Inc. (Steve Sanchez) for paving improvements to Connell Street; and appropriating funds therefor; said agreement being authorized by Section 395.081 of the Texas Local Government Code.

RESOLUTION NO. 2013 - 172

RESOLUTION AUTHORIZING THE EXECUTION OF A PUBLIC IMPROVEMENT DEVELOPMENT AGREEMENT WITH SMCB, INC. FOR PAVING IMPROVEMENTS TO CONNELL STREET; AND APPROPRIATING FUNDS THEREFOR; SAID AGREEMENT BEING AUTHORIZED BY SECTION 395.081 OF THE TEXAS LOCAL GOVERNMENT CODE

20. Approved a resolution approving a Task Order for the Tanks Evaluation and Rehabilitation/Coating Project with Parkhill Smith and Cooper and appropriate funds. (UTILITIES)

RESOLUTION NO. 2013 - 173

RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT TASK ORDER WITH PARKHILL, SMITH & COOPER, INCORPORATED, FOR PROFESSIONAL CONSTRUCTION PHASE SERVICES FOR THE REHABILITATION OF THE CITY'S FOUR (4) ELEVATED WATER STORAGE TANKS, AT AN ESTIMATED TOTAL COST OF \$185,000.00; AND APPROPRIATING FUNDS

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

9. Consider a resolution approving the purchase of a 374.72 acre tract of land located in Section 33, Block 40, T-1-S, T. & P. R. Co. Survey, Midland County, Texas located near Midland International Airport from IAQ 191, LLC. (GENERAL SERVICES)

RESOLUTION NO. 2013 - 163

RESOLUTION APPROVING THE MIDLAND DEVELOPMENT CORPORATION'S PURCHASE OF AN APPROXIMATE 374-ACRE TRACT OF LAND OUT OF SECTION 33, BLOCK 40, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS FOR \$3,960,000.00; AUTHORIZING THE CITY MANAGER TO NEGOTIATE, EXECUTE AND FILE, ON BEHALF OF THE MIDLAND DEVELOPMENT CORPORATION, ALL DOCUMENTS NECESSARY FOR THE PURCHASE OF SAID PROPERTY; AND APPROVING A BUDGET AMENDMENT TO THE FISCAL YEAR 2012-2013 BUDGET OF THE MIDLAND DEVELOPMENT CORPORATION, A TYPE A CORPORATION AS AUTHORIZED BY CHAPTER 504 OF THE TEXAS LOCAL GOVERNMENT CODE

City Manager Courtney Sharp provided a brief overview of the item noting the property was located at the end of the runway at Midland International Airport and was being purchased because development to the property could jeopardize the current spaceport application being considered by the FAA.

Council Member Love moved to adopt Resolution No. 2013 - 163; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Love, Morales, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Trost.

10. Consider a resolution approving the purchase of Block 38, Lots 1 thru 6, Original Town Addition and Block 39, Lots 7 thru 12, Original Town, Midland County, Midland, Texas from Midland County, Texas; property is located south of the Midland Reporter Telegram. (GENERAL SERVICES)

RESOLUTION NO. 2013 - 164

RESOLUTION AUTHORIZING THE CITY MANAGER TO PURCHASE TITLE INSURANCE, ACQUIRE NECESSARY ENVIRONMENTAL STUDIES, NEGOTIATE AND EXECUTE AN AGREEMENT WITH A REAL ESTATE BROKER, AND NEGOTIATE, EXECUTE AND FILE ALL NECESSARY DOCUMENTS, REGARDING THE PURCHASE OF LOTS 1-6, BLOCK 38, ORIGINAL TOWN ADDITION, AND LOTS 7-12, BLOCK 39, ORIGINAL TOWN, MIDLAND, MIDLAND COUNTY, TEXAS, FOR AN AMOUNT NOT TO EXCEED \$685,000.00; AND DIRECTING THAT SAID PROPERTY

SHALL BE CLOSED AT LONE STAR ABSTRACT AND TITLE COMPANY, INCORPORATED

General Services Director Robert Patrick reported that the property is currently owned by Midland County and was being considered for the future home of the Municipal Court.

Council Member Love moved to adopt Resolution No. 2013 - 164; seconded by Council Member Morales. The motion carried by the following vote: AYE: Love, Morales, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Trost.

15. Consider a resolution approving plans and specifications and authorizing advertisement of the project described as Terminal Vehicle Parking Expansion (9019). (AIRPORTS)

RESOLUTION NO. 2013 - 169

RESOLUTION APPROVING PLANS AND SPECIFICATIONS PREPARED BY PARKHILL, SMITH AND COOPER, INCORPORATED, AND AUTHORIZING ADVERTISEMENT FOR BIDS FOR THE CITY OF MIDLAND PROJECT DESCRIBED AS TERMINAL VEHICLE PARKING EXPANSION (9019) AT THE MIDLAND INTERNATIONAL AIRPORT

Council Member Love reported he was pulling the item to abstain from voting because he had not seen any plans for the location.

Director of Airports Marv Esterly reported this purchase was for another parking lot with covered parking behind the economy parking lot as previously shown Council during a briefing session. He noted it takes about four minutes to walk from the lot to the terminal.

Council Member Dufford moved to adopt Resolution No. 2013 - 169; seconded by Council Member Trost. The motion carried by the following vote: AYE: Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: Love. ABSENT: None.

16. Consider a resolution to approve a Construction Agreement and other related agreements between the Midland Development Corporation and Carleton Construction Inc. for the purpose of constructing a Parking Garage and that the sum of \$200,000 is hereby appropriated from the Midland Development Corporation (235) Unappropriated Fund Balance (5650) to the Parking Facility and Related Infrastructure Project (9002). (This item is not available for review at this time. Will forward for review when received) (CITY MANAGER'S OFFICE)

RESOLUTION NO. 2013 - 170

RESOLUTION APPROVING CARLETON CONSTRUCTION, LTD. AS THE GENERAL CONTRACTOR FOR CONSTRUCTION OF A PARKING FACILITY AS PART OF THE WALL STREET LOFTS PROJECT (SAID PROJECT IS FOR THE CONSTRUCTION OF A MULTI-FAMILY RESIDENTIAL AND RETAIL BUILDING ON LOTS 13-23, OR THE REPLAT THEREOF, AND CONSTRUCTION OF SAID PARKING FACILITY ON LOTS 1-8, OR THE REPLAT THEREOF, ALL OUT OF BLOCK 53, ORIGINAL TOWN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS); APPROVING A LEASE AGREEMENT BETWEEN THE CITY OF MIDLAND AND THE MIDLAND DEVELOPMENT CORPORATION FOR SAID PROJECT; APPROVING A PARKING

LEASE AGREEMENT BETWEEN THE CITY OF MIDLAND AND WALL STREET LOFTS, LP OR AN AFFILIATE COMPANY FOR SAID PROJECT; APPROVING A PROJECT MANAGEMENT AGREEMENT BETWEEN THE MIDLAND DEVELOPMENT CORPORATION AND WALL STREET LOFTS, LP OR AN AFFILIATE COMPANY FOR SAID PROJECT; AND AUTHORIZING THE NEGOTIATION AND EXECUTION OF ANY AND ALL RELATED AGREEMENTS OR DOCUMENTS NECESSARY FOR SAID PROJECT

General Services Director Robert Patrick gave an overview of the item noting they expected the cost to come in at \$5 million. Following negotiations the cost was only \$200,000 over the expected budget.

Council Member Love moved to adopt Resolution No. 2013 - 170; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Love, Morales, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Trost.

17. Consider a resolution approving a lease agreement with the Midland Amateur Radio Club at Hogan Park. (COMMUNITY SERVICES)

RESOLUTION NO. 2013 - 171

RESOLUTION AUTHORIZING THE EXECUTION OF A TWENTY-FIVE YEAR LEASE AGREEMENT WITH THE MIDLAND AMATEUR RADIO CLUB REGARDING A CITY OWNED BUILDING LOCATED IN HOGAN PARK

Community Services Director Tina Jauz gave a brief overview of the item. Comments were made regarding the important role the club plays in the event of a City emergency.

Council Member Dufford moved to adopt Resolution No. 2013 - 171; seconded by Council Member Morales. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

SECOND READINGS

21. Consider an ordinance on second reading on a request by Madura Vista for a zone change from PD, Planned District for a Shopping Center, to O-1, Office District on a 0.95-acre tract of land out of Lots 1 and 2, Block 3, Mayfield Place Addition, Section 2, City and County of Midland, Texas. (Generally located between Mockingbird Lane and Bromley Place west of Mayfield Place.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9146

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 0.95-ACRE TRACT OF LAND OUT OF LOTS 1 AND 2, BLOCK 3, MAYFIELD PLACE ADDITION, SECTION 2, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A SHOPPING CENTER, TO BE USED AS AN O-1, OFFICE DISTRICT (GENERALLY LOCATED ON THE NORTH SIDE OF MOCKINGBIRD LANE, 860 FEET EAST OF MIDKIFF ROAD); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

Interim Planning Division Manager Ken VanDyne gave a brief overview of the item.

Deputy City Secretary Reyes read the caption of Ordinance No. 9146.

Council Member Sparks moved to approve the second and final reading of Ordinance No. 9146 in accordance with the Charter of the City of Midland; seconded by Council Member Love. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

22. Consider an ordinance on second reading on a request by Saltgrass, Inc. for a Specific Use Permit with Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant, on Lot 5, Block 44, Fairmont Park Addition, Section 26, City and County of Midland, Texas. (Generally located south side of West Loop 250 North, approximately 450 feet west of North Midland Drive.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9147

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF THE PROPERTY DESCRIBED AS LOT 5, BLOCK 44, FAIRMONT PARK ADDITION, SECTION 26, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTH SIDE OF WEST LOOP 250 NORTH, APPROXIMATELY 450 FEET WEST OF NORTH MIDLAND DRIVE), WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A SHOPPING CENTER, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT WITH TERM FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID PERMIT SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

Deputy City Secretary Reyes read the caption of Ordinance No. 9147.

Council Member Morales moved to approve the second and final reading of Ordinance No. 9147 in accordance with the Charter of the City of Midland; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

23. Consider an ordinance on second reading on a request by Mike Massey for the vacation of the 0.30-acre alley adjacent to Lots 1 through 5, Block 5, of the 1.45-acre alley adjacent to Lots 1 through 14, Block 6, of the 0.90-acres of the right-of-way of Mandy Lane adjacent to Lots 1 through 9, Block 6 and to Lots 1 through 9, Block 7 and the 1.78-acres of the right-of-way of Corporate Drive and Spring Park Drive adjacent to Lots 1 through 5, Block 5 and Lots 10 through 14, Block 6, all out of Corporate Plaza, Section 4, City and County of Midland, Texas. (Generally located on the east side of Edwards Street, approximately 870 feet north of East Wadley Avenue.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9148

AN ORDINANCE VACATING AND ABANDONING A 0.30-ACRE ALLEY ADJACENT

TO LOTS 1-5, BLOCK 5, A 1.45-ACRE ALLEY ADJACENT TO LOTS 1-14, BLOCK 6, A 0.90-ACRE PORTION OF MANDY LANE RIGHT-OF-WAY ADJACENT TO LOTS 1-9, BLOCK 6, AND TO LOTS 1-9, BLOCK 7, AND A 1.78-ACRE PORTION OF CORPORATE DRIVE RIGHT-OF-WAY AND SPRING PARK DRIVE RIGHT-OF-WAY ADJACENT TO LOTS 1-5, BLOCK 5, AND TO LOTS 10-14, BLOCK 6, ALL OUT OF CORPORATE PLAZA, SECTION 4, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF EDWARDS STREET, APPROXIMATELY 870 FEET NORTH OF EAST WADLEY AVENUE); ADOPTING THE APPRAISAL BY THE CITY MANAGER OF \$19,321.00; AND ORDERING RECORDATION BY THE CITY SECRETARY

Deputy City Secretary Reyes read the caption of Ordinance No. 9148.

Council Member Love moved to approve the second and final reading of Ordinance No. 9148 in accordance with the Charter of the City of Midland; seconded by Council Member Sparks.

Interim Planning Division Manager Ken VanDyne reported that the figure for the appraisal comes from the Midland Central Appraisal District. The amount was just over \$19,000. He noted that no amendment was needed.

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

PUBLIC HEARINGS

24. At approximately 10:30 a.m. conduct a Public Hearing for the 2013/14 Community Development Block Grant (CDBG) Program. (DEVELOPMENT SERVICES)

Community Development Manager Sylvester Cantu gave a brief overview of the item noting how the funds were expected to be distributed. The final action plan will be adopted at the July 23rd meeting. He noted that overall there was a six percent increase of funds over the previous year.

Mayor Perry opened the public hearing at 10:36 a.m.

Michael Wallace, 1210 E. Cuthbert, reiterated that he has a six-acre lot and that he is willing to give half of the land to the City if the City installs infrastructure including water, sewer and a street.

There being no one else wishing to speak, the public hearing was closed at 10:41 a.m.

25. At approximately 10:33 A.M. hold a public hearing and consider an ordinance on a request by GBT Realty Corporation for a zone change from PD, Planned District for an Office Center to PD, Planned District for a Transition District on a 1.011-acre tract of land being the north 141.00 feet of Block 1, Harrison Tract, City and County of Midland, Texas. (Generally located at the east side of North Midland Drive, approximately 160 feet north of Shell Avenue.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9149

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING

CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 1.011-ACRE TRACT OF LAND BEING THE NORTH 141 FEET OF BLOCK 1, HARRISON TRACT, CITY AND COUNTY OF MIDLAND, TEXAS, AND MORE SPECIFICALLY DESCRIBED IN SECTION ONE HEREOF, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR AN OFFICE CENTER, TO BE USED AS A PD, PLANNED DISTRICT FOR A TRANSITION DISTRICT (GENERALLY LOCATED ON THE EAST SIDE OF NORTH MIDLAND DRIVE, APPROXIMATELY 160 FEET NORTH OF SHELL 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

Interim Planning Division Manager Ken VanDyne gave an overview of the item noting that it was a request for rezoning to allow for a retail use of a Dollar General Store. Three letters of opposition had been received. He reported there would be an eight-foot masonry wall on the east side and six foot fences on the north and south. He also reported that no alcohol would be sold at this particular Dollar General.

Council Member James reported he heard there was a requirement for the developer to obtain 47 signatures in order to give the developer permission to do what needs to be done. Mr. VanDyne said he was told the same thing but was unable to find anything in the Code to corroborate that information.

Mayor Perry opened the public hearing at 10:45 a.m.

Sara Holley, representing Gresham, Smith and Partners of Nashville, Tennessee, reported that Bob Guard of GBT Realty was coming to town to collect the necessary signatures.

Jim Blischke, 2104 Freeport, reported he went to the deeds office and found that when the property was originally subdivided there was a provision that the property being referred to today would be zoned as office space and that any rezoning would require 50 percent plus one of the residents in the original plat to sign for approval. He further reported that at the Planning and Zoning meeting there was opposition based on concern for lowered property values and safety. Many of the residents are elderly, retirees, and single women. The neighborhood does not want more traffic and is concerned that there are no street lights in some areas.

When asked why the first Planning and Zoning meeting was deferred, Mr. VanDyne responded that it was deferred to allow the applicant time to work with the neighborhood in site designing requirements.

Joy Hanson, 2106 Geraldine, reported she has a full view of the lot from her house and expressed concern about development. Specifically her concern was increased traffic from people cutting through the alley to get to the store. She asked that the lot remain vacant.

Glenda Southerland, 728 Beckley, expressed that a retail store would generate a lot of trash and asked the Council to reconsider.

Robert Hanson, 2106 Geraldine, asked the Council if they would like to live next door to a store like Dollar General and spoke about a wooden gate that would be put in so that a fire truck could crash through it in case of emergency.

Ms. Holley of Gresham, Smith and Partners, noted the plan for the fire truck is to enter through the main drive and that when they left there would be a key for them to exit from the gate in the back. Pertaining to concerns for safety, she noted there would be a fence and wall around the back as well as light on top of the wall. She emphasized that they will be picking up trash on the lot and that Dollar General Corporation has employees who will clean the lot. When asked, she reported she has not seen the deed restriction that has been referenced.

Alathea Blischke, 2104 Freeport, reported her and her husband are the block captains. She has met with many of the neighbors. Fear is their number one concern. They fear an increase in the crime rate, they fear increased danger, and reported that the three empty fields are currently a buffer between them and crime. She reported that if they were developing all three lots at the same time, many of the neighbors would support the item. They are afraid of trash, increased traffic, more petty crime, and long retail hours.

There being no one else wishing to speak, the public hearing was closed at 11:15 a.m.

Deputy City Secretary Reyes read the caption of Ordinance No. 9149.

Council Member James moved to defer the item to the next meeting; seconded by Council Member Love. Following brief discussion the motion to defer carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

26. At approximately 10:36 A.M. hold a public hearing and consider an ordinance on a request by Leslie Diann Hahn and L. H. Hahn for a zone change from 1F-2, One-Family Dwelling District to PD, Planned District for a Housing Development on Lots 1 through 15, Block 165; Lots 1 through 25, Block 166; Lots 1 through 4, Block 167, and the adjacent to be vacated 1.79-acres of Leslie Drive, the 0.43-acre of Kristie Lane and the 0.45-acres of alley rights-of-way, all out of Wilshire Park Addition, Section 11, City and County of Midland, Texas. (Generally located on the southeast corner of the intersection of Leisure Drive and Beal Parkway.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9150

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A LOTS 1-15, BLOCK 165, LOTS 1-25, BLOCK 166, LOTS 1-4, BLOCK 167, THE ADJACENT TO BE VACATED 1.79 ACRES OF LESLIE DRIVE, THE 0.43 ACRES OF KRISTIE LANE, AND THE 0.45 ACRES OF ALLEY RIGHTS-OF-WAY, ALL OUT OF WILSHIRE PARK ADDITION, SECTION 11, CITY AND COUNTY OF MIDLAND, TEXAS, AND MORE SPECIFICALLY DESCRIBED IN SECTION ONE HEREOF, WHICH IS PRESENTLY ZONED 1F-2, ONE-FAMILY DWELLING DISTRICT, TO BE USED AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT (GENERALLY LOCATED ON THE SOUTHEAST CORNER OF THE INTERSECTION OF LEISURE DRIVE AND BEAL PARKWAY); 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

Interim Planning Division Manager VanDyne gave a brief overview of the item noting it was a request for a zone change and to vacate City right of way that has never been developed. Three letters of objection had been received citing traffic concerns and reduced property values.

Mayor Pro Tem Sparks opened the public hearing at 11:24 a.m.

Granger MacDonald, speaking on behalf of the applicant, reported they came before the City Council in January to get support for Tax Credit. They are the first place finisher for the senior project noting the property is deed restricted to people over 55 years old. Their one bedroom rents will start at \$575/month and their two bedrooms will start at \$675/month. He also noted the rent cannot go up more than 3 percent a year. They are not assisted living but will offer many services including a club house, counseling, and transportation for shopping and doctor appointments. He answered questions about their funding cap and reported that children were not allowed.

David Diaz, 5101 Sherwood, reported this senior project would be comparable to Santa Rita and is 100 percent dedicated to seniors. Their density is well under the maximum 16 units per acre density cap. He also noted that senior projects do not generate nearly the amount of traffic as a normal apartment complex.

David Beattie, 5203 Leisure, reported he was under the impression this apartment complex would be similar to Blue Ridge Apartments but for affordable housing. He withdrew his written objection to the property.

There being no one else wishing to speak, the public hearing was closed at 11:33 a.m.

Deputy City Secretary Reyes read the caption of Ordinance No. 9150.

Council Member Morales moved approval of the first of two readings of Ordinance No. 9150 in accordance with the Charter of the City of Midland; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

27. At approximately 10:39 A.M. hold a public hearing and consider a resolution regarding the Accumulated Debris and Removal at 503 Devonian. (DEVELOPMENT SERVICES)

RESOLUTION NO. 2013 - 174

RESOLUTION FINDING LOT 12, BLOCK 46, PERMIAN ESTATES ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (LOCATED AT 503 DEVONIAN DRIVE) TO BE IN VIOLATION OF TITLE VIII, "FOOD ESTABLISHMENTS, HEALTH AND GENERAL SANITATION", CHAPTER 6, "GARBAGE, TRASH AND RUBBISH", SECTION 18, "ACCUMULATION OF STAGNANT WATER, FILTH, WEEDS, BRUSH AND DEBRIS ON LOTS", OF THE MIDLAND CITY CODE; PROVIDING THE OWNER THIRTY (30) DAYS TO BRING SAID PROPERTY INTO COMPLIANCE; AUTHORIZING THE BUILDING OFFICIAL TO ENTER UPON SAID PROPERTY AND REMOVE SUCH DEBRIS AFTER THIRTY-FIVE (35) DAYS FROM THE DATE OF THE PASSAGE OF

THIS RESOLUTION; DIRECTING THE BUILDING OFFICIAL TO DELIVER A COPY OF THIS RESOLUTION TO THE OWNER; AND ORDERING PUBLICATION BY THE CITY SECRETARY

Building Official Steve Thorpe gave an overview of the item noting the property is located at 503 Livonia and has had a long history dating back to May 2001. Code Enforcement Officers have issued 40 written notifications to the property owner, 35 pertaining to the accumulation of debris. The owner has also received six citations, four of which were for debris. In the Ordinance there is a clause that allows the City to enter the property to clean it up and send an invoice to property owner. If the owner fails to pay the invoice, the City can put a lien the property. This public hearing is to allow the owner the opportunity to explain his situation and for the City Council to make a determination as to whether the City will enter property to clean it up. Mr. Thorpe further explained that the Ordinance was amended a year ago to remove any ambiguity. He clarified that any items removed would be taken to the dump.

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

Joseph Barron, 503 Livonia Drive, reported he was the owner and acknowledged that he received some of the notices. He stated he just got out of jail for the citations he received. He has people lined up to clean the place and expects to have it done soon.

Mayor Perry clarified that he would have 35 days to remove the debris.

Glenda Southerland reported this property has been this way for a long time and offered her assistance in cleaning up.

City Attorney Stretcher commented that the City has very limited ability to move forward on lots and that the cleaning up has to be done with City staff or under their direction with a contractor. He reiterated that Council does not have the authority to allow third parties to go onto a property to remove items.

Ty Miller, 4311 Valley Drive, asked if anyone has seen the show "Hoarders" and wondered if a mental illness is involved.

There being no one else wishing to speak, the public hearing was closed at 11:50 a.m.

Council Member Sparks moved to adopt Resolution No. 2013 - 174; seconded by Council Member Morales.

Brief discussion ensued about determining what trash was. Mr. Thorpe reported he had been contacted by the TLC Show "Hoarders" and would be happy to share contact information with the owner.

Council Member Dufford moved to amend the motion by asking staff to use discretion and only take trash to dump; seconded by Council Member James. The motion to amend failed by the following vote: AYE: Dufford, James. NAY: Love, Morales, Trost, Perry, Sparks. ABSTAIN: None. ABSENT: None.

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

28. At approximately 10:42 A.M. hold a public hearing and consider a resolution regarding the Accumulated Debris and Removal at 309 East Maple Avenue. (DEVELOPMENT SERVICES)

RESOLUTION NO. 2013 - 175

RESOLUTION FINDING LOT 4, BLOCK 14, LOMA LINDA ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (LOCATED AT 309 EAST MAPLE AVENUE) TO BE IN VIOLATION OF TITLE VIII, "FOOD ESTABLISHMENTS, HEALTH AND GENERAL SANITATION", CHAPTER 6, "GARBAGE, TRASH AND RUBBISH", SECTION 18, "ACCUMULATION OF STAGNANT WATER, FILTH, WEEDS, BRUSH AND DEBRIS ON LOTS", OF THE MIDLAND CITY CODE; PROVIDING THE OWNER THIRTY (30) DAYS TO BRING SAID PROPERTY INTO COMPLIANCE; AUTHORIZING THE BUILDING OFFICIAL TO ENTER UPON SAID PROPERTY AND REMOVE SUCH DEBRIS AFTER THIRTY-FIVE (35) DAYS FROM THE DATE OF THE PASSAGE OF THIS RESOLUTION; DIRECTING THE BUILDING OFFICIAL TO DELIVER A COPY OF THIS RESOLUTION TO THE OWNER; AND ORDERING PUBLICATION BY THE CITY SECRETARY

Building Official Steve Thorpe gave a brief overview of the item noting that 23 violation notices were issued, 15 of which were for accumulation of debris. One citation was issued last September. It was heard in court on January 6th. He was ordered to clean the property within a prescribed period of time and has made strides in that direction.

Mayor Perry opened the public hearing at 12:01 p.m.

John Waites, 309 E. Maple, reported he has been trying to clean it up and explained he has had some medical issues. He reported he is now finished and asked the City to go take a look.

Mr. Thorpe reported that fresh pictures were taken this morning and stated there was a difference in opinion. He shared the current pictures with the City Council noting there was still accumulated debris on the property.

Mayor Perry noted that Mr. Thorpe would review the pictures with Mr. Waites so both parties would be clear as to what was expected.

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

Council Member Morales moved to adopt Resolution No. 2013 - 175; seconded by Council Member James. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

MISCELLANEOUS

29. Consider a resolution authorizing the City Manager to purchase Real Property located in Winkler County, Texas. (CITY ATTORNEY'S OFFICE)

RESOLUTION NO. 2013 - 176

RESOLUTION AUTHORIZING THE CITY MANAGER TO PURCHASE REAL PROPERTY LOCATED IN SECTIONS 9, 10, 11, 12, 13, 14, 18, 23, 19, 20, AND 22,

ALL BEING IN BLOCK B-5, PUBLIC SCHOOL LANDS, WINKLER COUNTY, TEXAS AND SECTION 3, BLOCK B-11 OF THE OFFICIAL PUBLIC LANDS OF WINKLER COUNTY, TEXAS; AND AUTHORIZING THE CITY MANAGER TO EXECUTE A SURFACE USE AGREEMENT AND LEASE WITH INFINITAIR ENERGY, LLC FOR THE ABOVE DESCRIBED PROPERTY; AUTHORIZING THE CITY TREASURER TO MAKE THE APPROPRIATE PAYMENTS

City Manager Sharp gave a brief overview of the item noting that the property is located in Winkler County and has 110,000 acre feet of ground water. The City intends to use the water to increase the volume of T-Bar Ranch by 20 percent.

Council Member Love moved to adopt Resolution No. 2013 - 176; seconded by Council Member James. The motion carried by the following vote: AYE: Love, Morales, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Trost.

30. Consider an ordinance temporarily closing the east/west alleys abutting the north and south boundary lines of Lot 1, Block 1, Fairgrounds Addition from the east right-of-way line of Fairgrounds Road east to their intersection with the north/south alley at Midland Draw and the north/side alley abutting the east boundary line of Lot 1, Block 1, Fairgrounds Addition at Midland Draw. (ENGINEERING SERVICES)

ORDINANCE NO. 9151

AN ORDINANCE TEMPORARILY CLOSING A PORTION OF THE EAST/WEST ALLEYS ABUTTING THE NORTH AND SOUTH BOUNDARY LINES OF LOT 1, BLOCK 1, FAIRGROUNDS ADDITION, FROM THE EAST RIGHT-OF-WAY LINE OF FAIRGROUNDS ROAD EAST TO THEIR INTERSECTION WITH THE NORTH/SOUTH ALLEY AT MIDLAND DRAW AND THE NORTH/SOUTH ALLEY ABUTTING THE EAST BOUNDARY LINE OF LOT 1, BLOCK 1, FAIRGROUNDS ADDITION AT MIDLAND DRAW IN THE CITY OF MIDLAND, TEXAS; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO HUNDRED DOLLARS (\$200.00); AND ORDERING PUBLICATION

Transportation Manager Gary Saunders gave a brief overview of the item noting this was for a manufactured home community and staff recommended approval.

Deputy City Secretary Reyes read the caption of Ordinance No. 9151.

Council Member Love moved approval of the first of two readings of Ordinance No. 9151 in accordance with the Charter of the City of Midland; seconded by Council Member James.

Mr. Saunders noted that it was a temporary closure because at some time in the future it could be reopened if the City deems it necessary.

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

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

No appointments were made.

EXECUTIVE SESSION

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

- a. Section 551.072 Deliberation Regarding Real Property.
 - a.1. Discuss the purchase, exchange lease or value of real property described as Block 35, Lots 7-8, Original Town Addition, Midland, Midland County, Texas.
 - a.2. Discuss the purchase, exchange lease or value of real property described as Section 33, Block 40, T-1-S, T. & P. R. Co. Survey, Midland County, Texas.
 - a.3. Discuss the purchase, exchange lease or value of real property described as Block 38, Lots 1 through 6, Original Town Addition and Block 39, Lots 7 thru 12, Original Town, Midland County, Midland, Texas.
 - a.4. Discuss the purchase, exchange, lease or value of real property described as Block 53, Lots 1-8 and 13-23, Original Town Addition, Midland, Midland County, Texas.
 - a.5. Discuss the purchase, exchange lease or value of real property described as Block 27, Lots 13A, Original Town Addition, Midland, Midland County, Texas.
 - a.6. Discuss the purchase, exchange lease or value of real property described as Block 27, Lots 07A, Original Town Addition, Midland, Midland County, Texas.
 - a.7. Discuss the purchase of real property described as Sections 9, 10, 11, 12, 13, 14, 18, 23, 19, 20, and 22, all being in Block B-5, Public School Lands, Winkler County, Texas and Section 3, Block B-11 of the Official Public Lands of Winkler County, Texas.
- b. Section 551.087 Deliberate Economic Development Negotiations
 - b.1. Discuss business prospects that the City seeks to have, locate, stay, or expand in or near the City of Midland, Texas, and discuss possible incentives.

Mayor Perry recessed the meeting to Executive Session at 12:09 p.m. noting they would return to hear the remaining items no sooner than 1:15 p.m. The entire Council met in Executive Session until 1:50 p.m.

The meeting reconvened in Regular Session at 1:52 p.m. with Council Member Trost absent.

All of the business at hand having been completed, the meeting adjourned at 2:04 p.m.

PASSED AND APPROVED the 25th day of June, 2013.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary



City Council Agenda

Approved for Agenda:
CSharp
City Manager's Office

MEETING DATE: 6/25/2013

TO: City Council / City Manager

FROM: Bob McNaughton, Finance Director

SUBJECT: Consider a Resolution adding one special meeting on August 6, 2013 and two regular meetings, one on August 20, 2013 and the second on August 26, 2013 to the City Council meetings scheduled for the 2013 calendar year.

Purpose:

Comply with Truth-in-Taxation schedule for setting of tax rate and budget for FY 2013 - 2014

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Comply with Truth-in-Taxation schedule for setting of tax rate and budget for FY 2013 - 2014

Discussion:

The City of Midland must hold one special meeting in August and three regularly scheduled City Council meetings in August to comply with Truth-in-Taxation statutes necessitating the scheduling of one special meeting and two additional regular meetings. A fifth meeting in August is the regularly scheduled meeting on Tuesday, August 27.

A special meeting on August 6 must be held to have the first public hearing on a tax increase and to consider a motion to place on the City Council's agenda for its August 20 and August 26 meetings as an action item the consideration of an ordinance establishing a property tax rate per \$100 taxable assessed valuation. A second public hearing on a tax increase will be held August 13 at the regular Council meeting.

Two regularly scheduled Council meetings must be set for August 20 and August 26 to hold a public hearing on the 2013 - 2014 budget on August 20 and conduct the two readings of the ordinance to adopt the 2013 - 2014 budget and the ordinance setting the tax rate for 2013 - 2014 on August 20 and August 26.

RESOLUTION NO.

**RESOLUTION ADDING ONE (1) SPECIAL MEETING,
ON AUGUST 6, 2013, AND TWO (2) REGULAR
MEETINGS, ONE ON AUGUST 20, 2013, AND THE
SECOND ON AUGUST 26, 2013, TO THE CITY
COUNCIL MEETINGS SCHEDULED FOR THE 2013
CALENDAR YEAR**

WHEREAS, the City of Midland must hold one special meeting in August, 2013, and three regularly scheduled City Council meetings in August, 2013, to comply with Truth-in-Taxation statutes; and

WHEREAS, this requirement necessitates the scheduling of one special meeting and two additional regular meetings; and

WHEREAS, the City Council finds that one special meeting must be held on August 6, 2013, to have the first public hearing on a tax increase and to consider a motion to place on the City Council's agenda for its August 20, 2013, and August 26, 2013, meetings as an action item the consideration of an ordinance establishing the property tax rate per \$100 taxable assessed valuation; and

WHEREAS, the City Council finds that two regularly scheduled Council meetings must be scheduled for August 20, 2013, and August 26, 2013, to hold a public hearing on the 2013-2014 budget on August 20, 2013, and conduct the two readings of the ordinance to adopt the 2013 - 2014 budget and the ordinance setting the tax rate for 2013 - 2014 on August 20, 2013, and August 26, 2013.

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

SECTION ONE. That one special meeting must be held on August 6, 2013, to have the first public hearing on a tax increase and to consider a motion to place on the City Council's agenda for its August 20, 2013, and August 26, 2013, meetings as an action item the consideration of an ordinance establishing the property tax rate per \$100 taxable assessed valuation.

SECTION TWO. That two regularly scheduled Council meetings must be scheduled

for August 20, 2013, and August 26, 2013, to hold a public hearing on the 2013-2014 budget on August 20, 2013, and conduct the two readings of the ordinance to adopt the 2013 - 2014 budget and the ordinance setting the tax rate for 2013 - 2014 on August 20, 2013, and August 26, 2013.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 6/25/2013

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution authorizing a Consultant Services Agreement with Berry, Dunn, McNeil & Parker, LLC dba Berry, Dunn, McNeil & Parker PLLC to provide assistance in preparing a requirements definition and request for proposal for an integrated Planning, Code Administration and Building Administration system as well as a Financial and Human Resources software needs assessment through DIR contract DIR-SDD-2053 for the Communication and Information Systems Department.

Purpose:

Approval of a consultant services agreement with Berry, Dunn, McNeil & Parker, LLC dba Berry, Dunn, McNeil & Parker, PLLC to provide assistance to prepare a request for proposals for an integrated Planning, Code Administration and Building Administration system as well as a Financial and Human Resources software needs assessment through DIR contract DIR-SDD-2053.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$139,505.00 2012 GPCO-Information Technology Bond Fund

Discussion:

City staff requires assistance preparing a request for proposals for an integrated Planning, Code Administration and Building Administration system as well as a Financial and Human Resources software needs assessment. We propose contracting with Berry, Dunn, McNeil & Parker, LLC dba Berry, Dunn, McNeil & Parker, PLLC of Portland, Maine to provide consulting services through Texas Department of Information Resources (DIR) contract, DIR-SDD-2053 for a total cost of \$139,505.00. Please see the attached memo from Sharlett Chowning, Chief Information Officer, for additional information.

RESOLUTION NO. _____

RESOLUTION APPROVING THE EXECUTION OF AN AGREEMENT FOR COMPUTER RELATED CONSULTATION SERVICES THROUGH THE TEXAS DEPARTMENT OF INFORMATION RESOURCES AT A TOTAL COST OF \$139,505.00; AND THIS ITEM WAS NOT BID BUT PURCHASED THROUGH A STATE OF TEXAS COOPERATIVE PROGRAM

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

WHEREAS, the Director of the Information Systems Department has arranged for the purchase of computer-related consultation services as defined in the attached memos, at a total proposed cost to the City of \$139,505.00 through the DIR; and

WHEREAS, the Council finds the price proposed for said computer-related consultation services through the DIR to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to purchase said computer-related consultation services through the DIR;

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 to execute and attest, respectively, on behalf of the City of Midland, an agreement for the provision of said computer-related consultation services referred to above through the DIR, with Berry, Dunn, McNeil & Parker, L.L.C., dba Berry, Dunn, McNeil & Parker, P.L.L.C., at a total estimated cost of \$139,505.00, said agreement being on file in the office of the City Secretary, referenced by the date and number of this resolution.

SECTION TWO. That the City Treasurer is hereby authorized and directed to pay Berry, Dunn, McNeil & Parker, L.L.C., dba Berry, Dunn, McNeil & Parker, P.L.L.C., for said computer-related consultation services from funds available in the Software Upgrade Project (8986) budget account upon proper receipt of invoices or statements approved by the City Manager.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Sharlett Chowning, Chief Information Officer,
Information Systems

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

CONSULTANT SERVICES AGREEMENT

THIS AGREEMENT is made and effective the 26th day of June 2013, by and between the **City of Midland, Texas** ("City") and **BERRY, DUNN, MCNEIL & PARKER, LLC DBA BERRY, DUNN, MCNEIL & PARKER, PLLC**, ("Consultant") a corporation with headquarters offices at 100 Middle Street, Suite 500, East Tower, Portland, Maine 04104.

W I T N E S S E T H:

In consideration of the mutual promises herein contained, the parties hereto, intending to be legally bound, agree as follows:

ARTICLE I - Scope of Work

CONSULTANT shall perform the services set forth in the document entitled, *Scope of Work and Fees*, annexed hereto as Appendix "A" and incorporated herein by this reference (the "SOW"). The SOW shall not be modified except by written agreement of the parties hereto. Anything herein to the contrary notwithstanding, if and to the extent City requests CONSULTANT to perform additional services not included in the SOW, absent a further written agreement between the parties, City shall compensate CONSULTANT for the performance of such additional services on a time and material basis in accordance with CONSULTANT's hourly rate schedule then in effect and the provisions of Article II hereof.

ARTICLE II – Fees and Expenses

As compensation for the services performed under this Agreement, City shall pay CONSULTANT a fee in accordance with this Agreement and the SOW. City shall reimburse CONSULTANT for all costs incurred by CONSULTANT for travel, lodging, meals, and other out-of-pocket expenses related to the services performed under this Agreement and for third-party products and services procured by CONSULTANT on City's behalf at CONSULTANT's cost therefor, plus an administrative charge equal to ten percent (10%) of such costs. Each month during the term hereof, CONSULTANT will submit to City an invoice for the services performed and expenses incurred during the previous month. City shall pay CONSULTANT the amount on each such invoice within thirty (30) days of receipt.

ARTICLE III - Submission of Reports

During the term of this Agreement, CONSULTANT shall provide to City or its designee such oral or written reports as the latter may reasonably require, and as are specified in the SOW.

ARTICLE IV - Period of Performance

The performance of the services set forth in the SOW shall commence as soon as practicable after the execution and delivery of this Agreement by both parties. CONSULTANT shall not commence any other phase of work unless and until it has received from City a written

notice to proceed with such work. Subject to the provisions of ARTICLE VII hereof, this Agreement shall terminate upon delivery by CONSULTANT of materials and reports specified in the SOW, and payment to CONSULTANT by City for all services performed and expenses incurred in connection with this Agreement.

ARTICLE V - Independent Contractor

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

ARTICLE VI - Notice

Any notice, request or other communication to either party by the other concerning the terms and conditions of this Agreement shall be in writing and shall be deemed given when actually received by the addressee, having been hand delivered or sent postage prepaid, by certified or registered United States mail, return receipt requested, addressed as follows:

If to CONSULTANT: BERRY, DUNN, MCNEIL & PARKER, LLC DBA
BERRY, DUNN, MCNEIL & PARKER, PLLC
100 Middle Street
Suite 500, East Tower
Portland, Maine 04104
Attn: Chad Snow

If to City: City of Midland
Communications and Information Systems
601 North Loraine – Suite 101
Midland, Texas 79701
Attn: Sharlett Chowning, CGCIO
Chief Information Officer

With a copy to: Midland City Hall
300 North Loraine
Midland, Texas 79701
Attn: City Manager

The person and the place to which notices are to be mailed to either party may be changed from time to time by notice given in accordance with the provisions of this ARTICLE VI.

ARTICLE VII - Termination

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

ARTICLE VIII - Confidentiality

CONSULTANT shall not publish, copyright, or otherwise disclose or permit to be disclosed or published, the results of any reports to City concerning the work to be performed pursuant to this Agreement, or any particulars thereof, including forms or other materials developed exclusively for City in connection with the performance by CONSULTANT of its services hereunder during the period of this Agreement, without prior written approval of City. CONSULTANT, cognizant of the sensitive nature of much of the data supplied by City, agrees to protect the confidentiality of any information designated by City to be privileged or proprietary except to the extent that (i) such information enters the public domain, (ii) is obtained by CONSULTANT from independent third parties not subject to any confidentiality or similar agreement with City, or (iii) disclosure of such information is required by law, rule or regulation or the valid order of a court or administrative agency.

ARTICLE IX - Personnel

A. Notwithstanding the provisions of ARTICLE V hereof, CONSULTANT will assign qualified professional personnel and other CONSULTANT support staff, as necessary, to complete the services contemplated by this Agreement. In the event that the employment of any such person should be terminated prior to the termination hereof, then in such event CONSULTANT shall, at its discretion, assign such other persons, as necessary, to complete the services.

B. City understands and agrees that CONSULTANT has a significant investment in the recruitment, training, and deployment of its personnel and that, if such personnel are hired directly by City, then CONSULTANT will incur substantial direct costs to recruit, train, and deploy new personnel of similar quality and experience and will suffer concomitant disruption of its business interests. Therefore, in order to preserve and further the positive business relationship between City and CONSULTANT, it is agreed that, during the term hereof and for a period of one (1) year after the completion or earlier termination of this Agreement: (1) If City hires, or induces any other person, firm or entity to hire, an CONSULTANT employee, or any person that was an CONSULTANT employee within the preceding three-month period, then City will pay a release fee to CONSULTANT equivalent to the greater of: (a) thirty percent (30%) of the annual compensation (including salary, bonus, and other compensation such as sales commission and deferred compensation) that City or such other person, firm or entity has agreed to pay to such person; or (b) the actual costs incurred by CONSULTANT in connection with the recruitment, training, and deployment of a new CONSULTANT employee of substantially equal skills and experience. (2) Such release fee will be billed by CONSULTANT to City when the candidate formally accepts the position offered by City or such other person, firm, or entity and is due and payable upon receipt of CONSULTANT's invoice.

ARTICLE X - Indemnity / Liability

CONSULTANT SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY AND ALL OF THE CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF THE CONSULTANT, 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 CONSULTANT WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST THE CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

THE CONSULTANT SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY AND ALL OF THE CITY'S OFFICERS, AGENTS AND

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

THE CONSULTANT AGREES THAT HE WILL INDEMNIFY AND SAVE THE CITY HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, ALL SUPPLIES, INCLUDING COMMISSARY INCURRED IN THE FURTHERANCE OF THE PERFORMANCE OF THIS CONTRACT. WHEN CITY SO DESIRES, THE CONSULTANT SHALL FURNISH SATISFACTORY EVIDENCE THAT ALL OBLIGATIONS OF THE NATURE HEREINABOVE DESIGNATED HAVE BEEN PAID, DISCHARGED OR WAIVED. THE CONSULTANT, ITS SURETIES AND INSURANCE CARRIERS SHALL DEFEND, INDEMNIFY AND SAVE HARMLESS THE CITY AND ALL OF ITS OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, OR CLAIMS OF ANY CHARACTER WHATSOEVER, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ARISING FROM ANY ACT OF THE CONSULTANT OR ANY SUBCONTRACTOR, THEIR AGENTS OR EMPLOYEES, IN THE EXECUTION AND SUPERVISION OF THIS CONTRACT, AND WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST THE CITY OR ANY OF ITS OFFICERS, AGENTS, OR EMPLOYEES INCLUDING ATTORNEY'S FEES.

ARTICLE XI – Taxes, Unemployment Insurance and Related Items

CONSULTANT hereby accepts full and exclusive responsibility for the payment of any and all contributions or taxes, or both, for any unemployment insurance, medical and old age retirement benefits, pensions, and annuities now or hereinafter imposed under any law of the United States or any State, which are measured by the wages, salaries or other remuneration paid to persons employed by CONSULTANT on the work covered by this Agreement or in any way connected therewith; and CONSULTANT shall comply with all administrative regulations and

rulings thereunder with respect to any of the aforesaid matters; and CONSULTANT shall reimburse City for any of the aforesaid contributions or taxes, or both, or any part thereof, if by law City may be required to pay the same or any part thereof.

ARTICLE XII - General

A. Modifications - This Agreement or any part thereof may not be modified, except by written agreement of the parties signed by the duly authorized representatives of the parties.

B. No Waiver - No omission or delay by either party to this Agreement at any time to enforce any right or remedy reserved to it, or to require performance of any of the terms of this Agreement, shall be a waiver of any such right or remedy to which either party is entitled, nor shall it in any way affect the right of either party to enforce such provisions thereafter.

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

D. Severability - If any provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity of all other provisions hereof shall in no way be affected thereby.

E. Court Appearances - Except for any dispute arising directly from CONSULTANT's performance under this Agreement, nothing in this Agreement shall obligate CONSULTANT to prepare for or appear in litigation on behalf of City except in consideration of additional compensation. Absent a written supplemental agreement as to the amount of such additional compensation, CONSULTANT shall be compensated on a time and materials basis in accordance with CONSULTANT's hourly rate schedule then in effect and the provisions of Article II hereof.

F. Successors and Assigns - Neither party shall assign or transfer this Agreement or any of its rights hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, CONSULTANT shall have the right, upon forty-five (45) days written notice to City, to assign this agreement and its rights and obligations hereunder to CONSULTANT's parents, subsidiaries or affiliates or to any partnership in which CONSULTANT or any parent, subsidiary or affiliate of CONSULTANT is a general partner, or to a successor of CONSULTANT by consolidation or merger or to a purchaser of all, or substantially all, of CONSULTANT's assets. This Agreement shall inure to the benefit of the parties and their respective permitted successors and assigns.

G. Force Majeure - In the event that performance by either party of any of its obligations or undertakings under this Agreement shall be interrupted or delayed by any occurrence not occasioned by the conduct of either party hereto, whether such occurrence be an act of God such as lightning, earthquakes, floods or other like causes, the common enemy, the

result of war, riot, strike, lockout, civil commotion, sovereign conduct, explosion, fire or the act or conduct of any person or persons not a party to or under the direction or control of a party hereto, then such performance shall be excused for such period of time as is reasonably necessary after such occurrence to remedy the effects thereof.

H. Entire Agreement - This Agreement constitutes the entire Agreement between the parties and supersedes all previous agreements and understandings relating to the services to be performed under this Agreement.

I. Counterparts - This Agreement may be signed in any number of counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

J. Notice of Alleged Breach; Statutory Prerequisites -

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

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

K. Sovereign Immunity - By executing this Agreement, City is not waiving its right of sovereign immunity. City is retaining its immunity from suit. City is not granting consent to be sued by legislative resolution or action. **THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.**

L. Third-party Beneficiary - 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.

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

Commercial General Liability (including Contractual liability):

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

-Property Damage: \$500,000.00 per occurrence

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

Worker's Compensation: Statutory limits

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

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

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

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

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

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

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

The Consultant 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.

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

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

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

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

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

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

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

CONSULTANT:

By: _____

By: _____

Courtney B. Sharp, City Manager

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 **BERRY, DUNN, MCNEIL & PARKER, LLC DBA BERRY, DUNN,
MCNEIL & PARKER, PLLC**, known to me to be the person and official whose name is
subscribed to the forgoing instrument, and acknowledged to me that he executed the same as the

act and deed of said corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

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

Notary Public, State of Texas

APPENDIX A

Scope of Work and Fees

APPENDIX A

Scope of Work and Fees



May 29, 2013

Ms. Sharlett Chowning, CGCIO
Chief Information Officer
City of Midland, Texas
300 N. Lorraine
PO Box 1152
Midland, Texas 79702-1152
(Sent via email to: schowning@midlandtexas.gov)

Dear Ms. Chowning,

We are pleased to present to the City of Midland, Texas (City) our proposed approach to providing Enterprise Resource Planning (ERP) Procurement Assistance services.

BerryDunn has provided ERP procurement assistance services for public sector organizations across the Country including similar projects with the Cities of Mesquite and College Station, Texas. Through our work with these clients, we have been able to continually refine our proven project approach, which will allow us to guide the City towards realizing the benefits available through its ERP initiative, which include:

- ✓ The incorporation of fully integrated "best practices"
- ✓ The development of a centralized system that is user friendly and empowers departments to improve business processes
- ✓ The ability to integrate, add, and improve functionality in back office functional areas
- ✓ Improved quality and accessibility of information for decision support
- ✓ Reduced redundant data entry, storage, and paper processing
- ✓ Improved operational effectiveness, productivity, and responsiveness to change
- ✓ Opportunities for e-Government initiatives
- ✓ The retirement of existing legacy and standalone systems and tools

An ERP system implementation is one of the largest and most far-reaching projects that a municipal government will carry out in terms of its impact on how work is conducted and the way in which day-to-day tasks are accomplished. Moreover, ERP projects are typically larger in scope than other software projects, which often focus on a more limited set of business processes. As such, the associated risks are relatively higher, as enterprise-wide projects affect many more users, who each may have different and possibly conflicting needs and requirements.

When undertaking a project of this scope and importance, the City must have every confidence that they have selected a consultant who is fully familiar with municipal ERP system technologies; knows how to work with a large and diverse group of users in a way that will accurately assess their needs; and can translate these needs into a meaningful set of practical ERP system requirements. Likewise, this consultant must be able to understand where the City is today, assist the City in envisioning where it would like to be, and help chart the smoothest course to get there. BerryDunn's track record of

successful engagements assisting municipalities in the selection and implementation of ERP systems recommends us as an effective and valuable partner, and we would enjoy the opportunity to provide the requested services to the City.

BerryDunn's Proposed Approach

Our project approach includes four key tasks that align with the City's requested consulting services:

Task 1: Needs Assessment and Gap Analysis

- ◆ Deliverable: D1. Project Work Plan and Schedule
- ◆ Deliverable: D2. Project Kickoff and Fact Finding Meetings
- ◆ Deliverable: D3. Needs Assessment and Gap Analysis Report

Task 2: Request for Proposal Document

- ◆ Deliverable: D4. Preliminary Functional and Technical Requirements Document
- ◆ Deliverable: D5. Final Functional and Technical Requirements Document
- ◆ Deliverable: D6. RFP Document

Task 3: Evaluation and Selection of a Vendor

- ◆ Deliverable: D7. System Selection Assistance

Task 4: Contract Negotiations

- ◆ Deliverable: D8. Contract Negotiations

Each of these tasks and the steps involved are described in detail over the following pages.

Task 1 – Needs Assessment and Gap Analysis

- 1. Conduct initial project planning.** BerryDunn's Project Manager will conduct an initial project planning meeting with the City's designated point of contact to review our proposed Project Work Plan and Schedule, clarify goals and objectives, identify known project constraints, and refine dates and/or tasks as appropriate. As part of this meeting, we will discuss our approach for managing communications between BerryDunn and the City, as well as our approach to scope, risks, and resource management.

At this point, we will request names and contact information for stakeholders from the City that will be involved in the project and schedule a project kick-off meeting and initial interviews. We will also request the assistance of City staff to coordinate on-site meeting space, assist in scheduling interviews, facilitate the process of circulating deliverable documents for review, and assist in identifying appropriate stakeholders to interview.

Deliverable: D1. Project Work Plan and Schedule

- 2. Request and review existing documentation.** Prior to conducting our on-site work, we will provide the City with an Information Request Sheet to request available documentation that will be helpful to us during the project (e.g., organizational charts, on the existing CGI-AMS system, and other relevant information). We respectfully request that the City provide requested information prior to the project kickoff meeting and interviews, as reviewing available

information in advance of our on-site work will enable us to be more efficient, become more knowledgeable of the current environment, and make best use of City personnel's time.

3. **Develop and issue web survey.** We will develop and issue a web survey to the City staff to understand issues and challenges with current system(s). We envision that this survey will be issued to the core department users and will be used to help determine City's current and future ERP system needs. Prior to issuing the interview questionnaire, we will review the questions with the City's project liaison. We will then provide the survey to the core department users for completion. The results of the survey will be used as one part of the evaluation process of the current system.
4. **Facilitate Project Kickoff Meeting.** We will conduct a project kick-off meeting with City leadership, the Chief Information Officer, and other City stakeholders to introduce project team members, discuss the City's goals for this project, present our project approach and Work Plan, review the schedule of key project dates, answer questions, and discuss any issues that may impact the nature or timing of this project.
5. **Conduct on-site fact-finding meetings.** We will conduct on-site fact-finding meetings with City representatives that will make use of all modules comprised in the project scope, including General Ledger and Financial Reporting, Budget, Purchasing, Accounts Payable, Contract Management, Project Accounting, Grant Management, Accounts Receivable, Cash Receipts, Vendor Self-Service, Payroll, Human Resources, Benefits, Job Applications, and Community Development (which will include modules addressing Electronic Development Review and citizen/contractor web access for submitting permit applications, scheduling inspections, tracking permit/inspection status, etc.). The purpose of these meetings is to review, evaluate, and document the City's existing system functionality and understand processes that are critical or unique to the City so that these may be considered in our review of potential systems.

In addition, we will meet with representatives from the IT Department who support the existing enterprise applications to review available system documentation, inventory the City's current environment, understand the City's current IT staffing and support structure, and discuss existing system functionality and potential areas of focus for a new ERP system. In our review, we will document current City-wide IT standards that may affect the range of software available. In addition, if available, we will review software change requests related to the existing systems. This will provide our team with an understanding of the types of functionality desired (but not available) in the current environment.

We have planned for four days of fact-finding meetings with two teams of BerryDunn consultants. Where feasible, we will consolidate meetings to minimize impact on City personnel.

Deliverable: D2. Project Kickoff and Fact Finding Meetings

6. **Develop Needs Assessment and Gap Analysis Report.** BerryDunn will develop a Needs Assessment and Gap Analysis Report that will describe the business needs and current deficiencies identified during the meetings, survey, and document review. Specifically, the report will analyze the existing ERP system's

- ✓ Effectiveness of the existing CGI-AMS ERP solution in meeting the business needs of the City
- ✓ Existing department-specific data or data needs that may be incorporated into a City-wide ERP solution
- ✓ Ability of existing stand-alone systems to effectively integrate into a ERP software solution (and the necessary components for a successful integration)
- ✓ Effectiveness of the existing hardware in supporting a ERP system
- ✓ Current staffing support for the ERP system and potential efficiencies that may be recognized with a new system
- ✓ Other relevant system, resource components, or issues that may drive the needs to replace or enhance the current ERP system

We will provide a draft of the Needs Assessment and Gap Analysis Report to the City for review and conduct a walkthrough via teleconference to explain our findings and gain feedback.

We believe it is important to obtain the City's validation and approval of these findings, as this information will serve as the basis for the preliminary functional and technical requirements that we develop. Based on the City's feedback, we will revise the Needs Assessment and Gap Analysis Report and update to Final.

Deliverable: D3. Needs Assessment and Gap Analysis Report

Task 2 – Request for Proposal Document

- 7. Develop preliminary functional and technical requirements.** In order to develop a Request for Proposal document, BerryDunn will need to first develop Preliminary Functional and Technical Requirements based on the survey results, document reviews, and onsite fact-finding meetings, the Needs Assessment and Gap Analysis, and the Action Plan.

BerryDunn has developed a database of general technical and functional requirements of ERP software systems based on our experience with other government agencies and our knowledge of ERP system functionality and best practices. Drawing from this database, we will make refinements and customize the preliminary list based on our understanding of the City's current business and technical environment, with consideration given to those processes that are critical or unique to the City.

Our Requirements Definition Methodology has been developed and refined over the past 15 years to meet the unique needs of local government ERP system planning projects. This methodology provides the City with a proven, iterative, and collaborative process that promotes involvement of stakeholders from all levels of the organization. The benefits of BerryDunn's methodology include:

- Involvement of key stakeholders
- Involvement of City staff at the appropriate time in the process
- Involvement of all levels of City staff
- Multiple opportunities for review
- Collaborative approach

- Requirements are documented in a format that facilitates ease of tracking during implementation

We have found that in following our process of preparing preliminary functional and technical requirements after initial fact-finding meetings with the City, we are able to define approximately 75 percent of requirements up front for most clients. We will provide this preliminary list to the City for use as a starting point for facilitated joint requirement planning (JRP) work sessions.

Deliverable: D4. Preliminary Functional and Technical Requirements Document

- 8. Conduct Joint Requirements Planning (JRP) work sessions.** Using the preliminary list of requirements as a starting point, we will schedule JRP work sessions with groups of staff for each of the core business areas that require a list of functional requirements. The purpose of these meetings will be to review the preliminary list of requirements and facilitate additions, changes, and deletions.

During these facilitated work sessions, BerryDunn will work collaboratively with participants and challenge staff to consider “desired” or “required” needs in the future environment. We will also ask stakeholders to identify whether or not the requirements exist in today’s environment. Based on our experience with other government institutions and our understanding of the City’s needs, we have planned for four (4) days of on-site JRP work sessions with two (2) teams of BerryDunn consultants as needed.

Following the JRP sessions, we will update the Preliminary Technical and Functional Requirements document to incorporate information gained from City personnel. Prior to finalizing the document, we will provide a draft of the requirements list to the City for review. We will collect a single summary of changes from the City and modify the draft report to include all desired document modifications.

Deliverable: D5. Final Functional and Technical Requirements Document

- 9. Develop Request for Proposal.** BerryDunn will meet with City leadership and a representative from the City’s Purchasing Department during the week of the JRP sessions to identify required standards for inclusion in an RFP (e.g., standard terms and conditions, required format, other language) and establish a timeline for the RFP development and procurement processes.

We will then develop the RFP using a proven format that incorporates information on the history of the project, a high-level description of the City’s current environment, the City’s desired approach to implementing a new ERP system, the City’s functional and technical requirements, and a structured list of points for vendors to address in their response.

Our team will also work with the City to develop objective evaluation criteria to include in the RFP. We will then prepare a scoring matrix to track significant strengths and limitations of each proposal reviewed in terms of the established evaluation criteria.

We will review the draft RFP and Scoring Matrix with the City prior to finalizing the document. We will then incorporate the City's feedback and prepare the RFP for distribution. BerryDunn is proposing the development of a one (1) Request for Proposal document for the City inclusive of the software and services needed to implement a new ERP system.

Deliverable: D6. RFP Document

- 10. Issue RFP and facilitate vendor conference.** BerryDunn will issue the RFP to prospective vendors utilizing the City's preferred RFP distribution methods. We will also facilitate an offeror's conference for prospective bidders via teleconference.
- 11. Respond to vendor questions.** We will work in collaboration with the City throughout the procurement process, including responding to vendor questions by compiling the questions, distributing questions to the appropriate individual(s) for response, and drafting responses as requested in collaboration with the City.

Task 3 – Evaluation and Selection of a Vendor

- 12. Review vendor proposals.** BerryDunn will facilitate the proposal review process by analyzing vendor proposals and developing an executive level summary of each. Our project work plan assumes that we will be reviewing up to six (6) vendor proposals. The result of each executive level summary will also summarize the reported level of fit of each vendor proposal based on their response to the City's functional and technical requirements.
- 13. Facilitate vendor scoring meeting.** BerryDunn will facilitate a vendor scoring meeting in order to review the proposal summaries, assist in the scoring process, and collect scores to identify the top three (3) preferred vendors. Immediately following this meeting BerryDunn will facilitate a meeting to review the approach to creating the necessary demonstration scripts and gain consensus.
- 14. Develop demonstration scripts and scoring methodology.** BerryDunn offers the City a unique set of qualifications in that our proposed Engagement Manager has not only assisted clients in facilitating vendor demonstrations, but has also demonstrated and implemented ERP software for numerous city, county, state, and quasi-state government clients. As such, we are well qualified to assist the City in developing a demonstration script that incorporates proven techniques and tactics to elicit useful information during the demonstration process. We will develop a draft demonstration script template, provide it to the City for review, and assist the City in completing the demonstration scripts. We will provide the script to vendors in advance of their on-site demonstrations. We will also develop a scoring methodology and evaluation criteria for the demonstrations that will assist the City in scoring each demonstration.
- 15. Conduct pre-demonstration conference calls.** BerryDunn will conduct a pre-demonstration conference call with each of the three vendor finalists. These calls will give each vendor one hour to ask questions about the demonstrations scripts and confirm their approach for the demonstrations.

- 16. Facilitate vendor demonstrations.** BerryDunn will coordinate and facilitate vendor demonstrations for up to three vendors over three days each, for a total of nine (9) days of demonstrations at the City's offices (Day 1 Financials, Day 2 Payroll, HR and Technology, Day 3 Community Development). Our project team's extensive background in the demonstration process provides the City with a unique perspective on how to score, prepare, evaluate, and participate in vendor demonstrations. Following each demonstration, we will meet with the City's evaluation team to assess the vendor's product utilizing the established evaluation criteria. Immediately following the last demonstration we will facilitate a second round scoring meeting with the City to determine a revised ranking of the vendors (if needed) based on the information collected during the demonstration process. We have planned for one BerryDunn staff to facilitate the vendor demonstrations on-site at City offices.

Deliverable: D7. System Selection Assistance

- 17. Prepare City team for reference checks.** BerryDunn will provide a format and structure for reference checks and participate with City staff to conduct vendor reference checks by teleconference.
- 18. Arrange site visits and develop site visit memo.** BerryDunn recommends the City visit a similar organization in which the finalist vendor has implemented the proposed system. This will provide an opportunity to ask questions, understand how the software is being used, and assess operational issues related to use of the software or implementation. We believe that a site visit will offer the City the unique opportunity to not only view the proposed software in use at another organization but to also offer City staff the ability to talk with peers and understand the challenges and benefits of the proposed system.

BerryDunn will develop a recommendations memo for the City that describes how to prepare for a site visit. As part of the memo we will identify City tasks that should be accomplished prior to the site visit. The memo will include a list of materials that should be reviewed and step-by-step instructions for preparing for each meeting. We will then arrange the site visit, develop an agenda for the visit, and meet with the City's project team to discuss the agenda and answer questions regarding the site visit.

Task 4 – Contract Negotiations

- 19. Contract Negotiation Participation.** We have been involved in contract negotiations from the client, vendor, and independent consultant perspective, and are knowledgeable about how the contract impacts the implementation process. In conducting contract negotiations between City and the preferred vendor, we will draw on these experiences to ensure the City's best interests are being met. As part of that process, we believe it is critical to develop a positive relationship between the City and the vendor, as this sets the foundation for a collaborative implementation process.

Prior to beginning negotiations, we will discuss the negotiation strategy with the City and identify key roles for decision-making. We will then draw on the information gathered during our review of the vendors' proposal, identify any concerns, and provide the vendors with an

opportunity to respond with requested modifications. Following initial conversations with the two vendors, we will confirm the preferred vendor with the City.

Additionally, we will work with the City's project team, the City's legal counsel, and the preferred vendor to develop a draft contract, utilizing the City's contracting procedures and the vendor's proposal as a starting point. We will review the contract documents in consultation with the City to establish that requirements are clearly defined and that the City agrees on the schedule, implementation process, fee arrangement, vendor resources, deliverables, costs, acceptance criteria, and terms and conditions. In addition, we will be "at the table" in negotiations with the preferred vendor. Should it become clear at any point during negotiations that the preferred vendor's solution or contract terms will not meet the needs of the City, we may recommend halting negotiations with the preferred vendor and commencing negotiations with the alternate vendor.

Integral to the process of finalizing contract negotiations is to ensure a positive working relationship between the City and the vendor. While contract negotiations can be stressful, we will work with all parties to establish a constructive sense of partnership moving into the implementation phase. Based on our experience conducting contract negotiations for similar projects, we recognize that the level of effort can vary significantly depending on several factors. We have planned for 40 hours of contract negotiation services (to be billed as used), which we have found is generally appropriate for a project of this scope and size.

Deliverable: D8. Contract Negotiation Assistance

Proposed Staffing

BerryDunn's Government Consulting Group will be responsible for conducting the work on this project. Our proposed team – which combines a wealth of experience in public sector ERP system planning, procurement, and implementation oversight, together with an extensive background in ERP software implementation for schools – has been assembled with careful consideration of the City's needs and goals. Table 1 presents brief descriptions of the experience, roles, and responsibilities of our proposed project team members.

Table 1: BerryDunn Project Team Roles and Backgrounds

Name/Title	Project Role and Background
Chad Snow, PMP, CFE Engagement Manager	Chad will serve as Engagement Manager for this project. In this role, he will work with the Project Manager to monitor the progress of the project and track the initiation and completion of tasks and milestones. Chad will also participate in on-site fact finding meetings. With the Project Manager, he will oversee the quality and timeliness of all deliverables. Chad is a Senior Manager in BerryDunn's Government Consulting Group and is dedicated to serving local government clients. He is a Certified Project Management Professional (PMP) and a Certified Fraud Examiner. He has provided or is providing ERP consulting services for several clients, including work with the Cities of College Station, Texas; Mesquite, Texas; Sioux Falls, South Dakota; Bloomington, Minnesota; Richmond, Virginia; and Toledo, Ohio; as well as the Town of Buckeye, Arizona; Sussex County, Delaware; Scott County, Iowa; and Hillsborough County, Florida, among others. Prior to joining BerryDunn, Chad worked for an ERP system vendor, where he provided in-depth demonstrations and assisted with the implementation of ERP and revenue applications to municipalities across the country. He has more than 17 years of experience working with public sector agencies to evaluate technology and related business processes, including 10 years working in municipal government.
Seth Hedstrom, CAPM Project Manager	Seth will serve as the Project Manager for this engagement. In this role, he will serve as primary liaison with the City and be responsible for maintaining a constructive and clear line of communication between City staff and BerryDunn. In addition, he will monitor the progress of the project, track the initiation and completion of tasks and milestones, facilitate our on-site meetings and information gathering activities, and lead the development of project deliverables. Seth is a Senior Consultant in BerryDunn's Government Consulting Group and a Certified Associate in Project Management (CAPM), a designation of PMI. He joined BerryDunn in 2009 and has worked with clients on financial systems planning, IT planning, system selection, and the implementation of new financial/ERP systems, including work with the Cities of Mesquite, Texas; College Station, Texas; Sioux Falls, South Dakota; Harrisonburg, Virginia; and Nashua, New Hampshire; as well as Sussex County, Delaware; Scott County, Iowa; and Hillsborough County, Florida, among others.
Jonathan Grace Business Analyst	Jon is a Consultant in BerryDunn's Government Consulting Group who has played key roles in a number of projects for local government clients looking to replace a variety of systems, many involving their ERP software. Before joining the firm in 2012, Jon has over 10 years' experience working with ERP system vendors. Jon will serve as a Business Analyst, working closely with the Project Manager and in collaboration with BerryDunn team members to facilitate fact-finding meetings, conduct research, analyze the City's needs, and develop project deliverables.

Name/Title	Project Role and Background
Kevin Price Business Analyst	Kevin is a Consultant in BerryDunn's Government Consulting Group who joined the firm at the start of 2013. He is currently working as a Business Analyst supporting a number of BerryDunn's local government clients. Kevin will serve as a Business Analyst, supporting BerryDunn's efforts relating to fact-finding, research, and deliverable development.
Marcy McHatten, PMP Business Analyst	Marcey provides a range of management and IT consulting services, including relevant systems planning work with the City of Newport News, Virginia; the Town of Leesburg, Virginia; and the Maryland Judiciary, among others. Marcey will serve as Business Analyst, working in collaboration with BerryDunn team members to facilitate fact-finding meetings, conduct research, analyze the City's needs, and develop project deliverables.

Timing and Fees

Please see Table 2 for an overview of our fees that will be assessed for this project.

Table 2: Project Costs

Deliverable	Cost
D1. Project Work Plan and Schedule	\$3,805
D2. Project Kickoff and Fact Finding Meetings	\$22,965
D3. Needs Assessment and Gap Analysis Report	\$10,485
D4. Preliminary Functional and Technical Requirements Document	\$9,040
D5. Final Functional and Technical Requirements Document	\$27,040
D6. RFP Document	\$8,050
D7. System Selection Assistance	\$32,880
D8. Contract Negotiation Assistance (billed as incurred)	\$11,200
Project Expenses, billed as incurred	\$14,040
Total Cost	\$139,505

We want to be sure that our work best meets your needs, and we can modify our proposed project scope, methods, work plan tasks, and timing as needed. We will schedule our work upon your authorization to proceed.

The City has indicated it is interested in using BerryDunn's prequalification under the Texas Department of Information Resources contract. The contract number is **DIR-SDD-2053**.

If you have any questions, please do not hesitate to contact me at (207) 541-2294 or csnow@berrydunn.com. Thank you again for thinking of BerryDunn for this project.

CITY OF MIDLAND
Communications and Information Services Department
Interoffice Memorandum

Date: June 25, 2013
To: Robert Patrick, Director of General Services
From: Sharlett Chowning, Chief Information Officer
Subject: Consulting Contract with BerryDunn

City staff proposes contracting with the firm of BerryDunn to provide assistance in preparing a requirements definition and Request for Proposal for an Enterprise Resource Planning System (ERP) software for the City.

Because of the constant changing state of citizen expectations, staff is interested in looking at computer functionality we may not possess at this time. The project would include looking at a complete needs assessment and Request for Proposal for a new Land Application system, i.e an integrated Planning, Codes Enforcement and Building Inspection system, as well as the state of our Financial and Human Resources System. By looking at all systems, economies of scale can be achieved for today and in the future. Most importantly, integration among the systems would be possible. Current systems available today include such features as citizen and developer portals and access to the systems from mobile devices for our field workers.

By engaging an experienced consultant, we can move the process much faster than using limited in-house staff. This engagement would ensure that all issues are looked at and evaluated. BerryDunn has performed similar services for multiple Texas cities, including most recently College Station and Mesquite. They have experience in identifying the functionality required for an integrated system for a municipality.

The staff recommends contracting with BerryDunn for consulting services to assist in the preparation of requirements definitions and an RFP at a cost of \$139,505. BerryDunn is on the Texas Department of Information Resources (DIR) contract, DIR-SDD-2053. Funding will be out of account 776-030-8986.



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 6/25/2013

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving a contract for the Water, Wastewater and Fire Hydrant Taps project for the Engineering Services Department.

Purpose:

Approval of a resolution approving a contract for water, wastewater and fire hydrant taps.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Not to exceed \$500,000.00 from the Water & Sewer Construction Fund

Discussion:

Four potential bidders attended the pre-bid conference. We received one bid from TEC Excavation, Inc. Their bid appears to be in line with current pricing trends. We recommend awarding the contract to TEC Excavation, Inc.

Therefore, please consider approval of a resolution awarding a contract for water, wastewater and fire hydrant taps to TEC Excavation, Inc. of Midland, Texas for a not to exceed cost of \$500,000.00.

RESOLUTION NO.

**RESOLUTION AWARDING A CONTRACT FOR THE
WATER, WASTEWATER AND FIRE HYDRANT TAPS
PROJECT TO TEC EXCAVATION, INCORPORATED,
OF MIDLAND, TEXAS, AT A TOTAL COST OF
\$500,000.00; AND APPROPRIATING FUNDS**

WHEREAS, the City Manager advertised plans and specifications and authorized advertisement for bids for the Water, Wastewater and Fire Hydrant Taps Project; and

WHEREAS, Bid No. U12-03-0000 was opened, with the sole bid received being submitted from TEC Excavation, Inc., at \$500,000.00 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 TEC Excavation, Inc., for said project;

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

SECTION ONE. That the Mayor and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a contract with TEC Excavation, Inc., for said project at a cost not to exceed \$500,000.00, 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 \$300,000.00 is hereby appropriated from the Water and Sewer Fund (300) Unappropriated Fund Balance (5650) to the W / WW / FH Tap Project 2 (9049).

SECTION THREE. That the appropriation to the W/WW/FH Tap Project (9027) is reduced by the amount of \$200,000.00 and the appropriation to the W / WW / FH Tap Project 2 (9049) is increased by the amount of the referenced reduction.

SECTION FOUR. That the City Treasurer is hereby authorized and directed to pay TEC Excavation, Inc., 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., 2013, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, General Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

Project # U13-03-0000 (Water, Wastewater & Fire Hydrant Tap Project)

Project # U12-03-0000 (Water, Wastewater & Fire Hydrant Tap Project)				TEC EXCAVATION	
		Quantity	Unit	Unit Price	Amount
Water Improvements					
Item	Description				
1	8" C-900 DR 18	500	LF	\$45.00	\$22,500.00
2	6" C-900 DR 18	500	LF	\$40.00	\$20,000.00
3	4" C-900 DR 18	250	LF	\$35.00	\$8,750.00
4	6" DIP Pressure Class 150	250	EA	\$60.00	\$15,000.00
5	12" Tapping Sleeve	4	EA	\$2,250.00	\$9,000.00
6	10" Tapping Sleeve	4	EA	\$1,900.00	\$7,600.00
7	8" Tapping Sleeve	4	EA	\$1,750.00	\$7,000.00
8	6" Tapping Sleeve	10	EA	\$1,620.00	\$16,200.00
9	4" Tapping Sleeve	4	EA	\$1,570.00	\$6,280.00
10	8" Gate Valve (MJ X MJ/F)	10	EA	\$1,370.00	\$13,700.00
11	6" Gate Valve (MJ x MJ/F)	30	EA	\$980.00	\$29,400.00
12	4" Gate Valve (MJ x MJ/F)	10	EA	\$840.00	\$8,400.00
13	Fire Hydrant	10	EA	\$3,500.00	\$35,000.00
14	Ductile Iron Fittings	4	TN	\$5,970.00	\$23,880.00
15	8" Mechanical Joint Restraining	30	EA	\$200.00	\$6,000.00
16	6" Mechanical Joint Restraining	30	EA	\$190.00	\$5,700.00
17	4" Mechanical Joint Restraining	10	EA	\$180.00	\$1,800.00
18	12" Tapping Saddle	10	EA	\$440.00	\$4,400.00
19	10" Tapping Saddle	10	EA	\$430.00	\$4,300.00
20	8" Tapping Saddle	25	EA	\$310.00	\$7,750.00
21	6" Tapping Saddle	25	EA	\$290.00	\$7,250.00
22	4" Tapping Saddle	10	EA	\$330.00	\$3,300.00
23	1" Water Service Connection (0' - 5' Depth)	50	EA	\$950.00	\$47,500.00
24	1" Polyethylene Tubing (Including Trenching)	500	LF	\$8.00	\$4,000.00
25	2" Water Service Connection (0' - 5' Depth)	10	EA	\$1,510.00	\$15,100.00
26	2" Polyethylene Tubing (Including Trenching)	250	LF	\$11.00	\$2,750.00
27	Additional Depth (5'-15')	30	VF	\$35.00	\$1,050.00
		TOTAL WATER BID		\$333,610.00	
Wastewater Improvements					
Item	Description				
1	8" Wastewater main	250	LF	\$43.00	\$10,750.00
2	6" Wastewater main	250	LF	\$41.00	\$10,250.00
3	6" Wastewater Service Connection	10	EA	\$2,000.00	\$20,000.00
4	4" Wastewater Service Connection	50	EA	\$1,800.00	\$90,000.00
5	6" SDR 35 Wastewater Lateral & Trenching (0' - 5' Depth)	200	LF	\$43.00	\$8,600.00
6	4" SDR 35 Wastewater Lateral & Trenching (0' - 5' Depth)	1000	LF	\$40.00	\$40,000.00
7	Additional Depth At Trenching Including Trench Safety (Depth 5' - 15')	200	VF	\$150.00	\$30,000.00
8	Additional Depth At Trenching Including Trench Safety (greater than	50	VF	\$150.00	\$7,500.00
		TOTAL WW BID		\$217,100.00	
Pavement Improvements					
Item	Description	Quantity	Unit	Unit Price	Amount
1	Base Rock Utility Cut Repair	5000	SF	\$4.00	\$20,000.00
2	Asphalt Utility Cut Repair	2000	SF	\$5.00	\$10,000.00
3	Concrete Utility Cut Repair	500	SF	\$12.00	\$6,000.00
4	Job Site Safety and Traffic Control	10	EA	\$2,000.00	\$20,000.00
5	Job Site Safety and Traffic Control	40	EA	\$1,250.00	\$50,000.00
6	Job Site Safety and Traffic Control	80	EA	\$500.00	\$40,000.00
		TOTAL PVMT BID		\$146,000.00	
		TOTAL BASE BID:		\$696,710.00	



MEMO

TO: Regina Stephenson; City of Midland, Purchasing Manager
FR: David D. Beard, P.E.; City of Midland, City Engineer
DA: 12 June 2013
RE: Water / Wastewater / Fire Hydrant Taps – Bid Tabulation
Project No. U13-03 ♦ RFB 6555-13

Regina --

Engineering staff has reviewed the bid tabulation for the Water, Wastewater, and Fire Hydrant Tap project. TEC Excavation, Inc. of Midland, TX was the low bidder. TEC has a track record of successfully completing work in the City of Midland and surrounding areas. Although only one bid was received, the unit prices appear to be in line with current pricing trends. Therefore, I am recommending award of the Water, Wastewater, and Fire Hydrant Tap project to TEC Excavation in the amount of \$500,000. Below is the funding language.

That the sum of \$300,000 is hereby appropriated from the Water and Sewer Fund (300) Unappropriated Fund Balance (5650) to the W / WW / FH Tap Project 2 (9049) ; and

That the appropriation to the W/WW/FH Tap Project (9027) is reduced by the amount of \$200,000 and the appropriation to the W / WW / FH Tap Project 2 (9049) is increased by the amount of the referenced reduction

City of Midland

David D. Beard, P.E.
City Engineer



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 6/25/2013

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution authorizing the advertisement of Request for Qualifications (RFQ) for Hike/Bike Master Plan development.

Purpose:

Approval to issue a request for qualifications for an engineering/architectural firm to analyze and develop the Hike and Bike Trail Plan for the Community Services Department.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Funding is not required at this time.

Discussion:

Please consider approving a resolution authorizing the issuance of a request for qualifications for an engineering/architectural firm to analyze and develop the comprehensive Hike and Bike Trail Plan Phase 1. The estimated cost is \$50,000.00. Please see the attached memo from Tina Jauz, Community Services Director, for additional information.

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING ISSUANCE OF A
REQUEST FOR QUALIFICATIONS FOR AN
ENGINEERING/ARCHITECTURAL FIRM TO
ANALYZE AND DEVELOP THE HIKE AND BIKE
TRAIL PLAN FOR THE COMMUNITY SERVICES
DEPARTMENT**

WHEREAS, a request for qualifications has been prepared for analysis and development of the City's Hike and Bike Trail Plan; and

WHEREAS, the City Council finds it to be in the public interest to approve such request for qualifications and authorizes the City Manager to issue the same;

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

SECTION ONE. That the request for qualifications for analysis and development of the City's Hike and Bike Trail Plan is hereby approved, said request for qualifications being on file with the office of the City Secretary, referenced by the date and number of this Resolution.

SECTION TWO. That the City Manager or his designee is hereby authorized to issue said request for qualifications pursuant to the statutes of the State of Texas for accomplishing the work set forth therein.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, General Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

REQUEST FOR QUALIFICATIONS FOR PROFESSIONAL ARCHITECTURAL/ENGINEERING SERVICES FOR THE CITY OF MIDLAND, TEXAS

Analysis and Development of Comprehensive Hike and Bike Trail Plan and Development of Plans, Specifications and Estimates for Phase I of the Hike and Bike Trail System

INTRODUCTION

The City of Midland is seeking to engage an Architectural/Engineering firm to:
Provide complete Architectural/Engineering services for the analysis and development of a Comprehensive Hike and Bike Trail Plan and to develop the plans, specifications and estimates for Phase I construction of the Hike and Bike Trail System.

GENERAL SCOPE OF SERVICES AND TASKS

The selected consultant will be responsible for providing complete Architectural/Engineering services for the analysis and development of a Comprehensive Hike and Bike Trail Plan and the development of plans, specifications and estimates for Phase I construction of the Hike and Bike Trail System.

All text and exhibit products shall be computer-based and provided in both hard copy and electronic format compatible with Microsoft Office 2007.

RFQ DUE DATE: 4:00p.m. Friday, August 2, 2013.

Seven (7) copies of the qualifications shall be submitted in accordance with this RFQ. Please mark the package "Request for Qualifications for the City of Midland, Hike and Bike Trail Plan and Phase I Development". Submit Package to:

Regina Stephenson
Purchasing
300 N. Loraine St. Suite 220
Midland, TX 79701

Final consultant approval will be by the City Council and is subject to budget approval. Consultants may contact Laurie Williams, Parks and Recreation Manager, for additional information at 432.685.7370. All qualifications are considered public records. The Community Services Department reserves the right to request additional information

from consultants submitting qualifications. If selected, staff will make a recommendation to City Council for approval; additional copies of the qualifications may be required.

INTRODUCTION AND SUMMARY

The City of Midland, Texas is seeking an Architectural/Engineering firm to provide the analysis and development of a Comprehensive Hike and Bike Trail Plan and to develop the plans, specifications and estimates for Phase I construction of the Hike and Bike Trail System. Hike and Bike Trails were identified as a number one priority by Midland citizens surveyed for the 2012 Parks, Recreation, and Open Space Master Plan. The City of Midland has a series of projects such as "Safe Routes to School" and others that have provided some opportunities for Hike and Bike facilities. However, there are many more opportunities that have not yet been developed, such as the drainage draws throughout the city. There are some designated bike routes throughout the city, but they are not connected with linkages that provide the best opportunities for safe transportation. In addition, new development throughout Midland does not currently require consideration for Hike and Bike trails. This opportunity needs to be evaluated and outlined in a Master Plan in order to provide a better quality of life in Midland, Texas.

Project Timeline

The Architectural/Engineering firm shall work with the city to establish a project timeline, phasing, and associated costs. Expected completion of the Comprehensive Master Plan is February 28, 2014. Expected completion of the Phase I construction plans, specifications and estimates is May 1, 2014.

GENERAL SCOPE OF SERVICES & TASKS

These tasks will include, but will not be limited to:

- 1) Evaluate existing Hike and Bike facilities;
- 2) Identify opportunities for new Hike and Bike facilities;
- 3) Prepare Comprehensive Hike and Bike Plan with phasing to include:
 - a. Connectivity of new and existing facilities
 - b. Provide trail recommendations for future land development
 - c. Provide typical details for future development of trails
 - d. Provide City of Midland Map with existing and proposed trails and linkages identified.
- 4) Prepare schematic plans and estimate associated costs
 - a. Present options for Phase I development
 - b. Recommend priorities with budget
- 5) Prepare construction documents for Phase I
- 6) Work with City to prepare bid documents for Phase I

INFORMATION FOR CONSULTANTS

Form of Qualifications

The consultant qualifications shall include the following information:

1. Description of the firm's interest in participating in the project.
2. Names and titles of professionals and support staff that will work on the project, a brief description of previous team experience on this type of project, and copies of their resumes. If the project is to be a joint venture between consulting firms, the qualifications should state so.
3. Work history of the company.
4. A proposed work program and timeline to respond to the scope of work in this RFQ.
5. Unique challenges in completing similar projects and outcomes.
6. Description of up to five projects indicating relevant experience and including a brief description of the project, client and phone number, budget, and role. Please include sample pages, websites, etc. for committee review.
7. Your current project schedule in relation to the time and attention, which you anticipate devoting to this project.
8. Names, addresses, and telephone numbers of references or clients for whom the consultant has recently performed services.
9. List all legal challenges and outcomes for this type of project within the last five (5) years.

Questions Prior to Submission of RFQ

Questions should be addressed to Laurie Williams, Parks and Recreation Manager, no later than July 29, 2013.

Evaluation of Qualifications

The following criteria will be considered in evaluating the qualifications and selecting a consultant:

- Firm experience and capability; credentials and experience of staff assigned to the study;
- References and quality of comparable work performed for other municipalities;
- Quality and organization of the proposal; tailoring of the proposal to the City of Midland needs;
- Likelihood of ability to produce a quality product in the given time frame; and
- Methodology;

In addition, the City reserves the right to request additional information from consultants submitting qualifications. All qualifications are considered public records. The City reserves the right to reject any or all qualifications and the right, in its sole discretion, to

accept the qualifications it considers most favorable to the City's interest. The City further reserves the right to reject all qualifications and seek new qualifications when such procedure is deemed reasonable and in its best interest.

Weighting Factors

The final overall score will be computed by scoring each factor separately, and multiplying that score by the appropriate weighted percentage, and then adding all of the scores together.

FACTOR	WEIGHT
Firm experience and capability; credentials and experience of staff assigned to the project	25%
References and quality of comparable work performed for other public agencies	25%
Quality and organization of the proposal; tailoring of the proposal to the City of Midland needs	20%
Likelihood of ability to produce a quality product within the given time frame	15%
Methodology	15%

Selection of Consultant

The City shall review and interview firms that meet the criteria explained within this RFQ. Community Services shall prepare a short list of consultants and interview those consultants. A firm will be selected for recommendation to the City Council for the purpose of negotiating contracts terms, including a fair and reasonable price. The firm will submit additional hardcopies and digital copies of their qualifications to be forwarded to the City Council.

If a satisfactory contract cannot be negotiated with that firm, the City shall formally end negotiations with that firm and select the next most favored provider, and attempt to negotiate with that firm. The City reserves the right to discontinue the process and reopen the process for proposals if an agreement cannot be reached.

Method of Compensation

Upon selection, the consultant will provide the necessary information for a contract to the City. The contract with the consultant is for a not-to-exceed amount, with reimbursement upon completion of agreed upon components of work, with a fee schedule for the remainder of the requested services. The Director of Community Services and/or her designee will review and approve for payment all invoices submitted by the consultant under the contract.

Liabilities

No costs associated with the presentation of the qualifications, or incurred in any manner by the proposer, may be charged to the City. All responses shall become property of the City and subject to disclosure under the Texas Open Records Law.

INSTRUCTIONS FOR QUALIFICATIONS

1. Qualifications must be submitted to:

Regina Stephenson
Purchasing
300 N Lorraine St. Suite 220
Midland, Texas 79701

2. Seven (7) copies of the qualifications must be received at the above address by 4:00 p.m. on **August 2, 2013**. The qualifications package should be labeled "Request for Qualifications for the City of Midland, Hike and Bike Trail Plan and Phase I Development".
3. Any questions concerning qualifications should be directed to Laurie Williams, Parks and Recreation Manager, 432.685.7370.

WAIVER

A. WAIVER OF CLAIMS ARISING FROM THE SUBMISSION OF A QUALIFICATION STATEMENT AND POSSIBLE AWARD OF CONTRACT.

BY SUBMITTING A STATEMENT OF QUALIFICATIONS, EACH SUBMITTER AGREES TO AND DOES HEREBY WAIVE ANY CLAIM THE SUBMITTER HAS OR MAY HAVE AGAINST THE CITY AND THE CITY'S EMPLOYEES, AGENTS AND OFFICERS, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE FOLLOWING:

1. **THE ADMINISTRATION, EVALUATION OR RECOMMENDATION OF ANY STATEMENT OF QUALIFICATIONS.**
2. **WAIVER OR DELETION OF ANY OF THE REQUIREMENTS UNDER THE STATEMENT OF QUALIFICATIONS OR THE CONTRACT DOCUMENTS.**
3. **ACCEPTANCE OR REJECTION OF ANY STATEMENT OF QUALIFICATION.**
4. **AWARD OF CONTRACT.**

By submitting a Statement of Qualifications, the submitter acknowledges that he or she understands all terms of the proposal documents and consents to the competitive selection process and the possibility of a negative assessment. By submitting a

Statement of Qualifications, the submitter acknowledges and agrees that there was and is no disparity of bargaining power between the submitter and the City.

The submitter agrees that this is the intentional relinquishment of the above listed presently existing known rights.

B. WAIVER OF ATTORNEY FEES

BY SUBMITTING A STATEMENT OF QUALIFICATIONS, EACH SUBMITTER AGREES TO WAIVE AND DOES HEREBY WAIVE ANY CLAIM THE SUBMITTER HAS OR MAY HAVE AGAINST THE CITY, AND ITS RESPECTIVE EMPLOYEES AND REPRESENTATIVES FOR THE AWARD OF ATTORNEY FEES, ARISING OUT OF OR IN CONNECTION WITH THE ADMINISTRATION, EVALUATION, OR RECOMMENDATION OF ANY STATEMENT OF QUALIFICATIONS, WAIVER OF ANY REQUIREMENTS UNDER THIS RFQ, ACCEPTANCE OR REJECTION OF ANY STATEMENT OF QUALIFICATIONS, AND AWARD OF THE CONTRACT. BY SUBMITTING A STATEMENT OF QUALIFICATIONS, THE SUBMITTER SPECIFICALLY WAIVES ANY RIGHT TO RECOVER OR BE PAID ATTORNEY'S FEES FROM THE CITY OR ANY OF THE CITY'S EMPLOYEES AND REPRESENTATIVES UNDER ANY OF THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE, SECTION 37.001, ET. SEQ., AS AMENDED).

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

By execution and submission of a Statement of Qualifications, the submitter hereby represents and warrants to the City that the submitter has read and understands the intent of the Statement of Qualifications. The submitter acknowledges that it understands all terms within the proposal documents, which include the waiver provisions, and has had the right to consult with counsel regarding all of the above documents.

This section shall not be construed as a Waiver of Sovereign Immunity.

SOVEREIGN IMMUNITY

The City is not waiving its right of sovereign immunity. The City is retaining its immunity from suit. The City is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

QUESTIONS REGARDING THIS REQUEST

Questions should be directed to:

Laurie Williams
Parks and Recreation Manger
432.685.7370

PROFESSIONAL SERVICES AGREEMENT
FOR CONSULTING SERVICES

THIS AGREEMENT is made and effective the ____th day of ____ 2013, by and between the CITY OF MIDLAND, TEXAS, a municipal corporation, hereinafter called "CITY," and, _____ 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 design, development and project management of the Comprehensive Hike and Bike Trail Plan and Development of Plans, Specifications and Estimates for Phase I of the Hike and Bike Trail System Project for the City of Midland.

ARTICLE II. SERVICES TO BE PERFORMED

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

ARTICLE III. FINANCIAL CONSIDERATIONS

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

amount of such invoice; provided, however, that if CITY objects to any portion of an invoice, CITY shall notify CONSULTANT of CITY's objection and the grounds therefor within 15 days of the date of receipt of the invoice, and the parties immediately shall make every effort to settle the disputed portion of the invoice. CITY in any event shall pay every portion of the invoice that is not in dispute within the 30-day period for payment.

ARTICLE IV. TERM

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

ARTICLE V. TERMINATION AT WILL

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

ARTICLE VI. ASSIGNMENT

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

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

All reports, information and other data ("instruments of service"), given to, prepared or assembled by CONSULTANT under this Agreement, and any other related documents or items shall become the sole property of CITY and shall be delivered to CITY, without restriction, except that

CONSULTANT may make copies of any and all instruments of service for its files. The CITY shall not make any modification to the plans and specifications or make them available for use by third parties without the prior written authorization of CONSULTANT, which consent shall not be unreasonably withheld.

ARTICLE VIII. INDEPENDENT CONTRACTOR

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

ARTICLE IX. INSURANCE

1. Insurance

Consultant 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 Consultant shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-CITY vehicles, and employee non-ownership, and the amount of such policy shall be a minimum of \$250,000.00 covering any vehicle used for the execution of the work that is the subject of this Contract.

The Workers' Compensation coverage provided by Consultant shall inure to the benefit of employees injured during the course and scope of their employment by Consultant 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 Consultant's insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage.

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

ARTICLE X. ATTORNEY FEES

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

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

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

ARTICLE XI. SOVEREIGN IMMUNITY

By executing this agreement the CITY is not waiving its right of sovereign immunity. The CITY is retaining its immunity from suit. The CITY is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

ARTICLE XII. NO THIRD PARTY BENEFICIARIES

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

ARTICLE XIII. RELEASE

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

ARTICLE XIV. GENERAL PROVISIONS

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

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

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

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

If to CONSULTANT:

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

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

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

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

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

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

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

The statutory prerequisites outlined herein constitute jurisdictional requirements pursuant

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

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

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

CONSULTANT:

By: _____
Courtney B. Sharp, City Manager

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM

Keith Stretcher, City Attorney

ATTEST

Amy M. Turner, City Secretary

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

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

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

Notary Public, State of Texas

NOTICE TO BIDDERS

IF THIS PURCHASE REQUIRES A CONTRACT, THE ATTACHED CONTRACT AND INSURANCE REQUIREMENTS ARE NON-NEGOTIABLE. MODIFICATIONS BY BIDDER/CONTRACTOR OF ANY MATERIAL TERM(S) TO THE CONTRACT DOCUMENTS WILL BE DEEMED A NON-RESPONSIVE BID. NON-RESPONSIVE BIDS WILL BE REJECTED. BIDDER/CONTRACTOR MUST BE WILLING TO SIGN THE CONTRACT AS IS AND WITHOUT MODIFICATIONS, PROVIDE PROPERLY EXECUTED BONDS (IF APPLICABLE) AND PROVIDE INSURANCE SPECIFICALLY AS REQUIRED WITHIN THE CONTRACT DOCUMENTS WITHIN 21 DAYS OF THE DATE OF THE TRANSMITTAL LETTER.

IF THE SELECTED BIDDER/CONTRACTOR CANNOT MEET THE ABOVE REQUIREMENTS, THEN THE CITY RESERVES THE RIGHT TO AWARD THIS PURCHASE TO ANOTHER BIDDER.

IMPORTANT NOTICE – IF THE CONTRACT DOCUMENTS REQUIRE WORKER'S COMPENSATION INSURANCE, BIDDER/CONTRACTOR MUST CARRY WORKER'S COMPENSATION INSURANCE TO BE ELIGIBLE FOR THIS CONTRACT. IF YOU CANNOT PROVIDE WORKER'S COMPENSATION INSURANCE AS REQUIRED BY STATE OF TEXAS STATUTE, WE RESPECTFULLY REQUEST THAT YOU "NO BID" THIS WORK.

ANY VENDOR WHO FAILS TO COMPLY WITH THE TERMS OF THE AWARD MAY BE DECLARED AN IRRESPONSIBLE VENDOR. BIDS SUBMITTED BY SAID VENDOR SHALL NOT BE CONSIDERED AGAIN FOR A MINIMUM PERIOD OF SIX MONTHS AS DETERMINED BY THE CITY MANAGER, OR DIRECTOR OF GENERAL SERVICES.

IMPORTANT NOTICE

Conflict Of Interest Reporting Requirements

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

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

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

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

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

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

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

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

If you have previously submitted a form, it is NOT necessary to send another, unless the status has changed. If submitting due to change in previous status, please note change in status on the front of the form.

Upon completion of the form, sign and submit with bid or mail to:

City of Midland

Attn: City Secretary

P. O. Box 1152

Midland, Texas 79702

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor or other person doing business with local governmental entity

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

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

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

OFFICE USE ONLY

Date Received

1 Name of person doing business with local governmental entity.

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

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

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

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

For vendor or other person doing business with local governmental entity

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

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

- A. Is the local government officer named in this section receiving or likely to receive taxable income from the filer of the questionnaire? ☐ Yes ☐ No
- B. Is the filer of the questionnaire receiving or likely to receive taxable income from or at the direction of the local government officer named in this section AND the taxable income is not from the local governmental entity? ☐ Yes ☐ No
- C. Is the filer of this questionnaire affiliated with a corporation or other business entity that the local government officer serves as an officer or director, or holds an ownership of 10 percent or more? ☐ Yes ☐ No
- D. Describe each affiliation or business relationship.

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.

6

Signature of person doing business with the governmental entity

Date _____

CITY OF MIDLAND
Community Services Department
Interoffice Memorandum

Date: June 13, 2013
To: Regina Stephenson, Purchasing Manager
From: Tina Jauz, Community Services Director
Subject: Request for Qualifications – Midland Hike and Bike Trail Plan, and development of Phase I plans, specifications and estimate.

This Request for Qualifications is to engage an Architectural/Engineering firm to analyze existing and future Hike and Bike facilities to include:

- 1) Evaluate existing Hike and Bike facilities;
- 2) Identify opportunities for new Hike and Bike facilities;
- 3) Prepare Hike and Bike Plan with phasing to include:
 - a) Connectivity of new and existing facilities
 - b) Provide trail recommendations for future land development
 - c) Provide typical details for future development of trails
 - d) Provide City of Midland Map with trails and linkages identified.

The firm must also provide the following in the scope of their work:

- 1) Prepare schematic plans and estimate associated costs
 - a) Present options for Phase I development
 - b) Recommend priorities with budget
- 2) Prepare construction documents for Phase I
- 3) Work with City to prepare bid documents for Phase I

The Hike and Bike Trail Plan is to be completed by February 28, 2014. The plans, specifications and estimates for Phase I are to be completed by May 1, 2014. The project will be funded with the Parks Operating Budget, Object 3450 Consulting Fees.



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 6/25/2013

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving the sole source purchase of 13 – M7300 mobile radios with accessories, 2 – XG-100M mobile radios with accessories and 2 – M5300 mobile radios with accessories for the Garage Division.

Purpose:

Approval of a resolution authorizing the purchase of 13 – M7300 mobile radios with accessories, 2 – XG-100M mobile radios with accessories and 2 – M5300 mobile radios with accessories for new vehicles.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$77,579.25 Garage Fund

Discussion:

These radios are proprietary in nature and are only available from the authorized dealer, Holsum Bakers, Inc. dba Caprock Communications of Midland, Texas.

Therefore, please consider approval of a resolution authorizing the purchase of mobile radios from Holsum Bakers, Inc. dba Caprock Communications of Midland, Texas for a total cost of \$77,579.25.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE PURCHASE OF SEVENTEEN (17) MOBILE RADIOS IN ASSORTED CONFIGURATIONS, WITH ACCESSORIES, FROM HOLSUM BAKERS, INCORPORATED, DBA CAPROCK COMMUNICATIONS OF MIDLAND, TEXAS; SAID PURCHASE WAS NOT BID BUT PURCHASED AS A SOLE SOURCE; AND THE COSTS FOR THE RADIOS SHALL BE APPROXIMATELY \$77,579.25

WHEREAS, the City Manager approved the single source bid for seventeen (17) mobile radios in assorted configurations with related accessories for the Garage Division; and

WHEREAS, the single source provider, Holsum Bakers, Inc., dba Caprock Communications, of Midland, Texas, submitted a total bid for said radios and related accessories in the estimated amount of \$77,579.25, as shown on the quote sheets attached hereto as Exhibit "A" and incorporated herein for all purposes; and

WHEREAS, said radios are proprietary in nature and incompatible with other third party equipment in the market; and

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

WHEREAS, the City Council finds it to be in the public interest to purchase said radios and related accessories from Holsum Bakers, Inc., dba Caprock Communications;

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

SECTION ONE. That the City Manager is hereby authorized and directed to purchase said radios and related equipment at a total estimated cost of \$77,579.25.

SECTION TWO. That the City Treasurer is hereby authorized and directed to pay Holsum Bakers, Inc., dba Caprock Communications, for said radios and related accessories at a price not to exceed \$77,579.25, from funds available in the Fiscal Year 2012 – 2013 Garage Fund (750) General Services (040) Garage (0752) Communication and Video Equipment (8481) budget account upon proper receipt of invoices or statements approved by the City Manager.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, General Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

Caprock
Communications

M/A COM Mobile Communications
Authorized Dealer

1202 W. Florida
Midland, TX 79702

☆☆☆☆☆Five Star Premier

(432)682-3283 Fax (432)682-0526

Cost and Equipment Requirements

Prepared for: DAVID FLORES, CITY OF MIDLAND

Qty.	Description	Unit	Price
13	MAMW-SDMXX, M7300 MOBILE RADIO	\$2065.00	\$26845.00
13	MAMW-PKGPP, FEATURE EDACS AND P25 TRUNKING	\$2515.00	\$32695.00
13	MW-PL4F, FEATURE PHASE 2 P25	\$250.00	\$3250.00
13	MAMW-NMC7Z, STANDARD MICROPHONE	\$80.00	\$1040.00
13	MAMW-NZN7R, REMOTE MOUNT ACCY. KIT	\$360.00	\$4680.00
13	MAMW-NCP9F, REMOTE MOUNT CH721 CONTROL UNIT	\$825.00	\$10725.00

SUBTOTAL

\$79235.00

LESS COM DISCOUNT 25%

-\$19808.75

Extended Total: \$59426.25

Installation and Maintenance:

Remarks:

Terms:

Prices quoted are F.O.B. midland, TX.

Quotation good for 30 days

Delivered Approximately days from receipt of order

Quotation prepared by: Dan Ruiz

Date: March 25, 2013

Accepted by: [Signature]

Date: 5-28-13

State Tax added where applicable

175,000
col.

Caprock
Communications

M/A COM Mobile Communications
Authorized Dealer

1202 W. Florida
Midland, TX 79702

☆☆☆☆☆Five Star Premier

(432)682-3283 Fax (432)682-0526

Cost and Equipment Requirements

Prepared for: DAVID FLORES, CITY OF MIDLAND

Qty.	Description	Unit	Price
2	XM-100F, MOBILE, XG-100M, 136-870MHz	\$3582.00	\$7164.00
2	XMPKGPP, FEATURE, EDACS AND P25 TRUNKING	\$2380.00	\$4760.00
2	XMPL4F, FEATURE PHASE 2 P25 OPERATION	\$250.00	\$500.00
2	XMCP9F, REMOTE MOUNT CH721 SYSTEM CONTROL UNIT	\$825.00	\$1650.00
2	XMMC7Z, STANDARD MICROPHONE	\$ 80.00	\$160.00
2	XMZN7R, REMOTE MOUNT ACCY. KIT	\$360.00	\$720.00
SUBTOTAL			\$14954.00
LESS COM DISCOUNT 25%			-\$3738.50

Extended Total: \$11215.50

Installation and Maintenance:

Remarks: This is a quote for 2 UNITY mobiles, with listed accessories and features.

Terms:

Prices quoted are F.O.B. midland, TX. Quotation good for 30 days

Delivered Approximately ___ days from receipt of order

Quotation prepared by: Dan Ruiz

Date: MARCH 25, 2013

Accepted by: [Signature]

Date: 5-28-13

State Tax added where applicable

Caprock
Communications

M/A COM Mobile Communications
Authorized Dealer

1202 W. Florida
Midland, TX 79702

☆☆☆☆☆Five Star Premier

(432)682-3283 Fax (432)682-0526

Cost and Equipment Requirements

Prepared for: DAVID FLORES, CITY OF MIDLAND

Qty.	Description	Unit	Price
2	MAHK-S8MEX, M5300 MOBILE 800 MHZ EDACS	\$2375.00	\$4750.00
2	MAHK-PKUPT, FEATURE P25 TRUNKING	\$735.00	\$1470.00
2	HK-PL4F, FEATURE P25 PHASE 2	\$250.00	\$500.00
2	MAHK-NCP9F, CH721 SYSTEM CONTROL UNIT REMOTE MOUNT	\$825.00	\$1650.00
2	MAHK-NMC7Z, STANDARD MICROPHONE	\$ 80.00	\$160.00
2	MAHK-NZN7R, REMOTE MOUNT ACCY. KIT	\$360.00	\$720.00
SUBTOTAL			\$9250.00
LESS COM DISCOUNT 25%			-\$2312.50
Extended Total:			\$6937.50

Installation and Maintenance:

Remarks: This is a quote for two M5300 mobiles with listed accessories and features.

Terms:

Prices quoted are F.O.B. midland, TX. Quotation good for 30 days

Delivered Approximately days from receipt of order

Quotation prepared by: Dan Ruiz

Date: March 25, 2013

Accepted by: [Signature] Date: 5-28-13

State Tax added where applicable



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 6/25/2013

TO: City Council / City Manager

FROM: Marv Esterly, Director of Airports

SUBJECT: Consider a resolution authorizing advertisement for bids for Airport Capital Improvement Projects

Purpose:

Consider a resolution authorizing advertisement for bids for Airport Capital Improvement Projects described as Northwest Taxiway Extension Project - Phase II (7083), Perimeter Emergency Roadway and Gates Rehabilitation (7082), and Taxiway P Run-up (7103) at Midland International Airport.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Estimated Project Construction Costs:

	Total Project	FAA	Airport
NW Taxilane Exten. Phase II	\$ 47,000	\$2,495,000	\$674,500
Perimeter Emerg. Roadway & Gates Rehab	\$305,000	\$ 274,500	\$ 30,500
Taxiway P Run-Up	\$975,000	\$ 491,200	\$ 97,500

Discussion:

On May 22, 2012, City Council approved a recommendation made by the Department of Airports to amend Parkhill, Smith & Cooper's Professional Services Agreement to add the project described as the Northwest Taxiway Extension Project - Phase II (7083). This project will extend a taxiway south of existing Taxiway "A" to allow airfield access to a portion of Airport property northwest of the CAF. This project will extend access established in Phase I and will open additional acres for the construction of private and corporate hangars. In addition, the Perimeter Emergency Roadway and Gates Rehabilitation (7082) project was also approved in this amendment. This project will make necessary repairs to the emergency access road and relocate certain security gates as needed.

On November 13, 2012, City Council approved a resolution authorizing the execution of Amendment #3 to Parkhill, Smith & Cooper's Professional Services Agreement to include the project described as Taxiway P Aircraft Run-up (7103). This project stems from the FAA-established Runway Safety Action Team (RSAT) and the need to allow aircraft to pass while another performs an engine run-up.

The design of all three of these projects has been completed and funding from the FAA is available. It is necessary at this time to place these projects out for bids in order to obtain accurate project costs for the FAA.

Once bids are received and the FAA issues grant funding, the Department of Airports will return to City Council for authorization to accept FAA grant funding and award these projects to the winning bidder that meets all the requirements established in the request for bids.

RESOLUTION NO. _____

RESOLUTION APPROVING PLANS AND SPECIFICATIONS PREPARED BY PARKHILL, SMITH AND COOPER, INCORPORATED, AND AUTHORIZING ADVERTISEMENT FOR BIDS FOR THE CAPITAL IMPROVEMENT PROJECTS DESCRIBED AS NORTHWEST TAXIWAY EXTENSION PROJECT - PHASE II (7083); PERIMETER EMERGENCY ROADWAY AND GATES REHABILITATION (7082); AND TAXIWAY P RUN-UP (7103) AT THE MIDLAND INTERNATIONAL AIRPORT

WHEREAS, plans and specifications have been prepared by Parkhill, Smith & Cooper for the Airport Capital Improvement projects described as Northwest Taxiway Extension Project - Phase II (7083), Perimeter Emergency Roadway and Gates Rehabilitation (7082), and Taxiway P Run-up (7103) at the Midland International Airport; and

WHEREAS, the City Council finds it to be in the public interest to approve such plans and specifications for the Northwest Taxiway Extension Project - Phase II (7083), Perimeter Emergency Roadway and Gates Rehabilitation (7082), and Taxiway P Run-up (7103), and authorize the City Manager to advertise for competitive bids;

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

SECTION ONE. That the plans and specifications as prepared by the Parkhill, Smith & Cooper for the Northwest Taxiway Extension Project - Phase II (7083), Perimeter Emergency Roadway and Gates Rehabilitation (7082), and Taxiway P Run-up (7103), those plans and specifications to be on file in the City Secretary's office referenced by the number and date of this resolution.

SECTION TWO. That the City Manager, or his designee, is hereby authorized to advertise for competitive bids for said project pursuant to the statutes of the State of Texas for accomplishing the work set forth in the above approved plans and specifications. The award of the contract shall be by resolution approved by the City Council.

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

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

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Marv Esterly, Director of Airports

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:
jnichols
City Manager's Office

MEETING DATE: 6/25/2013

TO: City Council / City Manager

FROM: Bill Hodge, GIS Manager

SUBJECT: Consider a Resolution to approve the execution a renewal Right of Way license (2006-306) with Atlas Pipeline Mid-Continent WestTex (contract rights assumed from the original license holder, Western Gas Resources, 2007) for the maintenance of a pipeline located in Blk 38, Sec 9 and 10, T2S, Midland County, TX.

Purpose:

Consider a Resolution to approve the execution of a renewal Right of Way license (2006-306) with Atlas Pipeline Mid-Continent WestTex (contract rights assumed from the original license holder, Western Gas Resources, 2007) for the maintenance of a pipeline located in Blk 38, Sec 9 and 10, T2S, Midland County, TX.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Annual Lease Rate: \$ 20/rod/yr for 599.63 rods = \$ 11,992.60 annual revenue to the City and \$ 59,963.00 total revenue for the first full five year period of the contract, an increase of 100% from the original agreement.

Renewal fee: Atlas will pay a one-time \$ 500.00 license renewal fee.

Because the pipeline is existing, there will be no surface damages involved.

The lease rate for the second five-year period will be negotiated before the end of the first period and will be capped at no more than a 25% increase.

Discussion:

This right of way license is proposed as a contract with an initial five (5) year agreement, with a second additional five (5) years available upon written request at least 120 days before expiration.

The easement will be 30 feet total from the pipeline centerline. The pipeline will be maintained to provide a minimum of 36 inches of cover to natural ground.

This is a renewal of a pipeline ROW contract (2006-306, Oct 25, 2006) originally entered into with Western Gas Resources in October 25, 2006 for a poly pipeline, not to exceed 6" in diameter. This contract was assumed by Atlas Pipeline in 2007, but expired in 2011 without renewal by either Midland or Atlas. Atlas brought the need for renewal to Midland's attention as a good faith effort to renew the agreement.

Atlas has agreed to pay the 2011 lease payment in arrears, because we did not cash the last check issued. Because of their demonstration of good faith and our excellent working relationship in a number of other ROW agreements, staff recommends that we not seek a contract expiration fee.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING A RIGHT-OF-WAY LICENSE BETWEEN THE CITY OF MIDLAND, TEXAS AND ATLAS PIPELINE MID-CONTINENT WESTTEX; SAID RIGHT-OF-WAY LICENSE IS FOR ENTERING THE CITY OF MIDLAND'S RIGHT-OF-WAY FOR THE PURPOSE OF PLACING, CONSTRUCTING, OPERATING, REPAIRING, MAINTAINING, REPLACING AND REMOVING ONE (1) PIPELINE, FOR THE TRANSPORTATION OF OIL AND GAS MATERIALS AND TO HAVE THE RIGHT OF INGRESS AND EGRESS AT CONVENIENT POINTS FOR SUCH PURPOSE; THE PIPELINE IS LOCATED WITHIN THE CITY OF MIDLAND RIGHT-OF-WAY, SECTIONS 9 AND 10, BLOCK 38, T-2-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS; THE LICENSE TERM IS FOR FIVE (5) YEARS, COMMENCING WITH THE DATE OF THIS LICENSE AND SHALL AUTOMATICALLY RENEW AT THE END OF THE TERM FOR ONE ADDITIONAL FIVE (5) YEAR TERM UPON 120 DAYS WRITTEN REQUEST PRIOR TO EXPIRATION

WHEREAS the City Council finds it to be in the public interest to authorize a right-of-way license with Atlas Pipeline Mid-Continent WestTex, located within the City of Midland Right-of-Way, Sections 9 and 10, Block 38, T-2-S, T&P RR Co. Survey, Midland County, Texas;

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

THAT the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a right-of-way license with Atlas Pipeline Mid-Continent WestTex, said license being substantially in the form attached hereto as Exhibit "A" and incorporated herein for all purposes.

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

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Bill Hodge, GIS Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

RIGHT-OF-WAY LICENSE

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

THIS RIGHT-OF-WAY LICENSE (“AGREEMENT”), effective this 26th day of June, 2013, by and between THE CITY OF MIDLAND, TEXAS, a home-rule municipal corporation, hereinafter called “Licensor”, and ATLAS PIPELINE MID-CONTINENT WESTTEX, LLC, 110 West 7th, Suite 2300, Tulsa, Oklahoma 74119, hereinafter called “Licensee”.

Licensee desires use of property owned by the Licensor in Midland County, Texas outside the City of Midland, Texas, for purposes set forth below.

It is the position of the Licensor that Licensee must obtain a license in order to use the public lands of the City. The parties agree the grant herein may be referred to as the “License”.

W I T N E S S E T H:

For and in consideration of the execution of this Agreement and the mutual promises and covenants of the parties hereto, it is mutually promised, understood and agreed as follows, to wit:

I. Term

This Agreement shall be for a term of five (5) years (the “Initial Term”), commencing with the date of this Agreement, the “Commencement Date,” unless terminated earlier as provided hereafter. This Agreement shall automatically renew at the end of the Initial Term for one (1) additional term of five (5) years, upon the written

request of Licensee received by Licensor on or before (120) days prior to the expiration of the Initial Term then in effect, subject to the express written consent of the governing body of the Licensor. All work under this Agreement shall be suspended immediately upon termination of the Agreement becoming effective.

Either party may terminate this Agreement at will for any or no reason upon giving at least three hundred sixty five (365) days written notice to the Licensor. The parties to this Agreement understand and agree that it is in the Licensor's sole discretion to cancel the Agreement during the term of the Agreement without penalty to the Licensor. The Licensee has no expectation and has received no guarantees that this Agreement will not be terminated before the end of the Agreement term. The parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the term of the Agreement. All work and services under the Agreement shall be suspended upon termination of Agreement becoming effective.

Upon termination of this Agreement, Licensee shall remove all equipment and structures associated with the undertakings contemplated by this License. After removal of all equipment and structures associated with the undertakings contemplated by this License, the surface shall be restored at the expense of the Licensee to its original condition, as close thereto as may be practical, subject to the approval of the Licensor upon inspection by Licensor's GIS Manager, which approval shall not be unreasonably withheld. All of said work shall be completed within one hundred and eighty (180) days after termination of this license.

II. Financial Considerations

1. In further consideration for the rights herein granted to Licensee, Licensee shall pay to the Licensors the sum of ELEVEN THOUSAND NINE HUNDRED NINETY TWO and 60/100 Dollars (\$11,992.60) per annum, each year payable on or before the anniversary of the commencement date of this license agreement except for the first year of the license agreement. The first year's license fee of ELEVEN THOUSAND NINE HUNDRED NINETY TWO and 60/100 Dollars (\$11,992.60) shall be due and payable in advance of the commencement date of this license ("License Fee"). Licensee's failure to make the License Fee payment within thirty (30) days after the License Fee is due shall constitute a late payment and Licensee shall pay the Licensors a late charge of five percent (5%).

2. At the same time the first year License Fee is due, Licensee shall pay a non-refundable onetime fee of \$500.00 to the Licensors' GIS Manager. Said fee shall revert to the Licensors and Licensee shall have no claim to said fee. The fee shall be used to process the application for the License.

3. Prior to commencement of any renewal term, the Licensors and Licensee shall negotiate in good faith to agree to an adjustment of the License Fee. If the Licensors and Licensee are unable to reach an agreement regarding an adjustment to the License Fee, then the License Fee shall be determined by Licensors in its sole discretion, provided the new License Fee shall not exceed twenty-five percent (25%) of the License Fee paid for the last year of the Initial Term.

4. The License Fee payment shall be made to the Licensors at the office of the GIS

Manager, P.O. Box 1152, Midland, Texas, 79702. The License Fee payment shall be exclusive of and in addition to all general municipal taxes of whatever nature, including but not limited to ad valorem taxes and special taxes and assessments for public improvements.

III. Use

1. Licensors does hereby grant unto Licensee, the right to enter upon certain property of the City of Midland in Midland County, Texas, being twenty (20) feet either side of the pipeline location as shown on Exhibit "A," attached hereto and incorporated herein for the purpose of placing, constructing, operating, repairing, maintaining, replacing and removing, thereon, along the hereinafter described pipeline location, one (1) pipeline, for the transportation of oil and gas materials and to have the right of ingress and egress at convenient points for such purpose.
2. Licensee covenants and agrees that it will repair any of Licensors's roads that Licensee damages on Licensors's property so that such roads will comply with Licensors's Standard Specifications.
3. Licensee covenants and agrees that Licensee shall, at its own expense, repair all water lines, sewer lines, service lines and water meters owned by the Licensors that Licensee, its employees, its agents or assigns, damage so that such water lines, sewer lines and water meters shall comply with the requirements of the Licensors's Standard Specifications.
4. Licensee covenants and agrees that it will bury the pipelines to be constructed hereunder at least thirty-six inches (36") in depth. All backfill used in burying such line

shall be compacted to a density of ninety percent (90%), except where such pipeline crosses under a paved or traveled portion of the City of Midland right of way where such backfill shall be compacted to a density of ninety-five percent (95%). The City of Midland shall be afforded the opportunity to test the density on all backfill.

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

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

Licensor reserves the right to lay and permit to be laid, sewer, gas, water, and other pipelines or cables and conduits, and to do and permit to be done, any underground or overhead installation or improvement that may be deemed necessary or proper by the governing body of the Licensor, in, across, along, over or under any public property occupied by Licensee. In permitting such work to be done, the Licensor shall not be liable to the Licensee for any damage so caused to the Licensee's system, **NOR SHALL THE LICENSOR BE LIABLE TO THE LICENSEE FOR ANY DAMAGES TO THE LICENSEE'S PIPELINE OR CASING, ARISING OUT OF THE NEGLIGENCE BY THE LICENSOR, ITS EMPLOYEES, OFFICERS OR AGENTS, OR LICENSOR'S CONTRACTORS OR SUBCONTRACTORS.** If the Licensor requires the Licensee to remove, alter, change, adapt, or conform Licensee's

facilities because of changes in the grade of a street or in the location or manner of constructing a water pipe, sewer pipe, or other surface, underground or aboveground structure owned by the Licensor, the Licensee shall make the alterations or changes as soon as practicable, and in no event longer than one hundred eighty (180) days, when ordered in writing by the Licensor, without claim for reimbursement for the cost of the relocation or for damages against the Licensor. If these requirements impose a financial hardship upon the Licensee, the Licensee shall have the right to present alternative proposals for the Licensor's consideration.

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

8. It is especially provided, however, that as an express condition of this Agreement, and not as a mere covenant, in the event Licensee abandons any equipment or appurtenances to the undertakings contemplated by this License, or the premises covered hereby cease to be used for the purposes enumerated herein for any period of twelve (12) consecutive months, or longer, other than the time elapsing between the date hereof and construction, and upon giving Licensee one hundred and twenty days (120) notice, then and in that event, this license shall automatically revert to the Licensor, its successors or assigns, free and clear of any right, title, or interest in the Licensee, or any re-entry by the Licensor.

9. In the event that Licensee desires to reconstruct, repair, maintain, replace or remove any pipeline or casing system built hereunder, Licensee shall submit the plans and specifications that pertain to the rebuilding or repairs of Licensor's streets and roads

and the rebuilding or repairs of any of Licensor's public utilities to the Licensor's GIS Manager for his or her approval. In the event of emergency repairs necessary to restore service, the Licensee shall notify Licensor's GIS Manager before making any repairs if during a Licensor work day and if not on a work day, the Licensee shall notify the Licensor's GIS Manager on the first work day after repairs have begun.

10. The Licensor reserves the right to use the surface or subsurface or airspace above the land covered by this Agreement for any public purpose allowed by law and deemed necessary by the Licensor and to do and permit to be done, any work in connection therewith which may be deemed necessary or proper by the Licensor on, across, along, under or over said right of way occupied by the Licensee. In the event of such work in connection with said public purposes it shall be deemed necessary by the Licensor, at Licensor's sole discretion, to alter, change, adapt, conform or relocate any pipeline or casing of Licensee, such alteration or change or relocation shall be commenced and completed by the Licensee within one hundred eighty (180) days after being ordered in writing by the Licensor pursuant to directions from the Licensor's City Council without any claim for reimbursement for the cost of the relocation or damages against the Licensor. The relocation or alteration shall be at the sole cost of Licensee. Provided, however, that Licensee shall at all times be entitled to receive from appropriate governmental bodies, excluding the Licensor, payment for alteration or relocation of its system to which it may be lawfully entitled to under applicable Federal or State laws with respect to relocation payments.

IV. Standard General Conditions

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

Commercial General Liability (including Contractual liability):

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

-Property Damage: \$100,000.00 per occurrence

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

Worker's Compensation: Statutory limits

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

Pollution Liability: \$5,000,000.00 each condition
\$10,000,000.00 aggregate

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

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

The Business Automobile Liability insurance provided by Licensee shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-owner vehicles, and employee non-ownership, and the amount of such policy shall

be a minimum of \$1,000,000.00 covering any vehicle used for the execution of the work that is the subject of this Agreement. All insurance required pursuant to this Agreement, except for Worker's Compensation Insurance, shall name the Licensor as an additional insured on a claims occurred basis. All insurance required pursuant to this Agreement, including Worker's Compensation Insurance, shall provide for a waiver of subrogation as to the Licensor.

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

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

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

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

2. INDEMNITY - THE LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND THE LICENSOR AND ALL OF LICENSOR'S OFFICERS, AGENTS, AND EMPLOYEES FROM ALL SUITS, ACTIONS,

CLAIMS, DAMAGES, LOSSES, ATTORNEY'S FEES AND EXPENSES OF ANY CHARACTER WHATSOEVER, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON, PERSONS OR PROPERTY, ON ACCOUNT OF ANY ACT OF THE LICENSEE, Licensee's contractor or subcontractor, their agents or employees, arising directly or indirectly or in any way connected with the placement, construction, operations, repair, maintenance, replacement or removal of any part of the Licensee's pipeline or casing system in the Licensors' rights of way. The Licensee will be required to pay any judgment with costs which may be obtained against the Licensors or any of its officers, agents, or employees including attorney's fees.

THE LICENSEE AGREES THAT LICENSEE WILL INDEMNIFY AND SAVE THE LICENSOR HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, ALL SUPPLIES, INCLUDING COMMISSARY INCURRED IN THE FURTHERANCE OF THE PLACEMENT, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF THE PIPELINE OR CASING SYSTEM DESCRIBED HEREIN.

THE LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND THE LICENSOR, AND ALL OF LICENSOR'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES,

PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES AND EXPENSE OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY ON ACCOUNT OF ANY NEGLIGENT ACT OF LICENSEE, LICENSEE'S OFFICERS, AGENTS, AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH LICENSEE OR LICENSEE'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT INCLUDING SUCH NEGLIGENT ACTS ARISING FROM OR IN ANY WAY CONNECTED WITH THE PLACEMENT, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF ANY PART OF THE LICENSEE'S PIPELINE OR CASING SYSTEM IN THE LICENSOR'S RIGHT OF WAY. THE LICENSEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST THE LICENSOR OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

3. **Assignment** - The rights granted by this Agreement inure to the benefit of the Licensee. The rights and privileges shall not be assignable by Licensee, with the

exception of an assignment by Licensee to an affiliated entity, without the express written consent of the governing body of the Licensors. Any required consent is to be evidenced by an ordinance or resolution of the governing body of the Licensors that fully recites the terms and conditions, if any, upon which consent is given. The granting of consent is in the sole discretion of Licensors.

4. **Subletting** - The rights granted by this Agreement inure to the benefit of the Licensee. Licensee shall not sublet the rights and privileges granted herein without the express written consent of the governing body of the Licensors. Any required consent is to be evidenced by an ordinance or resolution of the governing body of the Licensors that fully recites the terms and conditions, if any, upon which consent is given. The granting of consent is in the sole discretion of Licensors.

5. **Independent Contractor** - It is expressly understood and agreed that Licensee shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of the Licensors; that Licensee shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of respondeat superior shall not apply as between Licensors and Licensee, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between Licensors and Licensee. No person performing any of the work and services described hereunder shall be considered an officer, agent, servant or employee of the

Licensor. Further, it is specifically understood and agreed that nothing in this Agreement is intended or shall be construed as creating a “Community of Pecuniary Interest” or “An Equal Right of Control” which would give rise to vicarious liability. Licensee shall be an independent contractor under this Agreement and shall assume all of the rights, obligations and liabilities applicable to it as such independent contractor hereunder. Licensor does not have the power to direct the order in which the work is done. Licensor shall not have the right to control the means, methods or details of Licensee’s work. Licensee shall assume exclusive responsibility for the work. Licensee is entirely free to do the work in its own way.

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

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

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

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

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

deemed to have been performed in Midland County, Texas.

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

9. **Sovereign Immunity** - By executing this Agreement the Licensor is not waiving its right of sovereign immunity. The Licensor is retaining its immunity from suit. The Licensor is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

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

11. **Notice** - Any notice or communication required in the administration of this Agreement shall be sent by certified mail, return receipt requested, to the Licensor as follows: GIS Manager, City of Midland, P. O. Box 1152, Midland, Texas, 79702.

Any notice or communication required in the administration of this Agreement

shall be sent by certified mail, return receipt requested, to the Licensee as follows: Atlas Pipeline Mid-Continent West Tex, LLC, Greg Watson, Area Manager, 306 W. Wall Street, Suite 500, Midland, Texas, 79701.

12. **Notice of Alleged Breach; Statutory Prerequisites** - As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, Licensee or his legal representative, shall give the City Manager, or any other reasonable official of the Licensor, notice in writing (consisting of one original and seven copies of notice attached to a copy of this Agreement) of such damages, duly verified, within one hundred eighty (180) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which the Licensee will settle, the physical and mailing addresses of Licensee at the time and date the claim was presented and the physical and mailing addresses of Licensee for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Licensee relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except the Licensor from any liability whatsoever. The Licensor is under no obligation to provide notice to Licensee that Licensee's notice is insufficient. Licensor reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

The statutory prerequisites outlined herein constitute jurisdictional requirements

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

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

LICENSOR:

CITY OF MIDLAND, TEXAS

Courtney Sharp, City Manager

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT AND
COMPLETENESS:

Bill Hodge, GIS Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

LICENSEE:

**ATLAS PIPELINE MID-CONTINENT
WEST TEX, LLC**

THE STATE OF TEXAS

COUNTY OF _____

Denny Latham, Vice President

§
§
§

BEFORE ME, the undersigned authority, on this day personally appeared Denny Latham, an officer of ATLAS PIPELINE MID-CONTINENT WEST TEX, LLC, known to me to be the person and official whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of said entity, for the purposes and consideration therein expressed, and in the capacity therein stated.

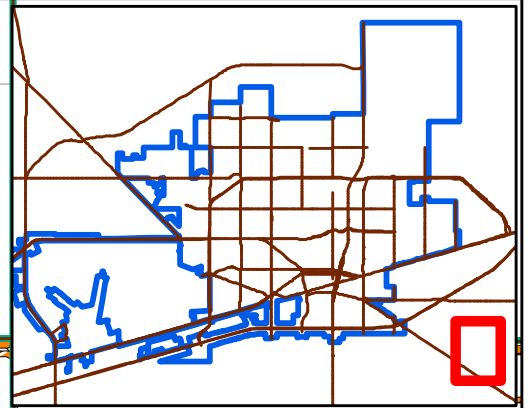
**GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day
of _____, 2013.**

Notary Public, State of Texas



BLK 38-2-S
SEC 4

E CR 110



Atlas ROW License 2006-306 & Renewal
Blk 38, Sec 9 & 10 T2S

Total Rods= 599.63

BLK 38-2-S
SEC 9

BLK 38-2-S
SEC 10

E CR 120

S CR 1140

TSP 38-2-S
M E SPARKS
A-591

TSP 38-2-S H M
HORTON-26 A-938

TSP 38-2-S
G A TORBETT
A-596

Legend

- Street
- Survey Section
- ROW
- Parcel
- City Limit

E SH 158

S CR 1140

TSP 38-2-S T J
MURPHY-1 A-579

TSP 38-2-S
H M HORTON
A-1082

TSP 38-2-S J
M ROSE A-585

E CR 128

1 inch = 980 feet

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SOLELY ON THE INFORMATION CONTAINED
HEREIN.

12.23



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 6/25/2013

TO: City Council / City Manager

FROM: Bill Hodge, GIS Manager

SUBJECT: Consider a Resolution to approve the execution of a renewal Right of Way license (2005-306) with Atlas Pipeline Mid-Continent WestTex (contract rights assumed from the original license holder, Western Gas Resources, 2007) for the maintenance of a pipeline located in Blk 38, Sec 10, T2S, T&P RR Survey, Midland County, TX.

Purpose:

Consider a Resolution to approve the execution of a renewal Right of Way license (2005-306) with Atlas Pipeline Mid-Continent WestTex (contract rights assumed from the original license holder, Western Gas Resources, 2007) for the maintenance of a pipeline located in Blk 38, Sec 10, T2S, T&P RR Survey, Midland County, TX.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Annual Lease Rate: \$ 20/rod/yr for 49.79 rods = \$ 995.80 annual revenue to the City and \$ 4,979.00 total revenue for the first full five year period of the contract, an increase of 100% from the original agreement.

Renewal fee: Atlas will pay a one-time \$ 500.00 license renewal fee.

Because the pipeline is existing, there will be no surface damages involved.

The lease rate for the second five-year period will be negotiated before the end of the first period and will be capped at no more than a 25% increase.

Discussion:

This right of way license is proposed as a contract with an initial five (5) year agreement, with a second additional five (5) years available upon written request at least 120 days before expiration.

The easement will be 30 feet total from the pipeline centerline. The pipeline will be maintained to provide a minimum of 36 inches of cover to natural ground.

This is a renewal of a pipeline ROW contract (2005-306, Sept 27, 2005) originally entered into with Western Gas Resources on Sept 27, 2005 for a poly pipeline, not to exceed 8" in diameter. This contract was assumed by Atlas Pipeline in 2007, but expired in 2010 without renewal by either Midland or Atlas. Atlas brought the need for renewal to Midland's attention as a good faith effort to renew the agreement.

Atlas has agreed to pay the 2010, 2011, and 2012 lease payment in arrears. Because of their demonstration of good faith and our excellent working relationship in a number of other ROW agreements, staff recommends that we not seek a contract expiration fee.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING A RIGHT-OF-WAY LICENSE BETWEEN THE CITY OF MIDLAND, TEXAS AND ATLAS PIPELINE MID-CONTINENT WESTTEX; SAID RIGHT-OF-WAY LICENSE IS FOR ENTERING THE CITY OF MIDLAND'S RIGHT-OF-WAY FOR THE PURPOSE OF PLACING, CONSTRUCTING, OPERATING, REPAIRING, MAINTAINING, REPLACING AND REMOVING ONE (1) PIPELINE, FOR THE TRANSPORTATION OF OIL AND GAS MATERIALS AND TO HAVE THE RIGHT OF INGRESS AND EGRESS AT CONVENIENT POINTS FOR SUCH PURPOSE; THE PIPELINE IS LOCATED WITHIN THE CITY OF MIDLAND RIGHT-OF-WAY, SECTION 10, BLOCK 38, T-2-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS; THE LICENSE TERM IS FOR FIVE (5) YEARS, COMMENCING WITH THE DATE OF THIS LICENSE AND SHALL AUTOMATICALLY RENEW AT THE END OF THE TERM FOR ONE ADDITIONAL FIVE (5) YEAR TERM UPON 120 DAYS WRITTEN REQUEST PRIOR TO EXPIRATION

WHEREAS the City Council finds it to be in the public interest to authorize a right-of-way license with Atlas Pipeline Mid-Continent WestTex, located within the City of Midland Right-of-Way, Section 10, Block 38, T-2-S, T&P RR Co. Survey, Midland County, Texas;

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

THAT the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a right-of-way license with Atlas Pipeline Mid-Continent WestTex, said license being substantially in the form attached hereto as Exhibit "A" and incorporated herein for all purposes.

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

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Bill Hodge, GIS Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

RIGHT-OF-WAY LICENSE

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

THIS RIGHT-OF-WAY LICENSE (“AGREEMENT”), effective this 26th day of June, 2013, by and between THE CITY OF MIDLAND, TEXAS, a home-rule municipal corporation, hereinafter called “Licensor”, and ATLAS PIPELINE MID-CONTINENT WESTTEX, LLC, 110 West 7th, Suite 2300, Tulsa, Oklahoma 74119, hereinafter called “Licensee”.

Licensee desires use of property owned by the Licensor in Midland County, Texas outside the City of Midland, Texas, for purposes set forth below.

It is the position of the Licensor that Licensee must obtain a license in order to use the public lands of the City. The parties agree the grant herein may be referred to as the “License”.

W I T N E S S E T H:

For and in consideration of the execution of this Agreement and the mutual promises and covenants of the parties hereto, it is mutually promised, understood and agreed as follows, to wit:

I. Term

This Agreement shall be for a term of five (5) years (the “Initial Term”), commencing with the date of this Agreement, the “Commencement Date,” unless terminated earlier as provided hereafter. This Agreement shall automatically renew at the end of the Initial Term for one (1) additional term of five (5) years, upon the written

request of Licensee received by Licensor on or before (120) days prior to the expiration of the Initial Term then in effect, subject to the express written consent of the governing body of the Licensor. All work under this Agreement shall be suspended immediately upon termination of the Agreement becoming effective.

Either party may terminate this Agreement at will for any or no reason upon giving at least three hundred sixty five (365) days written notice to the Licensor. The parties to this Agreement understand and agree that it is in the Licensor's sole discretion to cancel the Agreement during the term of the Agreement without penalty to the Licensor. The Licensee has no expectation and has received no guarantees that this Agreement will not be terminated before the end of the Agreement term. The parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the term of the Agreement. All work and services under the Agreement shall be suspended upon termination of Agreement becoming effective.

Upon termination of this Agreement, Licensee shall remove all equipment and structures associated with the undertakings contemplated by this License. After removal of all equipment and structures associated with the undertakings contemplated by this License, the surface shall be restored at the expense of the Licensee to its original condition, as close thereto as may be practical, subject to the approval of the Licensor upon inspection by Licensor's GIS Manager, which approval shall not be unreasonably withheld. All of said work shall be completed within one hundred and eighty (180) days after termination of this license.

II. Financial Considerations

1. In further consideration for the rights herein granted to Licensee, Licensee shall pay to the Licensors the sum of NINE HUNDRED NINETY FIVE and 80/100 Dollars (\$995.80) per annum, each year payable on or before the anniversary of the commencement date of this license agreement except for the first year of the license agreement. The first year's license fee of NINE HUNDRED NINETY FIVE and 80/100 Dollars (\$995.80) shall be due and payable in advance of the commencement date of this license ("License Fee"). Licensee's failure to make the License Fee payment within thirty (30) days after the License Fee is due shall constitute a late payment and Licensee shall pay the Licensors a late charge of five percent (5%).
2. At the same time the first year License Fee is due, Licensee shall pay a non-refundable onetime fee of \$500.00 to the Licensors' GIS Manager. Said fee shall revert to the Licensors and Licensee shall have no claim to said fee. The fee shall be used to process the application for the License.
3. Prior to commencement of any renewal term, the Licensors and Licensee shall negotiate in good faith to agree to an adjustment of the License Fee. If the Licensors and Licensee are unable to reach an agreement regarding an adjustment to the License Fee, then the License Fee shall be determined by Licensors in its sole discretion, provided the new License Fee shall not exceed twenty-five percent (25%) of the License Fee paid for the last year of the Initial Term.
4. The License Fee payment shall be made to the Licensors at the office of the GIS Manager, P.O. Box 1152, Midland, Texas, 79702. The License Fee payment shall be

exclusive of and in addition to all general municipal taxes of whatever nature, including but not limited to ad valorem taxes and special taxes and assessments for public improvements.

III. Use

1. Licensors does hereby grant unto Licensee, the right to enter upon certain property of the City of Midland in Midland County, Texas, being twenty (20) feet either side of the pipeline location as shown on Exhibit "A," attached hereto and incorporated herein for the purpose of placing, constructing, operating, repairing, maintaining, replacing and removing, thereon, along the hereinafter described pipeline location, one (1) pipeline, for the transportation of oil and gas materials and to have the right of ingress and egress at convenient points for such purpose.

2. Licensee covenants and agrees that it will repair any of Licensors's roads that Licensee damages on Licensors's property so that such roads will comply with Licensors's Standard Specifications.

3. Licensee covenants and agrees that Licensee shall, at its own expense, repair all water lines, sewer lines, service lines and water meters owned by the Licensors that Licensee, its employees, its agents or assigns, damage so that such water lines, sewer lines and water meters shall comply with the requirements of the Licensors's Standard Specifications.

4. Licensee covenants and agrees that it will bury the pipelines to be constructed hereunder at least thirty-six inches (36") in depth. All backfill used in burying such line shall be compacted to a density of ninety percent (90%), except where such pipeline

crosses under a paved or traveled portion of the City of Midland right of way where such backfill shall be compacted to a density of ninety-five percent (95%). The City of Midland shall be afforded the opportunity to test the density on all backfill.

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

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

Licensor reserves the right to lay and permit to be laid, sewer, gas, water, and other pipelines or cables and conduits, and to do and permit to be done, any underground or overhead installation or improvement that may be deemed necessary or proper by the governing body of the Licensor, in, across, along, over or under any public property occupied by Licensee. In permitting such work to be done, the Licensor shall not be liable to the Licensee for any damage so caused to the Licensee's system, **NOR SHALL THE LICENSOR BE LIABLE TO THE LICENSEE FOR ANY DAMAGES TO THE LICENSEE'S PIPELINE OR CASING, ARISING OUT OF THE NEGLIGENCE BY THE LICENSOR, ITS EMPLOYEES, OFFICERS OR AGENTS, OR LICENSOR'S CONTRACTORS OR SUBCONTRACTORS.** If the Licensor requires the Licensee to remove, alter, change, adapt, or conform Licensee's facilities because of changes in the grade of a street or in the location or manner of

constructing a water pipe, sewer pipe, or other surface, underground or aboveground structure owned by the Licensor, the Licensee shall make the alterations or changes as soon as practicable, and in no event longer than one hundred eighty (180) days, when ordered in writing by the Licensor, without claim for reimbursement for the cost of the relocation or for damages against the Licensor. If these requirements impose a financial hardship upon the Licensee, the Licensee shall have the right to present alternative proposals for the Licensor's consideration.

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

8. It is especially provided, however, that as an express condition of this Agreement, and not as a mere covenant, in the event Licensee abandons any equipment or appurtenances to the undertakings contemplated by this License, or the premises covered hereby cease to be used for the purposes enumerated herein for any period of twelve (12) consecutive months, or longer, other than the time elapsing between the date hereof and construction, and upon giving Licensee one hundred and twenty days (120) notice, then and in that event, this license shall automatically revert to the Licensor, its successors or assigns, free and clear of any right, title, or interest in the Licensee, or any re-entry by the Licensor.

9. In the event that Licensee desires to reconstruct, repair, maintain, replace or remove any pipeline or casing system built hereunder, Licensee shall submit the plans and specifications that pertain to the rebuilding or repairs of Licensor's streets and roads and the rebuilding or repairs of any of Licensor's public utilities to the Licensor's GIS

Manager for his or her approval. In the event of emergency repairs necessary to restore service, the Licensee shall notify Licensor's GIS Manager before making any repairs if during a Licensor work day and if not on a work day, the Licensee shall notify the Licensor's GIS Manager on the first work day after repairs have begun.

10. The Licensor reserves the right to use the surface or subsurface or airspace above the land covered by this Agreement for any public purpose allowed by law and deemed necessary by the Licensor and to do and permit to be done, any work in connection therewith which may be deemed necessary or proper by the Licensor on, across, along, under or over said right of way occupied by the Licensee. In the event of such work in connection with said public purposes it shall be deemed necessary by the Licensor, at Licensor's sole discretion, to alter, change, adapt, conform or relocate any pipeline or casing of Licensee, such alteration or change or relocation shall be commenced and completed by the Licensee within one hundred eighty (180) days after being ordered in writing by the Licensor pursuant to directions from the Licensor's City Council without any claim for reimbursement for the cost of the relocation or damages against the Licensor. The relocation or alteration shall be at the sole cost of Licensee. Provided, however, that Licensee shall at all times be entitled to receive from appropriate governmental bodies, excluding the Licensor, payment for alteration or relocation of its system to which it may be lawfully entitled to under applicable Federal or State laws with respect to relocation payments.

IV. Standard General Conditions

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

Commercial General Liability (including Contractual liability):

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

-Property Damage: \$100,000.00 per occurrence

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

Worker's Compensation: Statutory limits

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

Pollution Liability: \$5,000,000.00 each condition
\$10,000,000.00 aggregate

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

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

The Business Automobile Liability insurance provided by Licensee shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-owner vehicles, and employee non-ownership, and the amount of such policy shall

be a minimum of \$1,000,000.00 covering any vehicle used for the execution of the work that is the subject of this Agreement. All insurance required pursuant to this Agreement, except for Worker's Compensation Insurance, shall name the Licensor as an additional insured on a claims occurred basis. All insurance required pursuant to this Agreement, including Worker's Compensation Insurance, shall provide for a waiver of subrogation as to the Licensor.

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

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

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

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

2. INDEMNITY - THE LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND THE LICENSOR AND ALL OF LICENSOR'S OFFICERS, AGENTS, AND EMPLOYEES FROM ALL SUITS, ACTIONS,

CLAIMS, DAMAGES, LOSSES, ATTORNEY'S FEES AND EXPENSES OF ANY CHARACTER WHATSOEVER, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON, PERSONS OR PROPERTY, ON ACCOUNT OF ANY ACT OF THE LICENSEE, Licensee's contractor or subcontractor, their agents or employees, arising directly or indirectly or in any way connected with the placement, construction, operations, repair, maintenance, replacement or removal of any part of the Licensee's pipeline or casing system in the Licensors' rights of way. The Licensee will be required to pay any judgment with costs which may be obtained against the Licensors or any of its officers, agents, or employees including attorney's fees.

THE LICENSEE AGREES THAT LICENSEE WILL INDEMNIFY AND SAVE THE LICENSOR HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, ALL SUPPLIES, INCLUDING COMMISSARY INCURRED IN THE FURTHERANCE OF THE PLACEMENT, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF THE PIPELINE OR CASING SYSTEM DESCRIBED HEREIN.

THE LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND THE LICENSOR, AND ALL OF LICENSOR'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES,

PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES AND EXPENSE OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY ON ACCOUNT OF ANY NEGLIGENT ACT OF LICENSEE, LICENSEE'S OFFICERS, AGENTS, AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH LICENSEE OR LICENSEE'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT INCLUDING SUCH NEGLIGENT ACTS ARISING FROM OR IN ANY WAY CONNECTED WITH THE PLACEMENT, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF ANY PART OF THE LICENSEE'S PIPELINE OR CASING SYSTEM IN THE LICENSOR'S RIGHT OF WAY. THE LICENSEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST THE LICENSOR OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

3. **Assignment** - The rights granted by this Agreement inure to the benefit of the Licensee. The rights and privileges shall not be assignable by Licensee, with the

exception of an assignment by Licensee to an affiliated entity, without the express written consent of the governing body of the Licensor. Any required consent is to be evidenced by an ordinance or resolution of the governing body of the Licensor that fully recites the terms and conditions, if any, upon which consent is given. The granting of consent is in the sole discretion of Licensor.

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

5. **Independent Contractor** - It is expressly understood and agreed that Licensee shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of the Licensor; that Licensee shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of respondeat superior shall not apply as between Licensor and Licensee, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between Licensor and Licensee. No person performing any of the work and services described hereunder shall be considered an officer, agent, servant or employee of the

Licensor. Further, it is specifically understood and agreed that nothing in this Agreement is intended or shall be construed as creating a “Community of Pecuniary Interest” or “An Equal Right of Control” which would give rise to vicarious liability. Licensee shall be an independent contractor under this Agreement and shall assume all of the rights, obligations and liabilities applicable to it as such independent contractor hereunder. Licensor does not have the power to direct the order in which the work is done. Licensor shall not have the right to control the means, methods or details of Licensee’s work. Licensee shall assume exclusive responsibility for the work. Licensee is entirely free to do the work in its own way.

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

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

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

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

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

deemed to have been performed in Midland County, Texas.

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

9. **Sovereign Immunity** - By executing this Agreement the Licensor is not waiving its right of sovereign immunity. The Licensor is retaining its immunity from suit. The Licensor is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

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

11. **Notice** - Any notice or communication required in the administration of this Agreement shall be sent by certified mail, return receipt requested, to the Licensor as follows: GIS Manager, City of Midland, P. O. Box 1152, Midland, Texas, 79702.

Any notice or communication required in the administration of this Agreement

shall be sent by certified mail, return receipt requested, to the Licensee as follows: Atlas Pipeline Mid-Continent West Tex, LLC, Greg Watson, Area Manager, 306 W. Wall Street, Suite 500, Midland, Texas, 79701.

12. **Notice of Alleged Breach; Statutory Prerequisites** - As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, Licensee or his legal representative, shall give the City Manager, or any other reasonable official of the Licensor, notice in writing (consisting of one original and seven copies of notice attached to a copy of this Agreement) of such damages, duly verified, within one hundred eighty (180) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which the Licensee will settle, the physical and mailing addresses of Licensee at the time and date the claim was presented and the physical and mailing addresses of Licensee for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Licensee relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except the Licensor from any liability whatsoever. The Licensor is under no obligation to provide notice to Licensee that Licensee's notice is insufficient. Licensor reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

The statutory prerequisites outlined herein constitute jurisdictional requirements

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

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

LICENSOR:

CITY OF MIDLAND, TEXAS

Courtney Sharp, City Manager

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT AND
COMPLETENESS:

Bill Hodge, GIS Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

LICENSEE:

**ATLAS PIPELINE MID-CONTINENT
WEST TEX, LLC**

THE STATE OF TEXAS

COUNTY OF _____

Denny Latham, Vice President

§
§
§

BEFORE ME, the undersigned authority, on this day personally appeared Denny Latham, an officer of ATLAS PIPELINE MID-CONTINENT WEST TEX, LLC, known to me to be the person and official whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of said entity, for the purposes and consideration therein expressed, and in the capacity therein stated.

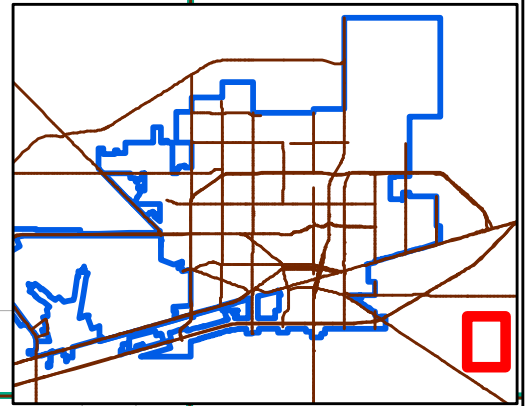
**GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day
of _____, 2013.**

Notary Public, State of Texas



BLK 38-2-S
SEC 3

E CR 110



BLK 38-2-S
SEC 10

BLK 38-2-S
SEC 11

S CR 1130

Atlas ROW License 2005-306 & Renewal
Blk 38, Sec 10 T2S

Total Rods= 49.79

E CR 120

S CR 1135

TSP 38-2-S
H M MORROW
A-578

TSP 38-2-S
H M HORTON
A-1126

1 inch = 830 feet

Legend

- Street
- Survey Section
- ROW
- Parcel
- City Limit

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THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR
ANY DECISIONS BASED UPON THE USE OF THIS DATA
WHILE THIS DATA IS MADE AVAILABLE TO THE PUBLIC, IT WAS
CREATED FOR INTERNAL USE BY THE CITY OF MIDLAND WHICH
MAKES NO CLAIM AS TO ITS ACCURACY OR COMPLETENESS.
THIS DATA IS NOT DESIGNED TO BE USED AS A
TOOL IN PERMITTING, CITING, OR OTHER DECISIONS
SOLELY ON THE INFORMATION CONTAINED
HEREIN.

13.23



City Council Agenda

Approved for Agenda:
jnichols
City Manager's Office

MEETING DATE: 6/25/2013

TO: City Council / City Manager

FROM: Bill Hodge, GIS Manager

SUBJECT: Consider a Resolution to approve the execution of a renewal Right of Way license (2001-256) with Atlas Pipeline Mid-Continent WestTex (contract rights assumed from the original license holder, Western Gas Resources, 2007) for the maintenance of two pipelines located in Blk 37, Sec 4, 9, and 16, T3S, T&P RR Survey, Midland County, TX.

Purpose:

Consider a Resolution to approve the execution of a renewal Right of Way license (2001-256) with Atlas Pipeline Mid-Continent WestTex (contract rights assumed from the original license holder, Western Gas Resources, 2007) for the maintenance of two pipelines located in Blk 37, Sec 4, 9, and 16, T3S, T&P RR Survey, Midland County, TX.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Annual Lease Rate: \$ 20/rod/yr/pipeline for 932.44 rods for each of two pipelines = \$ 37,297 total annual revenue to the City and \$ 186,448.00 total revenue for the first full five year period of the contract, an increase of 1000% from the original agreement.

Renewal fee: Atlas will pay a one-time \$ 500.00 license renewal fee.

Because the pipeline is existing, there will be no surface damages involved.

The lease rate for the second five-year period will be negotiated before the end of the first period and will be capped at no more than a 25% increase.

Discussion:

This is a renewal of a pipeline ROW contract (2001-256, Sept 11, 2001) originally entered into with Western Gas Resources in October 25, 2006 for two 8 in natural gas pipelines. This contract was assumed by Atlas Pipeline in 2007, but expired in 2011 without renewal by either Midland or Atlas, due to lack of oversight by both parties. Atlas was the first party to discover this and brought this to Midland's attention as a good faith effort to renew the agreement.

Atlas has agreed to pay the 2012 lease payment, now in arrears, and, because of their demonstration of good faith and our excellent relationship in a number of other ROW agreements, Midland will not seek a contract expiration fee.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING A RIGHT-OF-WAY LICENSE BETWEEN THE CITY OF MIDLAND, TEXAS AND ATLAS PIPELINE MID-CONTINENT WESTTEX; SAID RIGHT-OF-WAY LICENSE IS FOR ENTERING THE CITY OF MIDLAND'S RIGHT-OF-WAY FOR THE PURPOSE OF PLACING, CONSTRUCTING, OPERATING, REPAIRING, MAINTAINING, REPLACING AND REMOVING TWO (2) PIPELINES, FOR THE TRANSPORTATION OF OIL AND GAS MATERIALS AND TO HAVE THE RIGHT OF INGRESS AND EGRESS AT CONVENIENT POINTS FOR SUCH PURPOSE; THE PIPELINES ARE LOCATED WITHIN THE CITY OF MIDLAND RIGHT-OF-WAY, SECTIONS 4, 9, AND 16, BLOCK 37, T-3-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS; THE LICENSE TERM IS FOR FIVE (5) YEARS, COMMENCING WITH THE DATE OF THIS LICENSE AND SHALL AUTOMATICALLY RENEW AT THE END OF THE TERM FOR ONE ADDITIONAL FIVE (5) YEAR TERM UPON 120 DAYS WRITTEN REQUEST PRIOR TO EXPIRATION

WHEREAS the City Council finds it to be in the public interest to authorize a right-of-way license with Atlas Pipeline Mid-Continent WestTex, located within the City of Midland Right-of-Way, Sections 4, 9 and 16, Block 37, T-3-S, T&P RR Co. Survey, Midland County, Texas;

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

THAT the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a right-of-way license with Atlas Pipeline Mid-Continent WestTex, said license being substantially in the form attached hereto as Exhibit "A" and incorporated herein for all purposes.

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

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Bill Hodge, GIS Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

RIGHT-OF-WAY LICENSE

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

THIS RIGHT-OF-WAY LICENSE (“AGREEMENT”), effective this 26th day of June, 2013, by and between THE CITY OF MIDLAND, TEXAS, a home rule municipal corporation, hereinafter called “Licensor”, and ATLAS PIPELINE MID-CONTINENT WESTTEX, LLC, 110 West 7th, Suite 2300, Tulsa, Oklahoma 74119, hereinafter called “Licensee”.

Licensee desires use of property owned by the Licensor in Midland County, Texas outside the City of Midland, Texas, for purposes set forth below.

It is the position of the Licensor that Licensee must obtain a license in order to use the public lands of the City. The parties agree the grant herein may be referred to as the “License”.

W I T N E S S E T H:

For and in consideration of the execution of this Agreement and the mutual promises and covenants of the parties hereto, it is mutually promised, understood and agreed as follows, to wit:

I. Term

This Agreement shall be for a term of five (5) years (the “Initial Term”), commencing with the date of this Agreement, the “Commencement Date,” unless terminated earlier as provided hereafter. This Agreement shall automatically renew at the end of the Initial Term for one (1) additional term of five (5) years, upon the written

request of Licensee received by Licensor on or before (120) days prior to the expiration of the Initial Term then in effect, subject to the express written consent of the governing body of the Licensor. All work under this Agreement shall be suspended immediately upon termination of the Agreement becoming effective.

Either party may terminate this Agreement at will for any or no reason upon giving at least three hundred sixty five (365) days written notice to the Licensor. The parties to this Agreement understand and agree that it is in the Licensor's sole discretion to cancel the Agreement during the term of the Agreement without penalty to the Licensor. The Licensee has no expectation and has received no guarantees that this Agreement will not be terminated before the end of the Agreement term. The parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the term of the Agreement. All work and services under the Agreement shall be suspended upon termination of Agreement becoming effective.

Upon termination of this Agreement, Licensee shall remove all equipment and structures associated with the undertakings contemplated by this License. After removal of all equipment and structures associated with the undertakings contemplated by this License, the surface shall be restored at the expense of the Licensee to its original condition, as close thereto as may be practical, subject to the approval of the Licensor upon inspection by Licensor's GIS Manager, which approval shall not be unreasonably withheld. All of said work shall be completed within one hundred and eighty (180) days after termination of this license.

II. Financial Considerations

1. In further consideration for the rights herein granted to Licensee, Licensee shall pay to the Licensors the sum of THIRTY SEVEN THOUSAND TWO HUNDRED NINETY SEVEN and NO/100 Dollars (\$37,297.00) per annum, each year payable on or before the anniversary of the commencement date of this license agreement except for the first year of the license agreement. The first year's license fee of THIRTY SEVEN THOUSAND TWO HUNDRED NINETY SEVEN and NO/100 Dollars (\$37,297.00) shall be due and payable in advance of the commencement date of this license ("License Fee"). Licensee's failure to make the License Fee payment within thirty (30) days after the License Fee is due shall constitute a late payment and Licensee shall pay the Licensors a late charge of five percent (5%).

2. At the same time the first year License Fee is due, Licensee shall pay a non-refundable onetime fee of \$500.00 to the Licensors' GIS Manager. Said fee shall revert to the Licensors and Licensee shall have no claim to said fee. The fee shall be used to process the application for the License.

3. Prior to commencement of any renewal term, the Licensors and Licensee shall negotiate in good faith to agree to an adjustment of the License Fee. If the Licensors and Licensee are unable to reach an agreement regarding an adjustment to the License Fee, then the License Fee shall be determined by Licensors in its sole discretion, provided the new License Fee shall not exceed twenty-five percent (25%) of the License Fee paid for the last year of the Initial Term.

4. The License Fee payment shall be made to the Licensors at the office of the GIS

Manager, P.O. Box 1152, Midland, Texas, 79702. The License Fee payment shall be exclusive of and in addition to all general municipal taxes of whatever nature, including but not limited to ad valorem taxes and special taxes and assessments for public improvements.

III. Use

1. Licenser does hereby grant unto Licensee, the right to enter upon certain property of the City of Midland in Midland County, Texas, being twenty (20) feet either side of the pipeline locations as shown on Exhibit "A," attached hereto and incorporated herein for the purpose of placing, constructing, operating, repairing, maintaining, replacing and removing, thereon, along the hereinafter described pipeline locations, two (2) pipelines, for the transportation of oil and gas materials and to have the right of ingress and egress at convenient points for such purpose.
2. Licensee covenants and agrees that it will repair any of Licenser's roads that Licensee damages on Licenser's property so that such roads will comply with Licenser's Standard Specifications.
3. Licensee covenants and agrees that Licensee shall, at its own expense, repair all water lines, sewer lines, service lines and water meters owned by the Licenser that Licensee, its employees, its agents or assigns, damage so that such water lines, sewer lines and water meters shall comply with the requirements of the Licenser's Standard Specifications.
4. Licensee covenants and agrees that it will bury the pipelines to be constructed hereunder at least thirty-six inches (36") in depth. All backfill used in burying such line

shall be compacted to a density of ninety percent (90%), except where such pipeline crosses under a paved or traveled portion of the City of Midland right of way where such backfill shall be compacted to a density of ninety-five percent (95%). The City of Midland shall be afforded the opportunity to test the density on all backfill.

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

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

Licensor reserves the right to lay and permit to be laid, sewer, gas, water, and other pipelines or cables and conduits, and to do and permit to be done, any underground or overhead installation or improvement that may be deemed necessary or proper by the governing body of the Licensor, in, across, along, over or under any public property occupied by Licensee. In permitting such work to be done, the Licensor shall not be liable to the Licensee for any damage so caused to the Licensee's system, **NOR SHALL THE LICENSOR BE LIABLE TO THE LICENSEE FOR ANY DAMAGES TO THE LICENSEE'S PIPELINE OR CASING, ARISING OUT OF THE NEGLIGENCE BY THE LICENSOR, ITS EMPLOYEES, OFFICERS OR AGENTS, OR LICENSOR'S CONTRACTORS OR SUBCONTRACTORS.** If the Licensor requires the Licensee to remove, alter, change, adapt, or conform Licensee's

facilities because of changes in the grade of a street or in the location or manner of constructing a water pipe, sewer pipe, or other surface, underground or aboveground structure owned by the Licensor, the Licensee shall make the alterations or changes as soon as practicable, and in no event longer than one hundred eighty (180) days, when ordered in writing by the Licensor, without claim for reimbursement for the cost of the relocation or for damages against the Licensor. If these requirements impose a financial hardship upon the Licensee, the Licensee shall have the right to present alternative proposals for the Licensor's consideration.

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

8. It is especially provided, however, that as an express condition of this Agreement, and not as a mere covenant, in the event Licensee abandons any equipment or appurtenances to the undertakings contemplated by this License, or the premises covered hereby cease to be used for the purposes enumerated herein for any period of twelve (12) consecutive months, or longer, other than the time elapsing between the date hereof and construction, and upon giving Licensee one hundred and twenty days (120) notice, then and in that event, this license shall automatically revert to the Licensor, its successors or assigns, free and clear of any right, title, or interest in the Licensee, or any re-entry by the Licensor.

9. In the event that Licensee desires to reconstruct, repair, maintain, replace or remove any pipeline or casing system built hereunder, Licensee shall submit the plans and specifications that pertain to the rebuilding or repairs of Licensor's streets and roads

and the rebuilding or repairs of any of Licensor's public utilities to the Licensor's GIS Manager for his or her approval. In the event of emergency repairs necessary to restore service, the Licensee shall notify Licensor's GIS Manager before making any repairs if during a Licensor work day and if not on a work day, the Licensee shall notify the Licensor's GIS Manager on the first work day after repairs have begun.

10. The Licensor reserves the right to use the surface or subsurface or airspace above the land covered by this Agreement for any public purpose allowed by law and deemed necessary by the Licensor and to do and permit to be done, any work in connection therewith which may be deemed necessary or proper by the Licensor on, across, along, under or over said right of way occupied by the Licensee. In the event of such work in connection with said public purposes it shall be deemed necessary by the Licensor, at Licensor's sole discretion, to alter, change, adapt, conform or relocate any pipeline or casing of Licensee, such alteration or change or relocation shall be commenced and completed by the Licensee within one hundred eighty (180) days after being ordered in writing by the Licensor pursuant to directions from the Licensor's City Council without any claim for reimbursement for the cost of the relocation or damages against the Licensor. The relocation or alteration shall be at the sole cost of Licensee. Provided, however, that Licensee shall at all times be entitled to receive from appropriate governmental bodies, excluding the Licensor, payment for alteration or relocation of its system to which it may be lawfully entitled to under applicable Federal or State laws with respect to relocation payments.

IV. Standard General Conditions

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

Commercial General Liability (including Contractual liability):

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

-Property Damage: \$100,000.00 per occurrence

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

Worker's Compensation: Statutory limits

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

Pollution Liability: \$5,000,000.00 each condition
\$10,000,000.00 aggregate

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

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

The Business Automobile Liability insurance provided by Licensee shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-owner vehicles, and employee non-ownership, and the amount of such policy shall

be a minimum of \$1,000,000.00 covering any vehicle used for the execution of the work that is the subject of this Agreement. All insurance required pursuant to this Agreement, except for Worker's Compensation Insurance, shall name the Licensor as an additional insured on a claims occurred basis. All insurance required pursuant to this Agreement, including Worker's Compensation Insurance, shall provide for a waiver of subrogation as to the Licensor.

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

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

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

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

2. INDEMNITY - THE LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND THE LICENSOR AND ALL OF LICENSOR'S OFFICERS, AGENTS, AND EMPLOYEES FROM ALL SUITS, ACTIONS,

CLAIMS, DAMAGES, LOSSES, ATTORNEY'S FEES AND EXPENSES OF ANY CHARACTER WHATSOEVER, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON, PERSONS OR PROPERTY, ON ACCOUNT OF ANY ACT OF THE LICENSEE, Licensee's contractor or subcontractor, their agents or employees, arising directly or indirectly or in any way connected with the placement, construction, operations, repair, maintenance, replacement or removal of any part of the Licensee's pipeline or casing system in the Licensors' rights of way. The Licensee will be required to pay any judgment with costs which may be obtained against the Licensors or any of its officers, agents, or employees including attorney's fees.

THE LICENSEE AGREES THAT LICENSEE WILL INDEMNIFY AND SAVE THE LICENSOR HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, ALL SUPPLIES, INCLUDING COMMISSARY INCURRED IN THE FURTHERANCE OF THE PLACEMENT, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF THE PIPELINE OR CASING SYSTEM DESCRIBED HEREIN.

THE LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND THE LICENSOR, AND ALL OF LICENSOR'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES,

PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES AND EXPENSE OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY ON ACCOUNT OF ANY NEGLIGENT ACT OF LICENSEE, LICENSEE'S OFFICERS, AGENTS, AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH LICENSEE OR LICENSEE'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT INCLUDING SUCH NEGLIGENT ACTS ARISING FROM OR IN ANY WAY CONNECTED WITH THE PLACEMENT, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF ANY PART OF THE LICENSEE'S PIPELINE OR CASING SYSTEM IN THE LICENSOR'S RIGHT OF WAY. THE LICENSEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST THE LICENSOR OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

3. **Assignment** - The rights granted by this Agreement inure to the benefit of the Licensee. The rights and privileges shall not be assignable by Licensee, with the

exception of an assignment by Licensee to an affiliated entity, without the express written consent of the governing body of the Licensor. Any required consent is to be evidenced by an ordinance or resolution of the governing body of the Licensor that fully recites the terms and conditions, if any, upon which consent is given. The granting of consent is in the sole discretion of Licensor.

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

shall not have the right to control the means, methods or details of Licensee's work. Licensee shall assume exclusive responsibility for the work. Licensee is entirely free to do the work in its own way.

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

LICENSEE AGREES THAT THIS IS THE VOLUNTARY AND

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

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

6. **Governing Law & Venue** - All performance and payment made pursuant to this Agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this Agreement or the performance of this Agreement shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this Agreement shall be deemed to have been performed in Midland County, Texas.

7. **RELEASE** - **NOTWITHSTANDING ANY OTHER PROVISIONS, LICENSEE HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES LICENSOR, LICENSOR'S EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH LICENSEE HAS OR MIGHT**

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

8. **Sovereign Immunity** - By executing this Agreement the Licensor is not waiving its right of sovereign immunity. The Licensor is retaining its immunity from suit. The Licensor is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

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

10. **Notice** - Any notice or communication required in the administration of this Agreement shall be sent by certified mail, return receipt requested, to the Licensor as follows: GIS Manager, City of Midland, P. O. Box 1152, Midland, Texas, 79702.

Any notice or communication required in the administration of this Agreement shall be sent by certified mail, return receipt requested, to the Licensee as follows: Atlas Pipeline Mid-Continent West Tex, LLC, Greg Watson, Area Manager, 306 W. Wall Street, Suite 500, Midland, Texas, 79701.

11. **Notice of Alleged Breach; Statutory Prerequisites** - As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, Licensee or his legal representative, shall give the City

Manager, or any other reasonable official of the Licensor, notice in writing (consisting of one original and seven copies of notice attached to a copy of this Agreement) of such damages, duly verified, within one hundred eighty (180) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which the Licensee will settle, the physical and mailing addresses of Licensee at the time and date the claim was presented and the physical and mailing addresses of Licensee for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Licensee relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except the Licensor from any liability whatsoever. The Licensor is under no obligation to provide notice to Licensee that Licensee's notice is insufficient. Licensor reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

this entire Agreement are reasonable.

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

LICENSOR:

CITY OF MIDLAND, TEXAS

Courtney Sharp, City Manager

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT AND
COMPLETENESS:

Bill Hodge, GIS Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

LICENSEE:

**ATLAS PIPELINE MID-CONTINENT
WEST TEX, LLC**

Denny Latham, Vice President

THE STATE OF TEXAS

§
§
§

COUNTY OF _____

BEFORE ME, the undersigned authority, on this day personally appeared Denny Latham, an officer of ATLAS PIPELINE MID-CONTINENT WEST TEX, LLC, known to me to be the person and official whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of said entity, for the purposes and consideration therein expressed, and in the capacity therein stated.

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

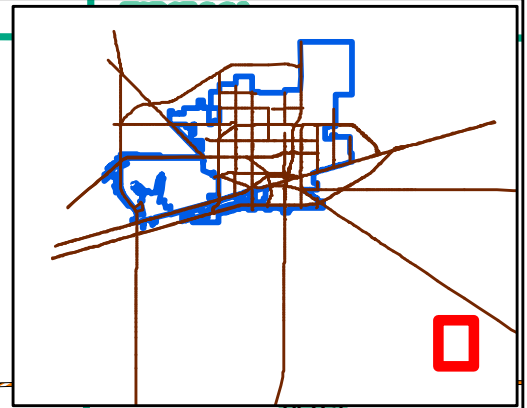
Notary Public, State of Texas

L:\Contracts\Utilities\Right of Way\2013\Atlas Pipeline Blk 37, Sec 4,9 and 16.docx



E CR 180

TSP 37-2-S L
LEECH-45 A-1037



BLK 37-3-S
SEC 5

BLK
37-3-S
SEC 4

S CR 1090

Atlas ROW License 2001-256 & Renewal
Blk 37, Sec 4, 9, & 16 T3S

Total Rods= 932.44

BLK
37-3-S
SEC 8

BLK
37-3-S
SEC 9

BLK 37-3-S
SEC 10

E CR 200

BLK
37-3-S
SEC 16

BLK 37-3-S
SEC 15

Legend

- Street
- Survey Section
- ROW
- Parcel
- City Limit

1 inch = 1,430 feet

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THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR
ANY DECISIONS BASED UPON THE USE OF THIS DATA
WHILE THIS DATA IS MADE AVAILABLE TO THE PUBLIC, IT WAS
CREATED FOR INTERNAL USE BY THE CITY OF MIDLAND WHICH
MAKES NO CLAIM AS TO ITS ACCURACY OR COMPLETENESS.
THIS DATA IS NOT DESIGNED TO BE USED AS A
TOOL IN PERMITTING, CITING, OR OTHER DECISIONS
SOLELY ON THE INFORMATION CONTAINED
HEREIN.

14.23



City Council Agenda

Approved for Agenda:
jnichols
City Manager's Office

MEETING DATE: 6/25/2013

TO: City Council / City Manager

FROM: Bill Hodge, GIS Manager

SUBJECT: Consider a Resolution to approve the execution of a renewal Right of Way license (1993-999) with Atlas Pipeline Mid-Continent WestTex (contract rights assumed from the original license holder, Western Gas Resources, 2007) for the maintenance of a pipeline located in Blk 37, Sec 2 and 3, T3S, Midland County, TX.

Purpose:

Consider a Resolution to approve the execution of a renewal Right of Way license (1993-999) with Atlas Pipeline Mid-Continent WestTex (contract rights assumed from the original license holder, Western Gas Resources, 2007) for the maintenance of a pipeline located in Blk 37, Sec 2 and 3, T3S, Midland County, TX.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Annual Lease Rate: \$ 20/rod/yr for 179.69 rods = \$ 3,593.80 annual revenue to the City and \$ 17,969.00 total revenue for the first full five year period of the contract, an increase of 333% from the original agreement.

Renewal fee: Atlas will pay a one-time \$ 500.00 license renewal fee.

Because the pipeline is existing, there will be no surface damages involved.

The lease rate for the second five-year period will be negotiated before the end of the first period and will be capped at no more than a 25% increase.

Discussion:

This right of way license is proposed as a contract with an initial five (5) year agreement, with a second additional five (5) years available upon written request at least 120 days before expiration.

The easement will be 30 feet total from the pipeline center line. The pipeline will be maintained to provide a minimum of 36 inches of cover to natural ground.

This is a renewal of a pipeline ROW contract (1993-999) originally entered into with Western Gas Resources, July 6, 1993, in for a natural gas pipeline, not to exceed 3" in diameter. This contract was assumed by Atlas Pipeline in 2007, and expires on July 6, 2013.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING A RIGHT-OF-WAY LICENSE BETWEEN THE CITY OF MIDLAND, TEXAS AND ATLAS PIPELINE MID-CONTINENT WESTTEX; SAID RIGHT-OF-WAY LICENSE IS FOR ENTERING THE CITY OF MIDLAND'S RIGHT-OF-WAY FOR THE PURPOSE OF PLACING, CONSTRUCTING, OPERATING, REPAIRING, MAINTAINING, REPLACING AND REMOVING ONE (1) PIPELINE, FOR THE TRANSPORTATION OF OIL AND GAS MATERIALS AND TO HAVE THE RIGHT OF INGRESS AND EGRESS AT CONVENIENT POINTS FOR SUCH PURPOSE; THE PIPELINE IS LOCATED WITHIN THE CITY OF MIDLAND RIGHT-OF-WAY, SECTIONS 2 AND 3, BLOCK 37, T-3-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS; THE LICENSE TERM IS FOR FIVE (5) YEARS, COMMENCING WITH THE DATE OF THIS LICENSE AND SHALL AUTOMATICALLY RENEW AT THE END OF THE TERM FOR ONE ADDITIONAL FIVE (5) YEAR TERM UPON 120 DAYS WRITTEN REQUEST PRIOR TO EXPIRATION

WHEREAS the City Council finds it to be in the public interest to authorize a right-of-way license with Atlas Pipeline Mid-Continent WestTex, located within the City of Midland Right-of-Way, Sections 2 and 3, Block 37, T-3-S, T&P RR Co. Survey, Midland County, Texas;

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

THAT the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a right-of-way license with Atlas Pipeline Mid-Continent WestTex, said license being substantially in the form attached hereto as Exhibit "A" and incorporated herein for all purposes.

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

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Bill Hodge, GIS Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

RIGHT-OF-WAY LICENSE

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

THIS RIGHT-OF-WAY LICENSE (“AGREEMENT”), effective this 6th day of July, 2013, by and between THE CITY OF MIDLAND, TEXAS, a home-rule municipal corporation, hereinafter called “Licensor”, and ATLAS PIPELINE MID-CONTINENT WESTTEX, LLC, 110 West 7th, Suite 2300, Tulsa, Oklahoma 74119, hereinafter called “Licensee”.

Licensee desires use of property owned by the Licensor in Midland County, Texas outside the City of Midland, Texas, for purposes set forth below.

It is the position of the Licensor that Licensee must obtain a license in order to use the public lands of the City. The parties agree the grant herein may be referred to as the “License”.

W I T N E S S E T H:

For and in consideration of the execution of this Agreement and the mutual promises and covenants of the parties hereto, it is mutually promised, understood and agreed as follows, to wit:

I. Term

This Agreement shall be for a term of five (5) years (the “Initial Term”), commencing with the date of this Agreement, the “Commencement Date,” unless terminated earlier as provided hereafter. This Agreement shall automatically renew at the end of the Initial Term for one (1) additional term of five (5) years, upon the written

request of Licensee received by Licensor on or before (120) days prior to the expiration of the Initial Term then in effect, subject to the express written consent of the governing body of the Licensor. All work under this Agreement shall be suspended immediately upon termination of the Agreement becoming effective.

Either party may terminate this Agreement at will for any or no reason upon giving at least three hundred sixty five (365) days written notice to the Licensor. The parties to this Agreement understand and agree that it is in the Licensor's sole discretion to cancel the Agreement during the term of the Agreement without penalty to the Licensor. The Licensee has no expectation and has received no guarantees that this Agreement will not be terminated before the end of the Agreement term. The parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the term of the Agreement. All work and services under the Agreement shall be suspended upon termination of Agreement becoming effective.

Upon termination of this Agreement, Licensee shall remove all equipment and structures associated with the undertakings contemplated by this License. After removal of all equipment and structures associated with the undertakings contemplated by this License, the surface shall be restored at the expense of the Licensee to its original condition, as close thereto as may be practical, subject to the approval of the Licensor upon inspection by Licensor's GIS Manager, which approval shall not be unreasonably withheld. All of said work shall be completed within one hundred and eighty (180) days after termination of this license.

II. Financial Considerations

1. In further consideration for the rights herein granted to Licensee, Licensee shall pay to the Licensors the sum of THREE THOUSAND FIVE HUNDRED NINETY THREE and 80/100 Dollars (\$3,593.80) per annum, each year payable on or before the anniversary of the commencement date of this license agreement except for the first year of the license agreement. The first year's license fee of THREE THOUSAND FIVE HUNDRED NINETY THREE and 80/100 Dollars (\$3,593.80) shall be due and payable in advance of the commencement date of this license ("License Fee"). Licensee's failure to make the License Fee payment within thirty (30) days after the License Fee is due shall constitute a late payment and Licensee shall pay the Licensors a late charge of five percent (5%).

2. At the same time the first year License Fee is due, Licensee shall pay a non-refundable onetime fee of \$500.00 to the Licensors' GIS Manager. Said fee shall revert to the Licensors and Licensee shall have no claim to said fee. The fee shall be used to process the application for the License.

3. Prior to commencement of any renewal term, the Licensors and Licensee shall negotiate in good faith to agree to an adjustment of the License Fee. If the Licensors and Licensee are unable to reach an agreement regarding an adjustment to the License Fee, then the License Fee shall be determined by Licensors in its sole discretion, provided the new License Fee shall not exceed twenty-five percent (25%) of the License Fee paid for the last year of the Initial Term.

4. The License Fee payment shall be made to the Licensors at the office of the GIS

Manager, P.O. Box 1152, Midland, Texas, 79702. The License Fee payment shall be exclusive of and in addition to all general municipal taxes of whatever nature, including but not limited to ad valorem taxes and special taxes and assessments for public improvements.

III. Use

1. Licensors does hereby grant unto Licensee, the right to enter upon certain property of the City of Midland in Midland County, Texas, being twenty (20) feet either side of the pipeline location as shown on Exhibit "A," attached hereto and incorporated herein for the purpose of placing, constructing, operating, repairing, maintaining, replacing and removing, thereon, along the hereinafter described pipeline location, one (1) pipeline, for the transportation of oil and gas materials and to have the right of ingress and egress at convenient points for such purpose.
2. Licensee covenants and agrees that it will repair any of Licensors's roads that Licensee damages on Licensors's property so that such roads will comply with Licensors's Standard Specifications.
3. Licensee covenants and agrees that Licensee shall, at its own expense, repair all water lines, sewer lines, service lines and water meters owned by the Licensors that Licensee, its employees, its agents or assigns, damage so that such water lines, sewer lines and water meters shall comply with the requirements of the Licensors's Standard Specifications.
4. Licensee covenants and agrees that it will bury the pipelines to be constructed hereunder at least thirty-six inches (36") in depth. All backfill used in burying such line

shall be compacted to a density of ninety percent (90%), except where such pipeline crosses under a paved or traveled portion of the City of Midland right of way where such backfill shall be compacted to a density of ninety-five percent (95%). The City of Midland shall be afforded the opportunity to test the density on all backfill.

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

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

Licensor reserves the right to lay and permit to be laid, sewer, gas, water, and other pipelines or cables and conduits, and to do and permit to be done, any underground or overhead installation or improvement that may be deemed necessary or proper by the governing body of the Licensor, in, across, along, over or under any public property occupied by Licensee. In permitting such work to be done, the Licensor shall not be liable to the Licensee for any damage so caused to the Licensee's system, **NOR SHALL THE LICENSOR BE LIABLE TO THE LICENSEE FOR ANY DAMAGES TO THE LICENSEE'S PIPELINE OR CASING, ARISING OUT OF THE NEGLIGENCE BY THE LICENSOR, ITS EMPLOYEES, OFFICERS OR AGENTS, OR LICENSOR'S CONTRACTORS OR SUBCONTRACTORS.** If the Licensor requires the Licensee to remove, alter, change, adapt, or conform Licensee's

facilities because of changes in the grade of a street or in the location or manner of constructing a water pipe, sewer pipe, or other surface, underground or aboveground structure owned by the Licensor, the Licensee shall make the alterations or changes as soon as practicable, and in no event longer than one hundred eighty (180) days, when ordered in writing by the Licensor, without claim for reimbursement for the cost of the relocation or for damages against the Licensor. If these requirements impose a financial hardship upon the Licensee, the Licensee shall have the right to present alternative proposals for the Licensor's consideration.

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

8. It is especially provided, however, that as an express condition of this Agreement, and not as a mere covenant, in the event Licensee abandons any equipment or appurtenances to the undertakings contemplated by this License, or the premises covered hereby cease to be used for the purposes enumerated herein for any period of twelve (12) consecutive months, or longer, other than the time elapsing between the date hereof and construction, and upon giving Licensee one hundred and twenty days (120) notice, then and in that event, this license shall automatically revert to the Licensor, its successors or assigns, free and clear of any right, title, or interest in the Licensee, or any re-entry by the Licensor.

9. In the event that Licensee desires to reconstruct, repair, maintain, replace or remove any pipeline or casing system built hereunder, Licensee shall submit the plans and specifications that pertain to the rebuilding or repairs of Licensor's streets and roads

and the rebuilding or repairs of any of Licensor's public utilities to the Licensor's GIS Manager for his or her approval. In the event of emergency repairs necessary to restore service, the Licensee shall notify Licensor's GIS Manager before making any repairs if during a Licensor work day and if not on a work day, the Licensee shall notify the Licensor's GIS Manager on the first work day after repairs have begun.

10. The Licensor reserves the right to use the surface or subsurface or airspace above the land covered by this Agreement for any public purpose allowed by law and deemed necessary by the Licensor and to do and permit to be done, any work in connection therewith which may be deemed necessary or proper by the Licensor on, across, along, under or over said right of way occupied by the Licensee. In the event of such work in connection with said public purposes it shall be deemed necessary by the Licensor, at Licensor's sole discretion, to alter, change, adapt, conform or relocate any pipeline or casing of Licensee, such alteration or change or relocation shall be commenced and completed by the Licensee within one hundred eighty (180) days after being ordered in writing by the Licensor pursuant to directions from the Licensor's City Council without any claim for reimbursement for the cost of the relocation or damages against the Licensor. The relocation or alteration shall be at the sole cost of Licensee. Provided, however, that Licensee shall at all times be entitled to receive from appropriate governmental bodies, excluding the Licensor, payment for alteration or relocation of its system to which it may be lawfully entitled to under applicable Federal or State laws with respect to relocation payments.

IV. Standard General Conditions

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

Commercial General Liability (including Contractual liability):

-Personal Injury:	\$1,000,000.00 per person
	\$1,000,000.00 per occurrence
-Property Damage:	\$100,000.00 per occurrence

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

Worker's Compensation: Statutory limits

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

Pollution Liability: \$5,000,000.00 each condition
\$10,000,000.00 aggregate

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

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

The Business Automobile Liability insurance provided by Licensee shall cover any auto for bodily injury and property damage, including owned vehicles, hired and

non-owner vehicles, and employee non-ownership, and the amount of such policy shall be a minimum of \$1,000,000.00 covering any vehicle used for the execution of the work that is the subject of this Agreement. All insurance required pursuant to this Agreement, except for Worker's Compensation Insurance, shall name the Licensor as an additional insured on a claims occurred basis. All insurance required pursuant to this Agreement, including Worker's Compensation Insurance, shall provide for a waiver of subrogation as to the Licensor.

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

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

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

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

2. INDEMNITY - THE LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND THE LICENSOR AND ALL OF LICENSOR'S

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

THE LICENSEE AGREES THAT LICENSEE WILL INDEMNIFY AND SAVE THE LICENSOR HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, ALL SUPPLIES, INCLUDING COMMISSARY INCURRED IN THE FURTHERANCE OF THE PLACEMENT, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF THE PIPELINE OR CASING SYSTEM DESCRIBED HEREIN.

THE LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND THE LICENSOR, AND ALL OF LICENSOR'S OFFICERS, AGENTS

AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES AND EXPENSE OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY ON ACCOUNT OF ANY NEGLIGENT ACT OF LICENSEE, LICENSEE'S OFFICERS, AGENTS, AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH LICENSEE OR LICENSEE'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT INCLUDING SUCH NEGLIGENT ACTS ARISING FROM OR IN ANY WAY CONNECTED WITH THE PLACEMENT, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF ANY PART OF THE LICENSEE'S PIPELINE OR CASING SYSTEM IN THE LICENSOR'S RIGHT OF WAY. THE LICENSEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST THE LICENSOR OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

3. **Assignment** - The rights granted by this Agreement inure to the benefit of the

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

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

5. **Independent Contractor** - It is expressly understood and agreed that Licensee shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of the Licensor; that Licensee shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of respondeat superior shall not apply as between Licensor and Licensee, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between Licensor and Licensee. No person performing any of the work and services

described hereunder shall be considered an officer, agent, servant or employee of the Licensor. Further, it is specifically understood and agreed that nothing in this Agreement is intended or shall be construed as creating a “Community of Pecuniary Interest” or “An Equal Right of Control” which would give rise to vicarious liability. Licensee shall be an independent contractor under this Agreement and shall assume all of the rights, obligations and liabilities applicable to it as such independent contractor hereunder. Licensor does not have the power to direct the order in which the work is done. Licensor shall not have the right to control the means, methods or details of Licensee’s work. Licensee shall assume exclusive responsibility for the work. Licensee is entirely free to do the work in its own way.

6. **WAIVER OF ATTORNEY’S FEES - BY EXECUTING THIS AGREEMENT, LICENSEE AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST THE LICENSOR, REGARDING THE AWARD OF ATTORNEY’S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, OR INTERPRETATION OF THE AGREEMENT. THE LICENSEE SPECIFICALLY AGREES THAT IF THE LICENSEE BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM**

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

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

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

7. **Governing Law & Venue** - All performance and payment made pursuant to this Agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this Agreement or the performance of this Agreement shall be in Midland County, Texas.

The obligations and undertakings of each of the parties to this Agreement shall be deemed to have been performed in Midland County, Texas.

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

9. **Sovereign Immunity** - By executing this Agreement the Licensor is not waiving its right of sovereign immunity. The Licensor is retaining its immunity from suit. The Licensor is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

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

11. **Notice** - Any notice or communication required in the administration of this Agreement shall be sent by certified mail, return receipt requested, to the Licensor as follows: GIS Manager, City of Midland, P. O. Box 1152, Midland, Texas, 79702.

Any notice or communication required in the administration of this Agreement shall be sent by certified mail, return receipt requested, to the Licensee as follows: Atlas Pipeline Mid-Continent West Tex, LLC, Greg Watson, Area Manager, 306 W. Wall Street, Suite 500, Midland, Texas, 79701.

12. **Notice of Alleged Breach; Statutory Prerequisites** - As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, Licensee or his legal representative, shall give the City Manager, or any other reasonable official of the Licensor, notice in writing (consisting of one original and seven copies of notice attached to a copy of this Agreement) of such damages, duly verified, within one hundred eighty (180) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which the Licensee will settle, the physical and mailing addresses of Licensee at the time and date the claim was presented and the physical and mailing addresses of Licensee for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Licensee relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except the Licensor from any liability whatsoever. The Licensor is under no obligation to provide notice to Licensee that Licensee's notice is insufficient. Licensor reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

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

LICENSOR:

CITY OF MIDLAND, TEXAS

Courtney Sharp, City Manager

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT AND
COMPLETENESS:

Bill Hodge, GIS Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

LICENSEE:

**ATLAS PIPELINE MID-CONTINENT
WEST TEX, LLC**

THE STATE OF TEXAS

Denny Latham, Vice President

§

§

COUNTY OF _____

§

BEFORE ME, the undersigned authority, on this day personally appeared Denny Latham, an officer of ATLAS PIPELINE MID-CONTINENT WEST TEX, LLC, known to me to be the person and official whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of said entity, for the purposes and consideration therein expressed, and in the capacity therein stated.

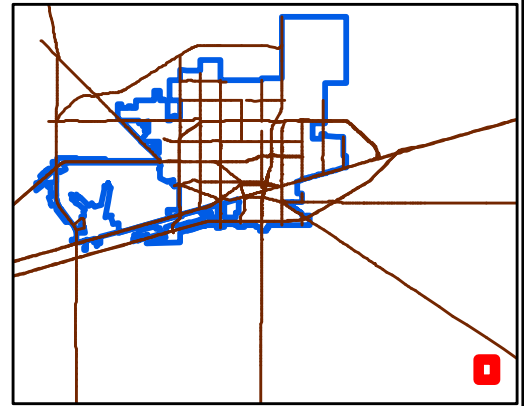
GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____, 2013.

Notary Public, State of Texas



TSP 37-2-S
L LEECH-45
A-1037

Atlas ROW License 1993-999 & Renewal
Blk 37, Sec 3 T3S



Total Rods= 179.69

BLK 37-3-S
SEC 4

BLK 37-3-S
SEC 3

Legend

- Street
- Survey Section
- ROW
- Parcel
- City Limit

1 inch = 500 feet

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MAKES NO CLAIM AS TO ITS ACCURACY OR COMPLETENESS.
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TOOL IN PERMITTING, CITING, OR OTHER DECISIONS
SOLELY ON THE INFORMATION CONTAINED
15.23



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 6/25/2013

TO: City Council / City Manager

FROM: Bill Hodge, GIS Manager

SUBJECT: Consider a Resolution to approve the execution of a renewal Right of Way license (2005-267) with Atlas Pipeline Mid-Continent WestTex (contract rights assumed from the original license holder, Western Gas Resources, 2007) for the maintenance of a pipeline located in Blk 38, Sec 44, T1S, T&P RR Survey, Midland County, TX.

Purpose:

Consider a Resolution to Approve the execution of a renewal Right of Way license (2005-267) with Atlas Pipeline Mid-Continent WestTex (contract rights assumed from the original license holder, Western Gas Resources, 2007) for the maintenance of a pipeline located in Blk 38, Sec 44, T1S, T&P RR Survey, Midland County, TX.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Annual Lease Rate: \$ 20/rod/yr for 147.5 rods = \$ 2,950.60 annual revenue to the City and \$ 14,750.00 total revenue for the first full five year period of the contract, an increase of 100% from the original agreement.

Renewal fee: Atlas will pay a one-time \$ 500.00 license renewal fee.

Because the pipeline is existing, there will be no surface damages involved.

The lease rate for the second five-year period will be negotiated before the end of the first period and will be capped at no more than a 25% increase.

Discussion:

This right of way license is proposed as a contract with an initial five (5) year agreement, with a second additional five (5) years available upon written request at least 120 days before expiration.

The easement will be 30 feet total from the pipeline centerline. The pipeline will be maintained to provide a minimum of 36 inches of cover to natural ground.

This is a renewal of a pipeline ROW contract (2005-267, Sept 13, 2005) originally entered into with Western Gas Resources on Sept 13, 2005 for a poly pipeline, not to exceed 8" in diameter. This contract was assumed by Atlas Pipeline in 2007, but expired in 2010 without renewal by either Midland or Atlas. Atlas brought the need for renewal to Midland's attention as a good faith effort to renew the agreement.

Atlas has agreed to pay the 2010, 2011, and 2012 lease payment in arrears, and because of their demonstration of good faith and our excellent working relationship in a number of other ROW agreements, staff recommends that we not seek a contract expiration fee.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING A RIGHT-OF-WAY LICENSE BETWEEN THE CITY OF MIDLAND, TEXAS AND ATLAS PIPELINE MID-CONTINENT WESTTEX; SAID RIGHT-OF-WAY LICENSE IS FOR ENTERING THE CITY OF MIDLAND'S RIGHT-OF-WAY FOR THE PURPOSE OF PLACING, CONSTRUCTING, OPERATING, REPAIRING, MAINTAINING, REPLACING AND REMOVING ONE (1) PIPELINE, FOR THE TRANSPORTATION OF OIL AND GAS MATERIALS AND TO HAVE THE RIGHT OF INGRESS AND EGRESS AT CONVENIENT POINTS FOR SUCH PURPOSE; THE PIPELINE IS LOCATED WITHIN THE CITY OF MIDLAND RIGHT-OF-WAY, SECTION 44, BLOCK 38, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS; THE LICENSE TERM IS FOR FIVE (5) YEARS, COMMENCING WITH THE DATE OF THIS LICENSE AND SHALL AUTOMATICALLY RENEW AT THE END OF THE TERM FOR ONE ADDITIONAL FIVE (5) YEAR TERM UPON 120 DAYS WRITTEN REQUEST PRIOR TO EXPIRATION

WHEREAS the City Council finds it to be in the public interest to authorize a right-of-way license with Atlas Pipeline Mid-Continent WestTex, located within the City of Midland Right-of-Way, Section 44, Block 38, T-1-S, T&P RR Co. Survey, Midland County, Texas;

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

THAT the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a right-of-way license with Atlas Pipeline Mid-Continent WestTex, said license being substantially in the form attached hereto as Exhibit "A" and incorporated herein for all purposes.

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

Council members voting "AYE":

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Bill Hodge, GIS Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

RIGHT-OF-WAY LICENSE

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

THIS RIGHT-OF-WAY LICENSE (“AGREEMENT”), effective this 26th day of June, 2013, by and between THE CITY OF MIDLAND, TEXAS, a home rule municipal corporation, hereinafter called “Licensor”, and ATLAS PIPELINE MID-CONTINENT WESTTEX, LLC, 110 West 7th, Suite 2300, Tulsa, Oklahoma 74119, hereinafter called “Licensee”.

Licensee desires use of property owned by the Licensor in Midland County, Texas outside the City of Midland, Texas, for purposes set forth below.

It is the position of the Licensor that Licensee must obtain a license in order to use the public lands of the City. The parties agree the grant herein may be referred to as the “License”.

W I T N E S S E T H:

For and in consideration of the execution of this Agreement and the mutual promises and covenants of the parties hereto, it is mutually promised, understood and agreed as follows, to wit:

I. Term

This Agreement shall be for a term of five (5) years (the “Initial Term”), commencing with the date of this Agreement, the “Commencement Date,” unless terminated earlier as provided hereafter. This Agreement shall automatically renew at the end of the Initial Term for one (1) additional term of five (5) years, upon the written

request of Licensee received by Licensor on or before (120) days prior to the expiration of the Initial Term then in effect, subject to the express written consent of the governing body of the Licensor. All work under this Agreement shall be suspended immediately upon termination of the Agreement becoming effective.

Either party may terminate this Agreement at will for any or no reason upon giving at least three hundred sixty five (365) days written notice to the Licensor. The parties to this Agreement understand and agree that it is in the Licensor's sole discretion to cancel the Agreement during the term of the Agreement without penalty to the Licensor. The Licensee has no expectation and has received no guarantees that this Agreement will not be terminated before the end of the Agreement term. The parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the term of the Agreement. All work and services under the Agreement shall be suspended upon termination of Agreement becoming effective.

Upon termination of this Agreement, Licensee shall remove all equipment and structures associated with the undertakings contemplated by this License. After removal of all equipment and structures associated with the undertakings contemplated by this License, the surface shall be restored at the expense of the Licensee to its original condition, as close thereto as may be practical, subject to the approval of the Licensor upon inspection by Licensor's GIS Manager, which approval shall not be unreasonably withheld. All of said work shall be completed within one hundred and eighty (180) days after termination of this license.

II. Financial Considerations

1. In further consideration for the rights herein granted to Licensee, Licensee shall pay to the Licensors the sum of TWO THOUSAND NINE HUNDRED FIFTY AND 60/100 Dollars (\$2,950.60) per annum, each year payable on or before the anniversary of the commencement date of this license agreement except for the first year of the license agreement. The first year's license fee of TWO THOUSAND NINE HUNDRED FIFTY AND 60/100 Dollars (\$2,950.60) shall be due and payable in advance of the commencement date of this license ("License Fee"). Licensee's failure to make the License Fee payment within thirty (30) days after the License Fee is due shall constitute a late payment and Licensee shall pay the Licensors a late charge of five percent (5%).
2. At the same time the first year License Fee is due, Licensee shall pay a non-refundable onetime fee of \$500.00 to the Licensors' GIS Manager. Said fee shall revert to the Licensors and Licensee shall have no claim to said fee. The fee shall be used to process the application for the License.
3. Prior to commencement of any renewal term, the Licensors and Licensee shall negotiate in good faith to agree to an adjustment of the License Fee. If the Licensors and Licensee are unable to reach an agreement regarding an adjustment to the License Fee, then the License Fee shall be determined by Licensors in its sole discretion, provided the new License Fee shall not exceed twenty-five percent (25%) of the License Fee paid for the last year of the Initial Term.
4. The License Fee payment shall be made to the Licensors at the office of the GIS Manager, P.O. Box 1152, Midland, Texas, 79702. The License Fee payment shall be

exclusive of and in addition to all general municipal taxes of whatever nature, including but not limited to ad valorem taxes and special taxes and assessments for public improvements.

III. Use

1. Licensors does hereby grant unto Licensee, the right to enter upon certain property of the City of Midland in Midland County, Texas, being twenty (20) feet either side of the pipeline location as shown on Exhibit "A," attached hereto and incorporated herein for the purpose of placing, constructing, operating, repairing, maintaining, replacing and removing, thereon, along the hereinafter described pipeline location, one (1) pipeline, for the transportation of oil and gas materials and to have the right of ingress and egress at convenient points for such purpose.

2. Licensee covenants and agrees that it will repair any of Licensors's roads that Licensee damages on Licensors's property so that such roads will comply with Licensors's Standard Specifications.

3. Licensee covenants and agrees that Licensee shall, at its own expense, repair all water lines, sewer lines, service lines and water meters owned by the Licensors that Licensee, its employees, its agents or assigns, damage so that such water lines, sewer lines and water meters shall comply with the requirements of the Licensors's Standard Specifications.

4. Licensee covenants and agrees that it will bury the pipelines to be constructed hereunder at least thirty-six inches (36") in depth. All backfill used in burying such line shall be compacted to a density of ninety percent (90%), except where such pipeline

crosses under a paved or traveled portion of the City of Midland right of way where such backfill shall be compacted to a density of ninety-five percent (95%). The City of Midland shall be afforded the opportunity to test the density on all backfill.

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

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

Licensor reserves the right to lay and permit to be laid, sewer, gas, water, and other pipelines or cables and conduits, and to do and permit to be done, any underground or overhead installation or improvement that may be deemed necessary or proper by the governing body of the Licensor, in, across, along, over or under any public property occupied by Licensee. In permitting such work to be done, the Licensor shall not be liable to the Licensee for any damage so caused to the Licensee's system, **NOR SHALL THE LICENSOR BE LIABLE TO THE LICENSEE FOR ANY DAMAGES TO THE LICENSEE'S PIPELINE OR CASING, ARISING OUT OF THE NEGLIGENCE BY THE LICENSOR, ITS EMPLOYEES, OFFICERS OR AGENTS, OR LICENSOR'S CONTRACTORS OR SUBCONTRACTORS.** If the Licensor requires the Licensee to remove, alter, change, adapt, or conform Licensee's facilities because of changes in the grade of a street or in the location or manner of

constructing a water pipe, sewer pipe, or other surface, underground or aboveground structure owned by the Licensor, the Licensee shall make the alterations or changes as soon as practicable, and in no event longer than one hundred eighty (180) days, when ordered in writing by the Licensor, without claim for reimbursement for the cost of the relocation or for damages against the Licensor. If these requirements impose a financial hardship upon the Licensee, the Licensee shall have the right to present alternative proposals for the Licensor's consideration.

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

8. It is especially provided, however, that as an express condition of this Agreement, and not as a mere covenant, in the event Licensee abandons any equipment or appurtenances to the undertakings contemplated by this License, or the premises covered hereby cease to be used for the purposes enumerated herein for any period of twelve (12) consecutive months, or longer, other than the time elapsing between the date hereof and construction, and upon giving Licensee one hundred and twenty days (120) notice, then and in that event, this license shall automatically revert to the Licensor, its successors or assigns, free and clear of any right, title, or interest in the Licensee, or any re-entry by the Licensor.

9. In the event that Licensee desires to reconstruct, repair, maintain, replace or remove any pipeline or casing system built hereunder, Licensee shall submit the plans and specifications that pertain to the rebuilding or repairs of Licensor's streets and roads and the rebuilding or repairs of any of Licensor's public utilities to the Licensor's GIS

Manager for his or her approval. In the event of emergency repairs necessary to restore service, the Licensee shall notify Licensor's GIS Manager before making any repairs if during a Licensor work day and if not on a work day, the Licensee shall notify the Licensor's GIS Manager on the first work day after repairs have begun.

10. The Licensor reserves the right to use the surface or subsurface or airspace above the land covered by this Agreement for any public purpose allowed by law and deemed necessary by the Licensor and to do and permit to be done, any work in connection therewith which may be deemed necessary or proper by the Licensor on, across, along, under or over said right of way occupied by the Licensee. In the event of such work in connection with said public purposes it shall be deemed necessary by the Licensor, at Licensor's sole discretion, to alter, change, adapt, conform or relocate any pipeline or casing of Licensee, such alteration or change or relocation shall be commenced and completed by the Licensee within one hundred eighty (180) days after being ordered in writing by the Licensor pursuant to directions from the Licensor's City Council without any claim for reimbursement for the cost of the relocation or damages against the Licensor. The relocation or alteration shall be at the sole cost of Licensee. Provided, however, that Licensee shall at all times be entitled to receive from appropriate governmental bodies, excluding the Licensor, payment for alteration or relocation of its system to which it may be lawfully entitled to under applicable Federal or State laws with respect to relocation payments.

IV. Standard General Conditions

1. **Insurance** - Licensee shall at all times during the term of this Agreement maintain

and keep in full force and effect insurance in the following types and minimum amounts
with companies authorized to do business in the State of Texas:

Commercial General Liability (including Contractual liability):

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

-Property Damage: \$100,000.00 per occurrence

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

<u>Worker's Compensation:</u>	Statutory limits
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Employers' Liability: \$1,000,000.00 per accident or occurrence

<u>Pollution Liability:</u>	\$5,000,000.00 each condition
	\$10,000,000.00 aggregate

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

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

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

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

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

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

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

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

2. INDEMNITY - THE LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND THE LICENSOR AND ALL OF LICENSOR'S OFFICERS, AGENTS, AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, LOSSES, ATTORNEY'S FEES AND EXPENSES OF ANY CHARACTER WHATSOEVER, BROUGHT FOR OR ON ACCOUNT OF ANY

INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON, PERSONS OR PROPERTY, ON ACCOUNT OF ANY ACT OF THE LICENSEE, Licensee's contractor or subcontractor, their agents or employees, arising directly or indirectly or in any way connected with the placement, construction, operations, repair, maintenance, replacement or removal of any part of the Licensee's pipeline or casing system in the Licensors rights of way. The Licensee will be required to pay any judgment with costs which may be obtained against the Licensors or any of its officers, agents, or employees including attorney's fees.

THE LICENSEE AGREES THAT LICENSEE WILL INDEMNIFY AND SAVE THE LICENSOR HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, ALL SUPPLIES, INCLUDING COMMISSARY INCURRED IN THE FURTHERANCE OF THE PLACEMENT, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF THE PIPELINE OR CASING SYSTEM DESCRIBED HEREIN.

THE LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND THE LICENSOR, AND ALL OF LICENSOR'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES AND EXPENSE OF ANY CHARACTER WHATSOEVER, INCLUDING

ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY ON ACCOUNT OF ANY NEGLIGENT ACT OF LICENSEE, LICENSEE'S OFFICERS, AGENTS, AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH LICENSEE OR LICENSEE'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT INCLUDING SUCH NEGLIGENT ACTS ARISING FROM OR IN ANY WAY CONNECTED WITH THE PLACEMENT, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF ANY PART OF THE LICENSEE'S PIPELINE OR CASING SYSTEM IN THE LICENSOR'S RIGHT OF WAY. THE LICENSEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST THE LICENSOR OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

3. **Assignment** - The rights granted by this Agreement inure to the benefit of the Licensee. The rights and privileges shall not be assignable by Licensee, with the exception of an assignment by Licensee to an affiliated entity, without the express written consent of the governing body of the Licensor. Any required consent is to be evidenced

by an ordinance or resolution of the governing body of the Licensor that fully recites the terms and conditions, if any, upon which consent is given. The granting of consent is in the sole discretion of Licensor.

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

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

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

6. **WAIVER OF ATTORNEY’S FEES - BY EXECUTING THIS AGREEMENT, LICENSEE AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST THE LICENSOR, REGARDING THE AWARD OF ATTORNEY’S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, OR INTERPRETATION OF THE AGREEMENT. THE LICENSEE SPECIFICALLY AGREES THAT IF THE LICENSEE BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET. SEQ., AS AMENDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, THE LICENSEE AGREES**

TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH LICENSEE MIGHT OTHERWISE BE ENTITLED.

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

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

7. **Governing Law & Venue** - All performance and payment made pursuant to this Agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this Agreement or the performance of this Agreement shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this Agreement shall be deemed to have been performed in Midland County, Texas.

8. **RELEASE** - NOTWITHSTANDING ANY OTHER PROVISIONS,

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

9. **Sovereign Immunity** - By executing this Agreement the Licensor is not waiving its right of sovereign immunity. The Licensor is retaining its immunity from suit. The Licensor is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

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

11. **Notice** - Any notice or communication required in the administration of this Agreement shall be sent by certified mail, return receipt requested, to the Licensor as follows: GIS Manager, City of Midland, P. O. Box 1152, Midland, Texas, 79702.

Any notice or communication required in the administration of this Agreement shall be sent by certified mail, return receipt requested, to the Licensee as follows: Atlas Pipeline Mid-Continent West Tex, LLC, Greg Watson, Area Manager, 306 W. Wall

Street, Suite 500, Midland, Texas, 79701.

12. **Notice of Alleged Breach; Statutory Prerequisites** - As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, Licensee or his legal representative, shall give the City Manager, or any other reasonable official of the Licensor, notice in writing (consisting of one original and seven copies of notice attached to a copy of this Agreement) of such damages, duly verified, within one hundred eighty (180) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which the Licensee will settle, the physical and mailing addresses of Licensee at the time and date the claim was presented and the physical and mailing addresses of Licensee for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Licensee relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except the Licensor from any liability whatsoever. The Licensor is under no obligation to provide notice to Licensee that Licensee's notice is insufficient. Licensor reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

to comply with the requirements herein shall perpetually bar Licensee's claim for damages under Chapter 271 of the Texas Local Government Code, and Section 311.034 of the Texas Government Code, regardless if Licensor has actual or constructive notice or knowledge of said claim or alleged damages. Licensee agrees that the requirements of this entire Agreement are reasonable.

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

LICENSOR:

CITY OF MIDLAND, TEXAS

Courtney Sharp, City Manager

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT AND
COMPLETENESS:

Bill Hodge, GIS Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

LICENSEE:

**ATLAS PIPELINE MID-CONTINENT
WEST TEX, LLC**

Denny Latham, Vice President

THE STATE OF TEXAS

§

§

COUNTY OF _____

§

BEFORE ME, the undersigned authority, on this day personally appeared Denny Latham, an officer of ATLAS PIPELINE MID-CONTINENT WEST TEX, LLC, known to me to be the person and official whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of said entity, for the purposes and consideration therein expressed, and in the capacity therein stated.

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

Notary Public, State of Texas



Atlas ROW License 2005-267 & Renewal
Blk 38, Sec 44 T1S

Total Rods= 147.5

BLK
38-1-S
SEC 43

BLK 38-1-S
SEC 44

FM 307

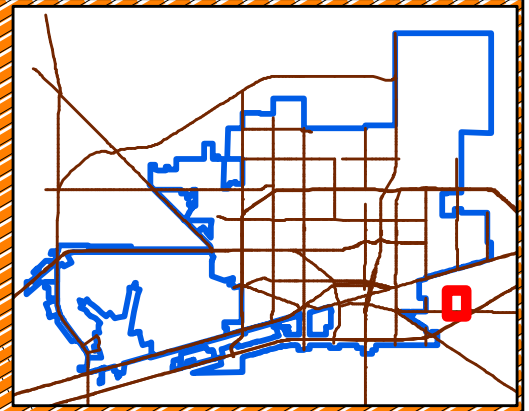
BLK
38-2-S
SEC 6

BLK
38-2-S
SEC 5

1 inch = 415 feet

Legend

- Street
- Survey Section
- ROW
- Parcel
- City Limit



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WHILE THIS DATA IS MADE AVAILABLE TO THE PUBLIC, IT WAS
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MAKES NO CLAIM AS TO ITS ACCURACY OR COMPLETENESS.
THIS DATA IS NOT DESIGNED TO BE USED AS A
TOOL IN PERMITTING, CITING, OR OTHER DECISIONS
SOLELY ON THE INFORMATION CONTAINED
HEREIN.

16.23



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 6/25/2013

TO: City Council / City Manager

FROM: Bill Hodge, GIS Manager

SUBJECT: Consider a Resolution to approve the execution of a renewal Right of Way license (2001-255) with Atlas Pipeline Mid-Continent WestTex (contract rights assumed from the original license holder, Western Gas Resources, 2007) for the maintenance of a pipeline crossing in and along Todd Road in Blk 38, Sec, 30, 32, and 41, T1S, T&P RR Survey, Midland County, TX.

Purpose:

Consider a Resolution to approve the execution of a renewal Right of Way license (2001-255) with Atlas Pipeline Mid-Continent WestTex (contract rights assumed from the original license holder, Western Gas Resources, 2007) for the maintenance of a pipeline crossing in and along Todd Road in Blk 38, Sec, 30, 32, and 41, T1S, T&P RR Survey, Midland County, TX.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Annual Lease Rate: \$ 20/rod/yr for 510.75 rods = \$ 10,215.00 annual revenue to the City and \$ 51,075.00 total revenue for the first full five year period of the contract, an increase of 67% from the original agreement.

Renewal fee: Atlas will pay a one-time \$ 500.00 license renewal fee.

Because the pipeline is existing, there will be no surface damages involved.

The lease rate for the second five-year period will be negotiated before the end of the first period and will be capped at no more than a 25% increase.

Discussion:

This right of way license is proposed as a contract with an initial five (5) year agreement, with a second additional five (5) years available upon written request at least 120 days before expiration.

The easement will be 30 feet total from the pipeline centerline. The pipeline will be maintained to provide a minimum of 36 inches of cover to natural ground.

This is a renewal of a pipeline ROW contract (2001-255) originally entered into with Western Gas Resources On Sept 11, 2001 for a poly pipeline, not to exceed 8" in diameter, and runs along a stretch of Todd Road. This contract was assumed by Atlas Pipeline in 2007, but expired in 2011 without renewal by either Midland or Atlas. Atlas brought the need for renewal to Midland's attention as a good faith effort to renew the agreement.

Atlas has agreed to pay the 2012 lease payment in arrears. Because of their demonstration of good faith and our excellent working relationship in a number of other ROW agreements, staff recommends that we not seek a contract expiration fee.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING A RIGHT-OF-WAY LICENSE BETWEEN THE CITY OF MIDLAND, TEXAS AND ATLAS PIPELINE MID-CONTINENT WESTTEX; SAID RIGHT-OF-WAY LICENSE IS FOR ENTERING THE CITY OF MIDLAND'S RIGHT-OF-WAY FOR THE PURPOSE OF PLACING, CONSTRUCTING, OPERATING, REPAIRING, MAINTAINING, REPLACING AND REMOVING ONE (1) PIPELINE, FOR THE TRANSPORTATION OF OIL AND GAS MATERIALS AND TO HAVE THE RIGHT OF INGRESS AND EGRESS AT CONVENIENT POINTS FOR SUCH PURPOSE; THE PIPELINE IS LOCATED WITHIN THE CITY OF MIDLAND RIGHT-OF-WAY, SECTIONS 30, 32, AND 41, BLOCK 38, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS; THE LICENSE TERM IS FOR FIVE (5) YEARS, COMMENCING WITH THE DATE OF THIS LICENSE AND SHALL AUTOMATICALLY RENEW AT THE END OF THE TERM FOR ONE ADDITIONAL FIVE (5) YEAR TERM UPON 120 DAYS WRITTEN REQUEST PRIOR TO EXPIRATION

WHEREAS the City Council finds it to be in the public interest to authorize a right-of-way license with Atlas Pipeline Mid-Continent WestTex, located within the City of Midland Right-of-Way, Sections 30, 32, and 41, Block 38, T-1-S, T&P RR Co. Survey, Midland County, Texas;

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

THAT the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a right-of-way license with Atlas Pipeline Mid-Continent WestTex, said license being substantially in the form attached hereto as Exhibit "A" and incorporated herein for all purposes.

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

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Bill Hodge, GIS Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

RIGHT-OF-WAY LICENSE

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

THIS RIGHT-OF-WAY LICENSE (“AGREEMENT”), effective this 26th day of June, 2013, by and between THE CITY OF MIDLAND, TEXAS, a home rule municipal corporation, hereinafter called “Licensor”, and ATLAS PIPELINE MID-CONTINENT WEST TEX, LLC, 110 West 7th, Suite 2300, Tulsa, Oklahoma 74119, hereinafter called “Licensee”.

Licensee desires use of property owned by the Licensor in Midland County, Texas inside the City of Midland, Texas, for purposes set forth below.

It is the position of the Licensor that Licensee must obtain a license in order to use the public lands of the City. The parties agree the grant herein may be referred to as the “License”.

W I T N E S S E T H:

For and in consideration of the execution of this Agreement and the mutual promises and covenants of the parties hereto, it is mutually promised, understood and agreed as follows, to wit:

I. Term

This Agreement shall be for a term of five (5) years (the “Initial Term”), commencing with the date of this Agreement, the “Commencement Date,” unless terminated earlier as provided hereafter. This Agreement shall automatically renew at the end of the Initial Term for one (1) additional term of five (5) years, upon the written

request of Licensee received by Licensor on or before (120) days prior to the expiration of the Initial Term then in effect, subject to the express written consent of the governing body of the Licensor. All work under this Agreement shall be suspended immediately upon termination of the Agreement becoming effective.

Either party may terminate this Agreement at will for any or no reason upon giving at least three hundred sixty five (365) days written notice to the Licensor. The parties to this Agreement understand and agree that it is in the Licensor's sole discretion to cancel the Agreement during the term of the Agreement without penalty to the Licensor. The Licensee has no expectation and has received no guarantees that this Agreement will not be terminated before the end of the Agreement term. The parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the term of the Agreement. All work and services under the Agreement shall be suspended upon termination of Agreement becoming effective.

Upon termination of this Agreement, Licensee shall remove all equipment and structures associated with the undertakings contemplated by this License. After removal of all equipment and structures associated with the undertakings contemplated by this License, the surface shall be restored at the expense of the Licensee to its original condition, as close thereto as may be practical, subject to the approval of the Licensor upon inspection by Licensor's GIS Manager, which approval shall not be unreasonably withheld. All of said work shall be completed within one hundred and eighty (180) days after termination of this license.

II. Financial Considerations

1. In further consideration for the rights herein granted to Licensee, Licensee shall pay to the Licensors the sum of TEN THOUSAND TWO HUNDRED FIFTEEN and NO/100 Dollars (\$10,215.00) per annum, each year payable on or before the anniversary of the commencement date of this license agreement except for the first year of the license agreement. The first year's License Fee of TEN THOUSAND TWO HUNDRED FIFTEEN and NO/100 Dollars (\$10,215.00) shall be due and payable in advance of the commencement date of this license ("License Fee"). Licensee's failure to make the License Fee payment within thirty (30) days after the License Fee is due shall constitute a late payment and Licensee shall pay the Licensors a late charge of five percent (5%).

2. At the same time the first year License Fee is due, Licensee shall pay a non-refundable onetime fee of \$500.00 to the Licensors' GIS Manager. Said fee shall revert to the Licensors and Licensee shall have no claim to said fee. The fee shall be used to process the application for the License.

3. Prior to commencement of any renewal term, the Licensors and Licensee shall negotiate in good faith to agree to an adjustment of the License Fee. If the Licensors and Licensee are unable to reach an agreement regarding an adjustment to the License Fee, then the License Fee shall be determined by Licensors in its sole discretion, provided the new License Fee shall not exceed twenty-five percent (25%) of the License Fee paid for the last year of the Initial Term.

4. The License Fee payment shall be made to the Licensors at the office of the GIS

Manager, P.O. Box 1152, Midland, Texas, 79702. The License Fee payment shall be exclusive of and in addition to all general municipal taxes of whatever nature, including but not limited to ad valorem taxes and special taxes and assessments for public improvements.

III. Use

1. Licenser does hereby grant unto Licensee, the right to enter upon certain property of the City of Midland in Midland County, Texas, being twenty (20) feet either side of the pipeline location as shown on Exhibit "A," attached hereto and incorporated herein for the purpose of placing, constructing, operating, repairing, maintaining, replacing and removing, thereon, along the hereinafter described pipeline location, one (1) pipeline, for the transportation of oil and gas materials and to have the right of ingress and egress at convenient points for such purpose.
2. Licensee covenants and agrees that it will repair any of Licenser's roads that Licensee damages on Licenser's property so that such roads will comply with Licenser's Standard Specifications.
3. Licensee covenants and agrees that Licensee shall, at its own expense, repair all water lines, sewer lines, service lines and water meters owned by the Licenser that Licensee, its employees, its agents or assigns, damage so that such water lines, sewer lines and water meters shall comply with the requirements of the Licenser's Standard Specifications.
4. Licensee covenants and agrees that it will bury the pipelines to be constructed hereunder at least thirty-six inches (36") in depth. All backfill used in burying such line

shall be compacted to a density of ninety percent (90%), except where such pipeline crosses under a paved or traveled portion of the City of Midland right of way where such backfill shall be compacted to a density of ninety-five percent (95%). The City of Midland shall be afforded the opportunity to test the density on all backfill.

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

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

Licensor reserves the right to lay and permit to be laid, sewer, gas, water, and other pipelines or cables and conduits, and to do and permit to be done, any underground or overhead installation or improvement that may be deemed necessary or proper by the governing body of the Licensor, in, across, along, over or under any public property occupied by Licensee. In permitting such work to be done, the Licensor shall not be liable to the Licensee for any damage so caused to the Licensee's system, **NOR SHALL THE LICENSOR BE LIABLE TO THE LICENSEE FOR ANY DAMAGES TO THE LICENSEE'S PIPELINE OR CASING, ARISING OUT OF THE NEGLIGENCE BY THE LICENSOR, ITS EMPLOYEES, OFFICERS OR AGENTS, OR LICENSOR'S CONTRACTORS OR SUBCONTRACTORS.** If the Licensor requires the Licensee to remove, alter, change, adapt, or conform Licensee's

facilities because of changes in the grade of a street or in the location or manner of constructing a water pipe, sewer pipe, or other surface, underground or aboveground structure owned by the Licensor, the Licensee shall make the alterations or changes as soon as practicable, and in no event longer than one hundred eighty (180) days, when ordered in writing by the Licensor, without claim for reimbursement for the cost of the relocation or for damages against the Licensor. If these requirements impose a financial hardship upon the Licensee, the Licensee shall have the right to present alternative proposals for the Licensor's consideration.

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

8. It is especially provided, however, that as an express condition of this Agreement, and not as a mere covenant, in the event Licensee abandons any equipment or appurtenances to the undertakings contemplated by this License, or the premises covered hereby cease to be used for the purposes enumerated herein for any period of twelve (12) consecutive months, or longer, other than the time elapsing between the date hereof and construction, and upon giving Licensee one hundred and twenty days (120) notice, then and in that event, this license shall automatically revert to the Licensor, its successors or assigns, free and clear of any right, title, or interest in the Licensee, or any re-entry by the Licensor.

9. In the event that Licensee desires to reconstruct, repair, maintain, replace or remove any pipeline or casing system built hereunder, Licensee shall submit the plans and specifications that pertain to the rebuilding or repairs of Licensor's streets and roads

and the rebuilding or repairs of any of Licensor's public utilities to the Licensor's GIS Manager for his or her approval. In the event of emergency repairs necessary to restore service, the Licensee shall notify Licensor's GIS Manager before making any repairs if during a Licensor work day and if not on a work day, the Licensee shall notify the Licensor's GIS Manager on the first work day after repairs have begun.

10. The Licensor reserves the right to use the surface or subsurface or airspace above the land covered by this Agreement for any public purpose allowed by law and deemed necessary by the Licensor and to do and permit to be done, any work in connection therewith which may be deemed necessary or proper by the Licensor on, across, along, under or over said right of way occupied by the Licensee. In the event of such work in connection with said public purposes it shall be deemed necessary by the Licensor, at Licensor's sole discretion, to alter, change, adapt, conform or relocate any pipeline or casing of Licensee, such alteration or change or relocation shall be commenced and completed by the Licensee within one hundred eighty (180) days after being ordered in writing by the Licensor pursuant to directions from the Licensor's City Council without any claim for reimbursement for the cost of the relocation or damages against the Licensor. The relocation or alteration shall be at the sole cost of Licensee. Provided, however, that Licensee shall at all times be entitled to receive from appropriate governmental bodies, excluding the Licensor, payment for alteration or relocation of its system to which it may be lawfully entitled to under applicable Federal or State laws with respect to relocation payments.

IV. Standard General Conditions

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

Commercial General Liability (including Contractual liability):

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

-Property Damage: \$100,000.00 per occurrence

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

Worker's Compensation: Statutory limits

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

Pollution Liability: \$5,000,000.00 each condition
\$10,000,000.00 aggregate

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

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

The Business Automobile Liability insurance provided by Licensee shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-owner vehicles, and employee non-ownership, and the amount of such policy shall

be a minimum of \$1,000,000.00 covering any vehicle used for the execution of the work that is the subject of this Agreement. All insurance required pursuant to this Agreement, except for Worker's Compensation Insurance, shall name the Licensor as an additional insured on a claims occurred basis. All insurance required pursuant to this Agreement, including Worker's Compensation Insurance, shall provide for a waiver of subrogation as to the Licensor.

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

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

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

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

2. INDEMNITY - THE LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND THE LICENSOR AND ALL OF LICENSOR'S OFFICERS, AGENTS, AND EMPLOYEES FROM ALL SUITS, ACTIONS,

CLAIMS, DAMAGES, LOSSES, ATTORNEY'S FEES AND EXPENSES OF ANY CHARACTER WHATSOEVER, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON, PERSONS OR PROPERTY, ON ACCOUNT OF ANY ACT OF THE LICENSEE, Licensee's contractor or subcontractor, their agents or employees, arising directly or indirectly or in any way connected with the placement, construction, operations, repair, maintenance, replacement or removal of any part of the Licensee's pipeline or casing system in the Licensors' rights of way. The Licensee will be required to pay any judgment with costs which may be obtained against the Licensors or any of its officers, agents, or employees including attorney's fees.

THE LICENSEE AGREES THAT LICENSEE WILL INDEMNIFY AND SAVE THE LICENSOR HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, ALL SUPPLIES, INCLUDING COMMISSARY INCURRED IN THE FURTHERANCE OF THE PLACEMENT, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF THE PIPELINE OR CASING SYSTEM DESCRIBED HEREIN.

THE LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND THE LICENSOR, AND ALL OF LICENSOR'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES,

PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES AND EXPENSE OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY ON ACCOUNT OF ANY NEGLIGENT ACT OF LICENSEE, LICENSEE'S OFFICERS, AGENTS, AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH LICENSEE OR LICENSEE'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT INCLUDING SUCH NEGLIGENT ACTS ARISING FROM OR IN ANY WAY CONNECTED WITH THE PLACEMENT, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF ANY PART OF THE LICENSEE'S PIPELINE OR CASING SYSTEM IN THE LICENSOR'S RIGHT OF WAY. THE LICENSEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST THE LICENSOR OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

3. **Assignment** - The rights granted by this Agreement inure to the benefit of the Licensee. The rights and privileges shall not be assignable by Licensee, with the

exception of an assignment by Licensee to an affiliated entity, without the express written consent of the governing body of the Licensor. Any required consent is to be evidenced by an ordinance or resolution of the governing body of the Licensor that fully recites the terms and conditions, if any, upon which consent is given. The granting of consent is in the sole discretion of Licensor.

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

5. **Independent Contractor** - It is expressly understood and agreed that Licensee shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of the Licensor; that Licensee shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of respondeat superior shall not apply as between Licensor and Licensee, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between Licensor and Licensee. No person performing any of the work and services described hereunder shall be considered an officer, agent, servant or employee of the

Licensor. Further, it is specifically understood and agreed that nothing in this Agreement is intended or shall be construed as creating a “Community of Pecuniary Interest” or “An Equal Right of Control” which would give rise to vicarious liability. Licensee shall be an independent contractor under this Agreement and shall assume all of the rights, obligations and liabilities applicable to it as such independent contractor hereunder. Licensor does not have the power to direct the order in which the work is done. Licensor shall not have the right to control the means, methods or details of Licensee’s work. Licensee shall assume exclusive responsibility for the work. Licensee is entirely free to do the work in its own way.

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

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

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

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

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

deemed to have been performed in Midland County, Texas.

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

9. **Sovereign Immunity** - By executing this Agreement the Licensor is not waiving its right of sovereign immunity. The Licensor is retaining its immunity from suit. The Licensor is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

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

11. **Notice** - Any notice or communication required in the administration of this Agreement shall be sent by certified mail, return receipt requested, to the Licensor as follows: GIS Manager, City of Midland, P. O. Box 1152, Midland, Texas, 79702.

Any notice or communication required in the administration of this Agreement

shall be sent by certified mail, return receipt requested, to the Licensee as follows: Atlas Pipeline Mid-Continent West Tex, LLC, Greg Watson, Area Manager, 306 W. Wall Street, Suite 500, Midland, Texas, 79701.

12. **Notice of Alleged Breach; Statutory Prerequisites** - As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, Licensee or his legal representative, shall give the City Manager, or any other reasonable official of the Licensor, notice in writing (consisting of one original and seven copies of notice attached to a copy of this Agreement) of such damages, duly verified, within one hundred eighty (180) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which the Licensee will settle, the physical and mailing addresses of Licensee at the time and date the claim was presented and the physical and mailing addresses of Licensee for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Licensee relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except the Licensor from any liability whatsoever. The Licensor is under no obligation to provide notice to Licensee that Licensee's notice is insufficient. Licensor reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

The statutory prerequisites outlined herein constitute jurisdictional requirements

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

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

LICENSOR:

CITY OF MIDLAND, TEXAS

Courtney Sharp, City Manager

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT AND
COMPLETENESS:

Bill Hodge, GIS Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

LICENSEE:

**ATLAS PIPELINE MID-CONTINENT
WEST TEX, LLC**

Denny Latham, Vice President

THE STATE OF TEXAS

§
§
§

COUNTY OF _____

BEFORE ME, the undersigned authority, on this day personally appeared Denny Latham, an officer of ATLAS PIPELINE MID-CONTINENT WEST TEX, LLC, known to me to be the person and official whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of said entity, for the purposes and consideration therein expressed, and in the capacity therein stated.

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

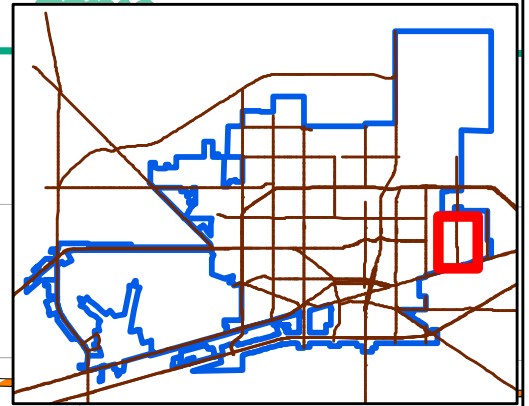
Notary Public, State of Texas



CYNTHIA

BLK 38-1-S
SEC 30

TODD DR



BLK 38-1-S
SEC 31

BLK 38-1-S
SEC 32

E CR 77

Atlas ROW License 2001-255 & Renewal
Blk 38, Sec 30, 32, & 41 T1S

E GOLF COURSE RD

Total Rods= 510.75

BLK
38-1-S
SEC 42

QUAIL RIDGE RD

CHUKAR LN

TODD DR

BLK
38-1-S
SEC 41

WOOD ST

CALUMET ST

E SH 80
E BI 20

1 inch = 835 feet

Legend

- Street
- Survey Section
- ROW
- Parcel
- City Limit

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SOLELY ON THE INFORMATION CONTAINED
HEREIN.

17.23



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 6/25/2013

TO: City Council / City Manager

FROM: David Beard,

SUBJECT: Consider a resolution authorizing the execution of a Public Improvement Development Agreement in the amount of \$26,110 with SBC, LP (Doug Henson) for the construction of an oversized wastewater main in Deauville Blvd. along the north frontage of Westridge Park Addition – Section 23 (Chevron site). Said agreement being authorized by Section 395.081 of the Texas Local Government Code. (District #4 – Trost)

Purpose:

Consider a resolution authorizing the execution of a Public Improvement Development Agreement in the amount of \$26,110 with SBC, LP (Doug Henson) for the construction of an oversized wastewater main in Deauville Blvd. along the north frontage of Westridge Park Addition – Section 23 (Chevron site). Said agreement being authorized by Section 395.081 of the Texas Local Government Code. (District #4 – Trost)

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Oversized Wastewater Main Improvements - \$ 26,110

Funds are available in the Fiscal Year 2012-2013 Water and Sewer Fund (300) Engineering (080) Water & Wastewater Maintenance (0335) Sanitary Sewer (4110) budget account.

Discussion:

The Westridge Park Addition – Section 23 is located at the southeast corner of Avalon Dr. and Deauville Blvd. The developer is requesting City Participation for the construction of an oversized wastewater main along Deauville Blvd.

The wastewater main will ultimately extend west along a future Deauville Blvd. to serve property along the south side of the SH 191 Corridor

Staff recommends approval of the development agreement indicating City participation in the amount of \$26,110.

Attached is an opinion of probable cost from the engineer of record (Parkhill, Smith & Cooper – Larry G. Bell, P.E.) and a location map.

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE EXECUTION OF A
PUBLIC IMPROVEMENT DEVELOPMENT
AGREEMENT WITH SBC, LP FOR DEVELOPMENT OF
WESTRIDGE PARK ADDITION, SECTION 23, CITY
AND COUNTY OF MIDLAND, TEXAS (GENERALLY
LOCATED AT THE SOUTHEAST CORNER OF
AVALON DRIVE AND DEAUVILLE BOULEVARD);
AND AUTHORIZING PAYMENT IN THE AMOUNT OF
\$26,110.00 THEREFOR; SAID AGREEMENT BEING
AUTHORIZED BY SECTION 395.081 OF THE TEXAS
LOCAL GOVERNMENT CODE**

WHEREAS, the developer of Westridge Park Addition, Section 23, City and County of Midland, Texas, has requested City participation in the development of this addition; and

WHEREAS, the City Code allows City participation; and

WHEREAS, the City Council finds that in accordance with Section 395.081 of the Texas Local Government Code that the City of Midland will benefit from allowing the developer to connect to capital improvements by promoting the health, safety, and public welfare and providing for efficient and well-planned urban growth and development; and

WHEREAS, the City Council finds it to be in the public interest to execute a development agreement with SBC, LP which sets forth the extent of the City's participation in the construction of public improvements related to the development of the Westridge Park Addition, Section 23, and to authorize payment therefor;

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

SECTION ONE. That the Mayor and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, Texas, a Public Improvement Development Agreement with SBC, LP. Said agreement is marked as Exhibit "A", attached hereto and incorporated herein for all purposes.

SECTION TWO. That funds are available in the fiscal year 2012-2013 Water and Sewer Fund (300) Engineering (080) Water and Wastewater Maintenance (0335) Sanitary Sewer (4110) budget account.

SECTION THREE. That the City Treasurer is hereby authorized and directed to pay for said agreement, in amount not to exceed \$26,110.00, out of funds that are available in the said budget account upon receipt of proper invoice or statement therefor approved by the City Manager.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

Robert McNaughton, Director of Finance

APPROVED AS TO CONTENT
AND COMPLETENESS:

Jose Ortiz, Engineering Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

**PUBLIC IMPROVEMENT DEVELOPMENT AGREEMENT
BETWEEN SBC, LP
AND THE CITY OF MIDLAND, TEXAS**

THIS PUBLIC IMPROVEMENT DEVELOPMENT AGREEMENT (“Agreement”) is made and effective this 26th day of June, 2013, by and between **SBC, LP** (“Developer”) and the **CITY OF MIDLAND, TEXAS** (“City”), a home rule municipal corporation.

W I T N E S S E T H:

WHEREAS, the City and Developer find it to be to their mutual advantage to enter into this Public Improvement Development Agreement for the construction of appropriate and necessary public facilities;

NOW, THEREFORE, in consideration of the covenants, conditions, and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Developer does hereby agree to the terms set forth in this Agreement:

1. The Developer desires to develop the Property described as Westridge Park Addition, Section 23. Pursuant thereto, the Developer agrees to make certain public improvements as set forth below. The improvements are more particularly described in specifications and contract documents related to the construction of the public improvements related to the development of the Property prepared by Parkhill, Smith & Cooper, Inc. (hereafter collectively called “the Specifications”). The Specifications are incorporated herein by reference and made a part hereof for all purposes, and Developer shall comply with the Specifications in the performance of all work pursuant to this Agreement. No amendment to the Specifications may be made without the written approval of the City Manager.

2. The public improvements to be constructed by Developer pursuant to this Agreement shall be generally described as follows:

See Exhibit “A”, attached hereto and incorporated herein by reference.

3. Developer must submit any bids it receives for the proposed public improvements to the City for approval prior to engaging any contractor or subcontractor in such work, which approval shall not be unreasonably withheld. If City fails to object within ten (10) days (excluding weekends and City holidays) after receipt from the Developer of the bid tabulations and written notification of whom the Developer intends to award the contract, the bid which the Developer indicated it is accepting shall be deemed to have been accepted by the City. The City reserves the right to reject any and all bids for work that involves City participation. In rejecting any bid pursuant to the provisions of this Paragraph 3, the City shall issue a notice of rejection in writing to the Developer stating each and every ground or reason relied upon by the City for such rejection.

4. Upon completion of the improvements called for in Paragraph 2, the Developer shall notify the City’s Director of Development Services for inspection. Project inspection for required public improvements will be done by the City during the construction phase. The City’s Director of Development Services shall cause such work to be inspected within five (5) days, excluding weekends and holidays, of being notified by the Developer. Notwithstanding anything herein to the contrary, project inspection must be completed prior to water or sewer systems being backfilled. If the Director of Development Services determines that all work has been completed in conformance with the Specifications, then the Director of Development Services shall give his approval for that improvement work.

5. After completion and acceptance of all work, the Developer must furnish to City an affidavit of all bills paid with respect to the completed work.

6. In consideration of the obligations incurred by the Developer pursuant to this Agreement, the City agrees to participate in the funding of the construction of the public improvements listed in Exhibit "A" attached hereto and incorporated herein by reference said amount to be no more than \$26,110.00. In no case shall the City's contributions to the public improvements required to be constructed on the Property exceed 30 percent of the actual cost of all the public improvements associated with the development without Developer complying with the applicable competitive sealed bid procedures set forth in state law and the ordinances and regulations of the City of Midland, Texas. If the City's contribution for public improvements for any contract exceeds 30 percent of the total cost of all public improvements associated with such contract and such public improvements were constructed without complying with said applicable competitive sealed bid procedures, then the City's maximum contribution under this contract for such phase shall not exceed 30 percent of the actual cost of all public improvements associated with the particular contract.

7. Developer will indemnify and hold harmless and defend City and all of City's officers, agents and employees from all suits, actions, claims, damages, personal injuries, including accidental death, losses, property damage and expenses of any character whatsoever, including attorney's fees, brought for or on account of any injuries or damages received or sustained by any person or persons or property, on account of any negligent act of Developer, its agents or employees, or any subcontractor, in the execution, supervision and operations growing out of or in any way connected with the performance of this Agreement,

and Developer will be required to pay any judgment with costs which may be obtained against City or any of its officers, agents or employees, including attorney's fees.

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

8. The Developer agrees to indemnify and save the City harmless from all claims growing out of any demands of subcontractors, laborers, workmen, mechanics, materialmen, and suppliers of machinery and parts thereof, equipment, power tools, all supplies, including

commissary incurred in the furtherance of the performance of this contract. When City so desires, the Developer shall furnish satisfactory evidence that all obligations of the nature hereinabove designated have been paid, discharged or waived.

9. Developer shall obtain and maintain continuously in effect at all times during the construction of the public improvements described in Paragraph 2, above, at Developer's sole expense, at least the following minimum insurance with a carrier or carriers licensed to do business in the State of Texas and satisfactory to the City.

A. The following requirements shall be met in regard to workers' compensation insurance coverage: Definitions:

Certificate of coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project - includes the time from the beginning of the work on the project until the contractor's/persons's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractor" in §406.096) - includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

B. The Developer shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Developer providing services on the project, for the duration

of the project.

C. The Developer must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

D. If the coverage period shown on the Developer's current certificate of coverage ends during the duration of the project, the Developer must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

E. The Developer shall obtain from each person providing services on a project, and provide to the governmental entity:

(1) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and

(2) no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

F. The Developer shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

G. The Developer shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the Developer knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

H. The Developer shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

I. The Developer shall contractually require each person with whom it contracts to provide services on a project, to:

(1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;

(2) provide to the Developer, prior to that person beginning work on the

project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;

(3) provide the Developer, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(4) obtain from each other person with whom it contracts, and provide to the Developer:

(a) a certificate of coverage, prior to the other person beginning work on the project; and

(b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

(6) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and

(7) contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.

J. By signing this contract or providing or causing to be provided a certificate of coverage, the Developer is representing to the governmental entity that all employees of the Developer who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

K. The Developer's failure to comply with any of these provisions is a breach of

contract by the Developer which entitles the governmental entity to declare the contract void if the Developer does not remedy the breach within 10 days after receipt of notice of breach from the governmental entity.

Developer shall also comply with the following:

L. Comprehensive General Liability Insurance against claims for bodily injury, death, or property damage occurring on, in or about the Property, in at least the amount of \$250,000.00 per individual, \$1,000,000.00 per occurrence and \$100,000.00 with respect to property damage; said insurance shall name the City as an additional insured and shall waive all rights of subrogation against the City.

M. Automobile Liability Coverage on all motor vehicles owned, leased and/or operated by the Developer or its employees in amounts of not less than \$1,000,000.00 combined single limit or equivalent, provided, however, separate automobile coverage shall not be required if such coverage is provided under the Developer's comprehensive general liability policy. The insurance shall name the City as an additional insured and waive all rights of subrogation against the City.

All insurance herein required shall apply as primary and not in excess of or contributing with other insurance which the Developer may carry.

10. All insurance required pursuant to Paragraph 9, except worker's compensation, shall name the City as an additional insured. The comprehensive general liability policy shall provide contractual liability coverage sufficiently broad so as to include the liability assumed by the Developer in the indemnity and hold harmless provisions included in this Agreement. Developer's insurance as required by this Agreement shall not be subject to cancellation or material alteration until at least thirty (30) days written notice has been provided to the City. Developer shall furnish to the City a certificate of insurance showing City as an additional insured and evidencing that all of the herein stated requirements have been met. **All insurance coverage required pursuant to Paragraph 9 shall include in its provisions a waiver of any rights of subrogation against City.**

DEVELOPER SHALL CONTRACTUALLY REQUIRE ALL CONTRACTORS, SUBCONTRACTORS, AND SUB-SUBCONTRACTORS THAT WORK ON ANY PORTION OF THE WORK THAT IS THE SUBJECT OF THIS PUBLIC IMPROVEMENT DEVELOPMENT AGREEMENT TO OBTAIN INSURANCE COVERAGE THAT MEETS OR EXCEEDS THE MINIMUM AMOUNTS SPECIFIED HEREIN. ALL CONTRACTORS, SUBCONTRACTORS, AND SUB-SUBCONTRACTORS SHALL OBTAIN INSURANCE POLICIES THAT PROVIDE BLANKET WAIVERS OF SUBROGATION IN FAVOR OF THE CITY OF MIDLAND AND POLICIES THAT NAME THE CITY OF MIDLAND AS AN ADDITIONAL INSURED (EXCEPT WORKERS COMPENSATION).

11. Insurance must be approved by the City Attorney's office prior to this Agreement being executed.

12. This Agreement may be modified or amended only by the mutual consent of the parties hereto.

13. This Agreement contains the complete and entire agreement between the parties respecting the matters addressed herein, and supersedes all prior negotiations, agreements, representations and understandings, if any, between the parties respecting such matters.

14. Except as may be otherwise specifically provided in this Agreement, all notices required or permitted hereunder shall be in writing as follows:

If to Developer:

SBC, LP

1811 Heritage Blvd.
Midland, Texas 79707
Attn: Douglas B. Henson

If to City:

City of Midland
P.O. Box 1152
Midland, Texas 79702
Attn: City Engineer

15. Any clause, sentence, provision, paragraph or article of this Agreement held by a court of competent jurisdiction to be invalid, illegal or ineffective shall not impair, invalidate or nullify the remainder of this Agreement, but the effect thereof shall be confined to the clause, sentence, provision, paragraph or article so held to be invalid, illegal or ineffective.

16. This Agreement shall be construed under the laws of the State of Texas and all obligations of the parties hereunder are performable in Midland County, Texas. Exclusive venue for any cause of action shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this Agreement shall be deemed to have occurred in Midland County, Texas.

17. In the event of any conflict between the parties hereto such that either party brings or commences any legal action or proceeding related to this Agreement, including but not limited to any action pursuant to the provisions of the Texas Uniform Declaratory Judgments Act (TEX. CIV. PRAC. & REM. CODE §37.001 et seq., as amended), the parties hereto agree to waive any and all rights to recovery of attorneys fees to which the prevailing party might otherwise be entitled.

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

DEVELOPER AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING KNOWN RIGHT. DEVELOPER ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THE AGREEMENT. THE DEVELOPER FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS

AND IS NO DISPARITY OF BARGAINING POWER BETWEEN THE CITY AND THE DEVELOPER. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF SOVEREIGN IMMUNITY.

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

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

The City shall not have the right to control the means, methods or details of the Developer's work. Developer shall assume exclusive responsibility for the work. Developer is entirely free to do the work in its own way.

19. RELEASE: DEVELOPER HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY, CITY'S EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER ARISING UNDER OR ASSOCIATED WITH THIS AGREEMENT WHICH DEVELOPER HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO QUANTUM MERUIT, DUE PROCESS AND TAKINGS CLAUSES UNDER THE TEXAS AND UNITED STATES CONSTITUTION, TORT CLAIMS OR CITY'S NEGLIGENCE.

20. By executing this Agreement the City is not waiving its right of sovereign immunity. The City is retaining its immunity from suit. The City is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

21. NOTICE OF ALLEGED BREACH; STATUTORY PREREQUISITES

As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, Developer or its legal representative, shall give the City Manager, or any other reasonable official of the City, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this Agreement) of such damages, duly verified, within one hundred twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of

this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which the Developer will settle, the physical and mailing addresses of Developer at the time and date the claim was presented and the physical and mailing addresses of Developer for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Developer relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except the City from any liability whatsoever. The City is under no obligation to provide notice to Developer that Developer's notice is insufficient. The City reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

22. This agreement is made under the authority of Section 395.081 of the Texas Local Government Code and the laws of the State of Texas and Ordinances and the Charter of the City of Midland. The City finds in accordance with Section 395.081 of the Texas Local Government Code that the City of Midland will benefit from allowing the Developer

to connect to the capital improvements. The City finds that this benefit will promote the public health, safety, and public welfare of the citizens of Midland. The City finds that the benefit the City of Midland receives will be efficient and well-planned urban growth and development, in coordination with public services. The benefit is also that this agreement will help preserve and increase the ad valorem tax base of the City. The City finds that the Developer's land adjoins the capital improvement or is within five (5) miles of the capital improvement. The five (5) miles is the specified distance required in Section 395.081 of the Texas Local Government Code.

23. Notwithstanding any other provision hereof, the City shall not be obligated to provide payment to Developer under this Agreement until Developer has met all requirements of this Agreement, including, but not limited to, the City's approval of the improvement work as set forth in Paragraph 4 and the City's determination that Developer has furnished satisfactory evidence that all obligations described in Paragraph 8 have been paid, discharged or waived. Determination of whether Developer has furnished satisfactory evidence that all such obligations have been paid, discharged or waived shall be in the sole discretion of the City.

EXECUTED in duplicate the day and year first above written.

CITY OF MIDLAND, TEXAS

By: _____
W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Jose Ortiz, Engineering Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

SBC, LP
By: SBC GP, LP
Its Sole General Partner

By: _____
Douglas B. Henson, President

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared DOUGLAS

B. HENSON, 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 SBC, LP, in the capacity therein stated.

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

Notary Public, State of Texas



PARKHILLSMITH&COOPER

May 3, 2013

Mr. Jose Ortiz, PE
Engineering Services Director
City of Midland
P. O. Box 1152
Midland, TX 79702

CITY OF MIDLAND
CITY ENGINEER'S OFFICE
APPROVED: DDB 6/17/2013
☒ As submitted
☐ Subject to changes as indicated
☐ Rejected
Review based on applicants submitted
information.

Re: Westridge Park Addition, Section 23
Development Agreement Request – Utility Improvements

Dear Mr. Ortiz:

This project includes the extension of a 15" sanitary sewer line westward in Deauville Boulevard to serve current and future development needs. Our client is responsible for constructing this line. We are requesting City of Midland participation in this item and an associated Development Agreement to facilitate the City participation. From a platting standpoint, the project includes various utilities and a paving obligation on Griffith Drive, yet the anticipated participation is specifically for the sanitary sewer extension.

Enclosed please find an Opinion of Probable Cost for the overall work and a cost opinion for proposed City of Midland participation. The preliminary participation total is approximately \$26,110. The participation price differentials are based on bid unit prices and quantities. We propose that the actual City of Midland participation be based on the actual installed quantities.

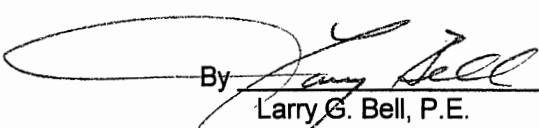
The Development Agreement would be contracted with
SBC, LP,
1811 Heritage Boulevard, Suite 100
Midland, Texas 79707
Attn: Doug Henson
432-522-2040.

Please call if there are any questions concerning this information.

Sincerely,

PARKHILL, SMITH & COOPER, INC.

By


Larry G. Bell, P.E.

cc: Mr. Doug Henson – SBC, LP

Amarillo
El Paso
Las Cruces
Lubbock
Midland

Enclosures

\\Data1\Projects\2012\3850.12\CIVIL\ENGR\3850.12-Req\UtilityDevAgree&ParticipationLetter.doc

1700 W. Wall Street Suite 100 Midland, Texas 79701 432.697.1447 Fax 432.697.9758

Exhibit "A"

**OPINION OF PROBABLE COST
WESTRIDGE PARK ADDITION - SECTION 23
UTILITY AND PAVING IMPROVEMENTS**

May 2, 2013

Improvements	Cost
<i>Westridge 23</i>	
Total On-Site Water Costs	\$250,305.00
Total On-Site Sewer Costs	\$263,500.00
Total On-Site Paving Costs	\$189,596.63
Contingencies = 10%	\$70,340.16
Engineer/Surveying/CA Costs (10%±)	\$77,374.18
Total Costs	\$851,115.98
Potential City Participation	\$26,110.00
Net Construction Cost	\$825,005.98

**OPINION OF PROBABLE COST
WESTRIDGE PARK ADDITION - Section 23
UTILITY AND PAVING IMPROVEMENTS**

May 2, 2013

Item No.	Description	Quantity	Unit	Unit Price	Amount
<i>Water Line Improvements</i>					
1	6" Water Line	120	LF	\$29.00	\$3,480
2	6" Valve & Box	4	EACH	\$940.00	\$3,760
3	8" Water Line	1,140	LF	\$34.00	\$38,760
4	8" Valve & Box	4	EACH	\$1,360.00	\$5,440
5	Fire Hydrants	4	EACH	\$3,500.00	\$14,000
6	Fittings	11.00	EACH	\$495.00	\$5,445
7	Tap into Existing Water Line	2	EACH	\$1,250.00	\$2,500
8	30" Restrained D.I. Pipe (Relocate/Lowering)	200	LF	\$538.00	\$107,600
9	30" 45 Degree Bends	4	EACH	\$6,520.00	\$26,080
10	Air Valves w/Manholes	2	EACH	\$12,880.00	\$25,760
11	SSCP to D.I. Pipe Adapters	2	EACH	\$5,040.00	\$10,080
12	Remove Existing 30" Water Line	200	LF	\$25.00	\$5,000
13	Construction Entrance	1	EACH	\$2,100.00	\$2,100
14	Silt Fence	60	LF	\$5.00	\$300
<i>Sewer Line Improvements</i>					
15	8" Sewer Line	30	LF	\$110.00	\$3,300
16	12" Sewer Line	112	LF	\$115.00	\$12,880
17	15" Sewer Line, SDR 26 PVC	860	LF	\$133.00	\$114,380
16	16" Sewer Line, C900 PVC	400	LF	\$133.00	\$53,200
18	Manholes	3	EACH	\$8,925.00	\$26,775
19	Asphaltic Pavement Replacement	735	SY	\$59.00	\$43,365
17	Trench Safety	1	LS	\$3,100.00	\$3,100
20	Traffic Control	1	LS	\$6,500.00	\$6,500
<i>Storm Sewer Improvements</i>					
21	24" Storm Sewer Line, HDPE	832	LF	\$83.00	\$69,056
22	48" FRP Storm Sewer Manhole	3	EACH	\$3,905.00	\$11,715
23	24" x 18" Tee w/Caps	2	EACH	\$2,150.00	\$4,300
<i>Paving Improvements</i>					
24	Clearing & Grubbing	0.11	ACRES	\$1,500.00	\$163
25	Subgrade Prep.	4,720	SY	\$7.30	\$34,456
26	8" Base	4,062	SY	\$10.70	\$43,463
27	Prime Coat	4,062	SY	\$1.05	\$4,265
28	1.75" ACP	4,062	SY	\$9.55	\$38,792
29	Miscellaneous Concrete	95	SY	\$72.45	\$6,883
30	24" C&G	2,075	LF	\$13.55	\$28,116
31	Flex Base under Concrete	650	SY	\$11.35	\$7,378
32	Adjust Valves to Grade	8	EACH	\$304.50	\$2,436
33	Traffic Control	1	LS	\$2,500.00	\$2,500
34	Erosion Control	1	LS	\$8,000.00	\$8,000
35	Curb Inlets - 5'	2	EACH	\$5,000.00	\$10,000
36	18" Storm Sewer & Appurtenances	37	LF	\$85.00	\$3,145
TOTAL OPINION OF PROBABLE COST:					\$788,473

**OPINION OF CITY PARTICIPATION
WESTRIDGE PARK ADDITION - Section 23
UTILITY AND PAVING IMPROVEMENTS**

May 2, 2013

Item No.	Description	Quantity	Unit	Unit Price	Amount
1	12" vs 10" Sewer Line	112.00	LF	\$2.50	\$280
2	15" vs 10" Sewer Line	860.00	LF	\$20.50	\$17,630
3	16" vs 10" Sewer Line	400.00	LF	\$20.50	\$8,200
TOTAL OPINION OF OVERSIZE COST:					\$26,110



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 6/25/2013

TO: City Council / City Manager

FROM: Gary Saunders, Transportation Manager

SUBJECT: Ordinance – Temporary Closure/Alleys

Consider an ordinance on second reading temporarily closing the east/west alleys abutting the north and south boundary lines of Lot 1, Block 1, Fairgrounds Addition from the east right-of-way line of Fairgrounds Road east to their intersection with the north/south alley at Midland Draw and the north/south alley abutting the east boundary line of Lot 1, Block 1, Fairgrounds Addition at Midland Draw.

Purpose:

Consider an ordinance on second reading temporarily closing the east/west alleys abutting the north and south boundary lines of Lot 1, Block 1, Fairgrounds Addition from the east right-of-way line of Fairgrounds Road east to their intersection with the north/south alley at Midland Draw and the north/south alley abutting the east boundary line of Lot 1, Block 1, Fairgrounds Addition at Midland Draw.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Approximately \$1,000.00 for installation of barricades and signs including materials, equipment and labor.

Discussion:

The City of Midland has received a request from Stonegate Manufactured Housing Community to temporarily close the east/west alleys abutting the north and south boundary lines of Lot 1, Block 1, Fairgrounds Addition from the east right-of-way line of Fairgrounds Road east to their intersection with the north/south alley at Midland Draw and the north/south alley abutting the east boundary line of Lot 1, Block 1, Fairgrounds Addition at Midland Draw.

The alley portions requested to be temporarily closed are currently undeveloped with no existing utilities.

Stonegate Manufactured Housing Community has requested the temporary closure for the purpose to partially pave the alley portions to be utilized for fire lane access.

The City of Midland does not have any current plans to develop and pave these alley portions and the temporary closure will allow them to remain within the ownership of the City of Midland until such time development is required or utility access is needed.

The Legal Department has prepared an ordinance to be considered for second reading authorizing the temporary closure of these alleys.

Staff recommends approval of this ordinance.

ORDINANCE NO. _____

AN ORDINANCE TEMPORARILY CLOSING A PORTION OF THE EAST/WEST ALLEYS ABUTTING THE NORTH AND SOUTH BOUNDARY LINES OF LOT 1, BLOCK 1, FAIRGROUNDS ADDITION, FROM THE EAST RIGHT-OF-WAY LINE OF FAIRGROUNDS ROAD EAST TO THEIR INTERSECTION WITH THE NORTH/SOUTH ALLEY AT MIDLAND DRAW AND THE NORTH/SOUTH ALLEY ABUTTING THE EAST BOUNDARY LINE OF LOT 1, BLOCK 1, FAIRGROUNDS ADDITION AT MIDLAND DRAW IN THE CITY OF MIDLAND, TEXAS; 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 City Council finds that the alley portions requested to be temporarily closed are currently undeveloped right-of-way and due to proposed development in this area, that the traffic conditions on a portion of the east/west alleys abutting the north and south boundary lines of Lot 1, Block 1, Fairgrounds Addition, from the east right-of-way line of Fairgrounds Road east to their intersection with the north/south alley at Midland Draw and the north/south alley abutting the east boundary line of Lot 1, Block 1, Fairgrounds Addition at Midland Draw in the City of Midland, Midland County, Texas, warrants temporary closing;

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

SECTION ONE. That a portion of the east/west alleys abutting north and south boundary lines of Lot 1, Block 1, Fairgrounds Addition, from the east right-of-way line of Fairgrounds Road east to their intersection with the north/south alley at Midland Draw and the north/south alley abutting the east boundary line of Lot 1, Block 1, Fairgrounds Addition at Midland Draw in the City of Midland, Midland County, is hereby temporarily closed for the purposes of through vehicular traffic.

SECTION TWO. That the Traffic Engineer of the City of Midland is hereby authorized and directed to erect, clearly mark and safely identify appropriate signs and

barriers necessary to carry out the provisions of this ordinance, specifically by the erection of barriers to be located on said alley.

SECTION THREE. That it shall hereafter be unlawful for any person to drive or otherwise operate a motor vehicle on said alley which is temporarily closed as described herein.

SECTION FOUR. That the Midland City Council expressly reserves the right to reopen said alley at any time and at its sole discretion.

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

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2013; and passed to second reading

on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

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

Council members voting "AYE":

Council members voting "NAY":

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

W. Wesley Perry, Mayor

ATTEST:

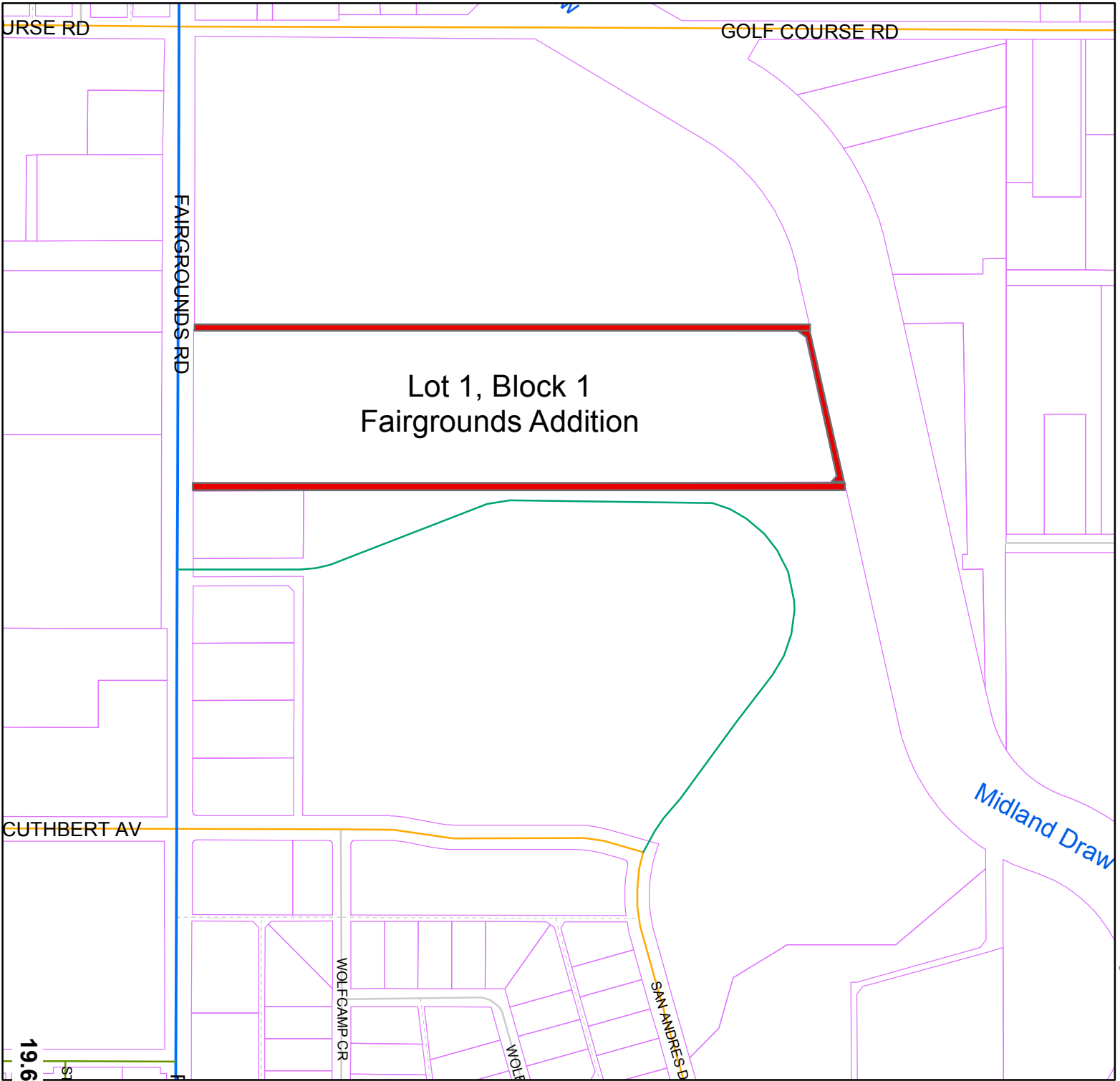
Amy M. Turner, City Secretary

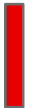
APPROVED AS TO CONTENT
AND COMPLETENESS:

Gary Saunders, Transportation Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



 Proposed temporary alley closure

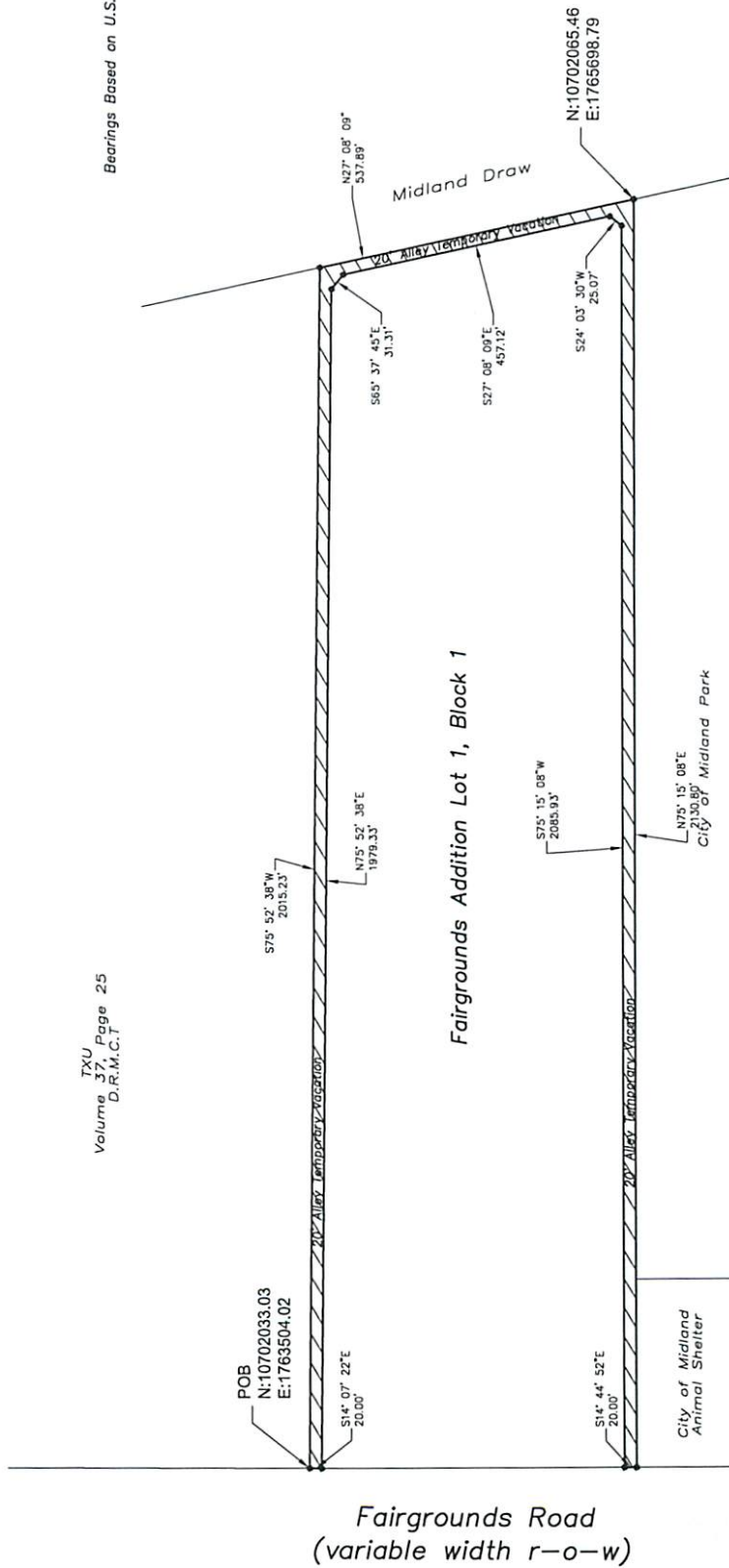


A Map for Temporary Vacation of a 2.14
Acre Alley Adjacent to Fairgrounds Addition
Lot 1, Block 1 as Recorded in Cabinet C,
Page 60, Midland County Plat Records

1" = 200'

TXU Page 25
Volume 37 D.R.M.C.T

Bearings Based on U.S. State Plane 1983 - Texas Central



NEWTON ENGINEERING, PC

P-13806
4608 N. Mckinley Road, Midland, Texas 79705
(432) 770-0499

Copyright 2013

Drawn by: R 05/24/2013 Job No. 13-MED006

2.14 Acre Alley Adjacent to Fairgrounds Addition Lot 1, Block 1,
MIDLAND COUNTY, TEXAS



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: June 25, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Ken Van Dyne, Acting Planning Division Manager

SUBJECT: Hold a public hearing at approximately 10:30 a.m. and consider a resolution on a request by San Miguel Archangel Catholic Church for a Temporary Land Use Permit for a Church Fair. (Generally located on the southwest corner of the intersection of Camp Street and Dakota Avenue.)

Purpose:

Hold a public hearing at approximately 10:30 a.m. and consider a resolution 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:

No City funds are required to approve this request.

Discussion:

San Miguel Archangel Catholic Church wishes to hold its annual family fair on their property located at 1100 Camp Street as shown on the Site Plan (Exhibit A). The fair will take place on Saturday July 13, 2013 from 12:00 p.m. (noon) to 12:00 a.m. (midnight) and Sunday July 14 from 12:00 p.m. (noon) to 10:00 p.m., with most of the perimeter enclosed in a 6' chain link fence. Food, game, and ticket booths will be set up, and Bingo is planned inside one of the buildings, as illustrated in Exhibit A. Live music is planned during the event using the City's showmobile which will be located adjacent to McKenzie Street. No alcohol sales are proposed. Eight portable restrooms as well as restrooms inside the church building will be available. Five security guards will be present during this event. Police reports from the fair held last year on July 21 and 22, 2012, revealed no significant complaints or disturbances, other than a patrol requested by the church due to exposed electronic equipment.

Attachments: Application, Maps, Proposed Resolution, Site Plan – Exhibit A

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 THE INTERSECTION 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 13, 2013 from noon to midnight; and
Sunday, July 14, 2013 from noon to 10:00 p.m.
- B. That the operation of the fair site and access arrangements 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, with a reduction in volume at 9:30 p.m. each evening.
- D. That a temporary six (6) foot minimum height fence shall be erected as shown on the attached site plan.

- E. That a maximum of one (1) showmobile shall be permitted during the fair.
- F. That a minimum of five (5) security officers shall be on site at all times during the fair.
- G. That a minimum of eight (8) portable restrooms and restrooms inside the church building shall be provided during all operating hours of the fair.
- H. That the fair must comply with all requirements of the Fire Code, including:
 - 1. Maintain a 20-foot minimum width at main vehicular access on Dakota Avenue.
 - 2. Maintain a 14-foot minimum width at secondary access south of the stage on McKenzie Street.
 - 3. Gates shall not be locked or secured in any way to prevent immediate access or opening to a public way.
 - 4. Gate leafs shall open in the direction of egress.
 - 5. All staff assigned to gate security shall have working knowledge of the operational features of each gate and emergency evacuation planning specific to this fair.
 - 6. Food vendors utilizing open-flame cooking devices shall have a portable fire extinguisher of 5 pounds or greater (2A-10BC) within an acceptable travel distance.
 - 7. Parking along Dakota Avenue, Camp Street, and McKenzie Street shall not prevent access by emergency vehicles.
 - 8. Fire hydrants shall be kept clear 15 feet to each side (Camp Street).
 - 9. The applicant must call for an inspection by the Fire Marshal prior to commencing operation.
- I. That the applicant shall obtain approval from the Utilities Department for a refuse collection and clean-up plan prior to the fair.
- J. That the Code Administration Division shall be notified no later than 48 hours preceding the fair.
- K. That Father Bernadito Getigan, a representative of the San Miguel Arcangel Catholic Church, shall be responsible for ensuring that the conditions of this permit are observed.

SECTION THREE. The City Council reserves at all times the full right and power to revoke said temporary use for violation of any of its terms or any misrepresentations contained in the application, after a hearing of which the holder of said temporary use has

been given at least one (1) day notice.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

Dakota

20' ft.

20.5

Gate

Vehicle access

Hamburgers	Agua Frescas	Funnel Cakes	TACOS	Fajitas	Gorditas	Corn on the Cob	Tri-pitas
------------	--------------	--------------	-------	---------	----------	-----------------	-----------

stage

14' Gate

(2nd vehicle) access

RECEIVED

MAY 20 2013

CITY OF MIDLAND
PLANNING DIVISION OFFICE

Drinks

Washer
Tournament

Portable
Potties

Nachos
Saus
Cones

Drinking
Water Kelly Hall

Ticket
Booth
Raffle
Tickets

Primary
Pedestrian
access

Main
Entrance

Games

Games

Games

Games

Games

Games

Games

Games

EXHIBIT A

Chocron

SITE PLAN

CASE NO. M-13-011

N. →

McKneeze St.

Amo St.

CITY OF MIDLAND, TEXAS
Planning Division

TEMPORARY LAND USE PERMIT APPLICATION

Submission Requirements: Application shall be submitted to the Planning Division not less than eighteen (18) days prior to the City Council meeting at which action is desired.

Application is hereby made to the City Council for a Temporary Land Use Permit:

Name of Applicant: San Miguel Arcangel Catholic Ch. Phone: 432-570-0952
Applicant's Address: 1100 Camp Street E-mail: sanmiguelarangel@stcglobal.net
Property Owner: Rev. Michael D. Pfeifer Phone: 325-651-7500
Owner's Address: P.O. Box 1829 San Angelo, TX 76905 E-mail: _____

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 13-14, 2013 12:00 P.M. - 12:00 A.M.
12:00 P.M. - 10:00 P.M.
Music will be turned down 30 min. before closing.
6. Will alcoholic beverages be sold? _____ Yes ☒ No ☐
7. A detailed Site Plan is required (16 copies needed (FOLDED), plus digital - .jpg and .pdf). Show existing buildings, parking, access arrangements, surrounding streets, activity areas, areas of alcoholic beverage sales, proposed street closures, etc.
Site Plan received: ☒ 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 music
Showmobile requested 2 Days and hours 12:00 - 12:00 P.M. (Sat)
12:00 - 10:00 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:

FR. BERNARDITO GETICAN 1100 Camp Midland, TX 79701 432-570-0952
Printed Name of Owner/Operator Address Zip Phone
[Signature] APRIL 29, 2013
Signature of Owner/Operator Date

Signature of Applicant

Date

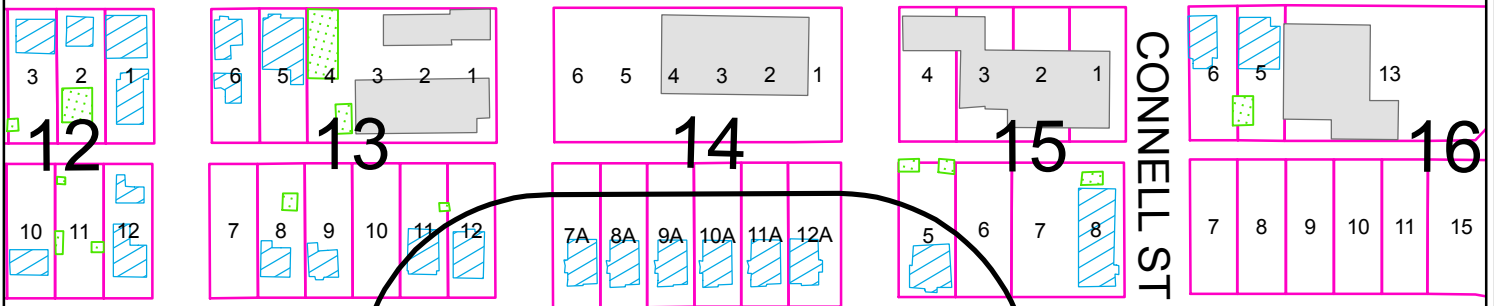
Signature of Property Owner, if other than Applicant

Date

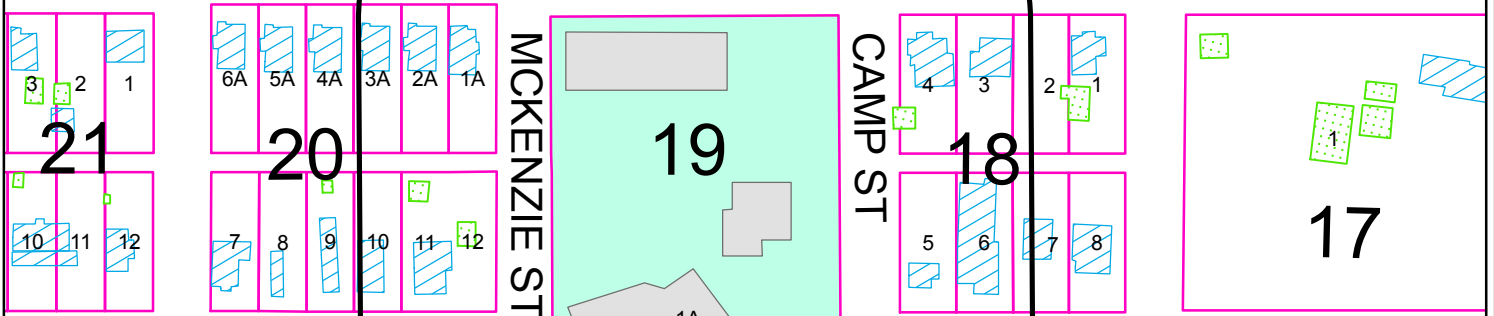
****Application will not be considered for scheduling until reviewed by a planner.****

FOR OFFICE USE ONLY	
Received By: <u>RS</u>	Date: <u>5/1/13</u>
Assigned: <u>MK</u>	
For: <u>C</u>	On: <u>6/25/13</u>

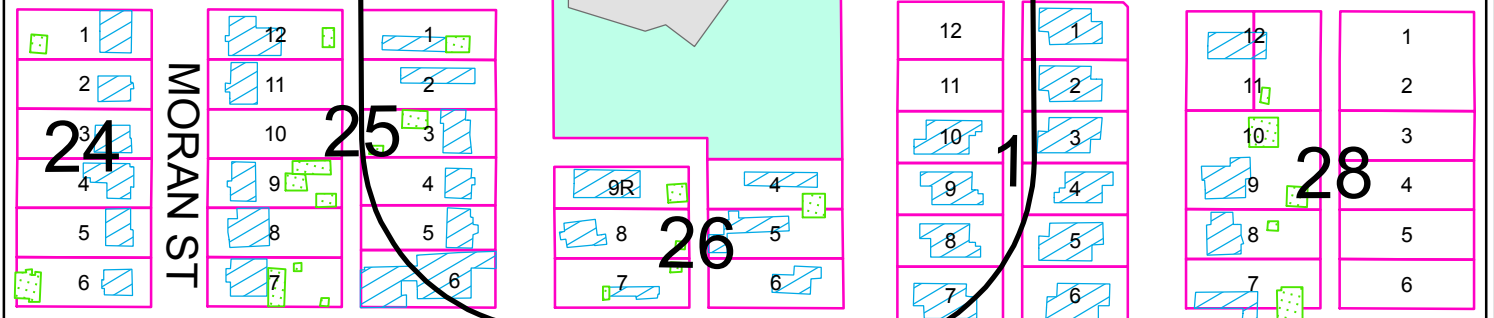
FLORIDA AV



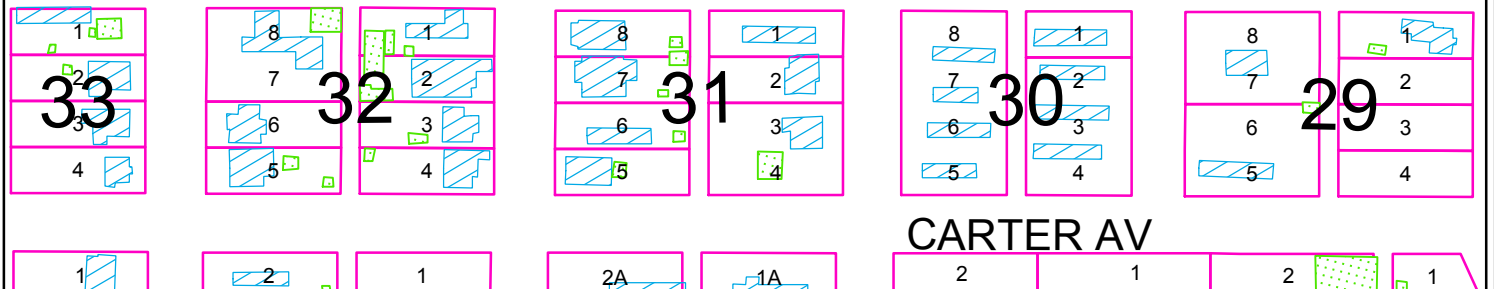
DAKOTA AV



NEW JERSEY AV



RHODE ISLAND AV



PROPERTY OWNER NOTIFICATION MAP

M - 13 - 011

Scale: 1" = 200'

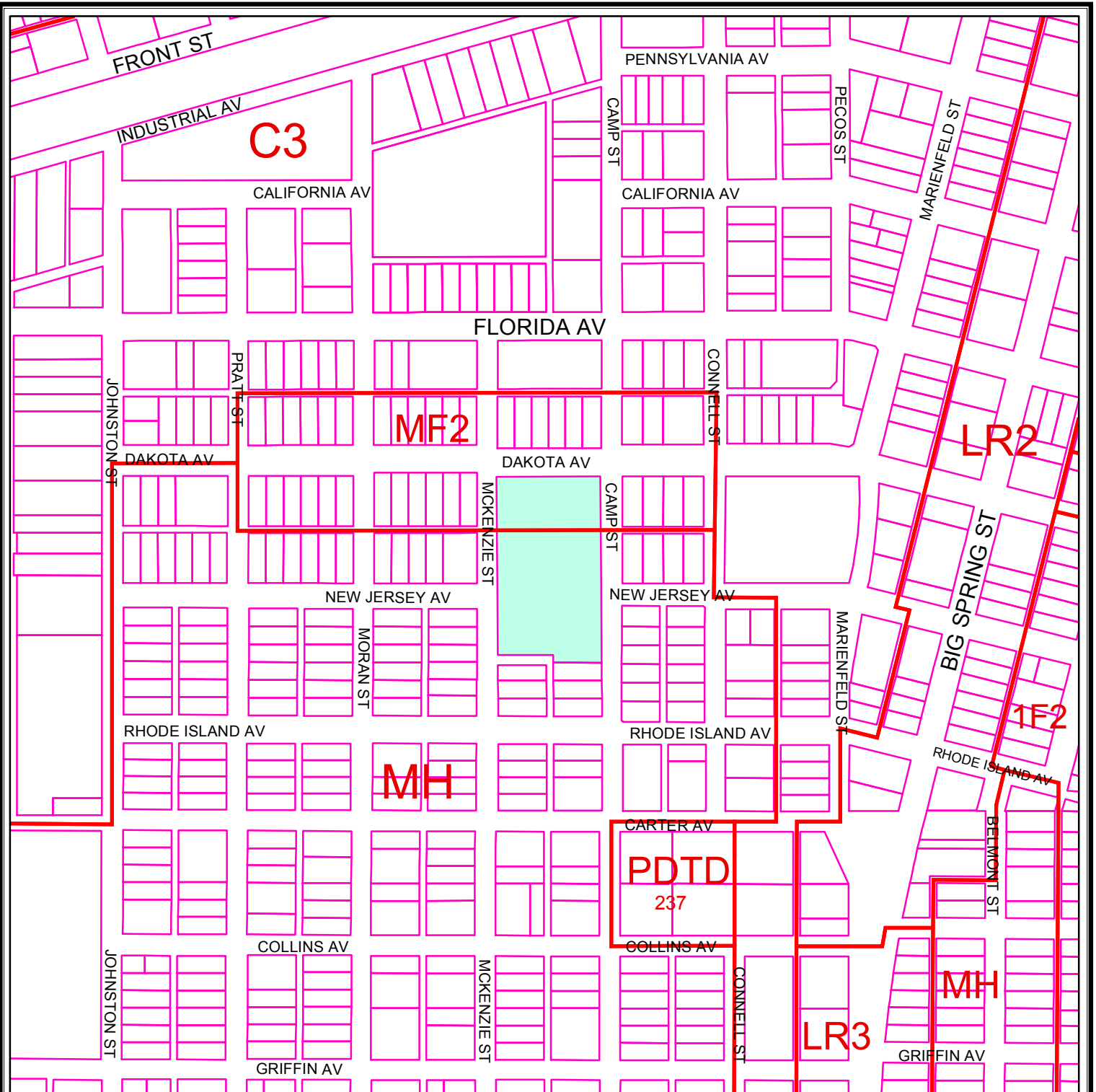
Consider a request for a Temporary Land Use Permit for a Church Fair on Lot 1A, Block 19, Midland Heights Addition, Section 4, City and County of Midland, Texas.

LEGEND

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



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ZONING MAP

M - 13 - 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

© THE CITY OF MIDLAND 2013; THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA. WHILE THIS DATA IS MADE AVAILABLE TO THE PUBLIC, IT WAS CREATED FOR INTERNAL USE BY THE CITY OF MIDLAND WHICH MAKES NO CLAIM AS TO ITS ACCURACY OR COMPLETENESS. THIS DATA IS NOT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING, CITING, OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.





City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: June 25, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Ken Van Dyne, Acting Planning Division Manager

SUBJECT: Hold a public hearing at approximately 10:33 A.M. hold a public hearing and consider an ordinance on a request by Real Property Resources (Tract 1) the initial zoning of annexed land to FD, Future Development District on a 40.498-acre tract of land out of Section 37, 38 and 48, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas, and being more specifically described by metes and bounds in Section One hereof (Generally located at the south extension of Avalon Drive, approximately 700 feet south of Hall of Fame Boulevard. – District 4).

Purpose:

Hold a public hearing at approximately 10:33 A.M. hold a public hearing and consider an ordinance on a request by Real Property Resources (Tract 1) the initial zoning of annexed land to FD, Future Development District on a 40.498-acre tract of land out of Section 37, 38 and 48, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas, and being more specifically described by metes and bounds in Section One hereof (Generally located at the south extension of Avalon Drive, approximately 700 feet south of Hall of Fame Boulevard. – District 4).

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

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

Discussion:

This land was recently annexed at the request of Real Property Resources, who intend to build upon the exiting Legends Park residential neighborhood, and it is now appropriate for the Council to consider an ordinance establishing the initial zoning of this 40.498-acre property. This land is located approximately ¼ mile to the southwest of the intersection of Tradewinds Blvd. and Champions Drive and extends westward to meet the future Avalon Drive extension. The property owner plans to zone this as the neighboring subdivision, a PD, Planned District for a Housing Development, but due to the preliminary lot configuration they have requested FD, Future Development District as the initial zoning.

Attachments:

Map
Proposed Ordinance
Metes & Bounds

ORDINANCE NO.

AN ORDINANCE ESTABLISHING THE ZONING CLASSIFICATION OF THE AREA INDICATED AS BEING A 40.498-ACRE TRACT OF LAND OUT OF SECTIONS 37, 38 AND 48, BLOCK 40, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS, AND BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS IN SECTION ONE HEREOF, AS AN FD, FUTURE DEVELOPMENT DISTRICT; SAID TRACT IS GENERALLY LOCATED AT THE SOUTH EXTENSION OF AVALON DRIVE, APPROXIMATELY 700 FEET SOUTH OF HALL OF FAME BOULEVARD; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, notice has been given to all parties in interest and citizens by publication in the official newspaper and otherwise, of a hearing to be held before the City Council on June 25, 2013, to consider amendments to the zoning regulations and map establishing the zoning classification of the property described in Section One hereof as an FD, Future Development District as set out in Section 11-1-6 of the City Code of Midland, Texas; and

WHEREAS, such a public hearing was held in the Council Chambers beginning at 10:33 a.m. on said June 25, 2013, as advertised; and

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

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

SECTION ONE. That the zoning classification of the area indicated as Tract 1 on

Exhibit “A”, attached hereto and incorporated herein by reference, is hereby established as an FD, Future Development District.

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

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

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

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

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

Council members voting “AYE”:

Council members voting “NAY”:

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

Council members voting "AYE":

Council members voting "NAY":

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

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

TRACT 1

ZONING - FD, FUTURE DEVELOPMENT

METES AND BOUNDS DESCRIPTION of a 40.498 Acre Tract of Land being 40.135 acres out of a 40.498 Acre Tract of Land, as recorded in Instrument No. 2013-5263, Official Public Records, Midland County, Texas, and a 0.363 Acre Tract of Land described as Exhibit B as recorded in Instrument No. 2013-8477, Official Public Records, Midland County, Texas, located in Section 37, Section 38, and Section 48, Block 40, T-1-S, T. & P. RR. Co. Survey, Midland County, Texas.

BEGINNING at (N=10689414.20 & E=1728297.74) a 1/2" iron rod and plastic cap marked "RPLS 4413" found in the west line of Section 37, the east line of Section 38, Block 40, T-1-S, T. & P. RR. Co. Survey, Midland County, Texas, the east line of a 634.887 acre tract of land as recorded in Volume 3131, Page 210, Official Public Records, Midland County, Texas, the southwest corner of a 108.712 acre tract of land as recorded in Instrument No. 2012-3638, Official Public Records, Midland County, Texas, for the northwest corner of a 40.498 acre tract of land as recorded in Instrument No. 2013-5263, Official Public Records, Midland County, Texas, and the northwest corner of this tract from which a 1/2" iron rod and plastic cap marked "RPLS 4413" found for the northwest corner of the 108.712 acre tract of land bears N 14°25'48" W a distance of 2417.76 feet;

THENCE, along the north boundary line of the 40.498 acre tract of land and the south boundary line of the 108.712 acre tract of land, S 84°27'35" E a distance of 2349.72 feet to a 1/2" iron rod and plastic cap marked "RPLS 4413" found in the north ROW line of a 40 foot wide pipeline easement as recorded in Volume 42, Page 289, Midland County Deed Records, the northeast corner of the 40.498 acre tract of land, the most southerly corner of the 108.712 acre tract of land and the northeast corner of this tract;

THENCE, along the east boundary line of the 40.498 acre tract of land, S 30°42'19" E a distance of 20.00 feet to a point in the center of said pipeline easement for the southeast corner of the 40.498 acre tract of land and the southeast corner of this tract, from which a City of Midland Control Point marked "43/93" bears S 12°53'34" E a distance of 9436.9 feet;

THENCE, along the south boundary line of the 40.498 acre tract of land and the centerline of said pipeline easement, S 59°17'41" W at a distance of 35.46 feet cross the south line of said Section 37 and the north line of said Section 48, Block 40, T-1-S, T. & P. RR. Co. Survey, Midland County, Texas, from which a 1" black iron pipe found for the southwest corner of said Section 37 bears S 75°19'36" E a distance of 91.64 feet and a 1" black iron pipe found for the northwest corner of said Section 48 bears S 75°19'36" W a distance of 91.57 feet, continuing for a total distance of 2499.30 feet to a 3/4" galvanized iron pipe and plastic cap marked "RPLS 4413" set in the west line of said Section 48, the east line of Section 47, Block 40, T-1-S, T. & P. RR. Co. Survey, Midland County, Texas, and the east line of the 634.887 acre tract of land for the southwest corner of this tract, from which a 1" black iron pipe found for the southwest corner of said Section 48 and the southeast corner of said Section 47 bears S 14°16'09" E a distance of 4659.26 feet;

THENCE, along the west line of said Section 48, the east line of said Section 47, the east boundary line of the 634.887 acre tract of land and the west boundary line of the 40.498 acre tract of land, N 14°16'09" W a distance of 156.99 feet to a point of curve to the right in the west line of said Section 48, the east line of said Section 47, the east boundary line of the 634.887 acre tract of land, the west boundary line of the 40.498 acre tract of land, the most southerly corner of a 0.363 acre tract of land described as Exhibit A as recorded in Instrument No. 2013-8477, Official Public Records, Midland County, Texas, and a corner of this tract;

THENCE, along the east boundary line of the 0.363 acre tract of land described as Exhibit A, with a curve to the right having a radius of 1500.00 feet, delta angle of 17°58'42" and an arc length of 470.67 feet (chord bearing N 05°16'48" W a distance of 468.74 feet), to a point for a corner of the 0.363 acre tract of land described as Exhibit A and a corner of this tract;

THENCE, along the east boundary line of the 0.363 acre tract of land described as Exhibit A, N 03°42'33" E at a distance of 59.38 feet pass the north line of said Section 48 and the south line of said Section 38, the northeast corner of the 0.363 acre tract of land described as Exhibit A and the southwest corner of a 0.363 acre tract of land described as Exhibit B, as recorded in Instrument No. 2013-8477, Official Public Records, Midland County, Texas, continuing for a total distance of 114.29 feet to a point of curve to the left for a corner of the 0.363 acre tract of land described as Exhibit B and a corner of this tract;

THENCE, along the west boundary line of the 0.363 acre tract described as Exhibit B, with a curve to the left having a radius of 1500.00 feet, delta angle of 18°08'21" and an arc length of 474.88 feet, (chord bearing N 05°21'37" W a distance of 472.90 feet), to a point in the west line of said Section 37, the east line of said Section 38, the east line of the 634.887 acre tract of land for the most northerly corner of the 0.363 acre tract of land described as Exhibit B and for a corner of this tract;

Page 1 of 2

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APR 25 2013

CITY OF MIDLAND
PLANNING DIVISION OFFICE

Exhibit "A"

CASE NO. 2-13-017

THENCE, along the west line of said Section 37, the east line of said Section 38, the east line of the 634.887 acre tract of land and the west boundary line of the 40.498 acre tract of land, N 14°25'48" W a distance of 326.76 feet to the POINT OF BEGINNING.

Bearing, Distances and Coordinates are based upon the Texas State Plane Coordinate System NAD 83 Central Zone and are relative to the City of Midland GPS Control Monuments as provided by the City of Midland. Acreages shown are surface values.



Michael L. Stanford

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APR 25 2013

CITY OF MIDLAND
PLANNING DIVISION OFFICE

Page 2 of 2

CASE NO. 2-13-017

21.7

Case Number: Z-13-017

CITY OF MIDLAND
Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

Real Property Resources
Applicant Name (Phone/e-mail)
6305 82nd St. Lubbock, TX 79424
Address Zip Code

Same
Property Owner Name (Phone/e-mail)
Address Zip Code

Same
Representative Name (Phone/e-mail)
Address Zip Code

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

PRESENT ZONE: N/A REQUESTED ZONE: PDHD
(List by tracts if more than one district is requested)
Reason for Zone Change Request: New residential development

Present Use of Property: Vacant

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

SITE PLAN SUBMITTALS (if applicable):

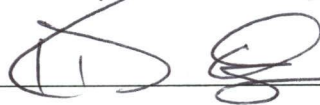
16 copies (FOLDED) of the PD site plan:

Site Plan in digital format .pdf and .jpg:

✓

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

Property Owner (signature):



Date: 4/25/13

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

STATE of TEXAS
COUNTY OF MIDLAND

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

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

Authorized Agent (signature)

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

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: <u>DS</u>	Date: <u>4/29</u>
Assigned: <u>KV</u>	
For: <u>CC</u>	On: <u>6/25/13</u>

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

**SEC 38,
BLK 40,
T-1-S**

**SEC 37,
BLK 40,
T-1-S**

**SEC 47,
BLK 40,
T-1-S**

SEC 48, BLK 40, T-1-S

LOCATION & ZONING MAP

Z - 13 - 017

Scale: 1" = 500'

TRACT 1

Consider the initial zoning of annexed land to FD, Future Development District on a 40.498-acre tract of land out of Sections 37, 38 and 48, Block 40, T-1-S, T & P RR Co. Survey, Midland County, Texas.

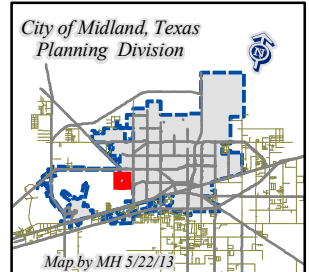
LEGEND

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

ZONING DISTRICTS:

O1 - OFFICE DISTRICT

PD - PLANNED DISTRICT FOR A HOUSING DEVELOPMENT



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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: June 25, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Ken Van Dyne, Acting Planning Division Manager

SUBJECT: Hold a public hearing at approximately 10:36 A.M. hold a public hearing and consider an ordinance on a request by Covington (Tract 2) the initial zoning of annexed land to LI, Light Industrial District on a 305.17-acre tract of land out of Section 37, Block 41, T-1-S, T&P RR Co. Survey, Midland County, Texas, and being more specifically described by metes and bounds in Section One hereof (Generally located on the north side of State Hwy 191 west side of N. FM 1788 – District 4).

Purpose:

Hold a public hearing at approximately 10:36 A.M. hold a public hearing and consider an ordinance on a request by Covington (Tract 2) the initial zoning of annexed land to LI, Light Industrial District on a 305.17-acre tract of land out of Section 37, Block 41, T-1-S, T&P RR Co. Survey, Midland County, Texas, and being more specifically described by metes and bounds in Section One hereof (Generally located on the north side of State Hwy 191 west side of N. FM 1788 – District 4).

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

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

Discussion:

This land was recently annexed at the request of the property owner, who intends to develop this 305-acre site with large subdivision lots to develop in a manner consistent with the surrounding industrial uses, and it is now appropriate for the Council to consider an ordinance establishing the initial zoning of this property. This land is located to the northwest of the intersection of FM 1788 and State Hwy 191. Some of the fronting properties (not included in this proposed annexation) include industrial/oil services operations with a number of active oil wells within the site. The property owner has requested that this land is zoned in a similar manner which would be an LI, Light Industrial District, and subject to all regulations as defined in the City Code with respects to development of this site.

Attachments:

Map
Proposed Ordinance
Metes & Bounds

ORDINANCE NO.

AN ORDINANCE ESTABLISHING THE ZONING CLASSIFICATION OF THE AREA INDICATED AS BEING A 305.17-ACRE TRACT OF LAND OUT OF SECTION 37, BLOCK 41, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS, AND BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS IN SECTION ONE HEREOF, AS AN LI, LIGHT INDUSTRIAL DISTRICT; SAID TRACT IS GENERALLY LOCATED ON THE NORTH SIDE OF STATE HIGHWAY 191, WEST OF NORTH FARM-TO-MARKET ROAD 1788; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, notice has been given to all parties in interest and citizens by publication in the official newspaper and otherwise, of a hearing to be held before the City Council on June 25, 2013, to consider amendments to the zoning regulations and map establishing the zoning classification of the property described in Section One hereof as an LI, Light Industrial District as set out in Section 11-1-6 of the City Code of Midland, Texas; and

WHEREAS, such a public hearing was held in the Council Chambers beginning at 10:36 a.m. on said June 25, 2013, as advertised; and

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

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

SECTION ONE. That the zoning classification of the area indicated as Tract 2 on

Exhibit “A”, attached hereto and incorporated herein by reference, is hereby established as an LI, Light Industrial District.

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

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

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

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

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

Council members voting “AYE”:

Council members voting “NAY”:

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

Council members voting "AYE":

Council members voting "NAY":

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

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

TRACT 2

ZONING - LI, LIGHT INDUSTRIAL

Legal Description:

BEING a 305.17 acre tract of land situated in Section 37, Block 41, T-1-S, T&P RR Co., Midland County, Texas, and being more fully described by metes and bounds as follows:

BEGINNING at (N:10,680,333.64, E:1,697,375.73) a 1/2 inch iron rod in Stone Mound found for the Southwest corner of said Section 37 and the Southeast corner of Section 38, Block 41, T-1-S, T&P RR Co. Survey, Midland County, Texas, and the Southwest corner of the herein described tract;

THENCE N 14°06'06" W, with the West line of said Section 37, a distance of 5325.2 feet to (N:10,685,498.48, E:1,696,078.24) a 1/2 inch iron rod found for the Northwest corner of said Section 37 and the Northeast corner of said Section 38, and the Northwest corner of the herein described tract;

THENCE N 74°59'19" E, a distance of 4159.7 feet to a point on the North Section line of said Section 37 and the South Section line of said Section 36, for the Northeast corner of the herein described tract;

THENCE S 14°10'06" E, with the West boundary line of said Calvary chapel tract and that certain tract of land as described in deed to Steve L. Hollifield Sr., Volume 1666, Page 335, Official Public Records, Midland County, Texas, a distance of 60.0 feet pass a 1/2 inch iron rod found on the West boundary line of said Calvary chapel tract and continuing on for a total distance of 1637.0 feet to a 1/2 inch iron rod with red plastic cap marked "West Co. Midland" set for an exterior corner of the herein described tract;

THENCE S 75°45'28" W, with the North boundary line of that certain tract of land as described in deed to Absolute Investments, Inc., recorded in Instrument number 2012-22283, Official Public Records, Midland County, Texas, a distance of 838.1 feet to a 1/2 inch iron rod with red plastic cap marked

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MAY 21 2013

CITY OF MIDLAND
PLANNING DIVISION OFFICE

Exhibit "A"

CASE NO. 2-13-023

"West Co. Midland" set for an interior corner of the herein described tract;

THENCE S 13°56'07" E. in and across said Section 37, a distance of 25.0 feet to a 1/2 inch iron rod with red plastic cap marked "West Co. Midland" set for an exterior corner of this herein described tract;

THENCE S 34°41'17" W. in and across said Section 37, a distance of 1970.6 feet to a 1/2 inch iron rod with red plastic cap marked "West Co. Midland" set for an interior corner of the herein described tract;

THENCE S 55°18'12" E. in and across said Section 37, a distance of 449.9 feet to a 1/2 inch iron rod with red plastic cap marked "West Co. Midland" set for an exterior corner of the herein described tract;

THENCE S 34°38'41" W. in and across said Section 37, a distance of 246.5 feet to a 1/2 inch iron rod with red plastic cap marked "West Co. Midland" set for an exterior corner of the herein described tract;

THENCE N 55°18'12" W. in and across said Section 37, a distance of 450.4 feet to a 1/2 inch iron rod with red plastic cap marked "West Co. Midland" set for an interior corner of the herein described tract;

THENCE S 34°41'48" W. in and across said Section 37, a distance of 739.6 feet to a 1/2 inch iron rod with red plastic cap marked "West Co. Midland" set for an interior corner of the herein described tract;

THENCE S 55°18'12" E. in and across said Section 37, a distance of 900.6 feet to a 1/2 inch iron rod with red plastic cap marked "West Co. Midland" set in the Northwest right-of-way line of said State Highway 191 for an exterior corner of the herein described tract;

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MAY 21 2013

CITY OF MIDLAND
PLANNING DIVISION OFFICE

CASE NO. 2-13-023

THENCE S 34°45'31" W, with the Northwest right-of-way line of said State Highway 191, a distance of 1665.7 feet to a point on the South Section line of said Section 37 for an exterior corner of the herein described tract;

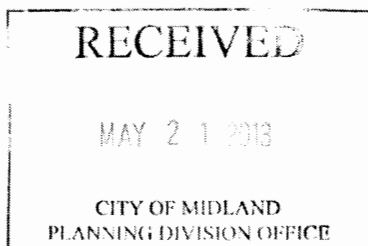
THENCE S 75°05'11" W, with the South Section line of said Section 37 and the North Section line of Section 48, Block 41, T-1-S, T&P RR Co. Survey, Midland County, Texas, a distance of 437.2 feet to the POINT OF BEGINNING.

Subject tract containing 305.17 acres of land.

NOTE:

THIS DESCRIPTION NOT TO BE USED FOR TRANSFERING TITLE!

M. Hostas 5/21/13

CASE NO. 2-13-023

Case Number: 2-13-023

CITY OF MIDLAND
Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

Dunaway Associates, Attn: Brooks Baca (817) 675-9878 BBAKA@dunaway-assoc.com
Applicant Name (Phone/e-mail)

4000 N. Big Spring Street, Ste 101, Midland, TX 79706
Address Zip Code

2010 Midland Properties JV, LLC (432) 553-7017 [Fletch Smith]
Property Owner Name (Phone/e-mail)

3008 W. Lancaster Ave., Fort Worth TX 76107
Address Zip Code

Representative Name

(Phone/e-mail)

Address

Zip Code

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

PRESENT ZONE: ~~Future Development~~ ANNEXATION REQUESTED ZONE: Light Industry
(List by tracts, if more than one district is requested)

Reason for Zone Change Request: Currently being annexed into the City of Midland.

Present Use of Property: Agricultural

Proposed Use of Property: Industrial

How will zone change affect the public health, safety and welfare? No affect

Describe how conditions affecting the property have changed since present zoning designation:
Property was previously in the county

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): J. Smith Date: 5-31-13

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

STATE of TEXAS

COUNTY OF MIDLAND

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

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

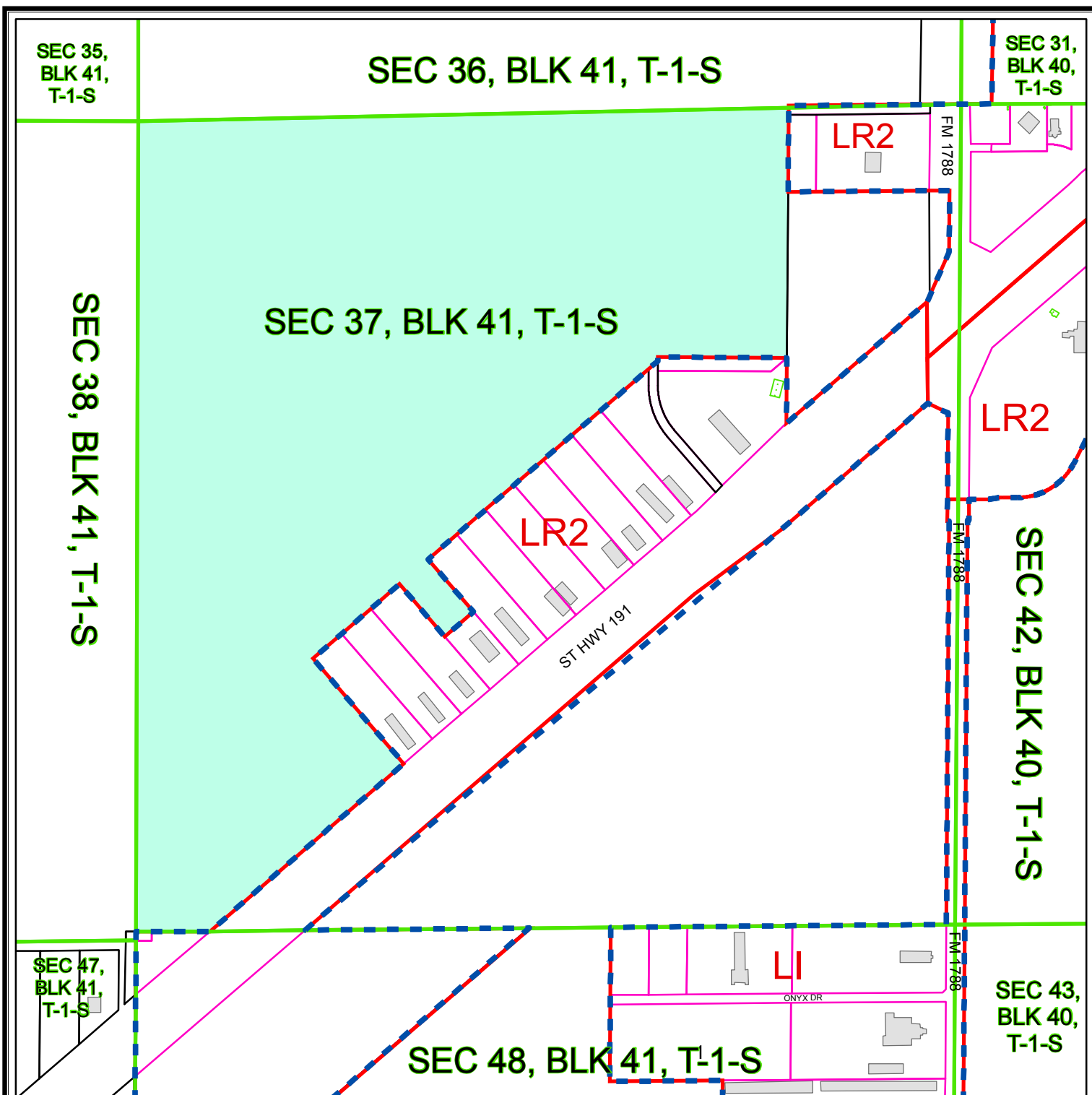
Authorized Agent (signature)

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

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: _____	Date: _____
Assigned: _____	
For: _____	On: _____

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



LOCATION & ZONING MAP

Z - 13 - 023

Scale: 1" = 900'

TRACT 2

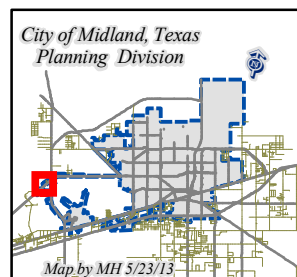
Consider the initial zoning of annexed land to LI, Light Industrial District on a 305.17-acre tract of land out of Section 37, Block 41, T-1-S, T & P RR Co. Survey, Midland County, Texas.

LEGEND

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

ZONING DISTRICTS:

- LR - LOCAL RETAIL DISTRICT
- LI - LIGHT INDUSTRIAL DISTRICT



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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: June 25, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Ken Van Dyne, Acting Planning Division Manager

SUBJECT: Hold a public hearing at approximately 10:39 A.M. hold a public hearing and consider an ordinance on a request by Younger Properties (Tract 3) the initial zoning of annexed land to IP-2, Industrial Park District on a 2.47-acre tract of land out of Section 8, Block 40, T-2-S, T&P RR Co. Survey, Midland County, Texas, and being more specifically described by metes and bounds in Section One hereof (Generally located on the west side of Wright Drive, approximately 850 feet south of Loop 40. – District 4).

Purpose:

Hold a public hearing at approximately 10:39 A.M. hold a public hearing and consider an ordinance on a request by Younger Properties (Tract 3) the initial zoning of annexed land to IP-2, Industrial Park District on a 2.47-acre tract of land out of Section 8, Block 40, T-2-S, T&P RR Co. Survey, Midland County, Texas, and being more specifically described by metes and bounds in Section One hereof (Generally located on the west side of Wright Drive, approximately 850 feet south of Loop 40. – District 4).

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

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

Discussion:

This land was recently annexed at the request of Younger Partners, who intends to continue development of this area for industrial use, and it is now appropriate for the Council to consider an ordinance establishing the initial zoning of this property encompassing approximately 2 ½ acres. This land is located south of the U.S. Post Office on the south leg of Loop 40 which serves as the main entrance to Midland International Airport from FM 1788. The area to the south is currently zoned and developed as an Industrial Park. The property owner has requested that this land is zoned in a similar manner which would be an IP-2, Industrial Park District, and subject to all regulations as defined in the City Code with respects to development of this site.

Attachments:

Map
Proposed Ordinance
Metes & Bounds

ORDINANCE NO.

AN ORDINANCE ESTABLISHING THE ZONING CLASSIFICATION OF THE AREA INDICATED AS BEING A 2.47-ACRE TRACT OF LAND OUT OF SECTION 8, BLOCK 40, T-2-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS, AND BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS IN SECTION ONE HEREOF, AS AN IP-2, INDUSTRIAL PARK DISTRICT; SAID TRACT IS GENERALLY LOCATED ON THE WEST SIDE OF WRIGHT DRIVE, APPROXIMATELY 850 FEET SOUTH OF LOOP 40; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, notice has been given to all parties in interest and citizens by publication in the official newspaper and otherwise, of a hearing to be held before the City Council on June 25, 2013, to consider amendments to the zoning regulations and map establishing the zoning classification of the property described in Section One hereof as an IP-2, Industrial Park District as set out in Section 11-1-6 of the City Code of Midland, Texas; and

WHEREAS, such a public hearing was held in the Council Chambers beginning at 10:39 a.m. on said June 25, 2013, as advertised; and

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

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

SECTION ONE. That the zoning classification of the area indicated as Tract 3 on

Exhibit “A”, attached hereto and incorporated herein by reference, is hereby established as an IP-2, Industrial Park District.

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

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

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

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

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

Council members voting “AYE”:

Council members voting “NAY”:

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

Council members voting "AYE":

Council members voting "NAY":

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

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

TRACT 3
ZONING - IP-2, INDUSTRIAL PARK
**LEGAL DESCRIPTION FOR A 2.47 ACRE TRACT
BEING PART OF PROPOSED LOT 1, BLOCK 4,
DEVON ADDITION, SECTION 4 AND A PART OF SECTION 8,
BLOCK 40, T-2-S, T. & P. RR. CO. SURVEY,
CITY OF MIDLAND, MIDLAND COUNTY, TEXAS**

Boundary being further described by metes and bounds as follows:

BEGINNING at (Y= 10,671,245.90', X= 1,712,930.07') a 1/2" iron rod with plastic cap marked "PLS 1974" set on the West right-of-way line of Wright Drive and the most Northerly Northeast corner of said Proposed Lot 1, Block 4 and this tract, from whence the Northwest corner of said Section 8 bears N29°58'29"W, a distance of 2212.02 feet and S75°17'06"W, a distance of 1702.05 feet;

THENCE S29°58'29"E with the West right-of-way line of said Wright Drive and the East line of said Proposed Lot 1, Block 4, at 420.00 feet pass a 1/2" iron rod with plastic cap marked "PLS 1974" set at the Southeast corner of said Lot 1, Block 4 continuing for a total distance of 426.80 feet to the Southeast corner of this tract;

THENCE S74°54'08"W along a Midland city limits line, a distance of 275.23 feet to the Southwest corner of this tract;

THENCE N29°58'29"W with the West line of said Proposed Lot 1, Block 4, a distance of 280.26 feet to a 1/2" iron rod with plastic cap marked "PLS 1974" set at the Northwest corner of said Proposed Lot 1, Block 4 and the beginning of a non-tangent curve;

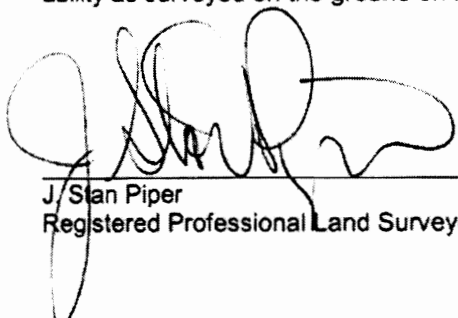
THENCE around a non-tangent curve to the right in a Northwesterly direction with the a Proposed Temporary Turn-Around Easement to be dedicated on said Proposed Devon Addition, Section 4 with a radius of 50.00 feet, an arc length of 249.81, a delta angle of 286°15'36" and a chord distance of 60.00 feet which bears N29°58'29"W to a 1/2" iron rod with plastic cap marked "PLS 1974" set on the North right-of-way line of Proposed Lindbergh Drive, Section 4 and an interior corner of this;

THENCE N59°50'14"E with the North line of said Proposed Lindbergh Drive and said Proposed Devon Addition, Section 4, a distance of 251.00 feet to a 1/2" iron rod with plastic cap marked "PLS 1974" set at an interior corner of said Devon Addition, Section 4 and of this tract;

THENCE N14°55'53"E with a cutback line of said Proposed Lindbergh Drive and said Proposed Devon Addition, Section 4, a distance of 21.25 feet to the **PLACE OF BEGINNING**. (Tract contains 107,582 square feet or 2.47 acres.)

Bearings, distances and coordinates are relative to Texas State Plane Coordinate System, Central Zone, 1983/86 NAD, with a combined grid factor of 0.9998706 for mean project datum. The theta angle is equal to -0°58'09.9" at City of Midland control station "Warfield" with published values of N=10,664,066.89' and E= 1,712,553.67' in U.S. Survey Feet.

I, J. Stan Piper, Registered Professional Land Surveyor, do hereby certify that this legal description is based on an actual survey made by me or under my supervision, and that the same is true and correct to the best of my knowledge and ability as surveyed on the ground on March 27, 2013.


J. Stan Piper
Registered Professional Land Surveyor #1974

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

RECEIVED BY SURVEYING BOX 60432; MIDLAND, TX 79711; (432) 550-7810

MAY 10 2013

CITY OF MIDLAND
PLANNING DIVISION OFFICE

Exhibit "A"

CASE NO. 2-13-024

Case Number: _____

CITY OF MIDLAND
Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

Younger Partners, Ltd.	432-682-9031
Applicant Name	(Phone/e-mail)
P.O. Box 11004 Midland, TX	79701-1004
Address	Zip Code

SAME	(Phone/e-mail)
Property Owner Name	
Address	Zip Code

Parkhill, Smith & Cooper, Inc.	432-697-1447
Representative Name	(Phone/e-mail)
1700 W. Wall, Suite 100 Midland, TX	79701
Address	Zip Code

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

PRESENT ZONE: N/A REQUESTED ZONE: IP-2
(List by tracts if more than one district is requested)

Reason for Zone Change Request: _____

Present Use of Property: Vacant Lot

Proposed Use of Property: Industrial park uses

How will zone change affect the public health, safety and welfare? It will not affect it.

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

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

APPLICATION FEES:

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

SITE PLAN SUBMITTALS (if applicable):

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

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

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

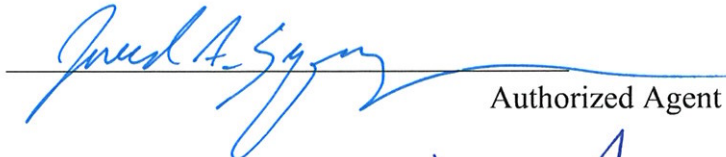
Property Owner (signature): _____ Date: _____

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

STATE of TEXAS
COUNTY OF MIDLAND

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

Jared A. Squyres who, being by me duly sworn, upon oath says: That (s)he is authorized by Younger Partners, Ltd., 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)

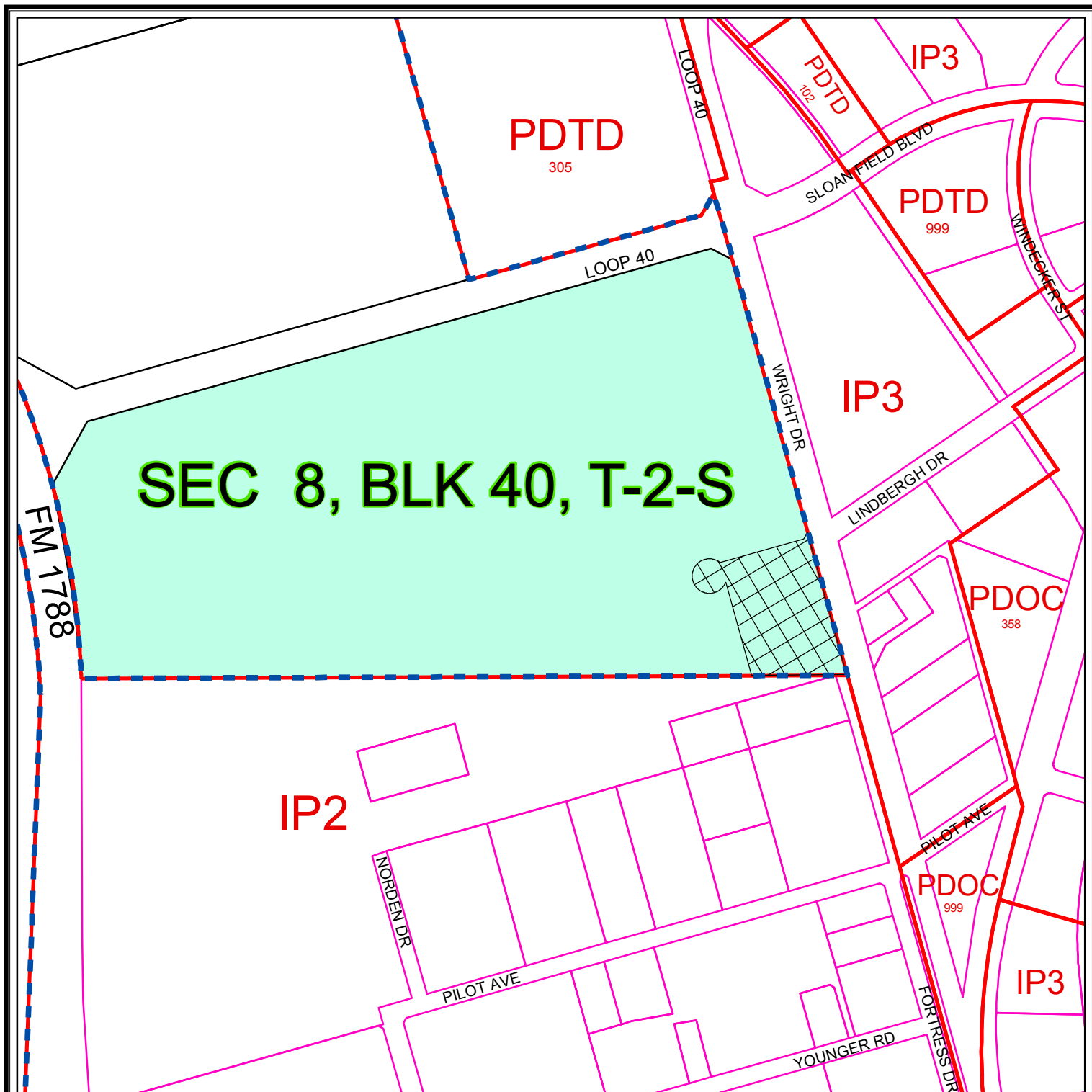
Subscribed and sworn to before me, this 7th day of June, 20 13, to certify which witness my hand and seal of office.

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: _____	Date: _____
Assigned: _____	
For: _____	On: _____



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



LOCATION & ZONING MAP

M - 13 - 006

Scale: 1" = 400'

TRACT 3

Consider the initial zoning of annexed land to IP-2, Industrial Park District on a 2.47-acre tract of land out of Section 8, Block 40, T-2-S, T & P RR Co. Survey, Midland County, Texas.

LEGEND

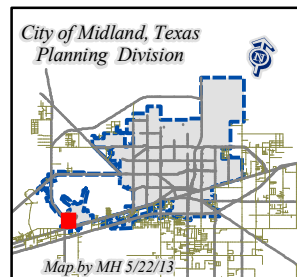
- CITY LIMITS
- CITY PARCEL
- COUNTY PARCEL
- ZONING
- SURVEY SECTION

ZONING DISTRICTS:

IP - INDUSTRIAL PARK DISTRICT

PDOC - PLANNED DISTRICT FOR A OFFICE CENTER

PDTD - PLANNED DISTRICT FOR A TRANSITION DISTRICT



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THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA WHILE THIS DATA IS MADE AVAILABLE TO THE PUBLIC. IT WAS CREATED FOR INTERNAL USE BY THE CITY OF MIDLAND WHICH MAKES NO CLAIM AS TO ITS ACCURACY OR COMPLETENESS. THIS DATA IS NOT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING, SITING, OR OTHER DECISIONS. IT IS SOLELY ON THE INFORMATION CONTAINED HEREIN.



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: June 25, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Ken Van Dyne, Acting Planning Division Manager

SUBJECT: Hold a public hearing at approximately 10:42 a.m. and consider an ordinance on a request by David Miller for a zone change from PD, Planned District for a Housing Development to Amended Planned District on Lot 21, Block 3, Wydeewood Estates, Section 33, City and County of Midland, Texas (Generally located on the south side of Wadley Avenue, approximately 450 feet east of Sunburst Drive)

Purpose:

Hold a public hearing at approximately 10:42 a.m. and consider an ordinance on a request by David Miller 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:

This property is zoned Planned District for a Housing Development, subject to the regulations of the MF-1, Multiple-Family Dwelling District, the Sign Code and an approved site plan. Construction of the apartments has already begun. The applicant is requesting two amendments to the approved site plan. First is a change to the clubhouse, which includes adding an additional 620 square feet to the maximum floor area, and raising the maximum building height to 40 feet (50 feet is allowed). Exhibit A shows the location and dimensions of the proposed clubhouse. There is also a minor architectural change to the building elevations, which is illustrated on Exhibits B and C. The changes emphasize the entrance location, and are minor in nature, and no change in building materials is proposed.

The second change is to the apartment identification sign. The Sign Code allows only one sign per street frontage, and limits the maximum area to 64 square feet. Thus, the applicant is entitled to one sign on Wadley Avenue, and one on Preston Drive. The applicant is requesting two signs on Wadley Avenue, one on either side of the driveway, as shown on Exhibit D. Each sign would be 40 square feet in area, for a total of 80 square feet, as shown on Exhibit E. The staff believes this request is reasonable, provided that no sign is placed along Preston Drive. The applicant has agreed to this condition. The Planning and Zoning Commission voted to approve this request. Several persons had questions regarding the proposed changes, but no opposition was voiced.

Attachments:

June 3, 2013 P&Z Staff Report
Proposed Ordinance and Exhibits A through E

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOT 21, BLOCK 3, WYDEWOOD ESTATES, SECTION 33, 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 SOUTH SIDE OF WADLEY AVENUE, APPROXIMATELY 450 EAST OF SUNBURST 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:

Lot 21, Block 3, Wyndewood Estates, Section 33, City and County of Midland, Texas.

SECTION TWO. That said property shall be subject to the following special conditions and restrictions:

1. That all conditions of City of Midland Ordinance No. 9100 shall remain in full force and effect, except as otherwise stated below.
2. That the dimensions of the clubhouse shall conform to the conditions shown on Exhibit "A", the maximum floor area shall not exceed 5,121 square feet, and maximum building height shall not exceed 40 feet above grade. The architectural details shall conform to the conditions shown on Exhibits "B" and "C". Exhibits "A", "B" and "C" are attached hereto and incorporated herein.
3. That a maximum of two apartment identification signs shall be allowed, located on either side of the Wadley Avenue driveway, as shown on Exhibit "D", which is attached hereto and incorporated herein. The maximum area of each sign shall not exceed 80 square feet. The design of the sign shall conform to the conditions shown on Exhibit "E", which is attached hereto and incorporated herein. No identification sign shall be allowed on Preston Drive.

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

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

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

SECTION SIX. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland,

Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

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

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

Council members voting “AYE”:

Council members voting “NAY”:

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

Council members voting “AYE”:

Council members voting “NAY”:

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

W. Wesley Perry, Mayor

ATTEST:

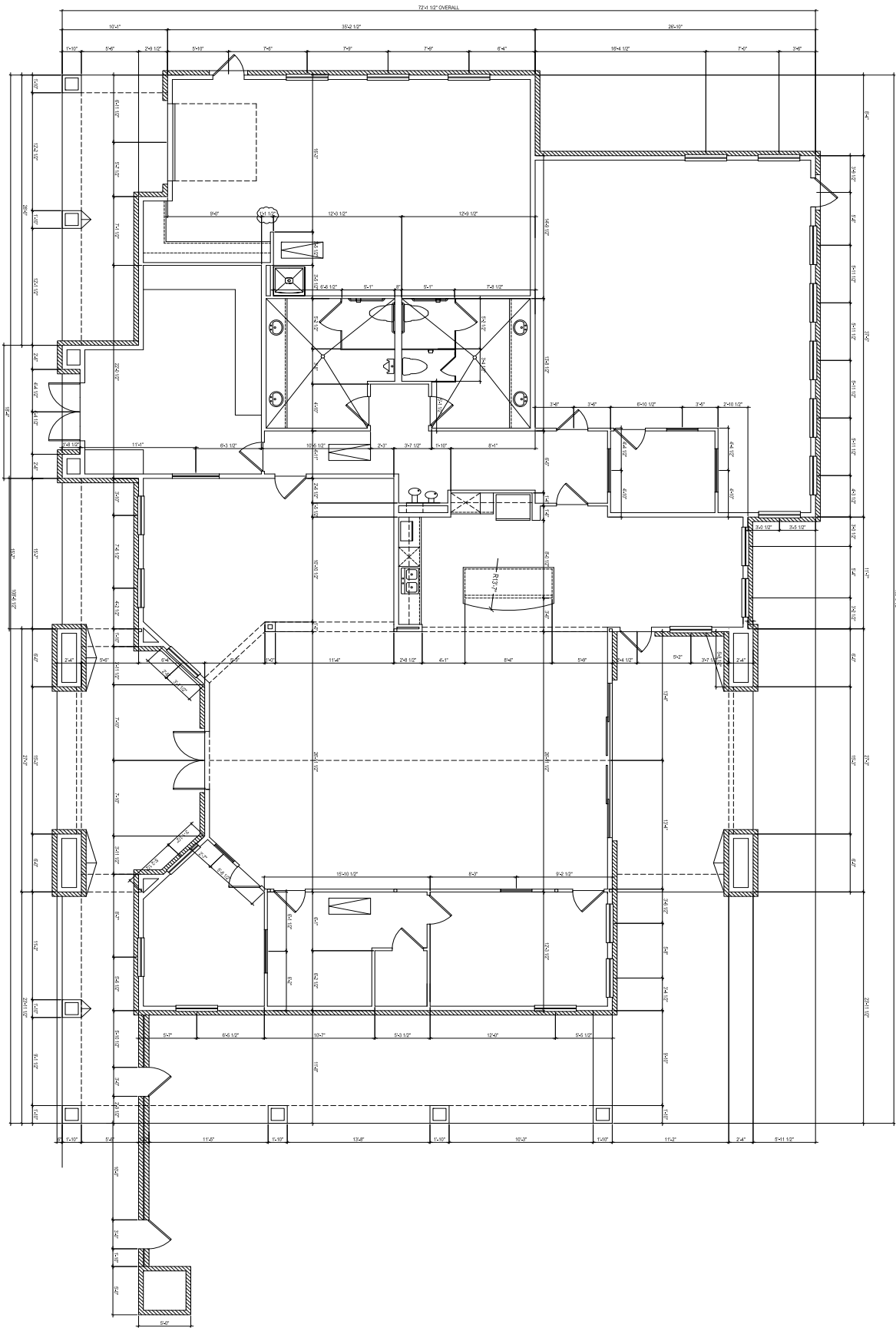
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



1 CLUBHOUSE - DIMENSIONAL FLOORPLAN
SCALE: 1/8" = 1'-0"



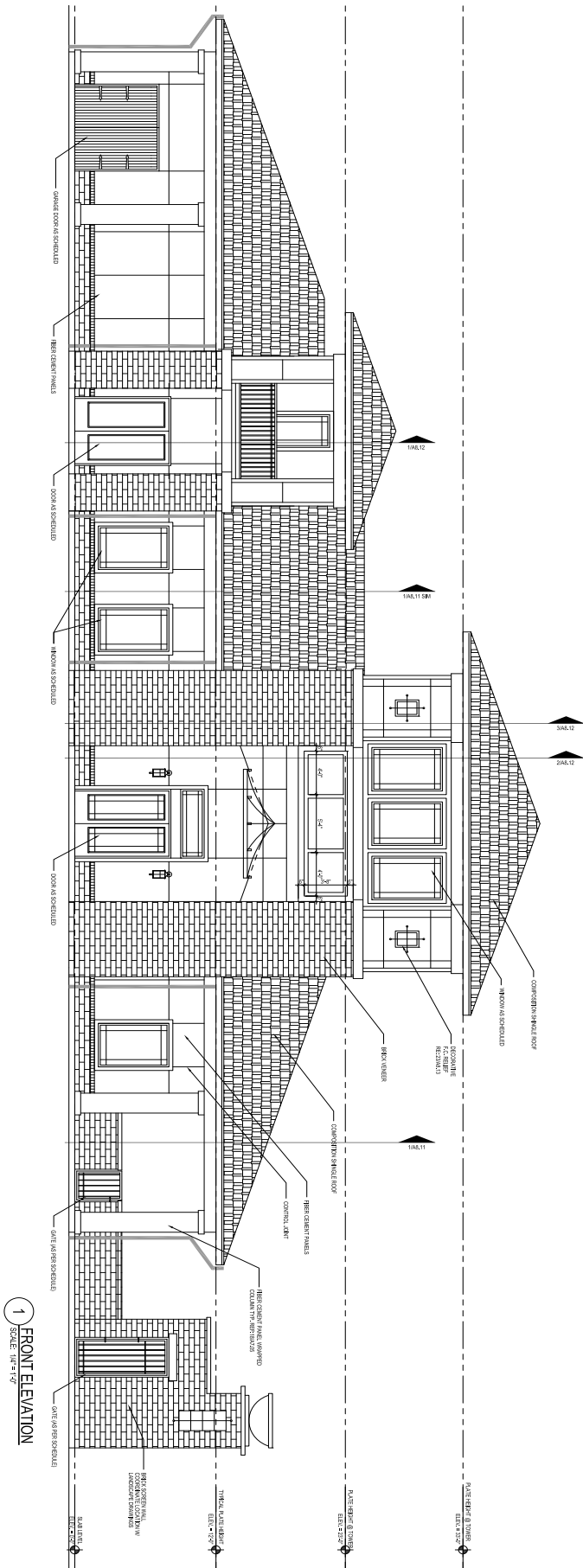
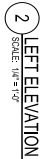
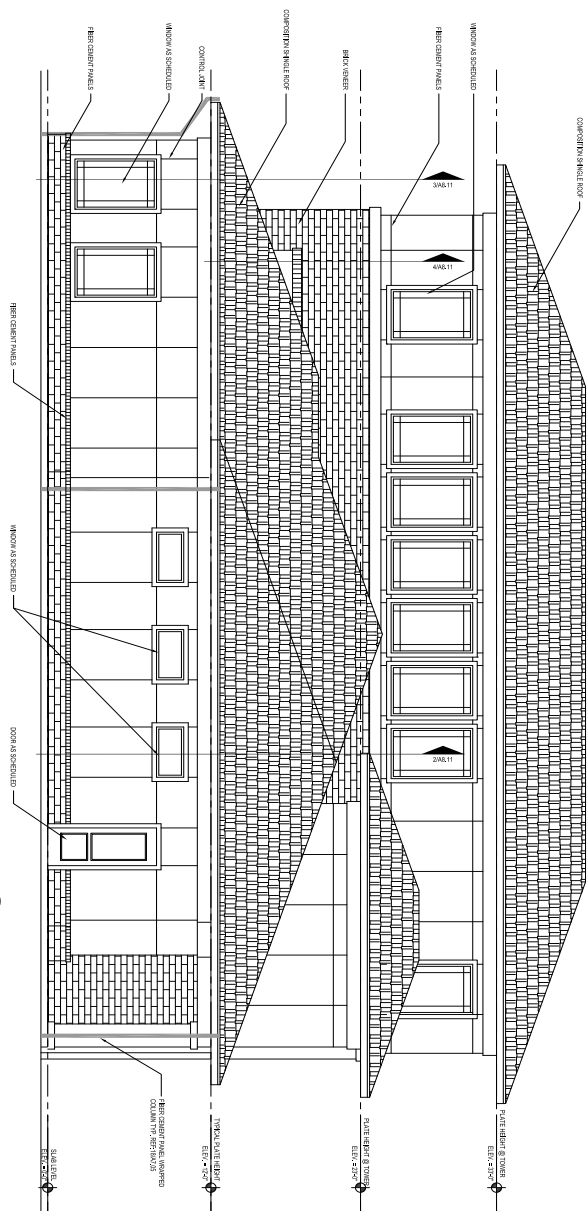
HUMPHREYS & PARTNERS
ARCHITECTS, L.P.
 5339 ALPHA ROAD • SUITE 300 • DALLAS, TEXAS 75240
 (972) 701-9636 • (972) 701-9639 FAX
 DALLAS • PHOENIX • ORLANDO • NEW ORLEANS • IRVINE
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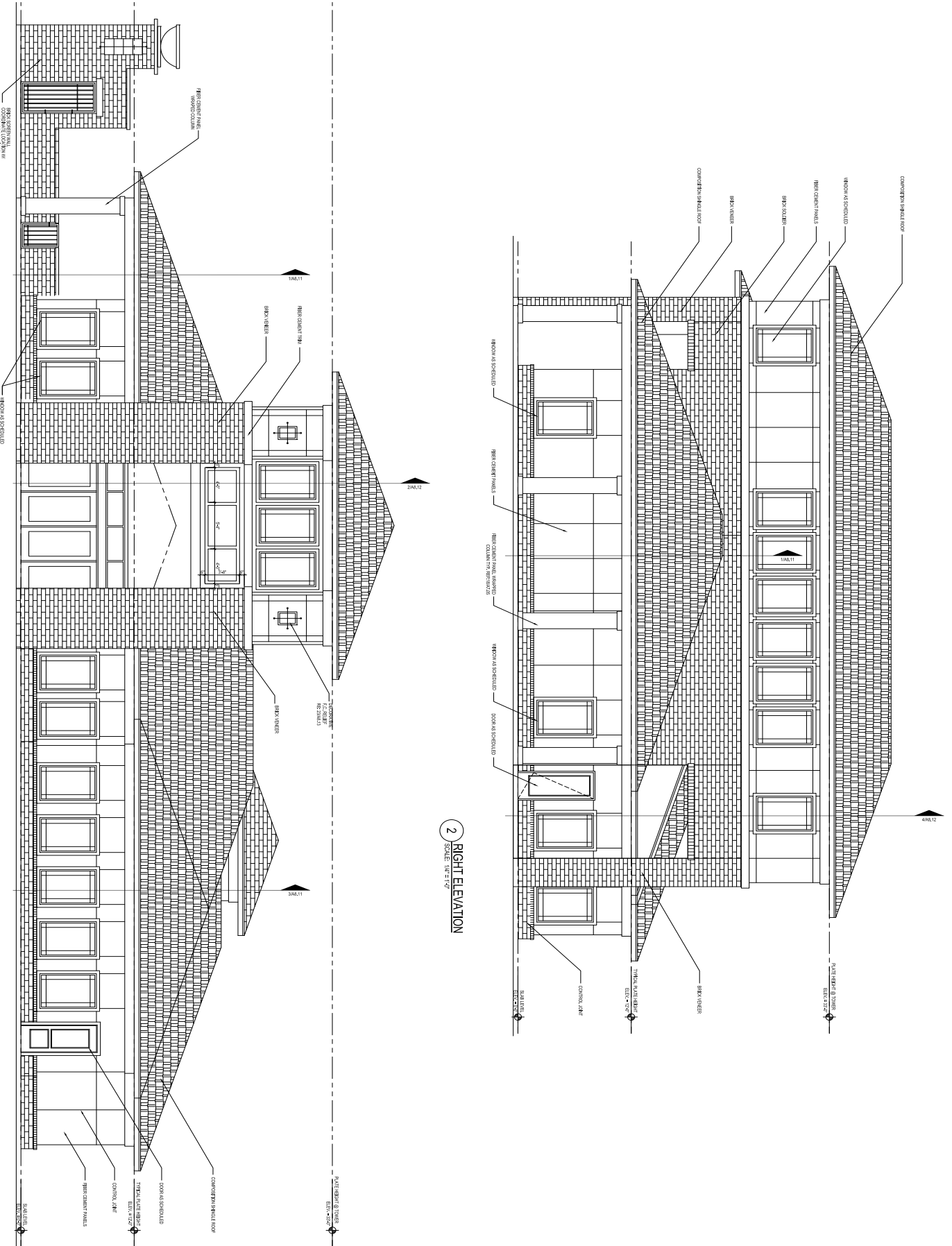


WADLEY APARTMENTS
 WEIDNER
 APARTMENT HOMES
 MIDLAND, TX

NOT TO SCALE
 THIS DRAWING IS THE PROPERTY OF HUMPHREYS & PARTNERS ARCHITECTS, L.P. AND IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREON. IT IS NOT TO BE REPRODUCED, COPIED, OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, WITHOUT THE WRITTEN PERMISSION OF HUMPHREYS & PARTNERS ARCHITECTS, L.P. ANY VIOLATION OF THIS NOTICE SHALL BE SUBJECT TO LEGAL ACTION.

DATE	2/1/13
BY	JP
CHECKED	JP
APPROVED	JP
PROJECT	WADLEY APARTMENTS
SHEET NO.	24.7
TOTAL SHEETS	2





1 REAR ELEVATION
SCALE: 1/8" = 1'-0"

2 RIGHT ELEVATION
SCALE: 1/8" = 1'-0"

Project Name: WADLEY APARTMENTS

Project Number: 24.9

Project Location: MIDLAND, TX

Project Date: 1/2

Project Status: IN PROGRESS

Project Manager: J. H. H.

Project Architect: J. H. H.

Project Engineer: J. H. H.

Project Designer: J. H. H.

Project Draftsman: J. H. H.

Project Checker: J. H. H.

Project Approver: J. H. H.

Project Coordinator: J. H. H.

Project Assistant: J. H. H.

Project Secretary: J. H. H.

Project Receptionist: J. H. H.

Project Janitor: J. H. H.

Project Landscaper: J. H. H.

Project Painter: J. H. H.

Project Electrician: J. H. H.

Project Plumber: J. H. H.

Project HVAC: J. H. H.

Project Fire Alarm: J. H. H.

Project Security: J. H. H.

Project Elevator: J. H. H.

Project Staircase: J. H. H.

Project Roofing: J. H. H.

Project Siding: J. H. H.

Project Foundation: J. H. H.

Project Framing: J. H. H.

Project Insulation: J. H. H.

Project Drywall: J. H. H.

Project Flooring: J. H. H.

Project Wallpaper: J. H. H.

Project Painting: J. H. H.

Project Landscaping: J. H. H.

Project Hardscaping: J. H. H.

Project Softscaping: J. H. H.

Project Irrigation: J. H. H.

Project Lighting: J. H. H.

Project Sound: J. H. H.

Project Video: J. H. H.

Project Telecommunications: J. H. H.

Project Datacom: J. H. H.

Project IT: J. H. H.

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Project Datacom: J. H. H.

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WADLEY APARTMENTS

WEIDNER

APARTMENT HOMES

MIDLAND, TX

HUMPHREYS & PARTNERS

ARCHITECTS, L.P.

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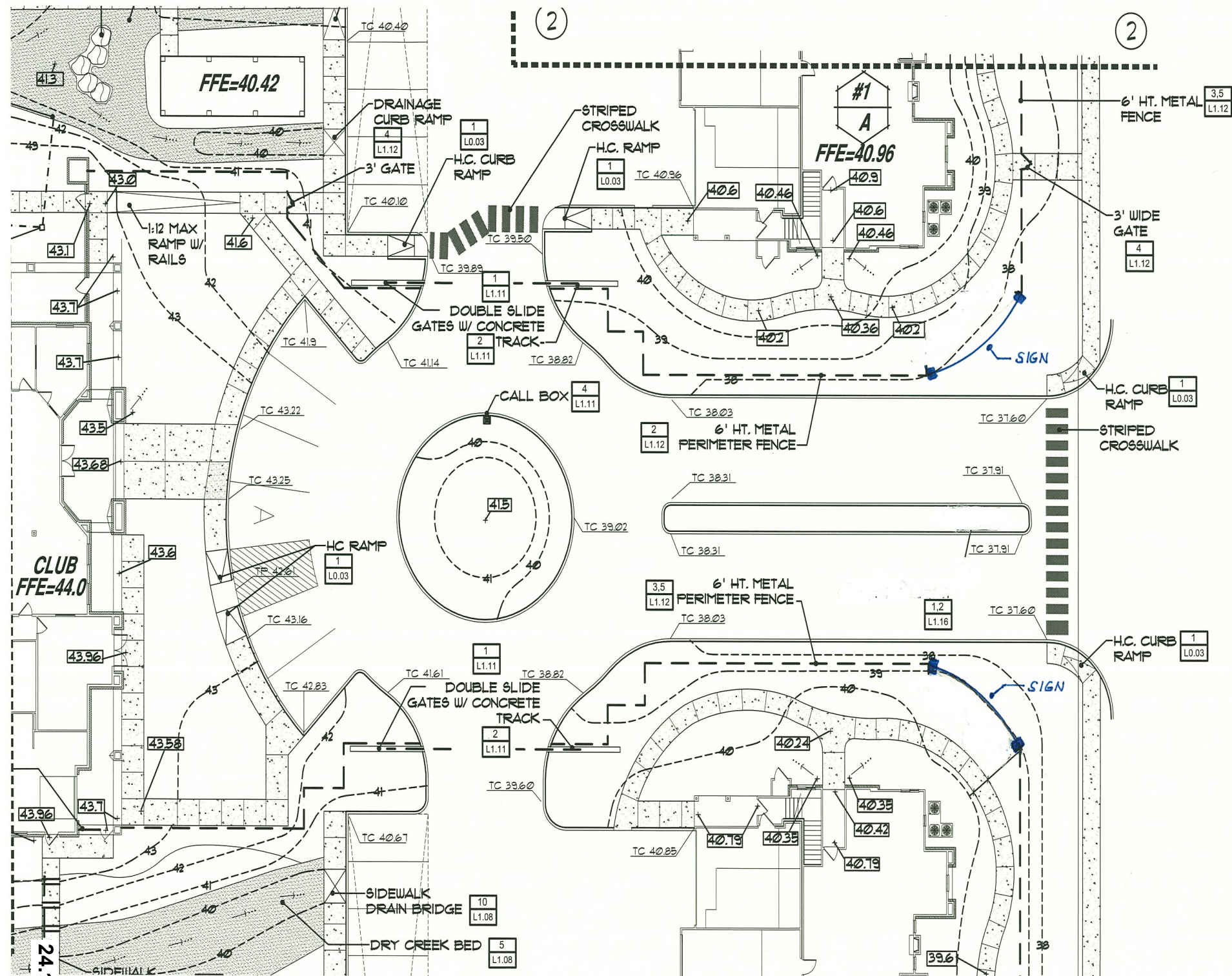


Sheet Contents:

CLUBHOUSE

EXTERIOR ELEVATIONS

Sheet No. A8.05



(3) 02-01-13 C

REVISIONS:

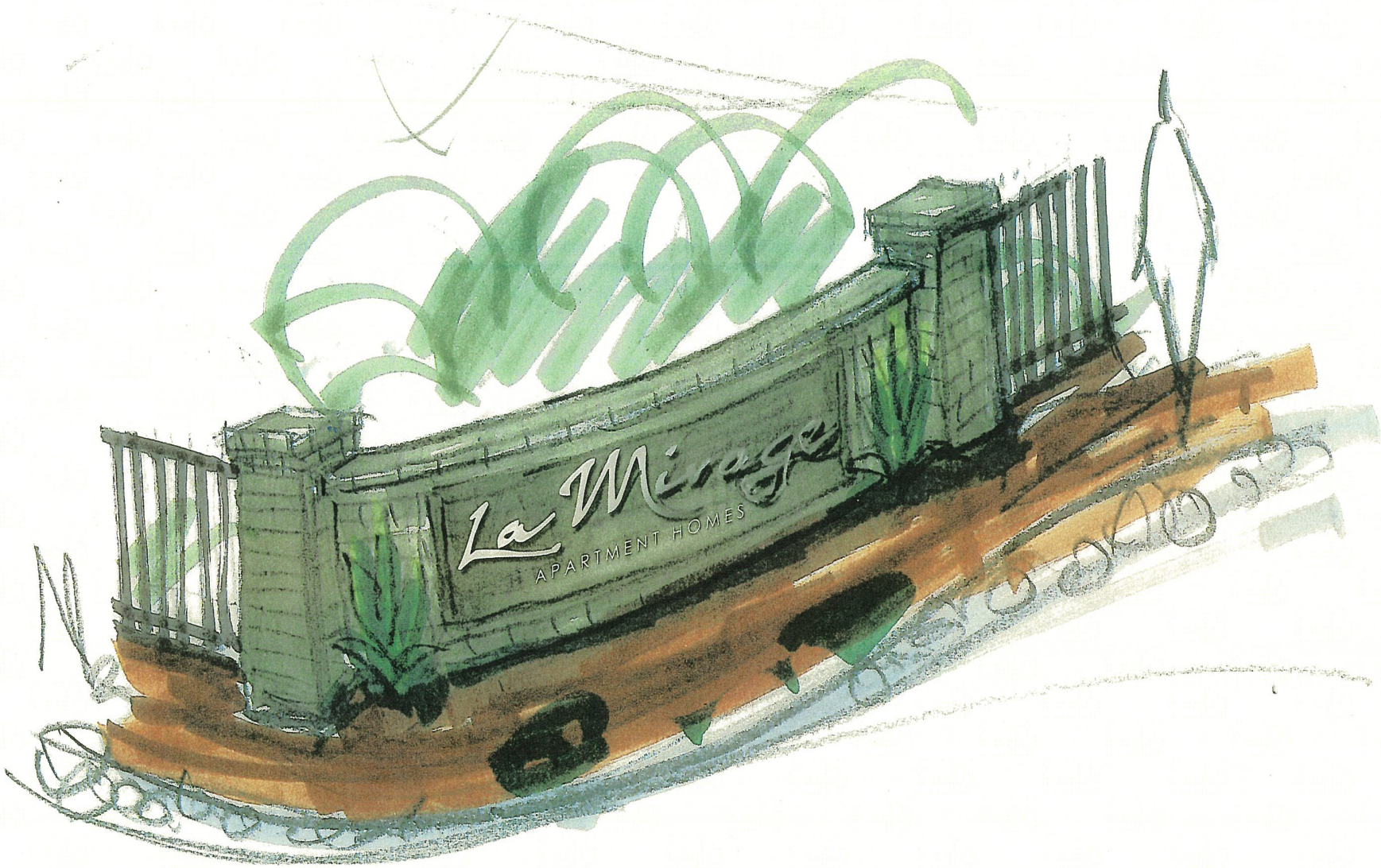
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|---|----------|---|
| 1 | 11-28-12 | C |
| 2 | 12-04-12 | A |
| 5 | 02-04-13 | C |
| 6 | 04-02013 | P |
| 7 | 04-17-13 | C |
| | | |

CLIENT:

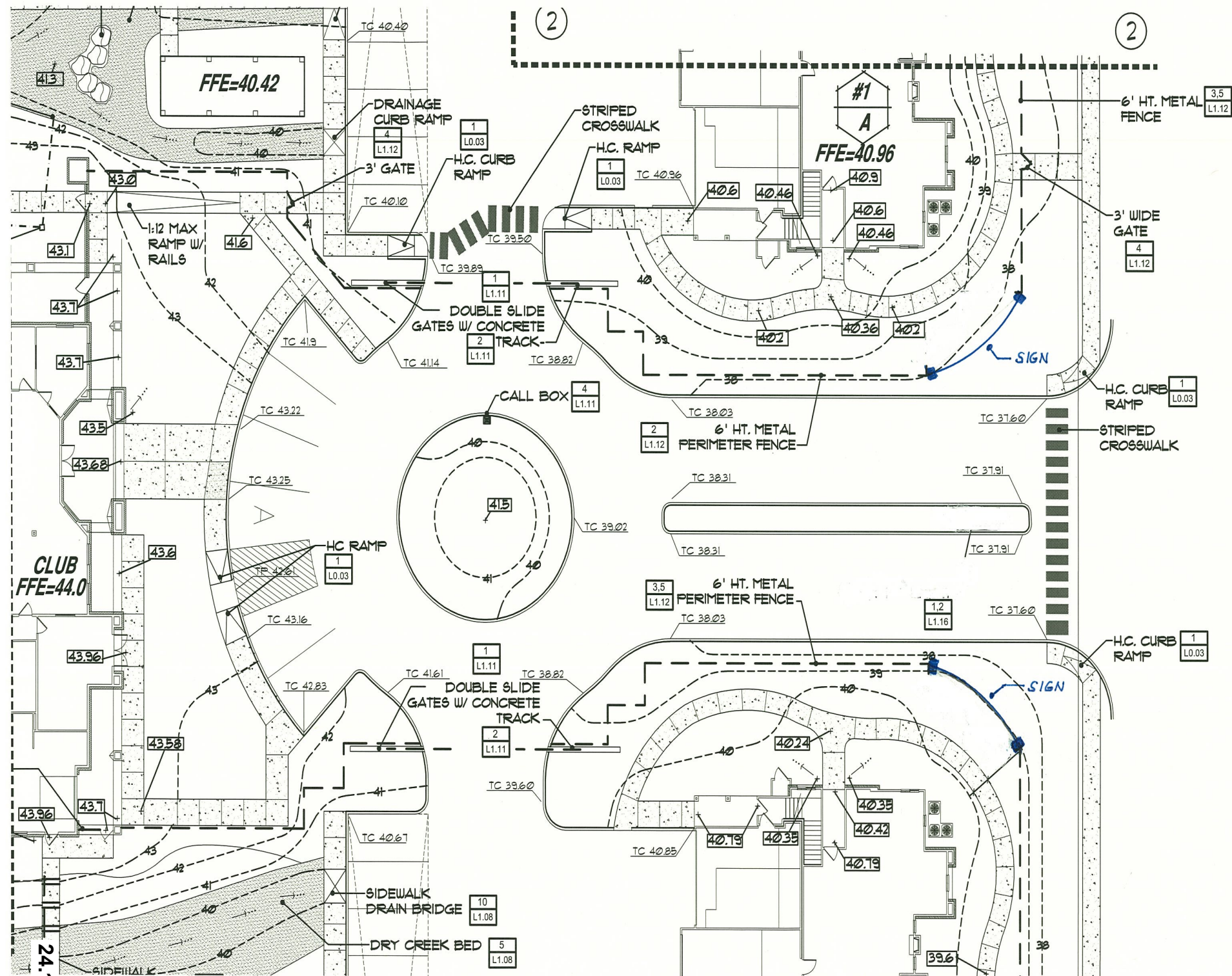
BGO ARCHI
4144 N. CEN
DALLAS, TX

CONTACT:
bgoarchitect

AVENUE







(3) 02-01-13 C

REVISIONS:

- | | | |
|---|----------|---|
| 1 | 11-28-12 | G |
| 2 | 12-04-12 | A |
| 5 | 02-04-13 | C |
| 6 | 04-02013 | P |
| 7 | 04-17-13 | C |
| | | |

CLIENT:

BGO ARCHITECTS
4144 N. CENTRAL
DALLAS, TX

CONTACT:
bgoarchitect

AVENUE



ALL LETTERING
40 S.F. - MAX.

PLANNING AND ZONING COMMISSION

June 3, 2013

CASE: Z-13-022.

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: David Miller

OWNER: Weidner Properties.

LEGAL DESCRIPTION: Lot 21, Block 3, Wydewood Estates, Section 33, City and County of Midland, Texas.

LOCATION: South side of Wadley Avenue, approximately 450 feet east of Sunburst Drive.

DETAILS OF REQUEST:

1. The Planning and Zoning Commission recently approved site plans on this lot for the construction of apartments. Later, it approved an amendment that affected the exterior building materials. We have now received another request to amend the site plan, consisting of two elements; the clubhouse and the signs, Exhibits A, B and C relate to the clubhouse, and Exhibits D and E relate to the signs.

SURROUNDING ZONING AND LAND USE:

2. The land to the north, across Wadley Avenue, is zoned and developed with single-family homes. To the east is a Planned District for a Housing Development that is developed with townhouses, a 1F-2 District developed with residences, and an MF-1 District developed with apartments. To the south are Bush Elementary School and a storm water detention basin. The area to the west is zoned Planned District for a Shopping, and is developed with a mix of office and retail uses.

ANALYSIS:

3. The current site plan represents the clubhouse as an outline of a building, with no dimensions or floor area labeled. This is not out of the ordinary since it is not located on the perimeter of the property. Exhibit A affects only the clubhouse portion of the approved site plan, and includes a building footprint with exterior dimensions, and lists the floor area at 5,121 square feet. The staff finds this exhibit to be acceptable. Proposed Exhibits B and C represent the four elevation views of the clubhouse. The exterior architecture has changed slightly from the approved site plan in that the front entryway is more defined by constructing an "arched tower" above it. The proposed building height is 40 feet, or six feet taller than shown on the approved site plan. In the staff's opinion, the proposed elevation views are somewhat more attractive, and the building height is well below the maximum 50-foot permitted height.

SIGNS:

4. The Sign Code allows one 64-square foot sign on each street frontage adjacent to an apartment. The approved site plan shows a single sign on Wadley Avenue, and no sign is shown on Preston Drive. The applicant is now requesting two signs on Wadley Avenue, one on either side of the driveway. Each sign is proposed to be a maximum of 40 square feet each, or a total of 80 feet. The frontage along Wadley Avenue is significant, at 550 feet. Further, this Planned District disallows signs on Preston Drive. For these two reasons, the staff has no objection to this proposed sign package.

STAFF RECOMMENDATION:

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

- A. That the construction of the clubhouse shall conform to the conditions shown on Exhibits A, B and C in all respects. The maximum floor area of the clubhouse shall not exceed 5,121 square feet, and the maximum building height shall not exceed 40 feet above grade.
- B. A maximum of two signs may be located along Wadley Avenue, to be located as shown on Exhibit D. The maximum area of each sign shall not exceed 40 square feet, for a combined sign area of 80 square feet.
- C. All other conditions of Ordinance 9100 not otherwise amended by these conditions shall remain in effect.


Ken Van Dyne
Acting Planning Division Manager
Department of Development Services


Jim Compton, Senior Planner
Department of Development Services

Attachments:

Application
Maps
Exhibits A-E

Case Number: 2-13-022

CITY OF MIDLAND
Planning Division

APPLICATION TO AMEND A PLANNED DISTRICT

Applicant: DAVID MILLER
Address: 5001 W. LOOP 289. 806.797.3162 david.miller@midway1.com
Street Address City State Zip Code
LUBBOCK TX 79414
(Phone/e-mail)

Property Owner: WEINER INVESTMENTS
Address: 9757 NE JUANITA DR. #300 425.821.3844.
Street Address City State Zip Code
KIRKLAND WA. 98034
(Phone/e-mail)

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:

5001 WEST WADLEY.

Current PD Classification: PDHD

Requested PD Classification: PDHD to Amended PDHD
(List by tracts if more than one zoning district is requested)

Reason for amendment request: ENLARGE LEASING OFFICE.

Describe how conditions affecting the property have changed since it was designated its present zone: LARGER LEASING OFFICE.

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): *David R. Miller* Date: 5/21/13

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

STATE of TEXAS

COUNTY OF MIDLAND

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

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

Authorized Agent (signature)

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

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

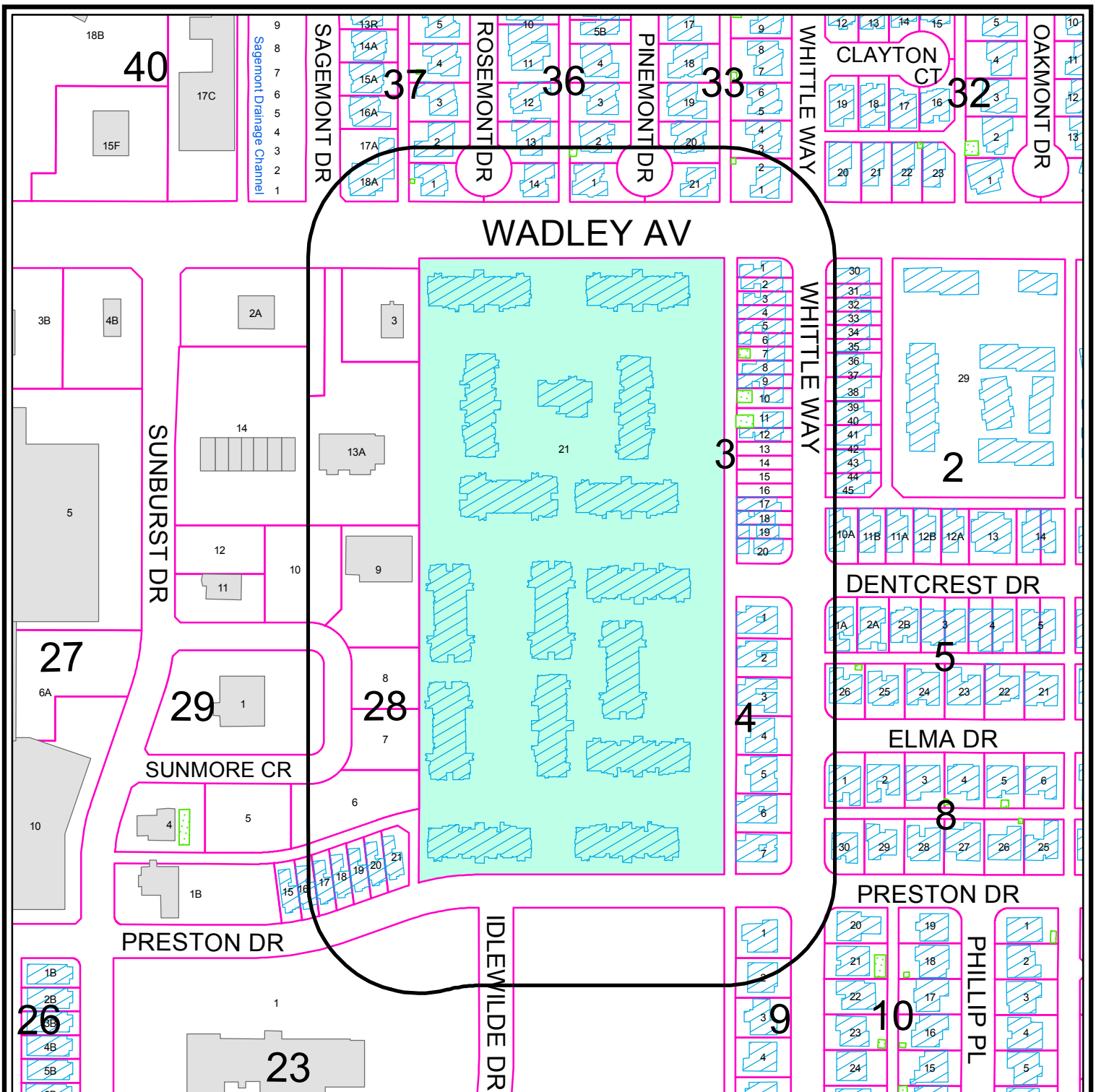
FOR OFFICE USE ONLY

Rec'd By: *TS* Date: 5/21

Assigned: *SC*

For: _____ On: _____

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



PROPERTY OWNER NOTIFICATION MAP

Z - 13 - 022

Scale: 1" = 250'

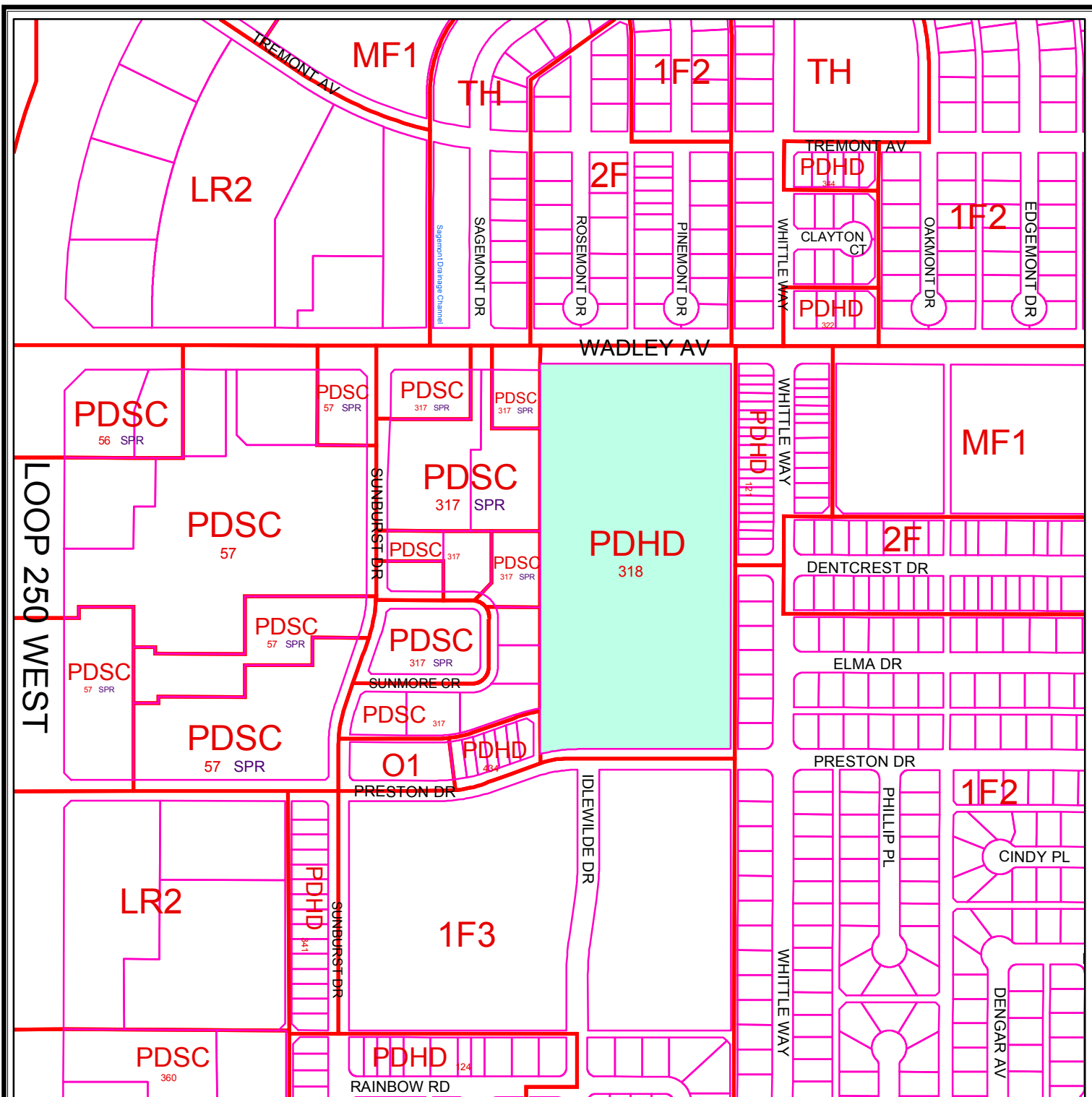
Consider a request for a zone change from PD, Planned District for a Housing Development, to an Amended Planned District on Lot 21, Block 3, Wydewood Estate, Section 33, City and County of Midland, Texas.

LEGEND

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



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ZONING MAP

Z - 13 - 022

Scale: 1" = 400'

Consider a request for a zone change from PD, Planned District for a Housing Development, to an Amended Planned District on Lot 21, Block 3, Wyndwood Estate, Section 33, City and County of Midland, Texas.

LEGEND

ZONING PARCELS

ZONING DISTRICTS:

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

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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: June 25, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Ken Van Dyne, Acting Planning Division Manager

SUBJECT: Hold a public hearing at approximately 10:45 a.m. and consider a request by COM Aquatics, Inc. for a zone change from PD, Planned District for a Community Center and a Planned District for a Shopping Center, to an Amended Planned District, on Lot 3, Block 3, and the vacated 0.162-acre east/west alley, "A" Street Community Center, Section 3; and Lot 1C, Block 3; "A" Street Community Center, Section 7, City and County of Midland, Texas. (Generally located near the southwest corner of the intersection of W. Wadley Avenue and N. "A" Street)

Purpose:

Hold a public hearing at approximately 10:45 a.m. and consider a request by COM Aquatics, Inc. for a zone change from PD, Planned District for a Community Center and a Planned District for a Shopping Center, to an Amended Planned District, Lot 3, Block 3, and the vacated 0.162-acre east/west alley, "A" Street Community Center, Section 3; and Lot 1C, Block 3; "A" Street Community Center, Section 7, 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:

This property is the proposed location for a new natatorium and parking area for expanding the operations of the current COM Aquatics building to the south. The PD, Planned District for a Shopping Center that is the current zoning on the site of the proposed building is governed by underlying LR-2, Local Retail District, regulations which limit the building height to 2 ½ standard stories and a new site plan also requires that this Planned District is

amended to accommodate the proposed structure's height of nearly 42 feet. The parking area to the west is currently zoned as a PD, Planned District for a Community Center, this area would be combined into a single zoning to match the Site Plan (Exhibit – A). The applicant is requesting to rezone this property to a single Amended Planned District for a Shopping Center; with the exception for the height allowance is satisfied at no greater than 42 feet. The new swimming facility plans that have been completed include securing the vacation of alley right-of-way, a provision for rerouting of public utilities, and replatting. City Council approved the second reading of the vacation of the right-of-way of the alley, pending inspection and approval of re-routed sewer lines in December of 2012 and the Preliminary Plat was approved by the Planning and Zoning Commission in February, 2012. A parking study (requested by the Planning Division as part of the application process) was based upon past events at the current COM Aquatics facility in addition to the anticipated needs of the future natatorium. The results of the parking study indicated the 110 existing parking spaces used by the current COM Aquatics facility would require roughly 80 additional parking spaces to meet peak demand. The new natatorium, which will displace some of that overflow parking, will offset this by providing 90 parking spaces by inclusion of the western lot into this planned district. Additionally, COM Aquatics has secured additional parking from neighboring property owners for overflow parking should the need arise. The new building will be primarily comprised of concrete block, glass, and architectural metal panels arranged in artistic, modern design (Exhibits – B & C). Staff concurs with the Planning & Zoning Commission in finding this development to be a complementary expansion to the existing facility and provides an attractive, pedestrian-scale development in its design, and recommends approval of this zone change request.

Attachments:

June 3, 2013 P&Z Staff Report
Proposed Ordinance and Exhibits A through C

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOT 3, BLOCK 3, THE ADJACENT VACATED 0.162-ACRE EAST/WEST ALLEY, "A" STREET COMMUNITY CENTER, SECTION 3, AND LOT 1C, BLOCK 3, "A" STREET COMMUNITY CENTER, SECTION 7, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A COMMUNITY CENTER, IN PART, AND PD, PLANNED DISTRICT FOR A SHOPPING CENTER, IN PART, TO BE USED AS AN AMENDED PLANNED DISTRICT (GENERALLY LOCATED NEAR THE SOUTHWEST CORNER OF THE INTERSECTION OF WEST WADLEY AVENUE AND NORTH "A" 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 Community Center, in part, and PD, Planned District for an Shopping Center, in part, and it shall be used as an Amended Planned, subject to the special conditions and restrictions hereinafter set out, said property being described as follows:

Lot 3, Block 3, the adjacent vacated 0.162-acre east/west alley, "A" Street Community Center, Section 3, and Lot 1C, Block 3, "A" Street Community Center, Section 7, City and County of Midland, Texas.

SECTION TWO. That said property shall be subject to the following special conditions and restrictions:

1. That this planned district shall be subject to the regulations of the LR-2, Local Retail District, except as otherwise stated below.
2. That the development shall conform to Exhibits "A", "B" and "C", which are attached hereto and incorporated herein.
3. That the maximum height of the building shall not exceed 42 feet.
4. That all roof or ground-based utility equipment shall be appropriately screened.
5. That the site plan shall meet all requirements of the Fire Marshal.
6. That the development shall meet all building code requirements.
7. That the development shall comply with all provisions of the City of Midland Landscaping Code in place at the time of development.
8. That City of Midland Ordinances Nos. 5811 and 7620 are amended by this ordinance.

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

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

SECTION FIVE. If any section, subsection, sentence, clause or phrase of this

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

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

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

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

Council members voting "AYE":

Council members voting "NAY":

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

Council members voting "AYE":

Council members voting "NAY":

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

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

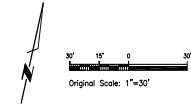
Keith Stretcher, City Attorney

A STREET COMMUNITY CENTER

ADDITION

SECTION 9

Being a Replat of
 Lot 1C, Block 3,
 "A" Street Community Center
 Section 7;
 Lot 2, Block 2,
 "A" Street Community Center
 Section 8;
 and
 0.162 Ac. of to be vacated
 alley right of way
 to the City of Midland, Texas

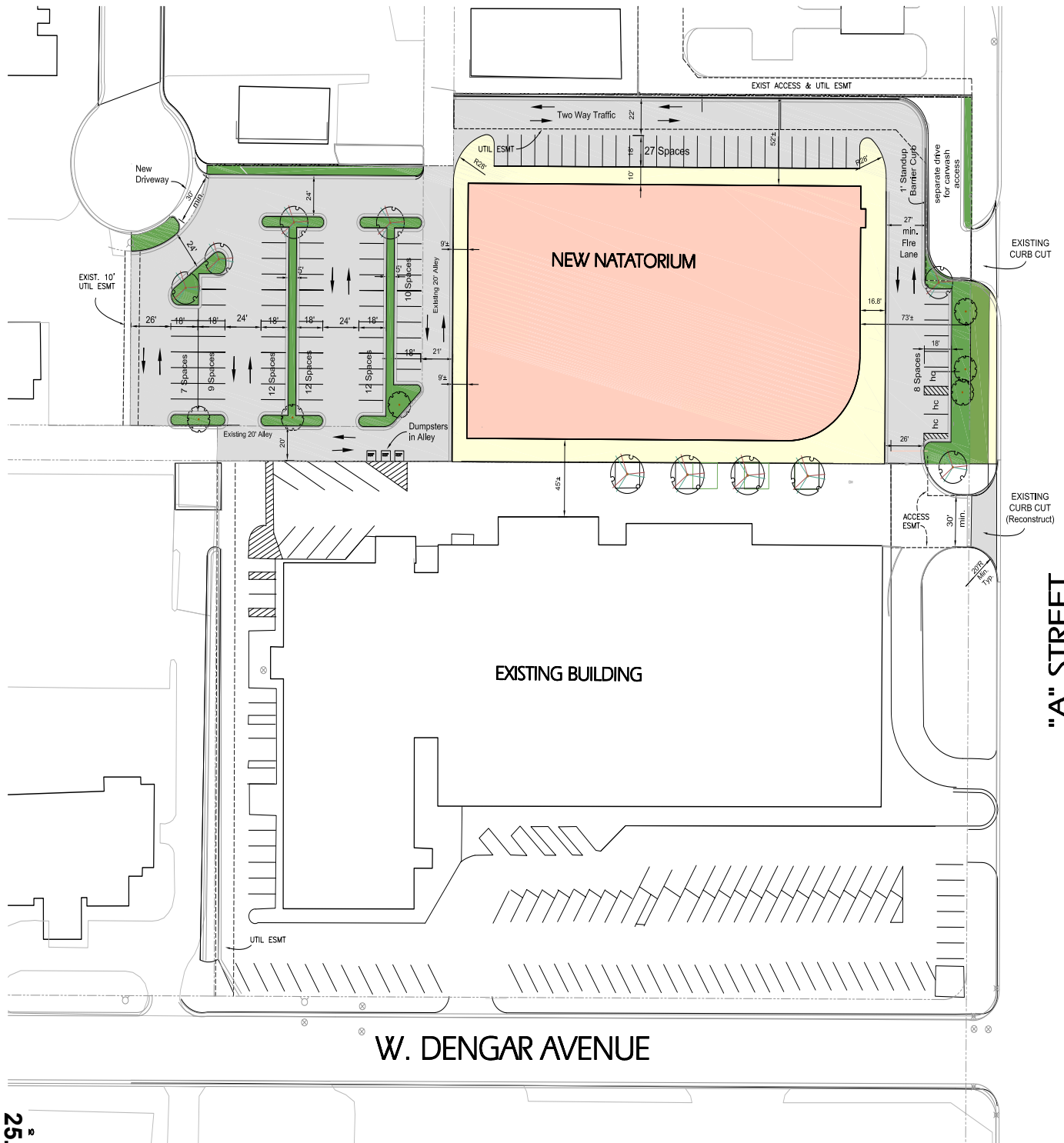


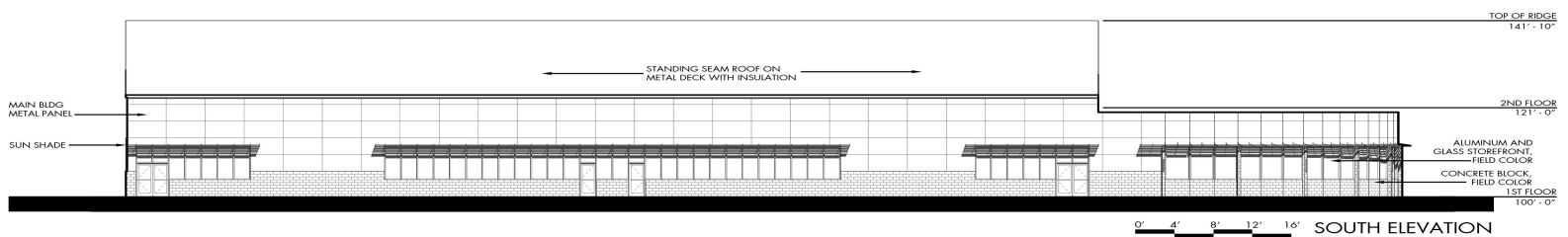
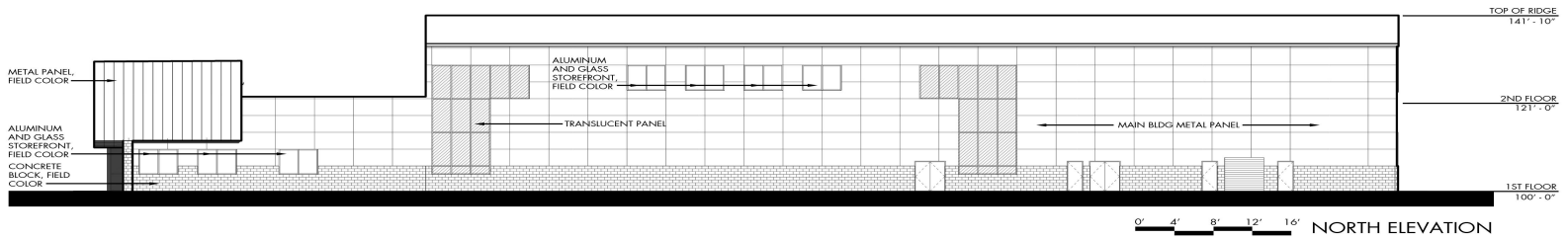
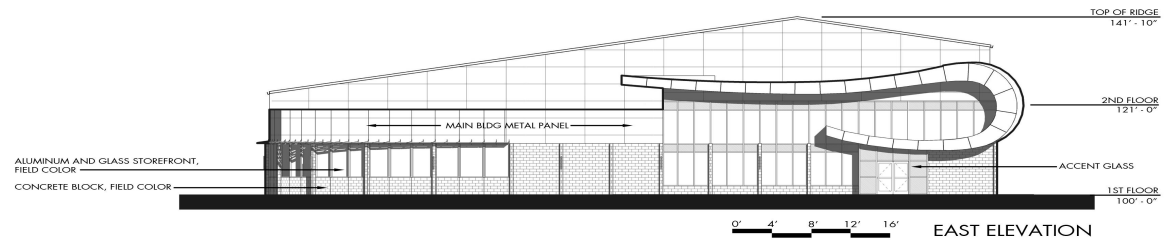
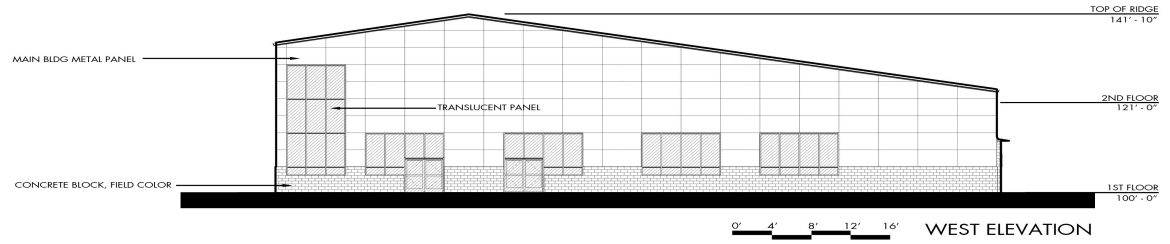
NOTES:

- BUILDING FOOTPRINT, PARKING AND LANDSCAPING SHOWN ARE FOR ILLUSTRATIVE PURPOSES ONLY. FINAL SITE DESIGNS TO BE REVIEWED BY THE CITY OF MIDLAND PRIOR TO ISSUING BUILDING PERMITS.
- SHADED AREAS DENOTED BY [Pattern] TO BE PAVED.
- SHADED AREAS DENOTED BY [Pattern] TO BE CONCRETE.
- SHADED AREAS DENOTED BY [Pattern] TO BE IRRIGATED & LANDSCAPED INCLUDING TREES, GRASS OR SHRUBS - WHICH MAY BE ENHANCED BY OTHER LANDSCAPE MATERIALS.
- SHADED AREAS DENOTED BY [Pattern] ARE BUILDINGS.
- LANDSCAPED AREA (NOT INCLUDING R.O.W.S.) WILL BE A MINIMUM OF 10% OF TOTAL LOT AREA LESS THE BUILDING AREA.
- EXTERIOR BUILDING MATERIALS SHALL BE CONCRETE BLOCK, ALUMINUM AND GLASS STORE FRONT, METAL AND TRANSLUCENT PANELS OR SIMILAR CONSTRUCTION.
- ROOF MATERIALS MAY INCLUDE COMPOSITE, BUILT-UP, STANDING SEAM OR METAL PANEL ROOF.
- ALL SIGNS SHALL BE IN CONFORMANCE WITH SECTION 11-7a OF THE MIDLAND CITY CODE.
- ALL EXTERIOR LIGHTING SHALL ADHERE TO THE STANDARDS OUTLINED IN SECTION 11-10 OF THE MIDLAND CITY CODE.

SITE DATA	
SITE AREA	107,069 SF ±
BUILDING AREA (Foot Print)	37,730 SF ±
LANDSCAPE AREA REQUIRED	6,707 SF ±
LANDSCAPED AREA SHOWN (NOT INCLUDING ROW)	5159 SF ±
TREES REQUIRED-(3" Cal. Min.)	17
PARKING SPACES REQUIRED	200 Total Site
PARKING SPACES SHOWN	110 Existing Lot 97 Proposed
H.C. PARKING SPACES REQUIRED	7 Total Site
H.C. PARKING SPACES EXISTING	14
H.C. PARKING SPACES PROPOSED	3

A STREET COMMUNITY CENTER ADDITION SECTION 9







PLANNING AND ZONING COMMISSION

June 3, 2013

CASE: Z-11-052

REQUEST: Hold a public hearing and consider a request by COM Aquatics, Inc. for a zone change from PD, Planned District for a Community Center and a Planned District for a Shopping Center, to an Amended Planned District.

APPLICANT/OWNER: COM Aquatics, Inc.

LEGAL DESCRIPTION: Lot 3, Block 3, and the vacated 0.162-acre east/west alley, "A" Street Community Center, Section 3; and Lot 1C, Block 3; "A" Street Community Center, Section 7, City and County of Midland, Texas.

LOCATION: Generally located near the southwest corner of the intersection of W. Wadley Avenue and N. "A" Street.

CURRENT ZONING: PD, Planned District for a Community Center & PD, Planned District for a Shopping Center.

ASSOCIATED CASES: P-11-075 & V-12-001.

DETAILS OF REQUEST:

1. The applicant is requesting to rezone their property for the purpose of expanding the operations of the current COM Aquatics building to the south. This proposed rezoning takes in both the site where the new natatorium is to be constructed, as well as, the lot to the west to accommodate additional parking area. The PD, Planned District for a Shopping Center that is the current zoning on the site of the proposed building is governed by underlying LR-2, Local Retail District, regulations which limit the building height to 2 ½ standard stories and a new site plan also requires that this Planned District is amended to accommodate the proposed structure's height of nearly 42 feet. The parking area to the west is currently zoned as a PD, Planned District for a Community Center, this area would be combined into a single zoning to match the Site Plan (Exhibit – A). The applicant is requesting to rezone this property to a single Amended Planned District for a Shopping Center, with the exception for the height allowance is satisfied at no greater than 42 feet.

SURROUNDING ZONING AND LAND USE:

2. This property has frontage along North "A" Street, just south of the intersection with Wadley Avenue. West of the site is the Junior League Baseball Facility and the City Park, to the South the True-Life Christian Fellowship is just south of the main COM Aquatics Facility. The two latter land uses offer opportunity for overflow parking.

ANALYSIS:

3. The applicant's request to rezone this property is to allow for the future development of a new swimming facility that is the result of a long fundraising effort and cooperation with the City in securing the vacation of alley right-of-way, rerouting of public utilities, and replatting. City Council just approved the second reading of the vacation of the right-of-way of the alley, pending inspection and approval of re-routed sewer lines in December of 2012 and the Preliminary Plat was approved by the Planning and Zoning Commission in February, 2012. Parking for the area and its events was the primary concern with maximum occupancy for a pool facility not readily translated into onsite parking, planning staff asked Parkhill Smith & Cooper to provide a parking study (as part of the application process) based upon past events at the current COM Aquatics facility in addition to the anticipated needs of the future natatorium. No events would be scheduled at the two facilities simultaneously to put additional burden on the limited surface parking onsite. The results of the lengthy study indicated that a number of visiting teams arrive via bus without all parents attending, thereby utilizing parking at all meets. Drop-off users for summer camp programs had a similar reduced parking demand. Greatest demand was determined to be 157-168 spaces between the summer and school months with 187-193 spaces being the peak including the required staffing. In summary, the 110 existing parking spaces used by the current COM Aquatics facility would require roughly 80 additional parking spaces to meet peak demand. The new natatorium, which will displace some of that overflow parking, will offset this by providing 90 parking spaces by inclusion of the western lot into this planned district. In addition, the City has spoken with the applicant about securing additional overflow parking on adjacent properties if need requires. COM Aquatics has provided letters from both True Lite Church (approximately 260 spaces – empty nearly every day with the exception of Sundays) and a letter of The Junior League of Midland (approximately 90 spaces available) both provide open permission to use their parking lots with the exception of when the owner themselves are using them. The new site plan will have access to both "A" Street and to Wadley Avenue (via Wadley Court). Landscaping shortage may be offset with contribution to the Midland Parks & Recreation Endowment Fund. Routing and traffic circulation is acceptable in design and by fire code. Since the common alley will be used for this site's traffic extensively, the dumpsters; in their open location, will need to be screened with masonry to match the building. The new building will be primarily comprised of concrete block, glass, and architectural metal panels arranged in artistic, modern design (Exhibits – B & C). Staff finds this development to be a complementary expansion to the existing facility and provides an attractive, pedestrian-scale development in its design, despite its height.

STAFF RECOMMENDATION:

Staff recommends approval of this request for a zone change from a PD, Planned District for a Community Center and a Planned District for a Shopping Center, to an Amended Planned District subject to the below conditions.

1. The Planned District will be subject to regulations of the LR-2 District, except as stated below.

2. That the development shall be substantially consistent with Exhibits A, B & C.
3. That the maximum height of the building shall not exceed 42 feet.
4. That all roof or ground based utility equipment shall be appropriately screened.
5. That the proposed site plan must meet all requirements by the Fire Marshall's Office.
6. The proposed development must meet all building code requirements.
7. The proposed development will meet the requirements of the City of Midland Landscape code in place at the time of development.
8. That Ordinances 5811 and 7620 are amended by this action.



Ken VanDyne, Senior Planner
Acting Planning Division Manager
Department of Development Services



Ken Van Dyne
Acting Planning Division Manager
Department of Development Services

Attachments:

Application
Maps
Exhibits A, B, and C

Case Number: 2-11-052

CITY OF MIDLAND
Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

COM Aquatics, Inc.	432-684-7755
Applicant Name	(Phone/e-mail)
3003 North A Street	Midland, Texas 79705
Address	Zip Code
COM Aquatics, Inc.	432-684-7755
Property Owner Name	(Phone/e-mail)
3003 North A Street	Midland, Texas 79705
Address	Zip Code
Parkhill, Smith, and Cooper, Inc.	432-697-1447 EOliiver@team-psc.com
Representative Name	(Phone/e-mail)
1700 W. Wall Street, Suite 100	Midland, Texas 79701
Address	Zip Code

Street address and Legal Description of property (complete Lot, Block, and Subdivision Name or if unplatted, attach a Metes and Bounds description with surveyor's seal). Each district must be described separately. Being a replat of Lot 3, Block 3, "A" Street Community Center Section 3; Lot 1C, Block 3, "A" Street Community Center Section 7 and 0.306 Ac. of to be vacated alley right of way to the City of Midland, Texas

PRESENT ZONE: PD-CC and PD-SC REQUESTED ZONE: Amended PD-SC
(List by tracts if more than one district is requested)

Reason for Zone Change Request: To facilitate the development of the property into a new swimming facility.

Present Use of Property: Parking Lot

Proposed Use of Property: New Natatorium for COM Aquatics

How will zone change affect the public health, safety and welfare? None

Describe how conditions affecting the property have changed since present zoning designation:
None

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

APPLICATION FEES:

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

SITE PLAN SUBMITTALS (if applicable):

16 copies (FOLDED) of the PD site plan: X
Site Plan in digital format .pdf and .jpg: X

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

Property Owner (signature): _____ Date: _____

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

STATE of TEXAS
COUNTY OF MIDLAND

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

Eric L. West, P.E. who, being by me duly sworn, upon oath says: That (s)he is authorized by COM Aquatics, Inc., 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.

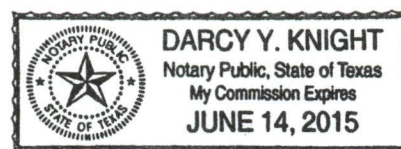
Eric L. West

Authorized Agent (signature)

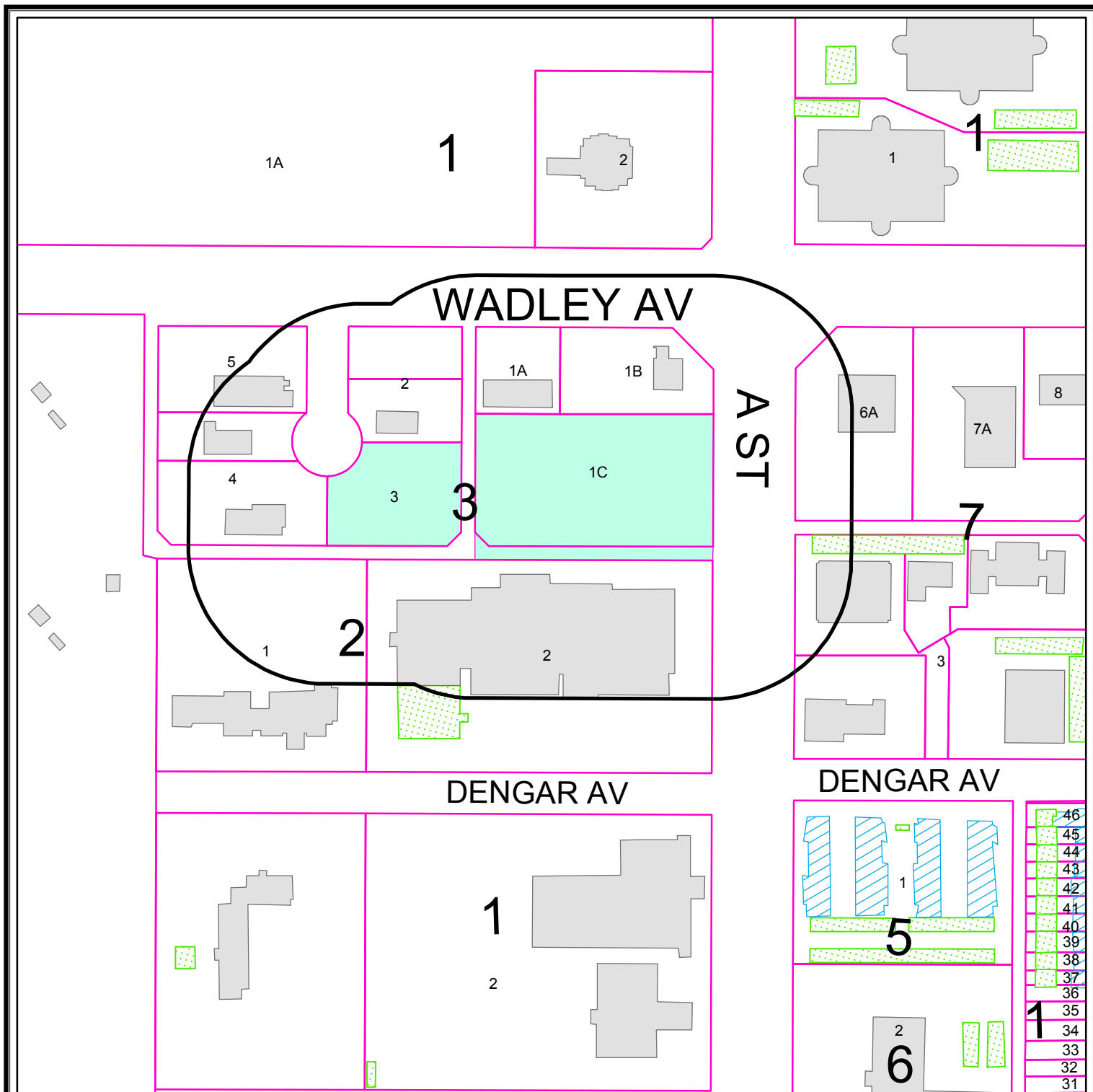
Subscribed and sworn to before me, this 29th day of October, 20 11, to certify which witness my hand and seal of office.

Darcy Y. Knight
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: <u>KV</u>	Date: <u>10/29/11</u>
Assigned: <u>KV</u>	
For: _____	On: _____



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



PROPERTY OWNER NOTIFICATION MAP

Z - 11 - 052

Scale: 1" = 200'

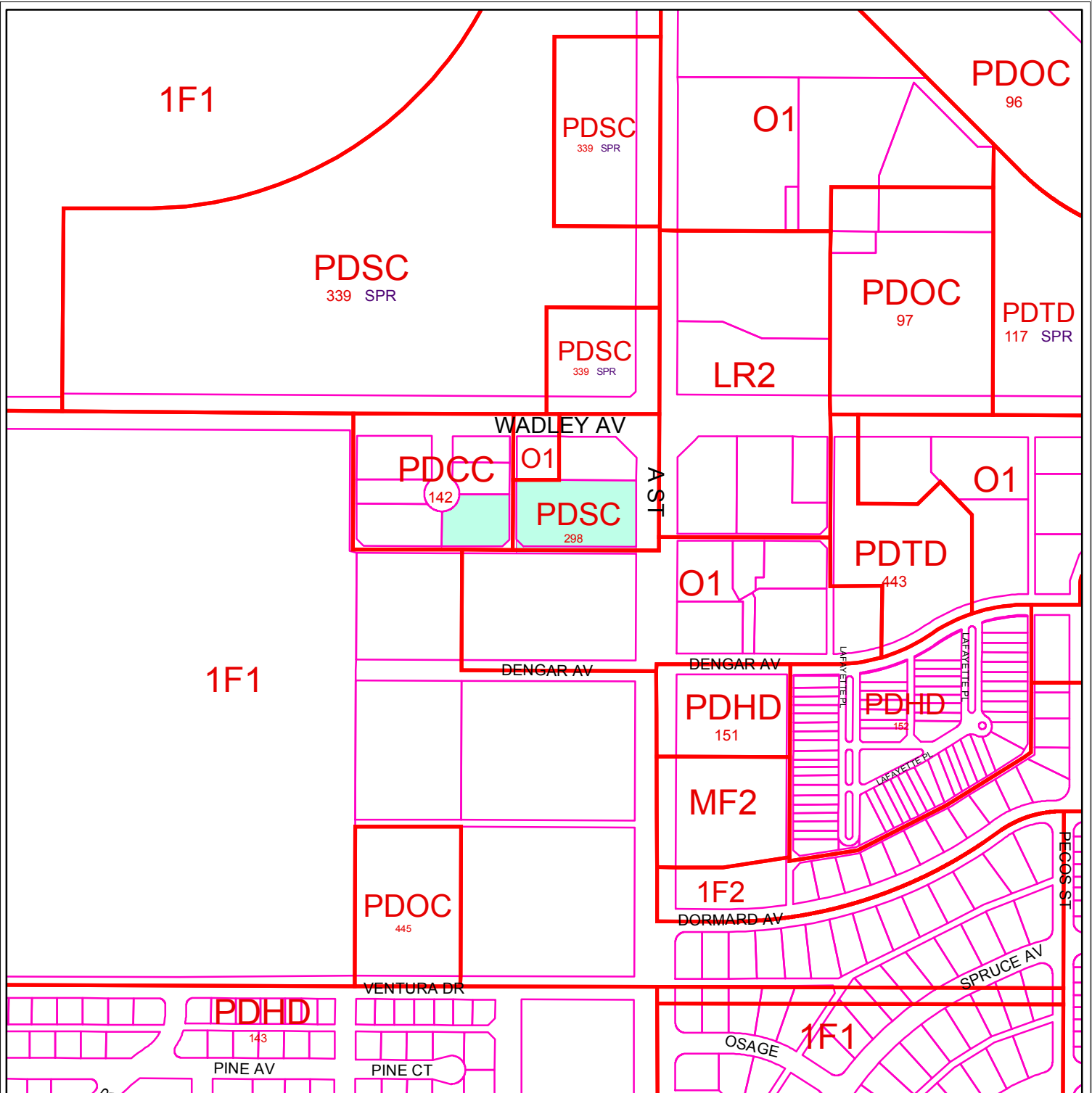
Consider a request for a zone change from PD, Planned District for a Community Center and a Planned District for a Shopping Center, to an Amended Planned District on Lot 3, Block 3, and the vacated 0.162-acre east/west alley, "A" Street Community Center, Section 3; and on Lot 1C, Block 3; "A" Street Community Center, Section 7, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



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ZONING MAP

Z - 11 - 052

Scale: 1" = 400'

Consider a request for a zone change from PD, Planned District for a Community Center and a Planned District for a Shopping Center, to an Amended Planned District on Lot 3, Block 3, and the vacated 0.162-acre east/west alley, "A" Street Community Center, Section 3; and on Lot 1C, Block 3; "A" Street Community Center, Section 7, City and County of Midland, Texas.

LEGEND

ZONING PARCELS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 02	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, JP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 6/25/2013

TO: City Council / City Manager

FROM: Steve Thorpe, Building Official

SUBJECT: Consider an ordinance amending City Code Sections 5-10-2 and 5-10-9 to include Midland County Courthouse, 500 N. Loraine. (DEVELOPMENT SERVICES)

Purpose:

To allow an approved person/business to sell food from a location on Tennessee Avenue east of Loraine Street, adjacent to Midland County Courthouse, 500 North Loraine Street for a period longer than the current time allowed and the Code Administration Division is the enforcement agency for this location's activity

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

none

Discussion:

The proposed amendments would allow a currently licensed vendor to obtain a special license to sell food for a Monday through Friday week at a location adjacent to the Midland County Courthouse, 500 North Loraine Street and return to that location after a week "off". The food units would receive an additional inspection from the Building Official to insure their appearance meets the desired aesthetics for the location. Additionally the Code Administration Division would be responsible for enforcement and the additional licensing of these vendors. The location would be on the north side of Tennessee Avenue, east of Loraine Street, directly adjacent to the Midland County Courthouse, 500 N. Loraine Street.

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE V, “BUSINESS REGULATIONS”, CHAPTER 10, “SIDEWALK SALES AND SELLING FROM FIXED LOCATIONS”, SECTION 2, “PERMIT AND LICENSE REQUIRED IF SELLING FROM A FIXED LOCATION”, AND SECTION 9, “DUTY OF POLICE”, SO AS TO ALLOW LICENSED FOOD VENDORS TO SELL FOOD AT A LOCATION ADJACENT TO THE MIDLAND COUNTY COURTHOUSE; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF FIVE HUNDRED DOLLARS (\$500.00); AND ORDERING PUBLICATION

WHEREAS, the City Council finds it to be in the public interest to make certain amendments to the City regulations regarding sidewalk sales and selling from fixed locations in order to allow licensed food vendors to sell food at a location adjacent to the Midland County Courthouse;

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

SECTION ONE. That Title V, “Business Regulations”, Chapter 10, “Sidewalk Sales and Selling From Fixed Locations”, Section 2, “Permit and license required if selling from a fixed location”, of the City Code of Midland, Texas, shall hereby be amended to read as follows:

5-10-2. Permit and license required if selling from a fixed location.

(a) A person who desires to do business from a fixed location, without traveling from place to place, shall make application for a license and a permit or permits from the chief of police, to do business in a fixed location. Said permit shall state that the operation of such business will be permitted at a specified location for a period not to exceed three days, and it shall be unlawful for such individual to continue to engage in such business for a period in excess of that stated in the permit. Further, once a specific location has been used by a permitted individual, no additional permits shall be issued to the same location for a period of not less than 15 days. The term “location” shall generally mean the same business site, such as a business or shopping center. No permit or license shall be issued for the operation of such business in a fixed location in zoning districts AE, Agricultural-Estate District through MF-2, Multiple-Family Dwelling District, as enumerated in Title XI, “Zoning Regulations,” Chapter 1, “Zoning,” of this Code. The application shall be the same as described in Section 5-10-1 of this Code.

A licensed and health department approved food vendor that desires to conduct business within the designated Texas Avenue right-of-way directly adjacent to Centennial

Plaza or Tennessee Avenue right-of-way directly adjacent to the Midland County Courthouse, located on Block 42, Homestead Addition, shall obtain a permit from the Building Official in the Code Administration Division, 4th Floor, City Hall, to conduct business for up to 1 business week beginning on Monday and ending on Saturday; sanctioned special events in Centennial Plaza may alter this schedule. A vendor may not obtain a permit for successive weeks. There shall be a maximum of three vendors allowed per business week at Centennial Plaza. The permit can be obtained beginning Monday of the week prior to vending from Centennial Plaza or the Tennessee Avenue right-of-way. Business hours shall be from 7:00 a.m. to 10:00 p.m. Equipment shall be removed each day and the space shall be cleaned. The Mobile equipment used at this location must obtain an inspection and approval from the Building Official prior to obtaining a permit. The inspection shall ensure the equipment is in acceptable physical condition and appearance.

(b) Except that the provisions of this subsection shall not apply to persons engaged in the business of selling firewood; said persons may sell firewood from October 1 to March 1. The provisions of the subsection shall also not apply to persons engaged in the business of the sale of ice cream from an ice cream truck which travels from place to place; said persons may conduct said business from April 1 to September 30.

(c) An individual who obtains a permit to do business from a fixed location shall only do business from 7:00 a.m. to 10:00 p.m.

(d) An individual engaging in business by virtue of a valid permit and/or license obtained under the provisions of this Chapter shall be allowed to display, sell and/or store goods, merchandise, commodities or other wares in the open, outside of a building, for the temporary period stated in such permit and/or license, notwithstanding the provisions of Title XI, "Zoning Regulations," of this Code prohibiting such open display, sale and storage in certain zoning districts.

SECTION TWO. That Title V, "Business Regulations", Chapter 10, "Sidewalk Sales and Selling From Fixed Locations", Section 9, "Duty of police", of the City Code of Midland, Texas, shall hereby be amended to read as follows:

5-10-9. Duty of police.

It shall be the duty of the Midland police department to enforce the provisions of this Chapter against any person found to be violating the same. In conjunction with said duty all Midland police officers shall have the authority to require any person seen operating from a fixed location to produce his license and/or permit.

The Building Official and staff of the Code Administration Division shall be responsible for enforcement regarding Centennial Plaza and Tennessee Avenue right-of-way food vendors.

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 five hundred dollars (\$500.00).

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 law as an alternative method of publication.

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

Council members voting “AYE”:

Council members voting “NAY”:

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

Council members voting “AYE”:

Council members voting “NAY”:

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

W. Wesley Perry, Mayor

ATTEST:

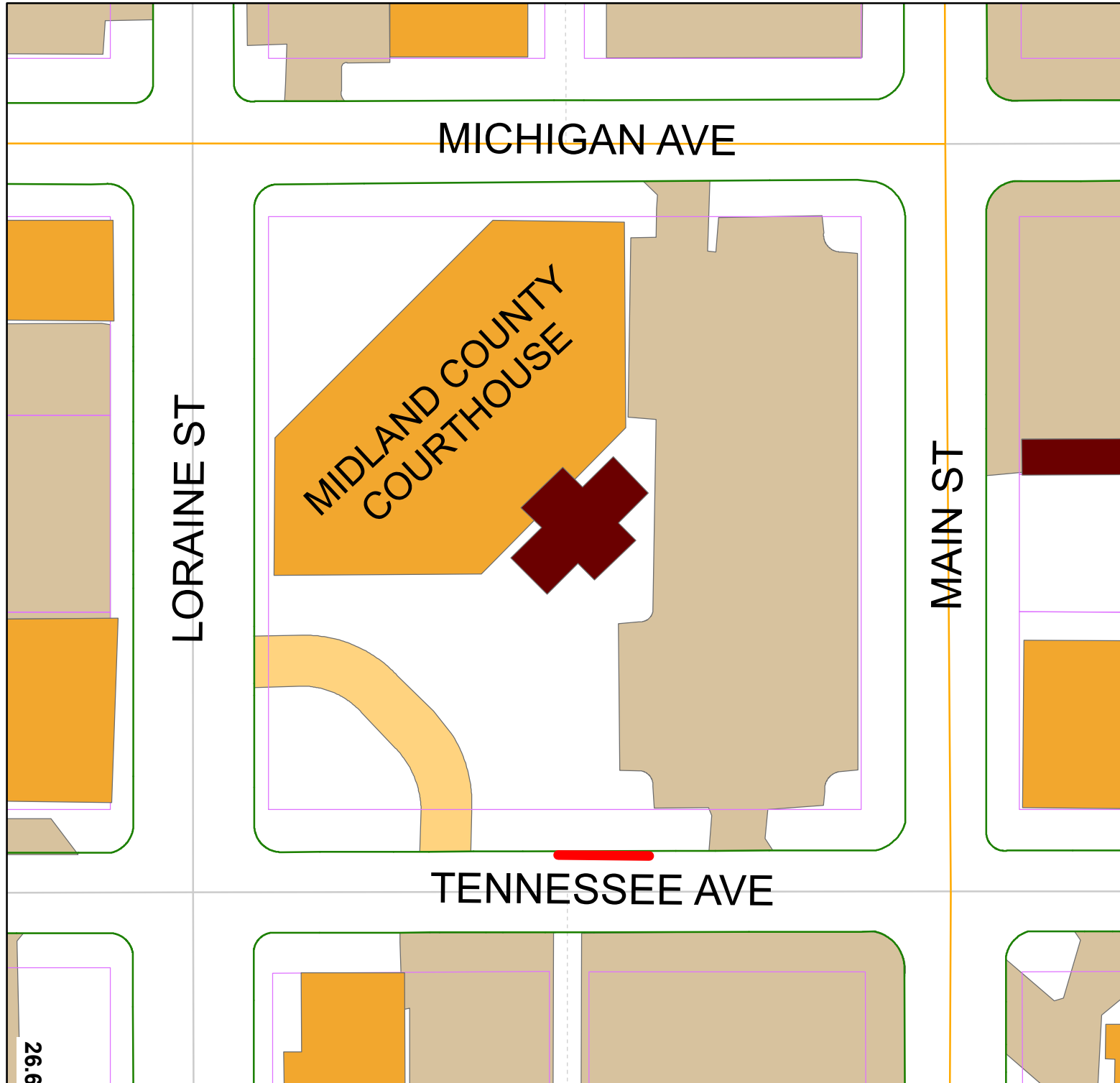
Amy M. Turner, Interim City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



Proposed 46'
vendor parking
area





City Council Agenda

Approved for Agenda:

City Manager's Office

MEETING DATE: June 25, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Ron Jenkins, Oil & Gas Compliance Coordinator

SUBJECT: Consider a resolution approving the issuance of a permit to Petroplex Energy, Inc. (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (Western-T 8 #3) located 467 feet from the north line and 2,058 feet from the west line located in Section 8, Block 39, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. (Generally located on the east side of the extension of North Midland Drive, approximately 1 mile north of the Green Tree Boulevard.)

Purpose:

To consider a resolution approving the issuance of a permit to Petroplex Energy, Inc. (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (Western-T 8 #3) located 467 feet from the north line and 2,058 feet from the west line located in Section 8, Block 39, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. The required 30-day public comment has passed and the Council may consider this request. No letters of objection received.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

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

Discussion:

The Oil and Gas Advisory Committee has reviewed this well site in detail and recommends application with updated tax certificate. Petroplex Energy, Inc. has addressed these recommendations and updated the application. The Committee is recommending the requested landscaping and irrigation variance until property changes ownership and at that time be reviewed by City Council. In addition Petroplex Energy is requesting a waiver for a road repair agreement since no city streets will be used.

Attachments: Application; Location map; Exhibit - Drill site map, Exhibit – Flow Line Location.

RESOLUTION NO. _____

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO PETROPLEX ENERGY, INC. (“OPERATOR”) TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 467 FEET FROM THE NORTH LINE AND 2,058 FEET FROM THE WEST LINE, SECTION 8, BLOCK 39, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF THE EXTENSION OF NORTH MIDLAND DRIVE, APPROXIMATELY 1 MILE NORTH OF GREEN TREE BOULEVARD); AND WAIVING THE REQUIREMENT OF A 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 May 14, 2013; and

WHEREAS, subsequent to said public hearing, and in accordance with Section 6-1-23(H)(1), the City Council allowed the public and Operator thirty (30) days to submit written input to the City Manager regarding Operator's application to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, the City Council has considered those issues set forth in Section 6-1-23(I) in determining whether to grant or deny a permit to Operator to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, the City Council finds it to be in the public interest to approve the issuance of a permit to Operator to drill an oil and gas well on the property described in Section Two hereof;

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

SECTION ONE. That the above recitals are hereby adopted and approved by the City Council of the City of Midland.

SECTION TWO. That the Mayor is hereby authorized and directed to execute a permit, on behalf of the City of Midland, that will allow Operator to drill an oil and gas well within the City limits located 467 feet from the north line and 2,058 feet from the west line, Section 8, Block 39, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. Said permit is attached hereto as Exhibit "A" and incorporated herein for all legal purposes.

SECTION THREE. That the requirement of a Road Repair Agreement between Operator and the City of Midland is hereby waived in regard to said permit.

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

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on June 25, 2013, considered the application of Petroplex Energy, Inc., dated December 31, 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 Petroplex Energy, Inc., dated December 31, 2012, and filed with the Oil & Gas Compliance Officer and incorporated herein for all legal purposes.

The location of Petroplex Energy, Inc., Western-T 8 #3 oil and gas well shall be 467 feet from the north line and 2058 feet from the west line, Section 8, Block 39, T-1-S, T & P RR Co. Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in that application of Petroplex Energy, Inc., 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 25, 2013, through June 25, 2014, and so long thereafter as oil or gas is produced or until such time as the permittee has permanently abandoned the operations of the well or facility for which this permit is issued.

NOTWITHSTANDING ANY OTHER PROVISION, PETROPLEX ENERGY, INC., HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY OF MIDLAND, CITY OF MIDLAND'S EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH PETROPLEX ENERGY, INC., HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKING CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS OR CITY OF MIDLAND'S NEGLIGENCE.

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts the permittee from its responsibilities or obligations as to third parties. The issuance of this permit only means that the permittee has, at this time, complied with Ordinance No. 8769 and that the Midland City Council, as a regulatory body, will allow the permittee to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize the recipient to act with impunity as to third parties, nor does it insulate the permittee from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize the permit holder from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a "negative pronouncement" that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. The permittee has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield the permittee from third party tort liability stemming from the consequences of the permitted activity.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, utility and drainage rights-of-way.

A variance granted for landscaping and irrigation to be consistent with the surface owner housing development plan.

A waiver granted for road repair agreement due to no city streets used by operator to access well or tank battery.

This permit shall constitute a written contract for purposes of insurance requirements.

In addition to the requirements of the Midland City Code, Ordinance 8769, and the requirements of this permit, including the General and Specific Conditions incorporated herein, Petroplex Energy, Inc., shall develop, maintain and operate the well described herein in accordance with the conditions, limitations and safeguards contained in Petroplex Energy, Inc., application for said well. Petroplex Energy, Inc., application for said well is incorporated herein by reference for all legal purposes.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS _____ day of June, 2013.

CITY OF MIDLAND, TEXAS

BY: _____

W. Wesley Perry, Mayor

UNDERSTOOD AND AGREE THIS _____ day of June, 2013.

Petroplex Energy, Inc.

By: _____

Don Hale, Director of Special Projects

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: _____
Don Hale, Director of Special Projects

Petroplex Energy, Inc.
110 N. Marienfeld
Midland, Texas 79702
(432) 687-2231

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. Variance granted June 25, 2013.

Landscaping and irrigation is to be consistent with housing development of surface owner.

(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: _____
Don Hale, Director of Special Projects

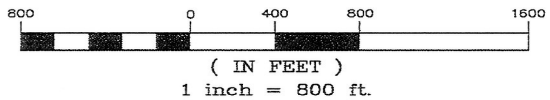
Petroplex Energy, Inc.
110 N. Marienfeld
Midland, Texas 79702
(432) 687-2222

RECEIVED

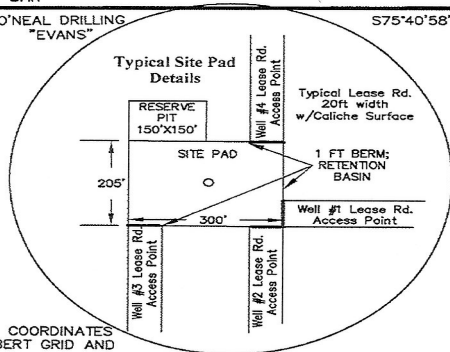
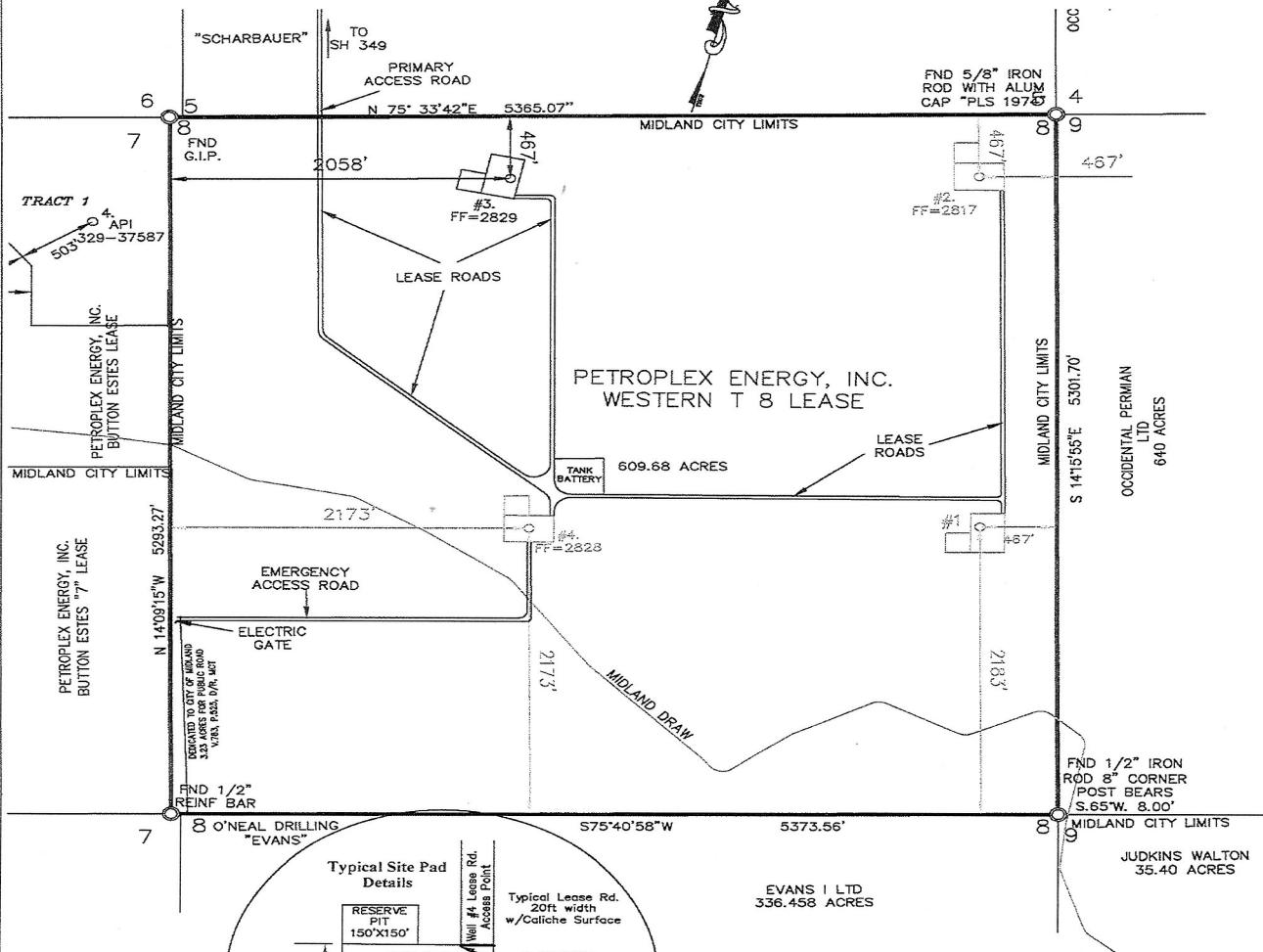
FEB 21 2013

EXHIBIT "G"

GRAPHIC SCALE



CITY OF MIDLAND
PLANNING DIVISION OFFICE



NOTES:

COURSES, DISTANCES AND COORDINATES SHOWN HEREON ARE LAMBERT GRID AND CONFORM TO THE "TEXAS COORDINATE SYSTEM", TEXAS CENTRAL ZONE, NORTH AMERICAN DATUM OF 1983. ALL DISTANCES AND COORDINATES ARE SHOWN IN GRID FEET.

THE UNDERSIGNED DOES HEREBY CERTIFY THAT THIS LOCATION WAS THIS DAY MADE ON THE GROUND BY ME OR UNDER MY SUPERVISION AND THAT THIS PLAT IS A CORRECT REPRESENTATION THEREOF.

DATED THIS 14TH DAY OF NOVEMBER, 2012

RJ DAUM
TEXAS RPLS 4826



revised lease name 10-25-2012

SCHUMANN ENGINEERING CO., INC.

REGISTERED PROFESSIONAL LAND SURVEYORS
LICENSED STATE LAND SURVEYORS

REGISTERED PROFESSIONAL CIVIL ENGINEERS
TEXAS and NEW MEXICO

Civil Engineering ~ Land Surveying

408 N. PECOS STREET - P. O. BOX 504
MIDLAND, TEXAS 79702-0504

Office (432) 684-5548
Fax (432) 684-6973

SITE PLAN

PETROPLEX ENERGY, INC.
WELL #3
WESTERN T8 LEASE

WELL NO. 3 [467 ft/NL, 2058 ft/WL]

SECTION 8, ABSTRACT 719,
BLOCK 39, T-1-S, T&P RR CO SURVEY,
MIDLAND COUNTY, TEXAS

QUAD: NORTHWEST MIDLAND
SCALE: 1" = 800'

PROJECT: 73423PEI
JOB NO: 73,423



APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information		
Date 12/31/12	Operator Name (must match W-1) Petroplex Energy, Inc.	Operator Address 110 N. Marienfeld Midland, TX 79702
Representative Name Don Hale	Representative Address (within Midland City Limits) 3011 Garden City Hwy	Rep. Tele. 432-687-2222 Rep. Fax 432-687-2231
Fee: \$4,000.00 Rec'd Yes ☒ No ☐	NOTE: All attachments need to bound and put in a binder before submitting.	Pages 1-4
Permit Compliance Contact (Choose 1): Option A: Don Hale 432-687-2222 No. 2 (Tele.): 432-687-2231 24/7 Answering Services - No. 1 (Tele.): Option B: Attached as Exhibit A Company Compliance Representative (Name, Address, Local Telephone) (ATTACH STATEMENT AS EXHIBIT A): Emergency Contact Representative (Name, Address, 24-Hour Tele. No.): Jim McCright 432-853-7900 Other Permitted Wells in City (ATTACH EXHIBIT B [see § J(26)]).		
II. Mineral Ownership		
Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease): 1. Petroplex Energy, Inc. P.O. Box 3082, Midland, TX 79702 2. The Jeffrey Family Trust 14812 W. Ravenswood Drive Sun City West, AZ 85375 3. ATTACHED AS EXHIBIT C is (a Title Opinion by John Collins, a licensed Texas Attorney/Title Commitment by Abstract Company/a Take-off from, a Certified Petroleum Landman/an opinion letter from, a licensed Texas Attorney) indicating that [Operator] has a legal right to develop the mineral estate that is the subject of this Application. [See § J(5)].		
III. Surface Ownership & Use		RECEIVED FEB 13 2013 CITY OF MIDLAND PLANNING DIVISION OFFICE
General Description of Current Surface Use (within 860 feet of proposed surface location): Ranch/Farm		
ATTACHED AS EXHIBIT D is (a Title Opinion by John Collins, a licensed Texas Attorney/a Take-off from, a Certified Petroleum Landman/Current Tax Roll from Midland Central Appraisal District), which lists the name(s) and address(es) of all surface owners within 860 feet of the surface well location. [See § J(7)].		

ATTACHED AS EXHIBIT E is a (map/p lat/satellite/aerial photo) depicting all Residences, commercial structures, public buildings, all publicly dedicated Streets and alleys, Rights of Way, and permanent accessory structures surrounding the proposed Drill Site. The (map/p lat/satellite/aerial photo) includes two circles, as required by the Ordinance—one depicting a 500 foot radius and one depicting an 860 foot radius from the proposed well's surface location. [See § J(10)].

ATTACHED AS EXHIBIT F is a copy of the notification letter(s) sent to 100 percent of the surface owners, Certified Mail, Return Receipt Requested. [See § J(36)].

IV. Well & Operations Information

Proposed Well Name: Western-T 8 #3

Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary)[See § J(11) and § L(4)]:

See Attached Exhibit V

Legal Description of Proposed Well Site:

467' FNL & 2058' FWL, Sec. 8, Blk. 39, T-1-S, T&P RR Survey

ATTACHED AS EXHIBIT G is the Location Site Plan [See § J(9)].

ATTACHED AS EXHIBIT H is the Map with the proposed transportation route(s) and road(s) for equipment, chemicals, or refuse products used or produced in the proposed oil and gas operations. [See § J(12)].

ATTACHED AS EXHIBIT I is a copy of the approved Texas Railroad Commission permit to drill (Form W-1), together with all attachments (also file copy of W-1 with City Secretary before commencement of drilling operations). [See § J(16) and (20)].

ATTACHED AS EXHIBIT J is a copy of the required TCEQ report as to depth of usable quality ground water. [See § J(17)].

ATTACHED AS EXHIBIT K (if applicable) is the list of alternative locations developed in consultation with the Oil & Gas Advisory Committee. [See § J(27)].

ATTACHED AS EXHIBIT L is the Fencing and Irrigation Plan. [See § J(30)].

ATTACHED AS EXHIBIT M is the Road Repair Agreement and Letter of Credit/Certificate of Deposit/Surety Bond in the amount of at least \$25,000. Option (if applicable): Applicant would further state that no City-owned streets or alleys will be used by the Operator in connection with its oil and gas operations and as a result, requests a waiver from the Council of this requirement. Option B (if applicable): Because Applicant has three Road Repair Agreements in effect that have been approved by the Council, Applicant requests that the Council consolidate all agreements into one and is filing the necessary \$75,000 letter of credit/certificate of deposit/surety bond in conjunction with this request. [See § J(31)].

(No City Streets Will Be Used)

ATTACHED AS EXHIBIT N is the Concept Plan depicting the proposed Operations Site (which includes tanks, roads, power lines, and pipeline routes). [See § J(32)].

Description of Public Utilities required during (1) drilling and (2) operations:

(1) Drilling: None

(2) Operations: Sharyland

Description of water source to be used during Drilling: Western-T water wells located in S/2 of Sec. 8, Blk. 39, T-1-S, T&P RR Survey

Description of all electric lines to production facilities (reference exhibits as necessary) [See § L(10)]:

Overhead electric lines

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]:

See Exhibit O

V. Additional Required Exhibits

ATTACHED AS EXHIBIT P is the *Letter of Credit/Certificate of Deposit* in accordance with Subsection (K)(2). [See § J(18)].

ATTACHED AS EXHIBIT Q are Tax certificates from Midland Central Appraisal District to be submitted indicating that all taxes on personal and real property, including minerals, owned by Applicant are current. [See § J(29)].

ATTACHED AS EXHIBIT R is the required Insurance Certificate. [See § J(19) and § K(3)].

ATTACHED AS EXHIBIT S (if applicable) is the Drainage Plan approved by the City Engineer relating to Applicant's proposed operations. [See § J(21)].

ATTACHED AS EXHIBIT T is Applicant's Emergency Action Response Plan. [See § J(22)].

ATTACHED AS EXHIBIT U is Applicant's Hazardous Materials Management Plan, a copy of which has been submitted and is on file with the Midland Fire Department. [See § J(23)].

Petroplex Energy, Inc.
[NAME OF COMPANY]

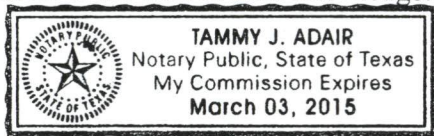
Don Hale

By Don Hale
Its Director of Special Projects

State of Texas)

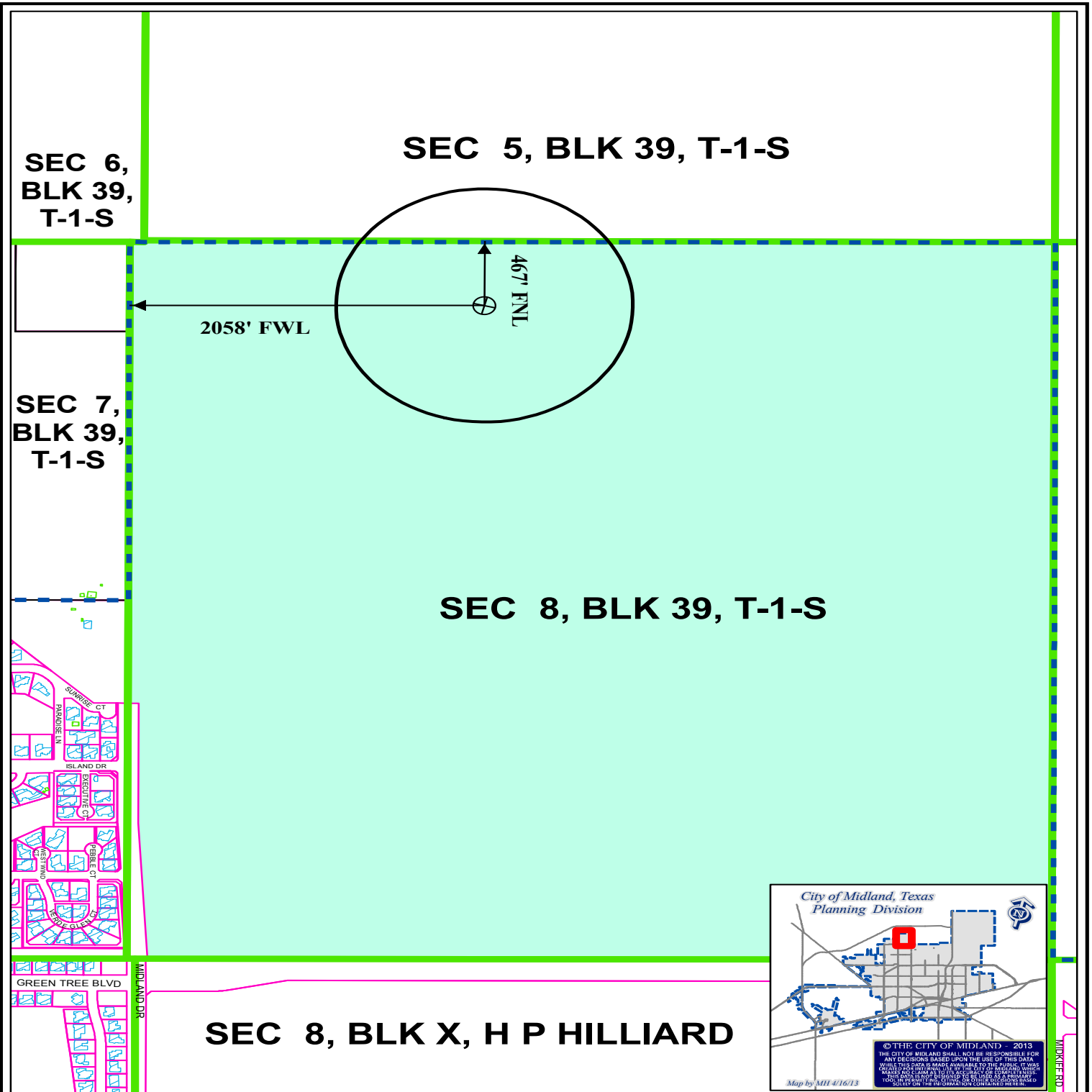
County of Midland)

, personally appeared before me, and being first duly sworn declared he/she signed the application in the capacity designated, if any, and further states that he/she has read the above application and attached exhibits and the statements therein are true and correct to the best of their knowledge.



Tammy J. Adair
Notary Public, State of Texas

[SEAL]



LOCATION AND ZONING MAP

O - 13 - 004

Scale: 1" = 800'

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 467' FNL and 2058' FWL, Section 8, Block 39, T-1-S, T & P RR Co. Survey, Midland County, Texas.

Western-T 8 #3

LEGEND

	CITY PARCELS		PUBLIC BLDGS		CITY LIMITS
	COUNTY PARCELS		PRIVATE BLDGS		860 FT. BUFFER
	ZONING		ACCESSORY BLDGS		SURVEY SEC.

ZONING DISTRICTS:

FD
PD
AE
1F1, 1F2, 1F3
MH
TH
2F
MF1, MF2

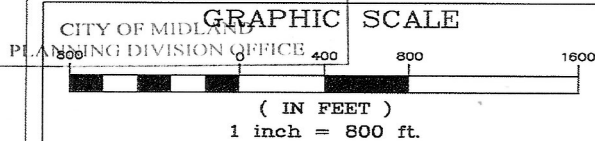
FUTURE DEVELOPMENT
PLANNED DISTRICT
AGRICULTURE ESTATE
ONE-FAMILY DWELLING
MOBILE HOME DWELLING
TOWNHOUSE DWELLING
TWO-FAMILY DWELLING
MULTIPLE FAMILY DWELLING

BP
P
01, 02
NS
LR1, LR2, LR3
C1, C2, C3
IP, JP1, IP2, IP3
LI
HI

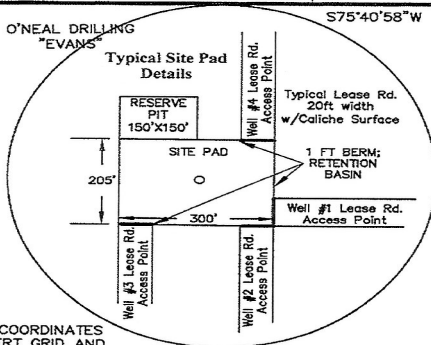
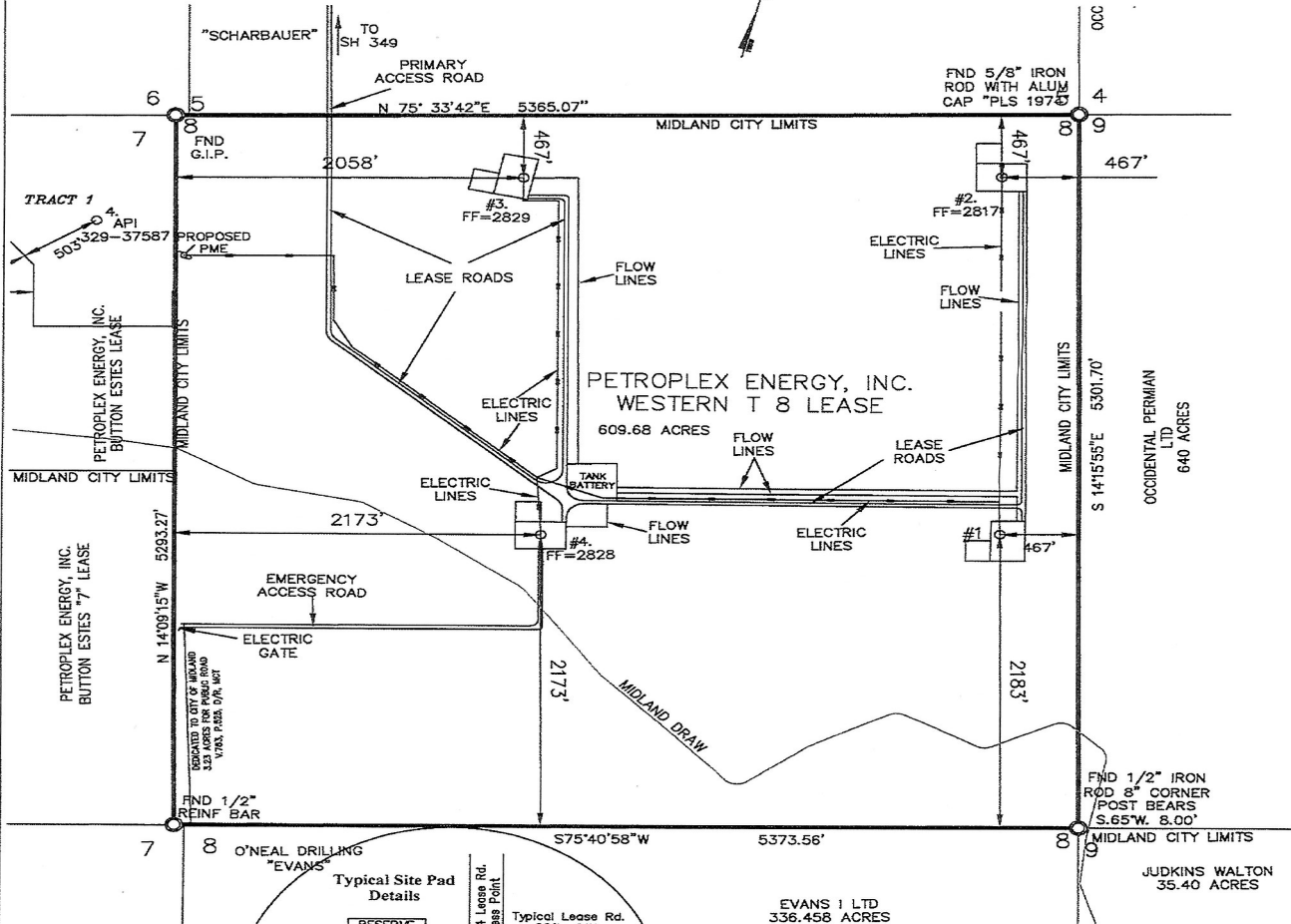
BUSINESS PARK
PARKING
OFFICE
NEIGHBORHOOD SERVICE
LOCAL RETAIL
COMMERCIAL
INDUSTRIAL PARK
LIGHT INDUSTRY
HEAVY INDUSTRY

RECEIVED

FEB 21 2013



ATTACHMENT "G-4"



NOTES:

COURSES, DISTANCES AND COORDINATES SHOWN HEREON ARE LAMBERT GRID AND CONFORM TO THE "TEXAS COORDINATE SYSTEM", TEXAS CENTRAL ZONE, NORTH AMERICAN DATUM OF 1983. ALL DISTANCES AND COORDINATES ARE SHOWN IN GRID FEET.

THE UNDERSIGNED DOES HEREBY CERTIFY THAT THIS LOCATION WAS THIS DAY MADE ON THE GROUND BY ME OR UNDER MY SUPERVISION AND THAT THIS PLAT IS A CORRECT REPRESENTATION THEREOF.

DATED THIS 14TH DAY OF NOVEMBER, 2012

RJ DAUM
TEXAS RPLS 4826

revised lease name 10-25-2012



SCHUMANN ENGINEERING CO., INC.

REGISTERED PROFESSIONAL LAND SURVEYORS
LICENSED STATE LAND SURVEYORS

REGISTERED PROFESSIONAL CIVIL ENGINEERS
TEXAS and NEW MEXICO

Civil Engineering ~ Land Surveying

408 N. PECOS STREET - P. O. BOX 504
MIDLAND, TEXAS 79702-0504

Office (432) 684-5548
Fax (432) 684-6973

SITE PLAN

PETROPLEX ENERGY, INC.
WELLS 1, 2, 3 & 4
WESTERN T8 LEASE

WELL NO. 1 [2183 ft/SL, 467 ft/EL]

WELL NO. 2 [467 ft/NL, 467 ft/EL]

WELL NO. 3 [467 ft/NL, 2058 ft/WL]

WELL NO. 4 [2173 ft/SL, 2173 ft/WL]

SECTION 8, ABSTRACT 719,
BLOCK 39, T-1-S, T&P RR CO SURVEY,
MIDLAND COUNTY, TEXAS

QUAD: NORTHWEST MIDLAND
SCALE: 1" = 800'

PROJECT: 73423PEI
JOB NO: 73,423



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: June 25, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Ken Van Dyne, Acting Planning Division Manager

SUBJECT: Consider an ordinance annexing and adopting a service plan for Tract 1, being a 40.498-acre tract of land out of Section 37, 38 and 48, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas. (Generally located at the south extension of Avalon Drive, approximately 700 feet south of Hall of Fame Boulevard)

Purpose: Consider an ordinance annexing and adopting a service plan for Tract 1, being a 40.498-acre tract of land out of Section 37, 38 and 48, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas. (Generally located at the south extension of Avalon Drive, approximately 700 feet south of Hall of Fame Boulevard)

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

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

Discussion:

Public hearings were held on June 25th and June 26th, 2013. It is now appropriate for the Council to consider an ordinance annexing and adopting a service plan for this 40.498-acre tract. As a reminder, this is a voluntary annexation with residential development plans submitted and under review with the City.

Attachments:

Map
Proposed Ordinance
Exhibit B: Service Plan

ORDINANCE NO.

AN ORDINANCE EXTENDING THE BOUNDARIES OF THE CITY OF MIDLAND, TEXAS, BY ADDING THERETO CERTAIN AREAS ADJOINING THE PRESENT CITY LIMITS, BEING A 40.498-ACRE TRACT OF LAND OUT OF SECTIONS 37, 38 AND 48, BLOCK 40, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS, AND BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS IN SECTION ONE HEREOF (GENERALLY LOCATED AT THE SOUTH EXTENSION OF AVALON DRIVE, APPROXIMATELY 700 FEET SOUTH OF HALL OF FAME BOULEVARD); AND APPROVING A PUBLIC SERVICE PLAN

WHEREAS, public hearings before the City Council of the City of Midland, Texas, a home rule municipal corporation, where all interested persons were provided an opportunity to be heard on the proposed annexation of the hereinafter described territory, were held in the City Council Chambers on May 28, 2013 and May 29, 2013; and

WHEREAS, notice of such public hearings was published in a newspaper having general circulation in the City of Midland, Texas, and in the below described territory, on May 17, 2013;

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

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

Being a 40.498-acre tract of land out of Sections 37, 38 and 48, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas, and being more fully described by metes and bounds attached hereto as Exhibit "A" and incorporated herein by reference for all legal purposes.

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

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

thereof.

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

Council members voting "AYE":

Council members voting "NAY":

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

Council members voting "AYE":

Council members voting "NAY":

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

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

TRACT 1

ZONING - FD, FUTURE DEVELOPMENT

METES AND BOUNDS DESCRIPTION of a 40.498 Acre Tract of Land being 40.135 acres out of a 40.498 Acre Tract of Land, as recorded in Instrument No. 2013-5263, Official Public Records, Midland County, Texas, and a 0.363 Acre Tract of Land described as Exhibit B as recorded in Instrument No. 2013-8477, Official Public Records, Midland County, Texas, located in Section 37, Section 38, and Section 48, Block 40, T-1-S, T. & P. RR. Co. Survey, Midland County, Texas.

BEGINNING at (N=10689414.20 & E=1728297.74) a 1/2" iron rod and plastic cap marked "RPLS 4413" found in the west line of Section 37, the east line of Section 38, Block 40, T-1-S, T. & P. RR. Co. Survey, Midland County, Texas, the east line of a 634.887 acre tract of land as recorded in Volume 3131, Page 210, Official Public Records, Midland County, Texas, the southwest corner of a 108.712 acre tract of land as recorded in Instrument No. 2012-3638, Official Public Records, Midland County, Texas, for the northwest corner of a 40.498 acre tract of land as recorded in Instrument No. 2013-5263, Official Public Records, Midland County, Texas, and the northwest corner of this tract from which a 1/2" iron rod and plastic cap marked "RPLS 4413" found for the northwest corner of the 108.712 acre tract of land bears N 14°25'48" W a distance of 2417.76 feet;

THENCE, along the north boundary line of the 40.498 acre tract of land and the south boundary line of the 108.712 acre tract of land, S 84°27'35" E a distance of 2349.72 feet to a 1/2" iron rod and plastic cap marked "RPLS 4413" found in the north ROW line of a 40 foot wide pipeline easement as recorded in Volume 42, Page 289, Midland County Deed Records, the northeast corner of the 40.498 acre tract of land, the most southerly corner of the 108.712 acre tract of land and the northeast corner of this tract;

THENCE, along the east boundary line of the 40.498 acre tract of land, S 30°42'19" E a distance of 20.00 feet to a point in the center of said pipeline easement for the southeast corner of the 40.498 acre tract of land and the southeast corner of this tract, from which a City of Midland Control Point marked "43/93" bears S 12°53'34" E a distance of 9436.9 feet;

THENCE, along the south boundary line of the 40.498 acre tract of land and the centerline of said pipeline easement, S 59°17'41" W at a distance of 35.46 feet cross the south line of said Section 37 and the north line of said Section 48, Block 40, T-1-S, T. & P. RR. Co. Survey, Midland County, Texas, from which a 1" black iron pipe found for the southwest corner of said Section 37 bears S 75°19'36" E a distance of 91.64 feet and a 1" black iron pipe found for the northwest corner of said Section 48 bears S 75°19'36" W a distance of 91.57 feet, continuing for a total distance of 2499.30 feet to a 3/4" galvanized iron pipe and plastic cap marked "RPLS 4413" set in the west line of said Section 48, the east line of Section 47, Block 40, T-1-S, T. & P. RR. Co. Survey, Midland County, Texas, and the east line of the 634.887 acre tract of land for the southwest corner of this tract, from which a 1" black iron pipe found for the southwest corner of said Section 48 and the southeast corner of said Section 47 bears S 14°16'09" E a distance of 4659.26 feet;

THENCE, along the west line of said Section 48, the east line of said Section 47, the east boundary line of the 634.887 acre tract of land and the west boundary line of the 40.498 acre tract of land, N 14°16'09" W a distance of 156.99 feet to a point of curve to the right in the west line of said Section 48, the east line of said Section 47, the east boundary line of the 634.887 acre tract of land, the west boundary line of the 40.498 acre tract of land, the most southerly corner of a 0.363 acre tract of land described as Exhibit A as recorded in Instrument No. 2013-8477, Official Public Records, Midland County, Texas, and a corner of this tract;

THENCE, along the east boundary line of the 0.363 acre tract of land described as Exhibit A, with a curve to the right having a radius of 1500.00 feet, delta angle of 17°58'42" and an arc length of 470.67 feet (chord bearing N 05°16'48" W a distance of 468.74 feet), to a point for a corner of the 0.363 acre tract of land described as Exhibit A and a corner of this tract;

THENCE, along the east boundary line of the 0.363 acre tract of land described as Exhibit A, N 03°42'33" E at a distance of 59.38 feet pass the north line of said Section 48 and the south line of said Section 38, the northeast corner of the 0.363 acre tract of land described as Exhibit A and the southwest corner of a 0.363 acre tract of land described as Exhibit B, as recorded in Instrument No. 2013-8477, Official Public Records, Midland County, Texas, continuing for a total distance of 114.29 feet to a point of curve to the left for a corner of the 0.363 acre tract of land described as Exhibit B and a corner of this tract;

THENCE, along the west boundary line of the 0.363 acre tract described as Exhibit B, with a curve to the left having a radius of 1500.00 feet, delta angle of 18°08'21" and an arc length of 474.88 feet, (chord bearing N 05°21'37" W a distance of 472.90 feet), to a point in the west line of said Section 37, the east line of said Section 38, the east line of the 634.887 acre tract of land for the most northerly corner of the 0.363 acre tract of land described as Exhibit B and for a corner of this tract;

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APR 25 2013

CITY OF MIDLAND
PLANNING DIVISION OFFICE

Page 1 of 2

Exhibit "A"

CASE NO. 2-13-017

28.5

THENCE, along the west line of said Section 37, the east line of said Section 38, the east line of the 634.887 acre tract of land and the west boundary line of the 40.498 acre tract of land, N 14°25'48" W a distance of 326.76 feet to the POINT OF BEGINNING.

Bearing, Distances and Coordinates are based upon the Texas State Plane Coordinate System NAD 83 Central Zone and are relative to the City of Midland GPS Control Monuments as provided by the City of Midland. Acreages shown are surface values.



Michael L. Stanford

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APR 25 2013

CITY OF MIDLAND
PLANNING DIVISION OFFICE

Page 2 of 2

CASE NO. 2-13-017

28.6

EXHIBIT B

SERVICE PLAN FOR Tract 1

Being a 40.498-acre tract of land out of Section 37, 38 and 48, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas. (Generally located at the south extension of Avalon Drive, approximately 700 feet south of Hall of Fame Boulevard.)

DEVELOPMENT SERVICES

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

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

UTILITIES

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

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

POLICE

Existing Services: None

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

FIRE

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

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

COMMUNITY SERVICES

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

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

**SEC 38,
BLK 40,
T-1-S**

**SEC 37,
BLK 40,
T-1-S**

**SEC 47,
BLK 40,
T-1-S**

SEC 48, BLK 40, T-1-S

PROPOSED ANNEXATION MAP

M - 13 - 004

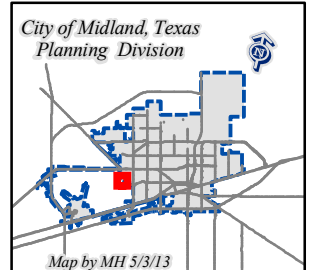
Scale: 1" = 500'

TRACT 1

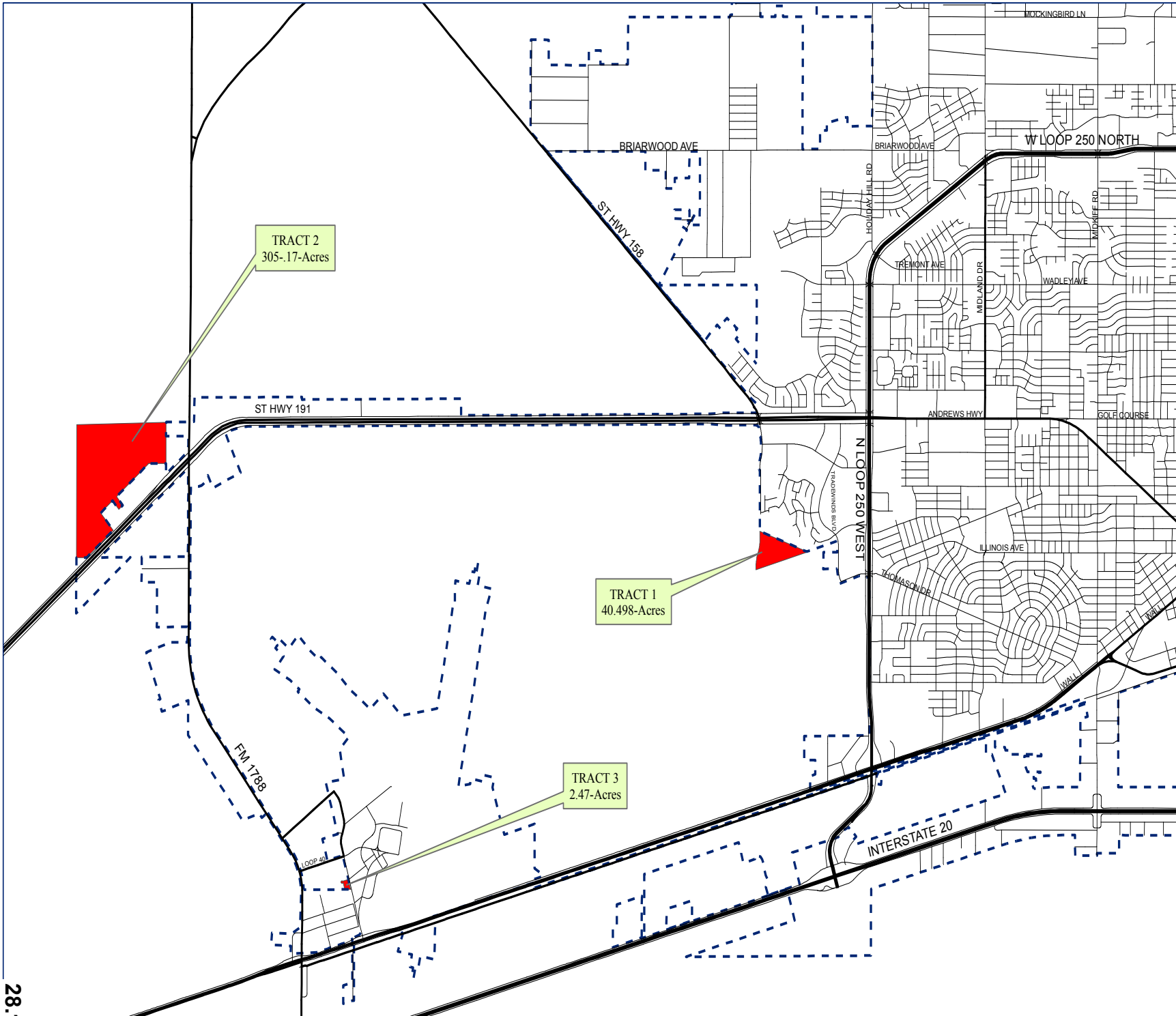
Consider a request for the annexation of a 40.498-acre tract of land out of Sections 37, 38 and 48, Block 40, T-1-S, T & P RR Co. Survey, Midland County, Texas.

LEGEND

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



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Proposed Annexation

May 10, 2013

LEGEND

- Streets
- City Limits
- Annexation Tract



PLANNING DIVISION
Map by MH

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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: June 25, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Ken Van Dyne, Acting Planning Division Manager

SUBJECT: Consider an ordinance annexing and adopting a service plan for Tract 2, being a 305.17-acre tract of land out of Section 37, Block 41, T-1-S, T&P RR Co. Survey, Midland County, Texas. (Generally located on the north side of State Hwy 191 west side of N. FM 1788)

Purpose: Consider an ordinance annexing and adopting a service plan for Tract 2, being a 305.17-acre tract of land out of Section 37, Block 41, T-1-S, T&P RR Co. Survey, Midland County, Texas. (Generally located on the north side of State Hwy 191 west side of N. FM 1788)

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

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

Discussion:

Public hearings were held on June 25th and June 26th, 2013. It is now appropriate for the Council to consider an ordinance annexing and adopting a service plan for this a 305.17-acre tract. As a reminder, this is a voluntary annexation submitted by the applicant, but may have been initiated by the City through the terms of the Agricultural Exemption Agreement. Development plans have been submitted and are under review with the City.

Attachments:

Map
Proposed Ordinance
Exhibit B: Service Plan

ORDINANCE NO.

AN ORDINANCE EXTENDING THE BOUNDARIES OF THE CITY OF MIDLAND, TEXAS, BY ADDING THERETO CERTAIN AREAS ADJOINING THE PRESENT CITY LIMITS, BEING A 305.17-ACRE TRACT OF LAND OUT OF SECTION 37, BLOCK 41, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS, AND BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS IN SECTION ONE HEREOF (GENERALLY LOCATED ON THE NORTH SIDE OF STATE HIGHWAY 191, WEST OF NORTH FARM-TO-MARKET ROAD 1788); AND APPROVING A PUBLIC SERVICE PLAN

WHEREAS, public hearings before the City Council of the City of Midland, Texas, a home rule municipal corporation, where all interested persons were provided an opportunity to be heard on the proposed annexation of the hereinafter described territory, were held in the City Council Chambers on May 28, 2013 and May 29, 2013; and

WHEREAS, notice of such public hearings was published in a newspaper having general circulation in the City of Midland, Texas, and in the below described territory, on May 17, 2013;

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

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

Being a 305.17-acre tract of land out of Section 37, Block 41, T-1-S, T&P RR Co. Survey, Midland County, Texas, and being more fully described by metes and bounds attached hereto as Exhibit "A" and incorporated herein by reference for all legal purposes.

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

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

thereof.

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

Council members voting "AYE":

Council members voting "NAY":

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

Council members voting "AYE":

Council members voting "NAY":

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

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

TRACT 2

ZONING - LI, LIGHT INDUSTRIAL

Legal Description:

BEING a 305.17 acre tract of land situated in Section 37, Block 41, T-1-S, T&P RR Co., Midland County, Texas, and being more fully described by metes and bounds as follows:

BEGINNING at (N:10,680,333.64, E:1,697,375.73) a 1/2 inch iron rod in Stone Mound found for the Southwest corner of said Section 37 and the Southeast corner of Section 38, Block 41, T-1-S, T&P RR Co. Survey, Midland County, Texas, and the Southwest corner of the herein described tract;

THENCE N 14°06'06" W, with the West line of said Section 37, a distance of 5325.2 feet to (N:10,685,498.48, E:1,696,078.24) a 1/2 inch iron rod found for the Northwest corner of said Section 37 and the Northeast corner of said Section 38, and the Northwest corner of the herein described tract;

THENCE N 74°59'19" E, a distance of 4159.7 feet to a point on the North Section line of said Section 37 and the South Section line of said Section 36, for the Northeast corner of the herein described tract;

THENCE S 14°10'06" E, with the West boundary line of said Calvary chapel tract and that certain tract of land as described in deed to Steve L. Holifield Sr., Volume 1666, Page 335, Official Public Records, Midland County, Texas, a distance of 60.0 feet pass a 1/2 inch iron rod found on the West boundary line of said Calvary chapel tract and continuing on for a total distance of 1637.0 feet to a 1/2 inch iron rod with red plastic cap marked "West Co. Midland" set for an exterior corner of the herein described tract;

THENCE S 75°45'28" W, with the North boundary line of that certain tract of land as described in deed to Absolute Investments, Inc., recorded in Instrument number 2012-22283, Official Public Records, Midland County, Texas, a distance of 838.1 feet to a 1/2 inch iron rod with red plastic cap marked

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MAY 21 2013

CITY OF MIDLAND
PLANNING DIVISION OFFICE

Exhibit "A"

CASE NO. 2-13-023

"West Co. Midland" set for an interior corner of the herein described tract;

THENCE S 13°56'07" E. in and across said Section 37, a distance of 25.0 feet to a 1/2 inch iron rod with red plastic cap marked "West Co. Midland" set for an exterior corner of this herein described tract;

THENCE S 34°41'17" W. in and across said Section 37, a distance of 1970.6 feet to a 1/2 inch iron rod with red plastic cap marked "West Co. Midland" set for an interior corner of the herein described tract;

THENCE S 55°18'12" E. in and across said Section 37, a distance of 449.9 feet to a 1/2 inch iron rod with red plastic cap marked "West Co. Midland" set for an exterior corner of the herein described tract;

THENCE S 34°38'41" W. in and across said Section 37, a distance of 246.5 feet to a 1/2 inch iron rod with red plastic cap marked "West Co. Midland" set for an exterior corner of the herein described tract;

THENCE N 55°18'12" W. in and across said Section 37, a distance of 450.4 feet to a 1/2 inch iron rod with red plastic cap marked "West Co. Midland" set for an interior corner of the herein described tract;

THENCE S 34°41'48" W. in and across said Section 37, a distance of 739.6 feet to a 1/2 inch iron rod with red plastic cap marked "West Co. Midland" set for an interior corner of the herein described tract;

THENCE S 55°18'12" E. in and across said Section 37, a distance of 900.6 feet to a 1/2 inch iron rod with red plastic cap marked "West Co. Midland" set in the Northwest right-of way line of said State Highway 191 for an exterior corner of the herein described tract;

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MAY 21 2013

CITY OF MIDLAND
PLANNING DIVISION OFFICE

CASE NO. 2-13-023

THENCE S 34°45'31" W, with the Northwest right-of-way line of said State Highway 191, a distance of 1665.7 feet to a point on the South Section line of said Section 37 for an exterior corner of the herein described tract;

THENCE S 75°05'11" W, with the South Section line of said Section 37 and the North Section line of Section 48, Block 41, T-1-S, T&P RR Co. Survey, Midland County, Texas, a distance of 437.2 feet to the POINT OF BEGINNING.

Subject tract containing 305.17 acres of land.

NOTE:

THIS DESCRIPTION NOT TO BE USED FOR TRANSFERING TITLE!

M. Hostas 5/21/13




CASE NO. 2-13-023

EXHIBIT B

SERVICE PLAN FOR Tract 2

Being a 305.17-acre tract of land out of Section 37, Block 41, T-1-S, T&P RR Co. Survey, Midland County, Texas. (Generally located on the north side of State Hwy 191 west side of N. FM 1788)

DEVELOPMENT SERVICES

Existing Services: State maintained public roads FM 1788 & SH 191 Service Drives.

- A. Type of service to be provided upon annexation: Tract 2 is adjacent to FM 1788 & SH 191. Maintenance of roads internal to the pending subdivision plat and public improvements will become the City's responsibility following construction by the developer(s) and acceptance by the City. Engineering services, platting, traffic studies and controls will be provided as warranted. Development and utility extension plans, right-of-ways, easements, and other typical development matters are anticipated on this tract.
- B. Capital improvements to begin within 2 1/2 years: None

UTILITIES

Existing Services: Water services are located within the vicinity of Tract 2, but water mains will need to be extended to serve any development in accordance with City regulations.

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

POLICE

Existing Services: None

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

FIRE

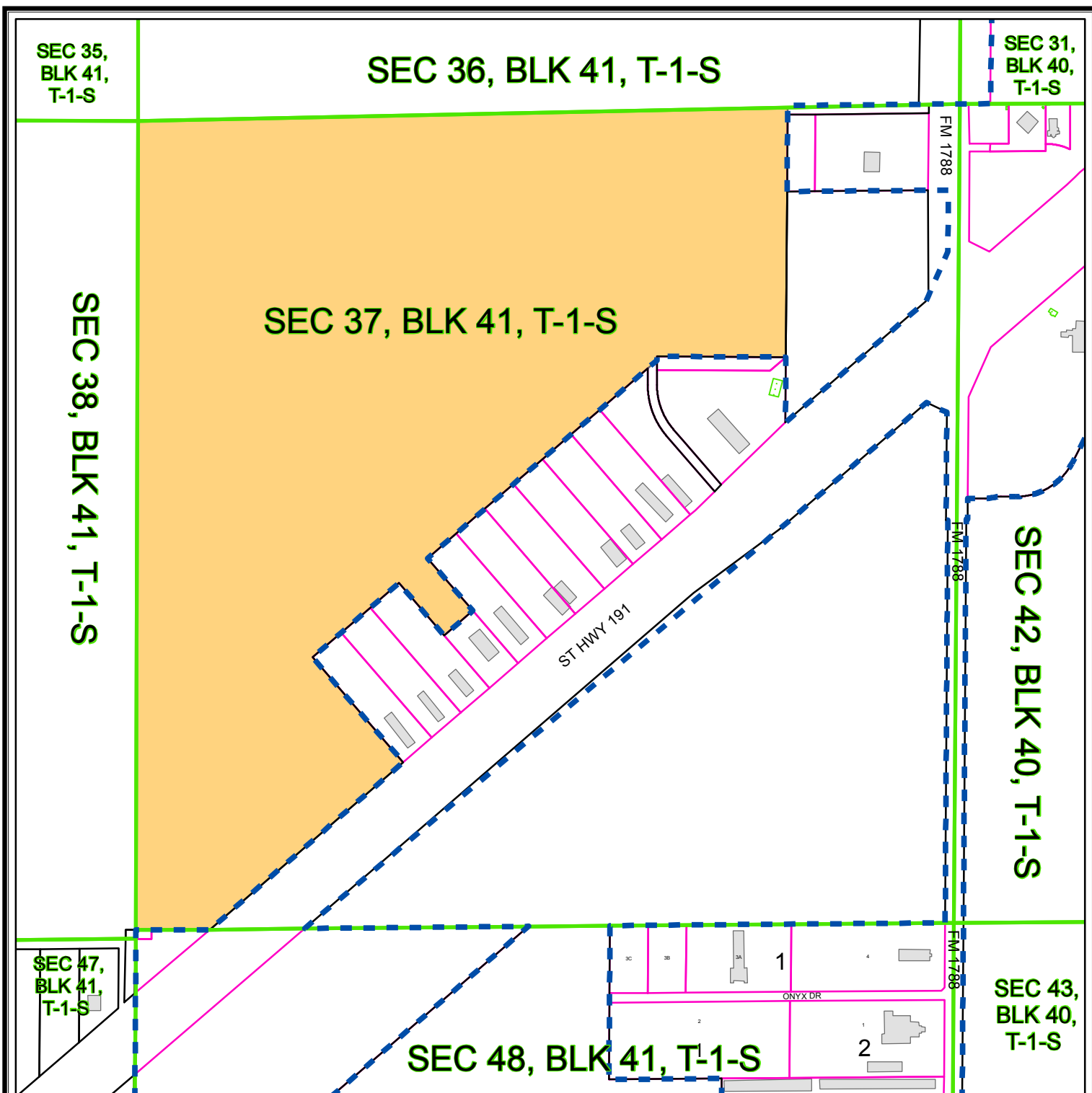
Existing Services: Fire and emergency response provided through agreement with Midland County

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

COMMUNITY SERVICES

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

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



PROPOSED ANNEXATION MAP

M - 13 - 007

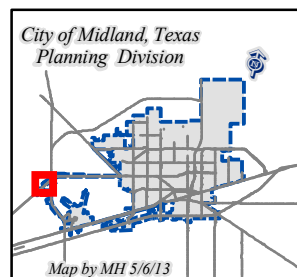
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TRACT 2

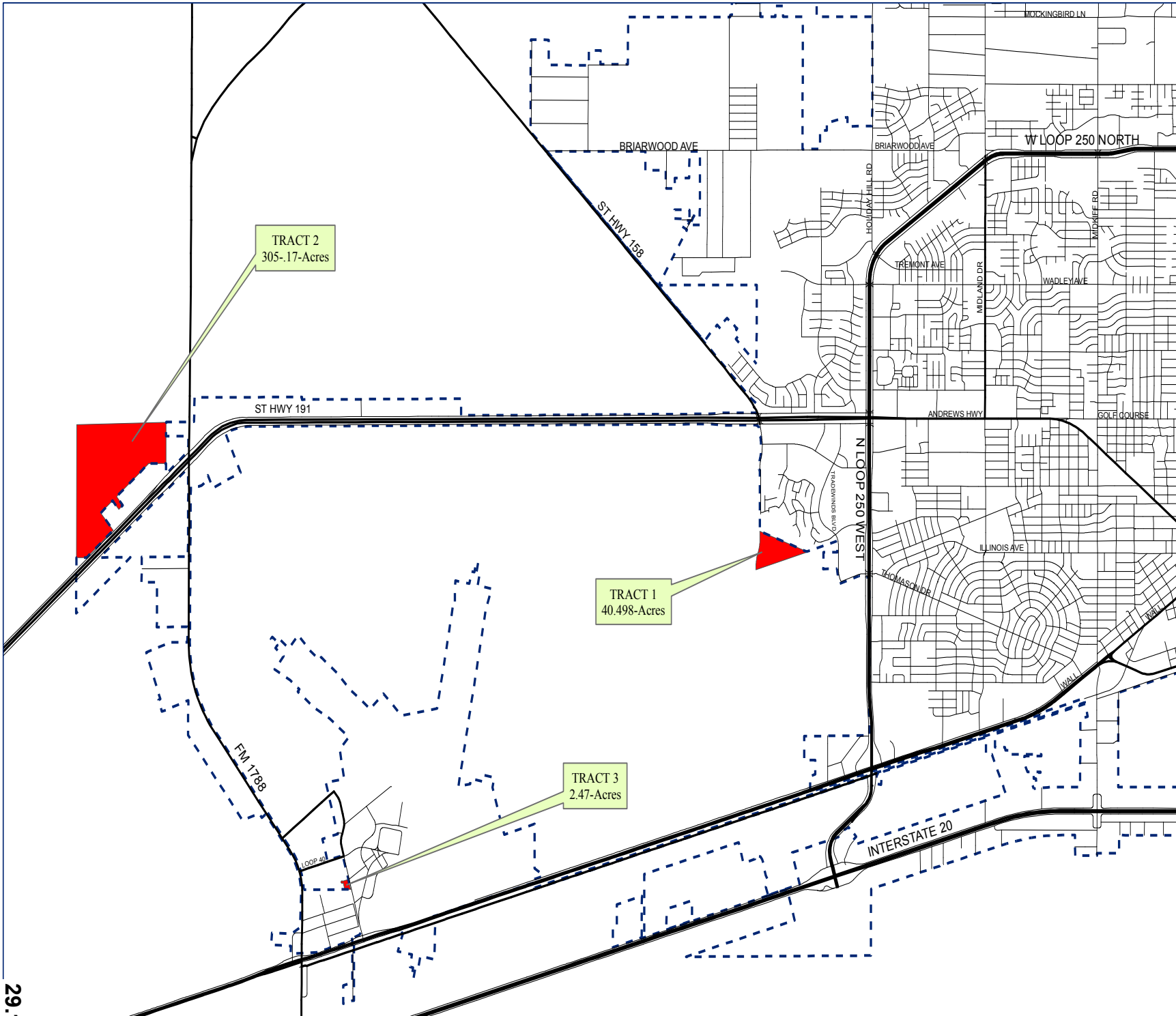
Consider a request for the annexation of a 305.17-acre tract of land out of Section 37, Block 41, T-1-S, T & P RR Co. Survey, Midland County, Texas.

LEGEND

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



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Proposed Annexation

May 10, 2013

LEGEND

- Streets
- City Limits
- Annexation Tract



PLANNING DIVISION
Map by MH

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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: June 25, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Ken Van Dyne, Acting Planning Division Manager

SUBJECT: Consider an ordinance annexing and adopting a service plan for Tract 3, being a 2.47-acre tract of land out of Section 8, Block 40, T-2-S, T&P RR Co. Survey, Midland County, Texas. (Generally located on the west side of Wright Drive, approximately 850 feet south of Loop 40)

Purpose: Consider an ordinance annexing and adopting a service plan for Tract 3, being a 2.47-acre tract of land out of Section 8, Block 40, T-2-S, T&P RR Co. Survey, Midland County, Texas. (Generally located on the west side of Wright Drive, approximately 850 feet south of Loop 40)

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

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

Discussion:

Public hearings were held on June 25th and June 26th, 2013. It is now appropriate for the Council to consider an ordinance annexing and adopting a service plan for this a 2.47-acre tract. As a reminder, this is a voluntary annexation submitted by the applicant, but may have been initiated by the City through the terms of the Agricultural Exemption Agreement. Development plans have been submitted and are under review with the City.

Attachments:

Map
Proposed Ordinance
Exhibit B: Service Plan

ORDINANCE NO.

AN ORDINANCE EXTENDING THE BOUNDARIES OF THE CITY OF MIDLAND, TEXAS, BY ADDING THERETO CERTAIN AREAS ADJOINING THE PRESENT CITY LIMITS, BEING A 2.47-ACRE TRACT OF LAND OUT OF SECTION 8, BLOCK 40, T-2-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS, AND BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS IN SECTION ONE HEREOF (GENERALLY LOCATED ON THE WEST SIDE OF WRIGHT DRIVE, APPROXIMATELY 850 FEET SOUTH OF LOOP 40); AND APPROVING A PUBLIC SERVICE PLAN

WHEREAS, public hearings before the City Council of the City of Midland, Texas, a home rule municipal corporation, where all interested persons were provided an opportunity to be heard on the proposed annexation of the hereinafter described territory, were held in the City Council Chambers on May 28, 2013 and May 29, 2013; and

WHEREAS, notice of such public hearings was published in a newspaper having general circulation in the City of Midland, Texas, and in the below described territory, on May 17, 2013;

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

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

Being a 2.47-acre tract of land out of Section 8, Block 40, T-2-S, T&P RR Co. Survey, Midland County, Texas, and being more fully described by metes and bounds attached hereto as Exhibit "A" and incorporated herein by reference for all legal purposes.

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

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

thereof.

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

Council members voting "AYE":

Council members voting "NAY":

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

Council members voting "AYE":

Council members voting "NAY":

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

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

TRACT 3
ZONING - IP-2, INDUSTRIAL PARK

**LEGAL DESCRIPTION FOR A 2.47 ACRE TRACT
BEING PART OF PROPOSED LOT 1, BLOCK 4,
DEVON ADDITION, SECTION 4 AND A PART OF SECTION 8,
BLOCK 40, T-2-S, T. & P. RR. CO. SURVEY,
CITY OF MIDLAND, MIDLAND COUNTY, TEXAS**

Boundary being further described by metes and bounds as follows:

BEGINNING at (Y= 10,671,245.90', X= 1,712,930.07') a 1/2" iron rod with plastic cap marked "PLS 1974" set on the West right-of-way line of Wright Drive and the most Northerly Northeast corner of said Proposed Lot 1, Block 4 and this tract, from whence the Northwest corner of said Section 8 bears N29°58'29"W, a distance of 2212.02 feet and S75°17'06"W, a distance of 1702.05 feet;

THENCE S29°58'29"E with the West right-of-way line of said Wright Drive and the East line of said Proposed Lot 1, Block 4, at 420.00 feet pass a 1/2" iron rod with plastic cap marked "PLS 1974" set at the Southeast corner of said Lot 1, Block 4 continuing for a total distance of 426.80 feet to the Southeast corner of this tract;

THENCE S74°54'08"W along a Midland city limits line, a distance of 275.23 feet to the Southwest corner of this tract;

THENCE N29°58'29"W with the West line of said Proposed Lot 1, Block 4, a distance of 280.26 feet to a 1/2" iron rod with plastic cap marked "PLS 1974" set at the Northwest corner of said Proposed Lot 1, Block 4 and the beginning of a non-tangent curve;

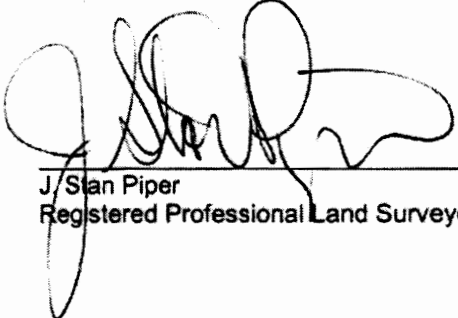
THENCE around a non-tangent curve to the right in a Northwesterly direction with the a Proposed Temporary Turn-Around Easement to be dedicated on said Proposed Devon Addition, Section 4 with a radius of 50.00 feet, an arc length of 249.81, a delta angle of 286°15'36" and a chord distance of 60.00 feet which bears N29°58'29"W to a 1/2" iron rod with plastic cap marked "PLS 1974" set on the North right-of-way line of Proposed Lindbergh Drive, Section 4 and an interior corner of this;

THENCE N59°50'14"E with the North line of said Proposed Lindbergh Drive and said Proposed Devon Addition, Section 4, a distance of 251.00 feet to a 1/2" iron rod with plastic cap marked "PLS 1974" set at an interior corner of said Devon Addition, Section 4 and of this tract;

THENCE N14°55'53"E with a cutback line of said Proposed Lindbergh Drive and said Proposed Devon Addition, Section 4, a distance of 21.25 feet to the **PLACE OF BEGINNING**. (Tract contains 107,582 square feet or 2.47 acres.)

Bearings, distances and coordinates are relative to Texas State Plane Coordinate System, Central Zone, 1983/86 NAD, with a combined grid factor of 0.9998706 for mean project datum. The theta angle is equal to -0°58'09.9" at City of Midland control station "Warfield" with published values of N=10,664,066.89' and E= 1,712,553.67' in U.S. Survey Feet.

I, J. Stan Piper, Registered Professional Land Surveyor, do hereby certify that this legal description is based on an actual survey made by me or under my supervision, and that the same is true and correct to the best of my knowledge and ability as surveyed on the ground on March 27, 2013.


J. Stan Piper
Registered Professional Land Surveyor #1974

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

RECEIVED PER SURVEYING BOX 60432; MIDLAND, TX 79711; (432) 550-7810

MAY 10 2013

CITY OF MIDLAND
PLANNING DIVISION OFFICE

Exhibit "A"

CASE NO. 2-13-024

EXHIBIT B

SERVICE PLAN FOR Tract 3

Being a 2.47-acre tract of land out of Section 8, Block 40, T-2-S, T&P RR Co. Survey, Midland County, Texas. (Generally located on the west side of Wright Drive, approximately 850 feet south of Loop 40)

DEVELOPMENT SERVICES

Existing Services: State maintained public roads FM 1788 & City maintained Wright Drive.

- A. Type of service to be provided upon annexation: Tract 3 is adjacent to FM 1788 & Wright Drive. Maintenance of roads internal to the pending subdivision plat and public improvements will become the City's responsibility following construction by the developer(s) and acceptance by the City. Engineering services, platting, traffic studies and controls will be provided as warranted. Development and utility extension plans, right-of-ways, easements, and other typical development matters are anticipated on this tract.
- B. Capital improvements to begin within 2 1/2 years: None

UTILITIES

Existing Services: Water and sewer services are located within the vicinity of Tract 3, but water and sewer mains will need to be extended to serve any development in accordance with City regulations.

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

POLICE

Existing Services: None

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

FIRE

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

- A. Fire and EMS Service to be provided upon the effective date of annexation: All services are currently available and will continue following annexation.

B. Capital improvements to begin within 2 1/2 years: None anticipated.

COMMUNITY SERVICES

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

A. Type of service to be provided upon annexation: Animal Control services including pick up, impoundment, records maintenance, adoption and education will be immediately available.

B. Capital improvements to begin within 2 1/2 years: None anticipated.

Case Number: M-13-006

CITY OF MIDLAND
Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

Younger Partners, Ltd.	432-682-9031
Applicant Name	(Phone/e-mail)
P.O. Box 11004	79701-1004
Address	Zip Code

SAME	
Property Owner Name	(Phone/e-mail)
Address	Zip Code

Parkhill, Smith & Cooper, Inc.	432-697-1447
Representative Name	(Phone/e-mail)
1700 W. Wall, Suite 100	79701
Address	Zip Code

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

PRESENT ZONE: N/A REQUESTED ZONE: IP-2
(List by tracts if more than one district is requested)

Reason for Zone Change Request: _____

Present Use of Property: Vacant Lot

Proposed Use of Property: Industrial park uses

How will zone change affect the public health, safety and welfare? It will not affect it.

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

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

APPLICATION FEES:

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

SITE PLAN SUBMITTALS (if applicable):

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

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

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

Property Owner (signature): _____ Date: _____

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

STATE of TEXAS
COUNTY OF MIDLAND

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

Jared A. Squyres who, being by me duly sworn, upon oath says: That (s)he is authorized by Younger Partners, Ltd., 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)

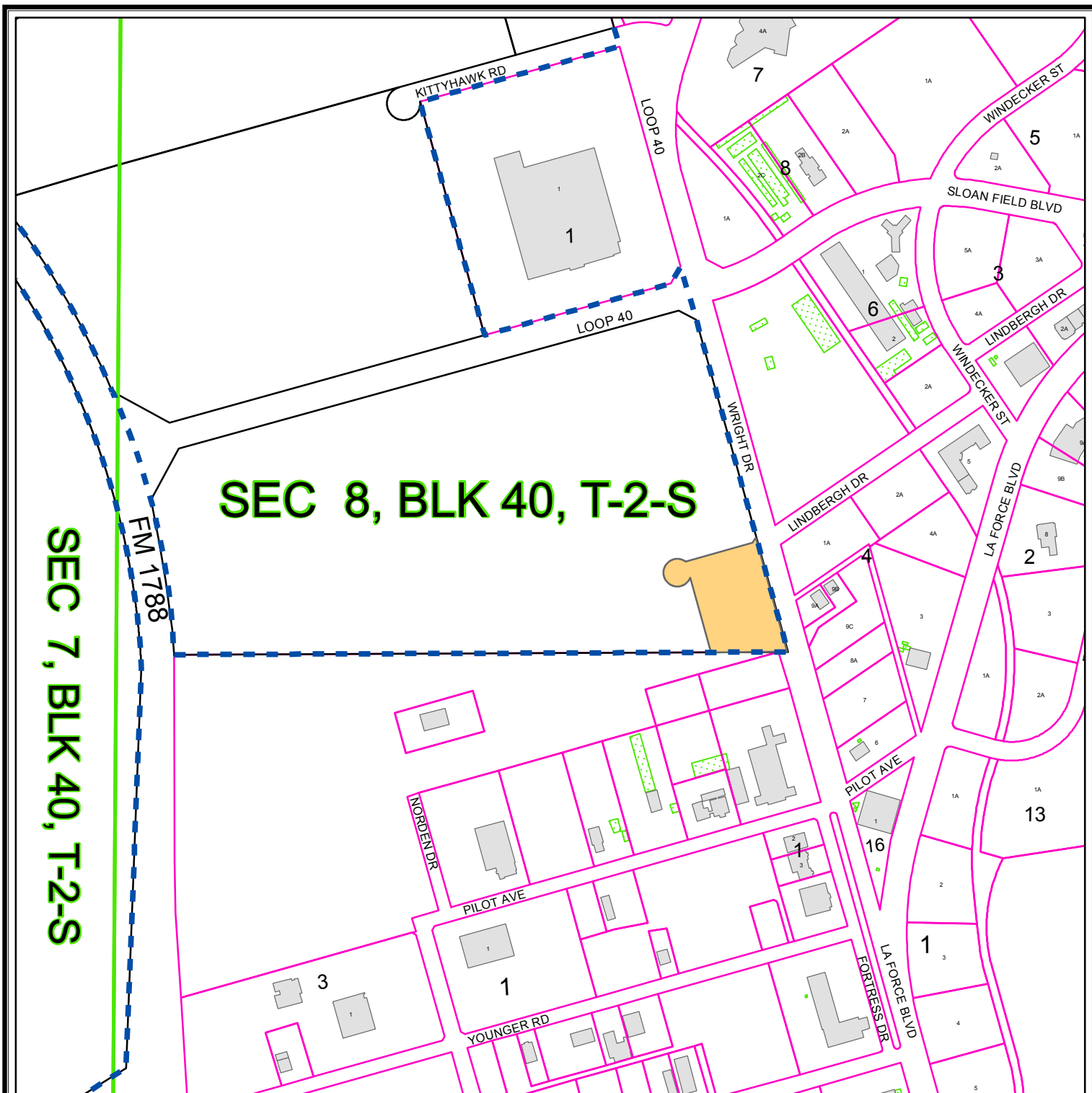
Subscribed and sworn to before me, this 7th day of June, 20 13, to certify which witness my hand and seal of office.

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: _____	Date: _____
Assigned: <u>KV</u>	
For: <u>CC</u>	On: _____



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



PROPOSED ANNEXATION MAP

M - 13 - 006

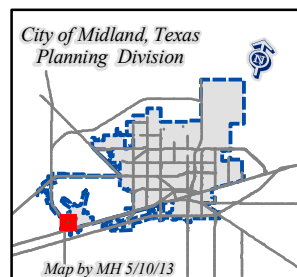
Scale: 1" = 500'

TRACT 3

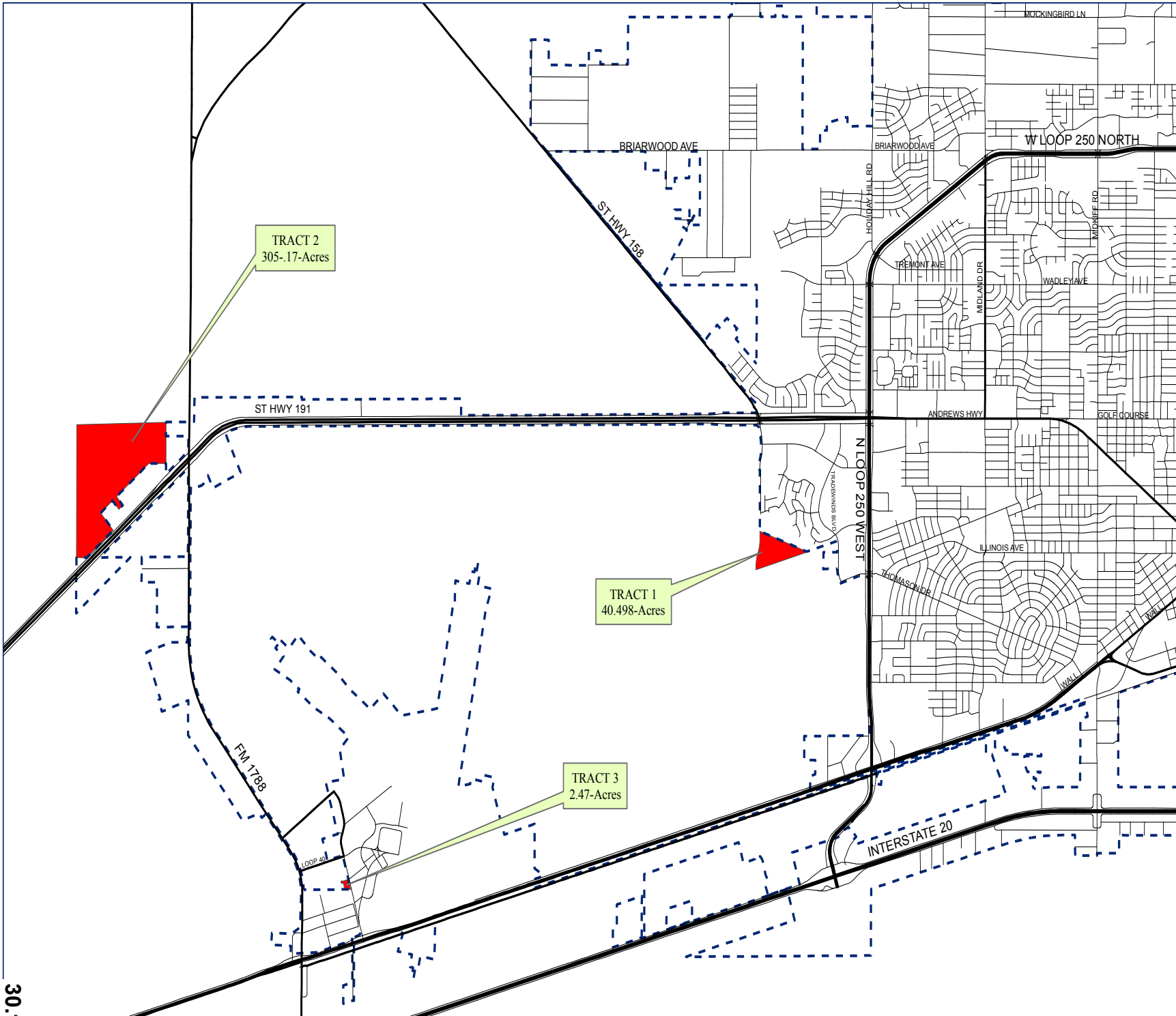
Consider a request for the annexation of a 2.47-acre tract of land out of Section 8, Block 40, T-2-S, T & P RR Co. Survey, Midland County, Texas.

LEGEND

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



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THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA WHILE THIS DATA IS MADE AVAILABLE TO THE PUBLIC. IT WAS CREATED FOR INTERNAL USE BY THE CITY OF MIDLAND WHICH MAKES NO CLAIM AS TO ITS ACCURACY OR COMPLETENESS. THIS DATA IS NOT DESIGNED TO BE USED AS A PROFESSIONAL TOOL IN PERMITTING, ENGINEERING, OR OTHER DECISION-MAKING. SOLELY ON THE INFORMATION CONTAINED HEREIN.



Proposed Annexation

May 10, 2013

LEGEND

- Streets
- - - City Limits
- Annexation Tract



PLANNING DIVISION
Map by MH

©THE CITY OF MIDLAND - 2013
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA. WHILE THIS DATA IS MADE AVAILABLE TO THE PUBLIC, IT WAS CREATED FOR INTERNAL USE BY THE CITY OF MIDLAND WHICH MAKES NO CLAIM AS TO ITS ACCURACY OR COMPLETENESS. THIS DATA IS NOT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING, ZONING, OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.



City Council Agenda

Approved for Agenda:

City Manager's Office

MEETING DATE: June 25, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Ken Van Dyne, Acting Planning Division Manager

SUBJECT: Consider a motion directing staff to begin the annexation of approximately 36 acres of land upon request by the property owner.

Purpose: Consider a motion directing staff to begin the annexation of approximately 36 acres of land upon request by the property owner.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

Additional land to be developed under City regulations in an expanded growth area.

Discussion:

Staff has met with the owner's representative and discussed development in this area located at FM 1788 and Loop 40 (adjacent to the U.S. Post Office) and has received an application and materials to begin the platting process. The owner would like to be annexed into the City for the benefit of City services. This is considered a voluntary annexation in accordance with the Agricultural Exemption Agreement that is currently in effect on this property.

Staff is requesting Council's direction to add this land parcel to the proposed annexation.

Attachment:

Location map

ORDINANCE NO.

AN ORDINANCE VACATING AND ABANDONING A 0.13-ACRE PORTION OF ALLEY RIGHT-OF-WAY ADJACENT TO LOTS 18-21, BLOCK 166, A 0.25-ACRE PORTION OF ALLEY RIGHT-OF-WAY ADJACENT TO LOTS 1-15, BLOCK 165, A 0.14-ACRE PORTION OF ALLEY RIGHT-OF-WAY ADJACENT TO LOTS 1-4, BLOCK 167, A 1.78-ACRE PORTION OF LESLIE DRIVE RIGHT-OF-WAY, AND A 0.64-ACRE PORTION OF KRISTIE LANE RIGHT-OF-WAY, ALL OUT OF WILSHIRE PARK ADDITION, SECTION 11, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTHEAST CORNER OF THE INTERSECTION OF LEISURE DRIVE AND BEAL PARKWAY); ADOPTING THE APPRAISAL BY THE CITY MANAGER OF \$192,073.50; AND ORDERING RECORDATION BY THE CITY SECRETARY

WHEREAS, it has been determined by the Midland City Council that a 0.13-acre portion of alley right-of-way adjacent to Lots 18-21, Block 166, a 0.25-acre portion of alley right-of-way adjacent to Lots 1-15, Block 165, a 0.14-acre portion of alley right-of-way adjacent to Lots 1-4, Block 167, a 1.78-acre portion of Leslie Drive right-of-way, and a 0.64-acre portion of Kristie Lane right-of-way, all out of Wilshire Park Addition, Section 11, City and County of Midland, Texas, are 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 \$192,073.50, as shown in Exhibit "F" 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 0.13-acre portion of alley right-of-way adjacent to Lots 18-21, Block 166, a 0.25-acre portion of alley right-of-way adjacent to Lots 1-15, Block 165, a 0.14-acre portion of alley right-of-way adjacent to Lots 1-4, Block 167, a 1.78-acre portion of Leslie Drive right-of-way, and a 0.64-acre portion of Kristie Lane right-of-way, all out of Wilshire Park Addition, Section 11, City and County of Midland, Texas, as described in Exhibits “A”, “B”, “C”, “D” and “E” attached hereto and made a part hereof for all legal purposes, are 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 \$192,073.50.

SECTION THREE. That upon the City’s receipt of the sum set forth in Section Two hereof, the City Secretary is hereby authorized and directed to file a certified copy of this Ordinance with the County Clerk of Midland County, Texas, for purposes of recording in the Official Records of Midland County, Texas.

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

Council members voting “AYE”:

Council members voting “NAY”:

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council

member _____, on the _____ day of _____, A.D., 2013, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

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

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

VACATED RIGHT OF WAY EXHIBIT

20' ALLEY

LEGAL DESCRIPTION of a 0.13 acre tract of Public Alley Right-of-Way out of Wilshire Park, Section 11, an Addition to the City of Midland Texas as recorded in Cabinet "C", Page 90 of the Plat Records of Midland County, Texas, and being located in Section 31, Block 39, T-1-S, T&P RR Co. Survey, Midland County, Texas, Subject Tract being more particularly described as follows:

BEGINNING at (N: 10,687,473.29, E: 1,734,777.04) the Southwest corner of this tract, a point at the Southeast corner of the intersection of Beal Parkway, a 60-foot public road, and a 20-Foot Alley, the Northwest corner of Lot 21, Block 166, said Wilshire Park, Section 11, from which a 1/2" Iron Rod with Red plastic cap marked "West Co Midland" found at the Northwest corner of the tract to Fasken Land & Minerals, Ltd as recorded in Volume 1346, Page 598 of the Deed Records of Midland County, Texas and for an exterior corner of said Wilshire Park, Section 11, bears S 14°19'26" E a distance of 506.37 feet, and N 75°32'54" E a distance of 7.60 feet;

THENCE Northerly with the East line of said Beal Parkway, with the West line of said 20-Foot Alley, through a Curve to the Left having a Radius of 956.78 feet, an Arc Length of 9.90 feet, a Chord Length of 9.90 feet, a Chord Bearing of N 21°50'48" W, and a Delta Angle of 0°35'34", to a point of reverse curvature;

THENCE Northerly with the East line of said Beal Parkway, with the West line of said 20-Foot Alley, through a Curve having a Radius of 955.66 feet, an Arc Length of 10.27 feet, a Chord Length of 10.27 feet, a Chord Bearing of N 21°50'07" W, and a Delta Angle of 0°36'56", to a point at the Northeast corner of the intersection of said Beal Parkway and said 20-Foot Alley, the Southwest corner of Lot 22, said Block 166, for the Northwest corner of this tract;

THENCE N 75°32'58" E with the South lines of Lots 22 - 25, said Block 166, and with the North line of said 20-Foot Alley, a distance of 278.86 feet to a point in the South line of said Lot 25, for the Northeast corner of this tract;

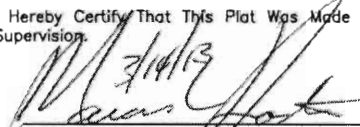
THENCE S 14°27'00" E, in and across said 20-Foot Alley to (N: 10,687,542.24, E: 1,735,044.56) a 1/2" Iron Rod with Red plastic cap marked "West Co Midland" set in the South line of said 20-Foot Alley, and in the North line of Lot 18, said Block 166, for the Southeast corner of this tract;

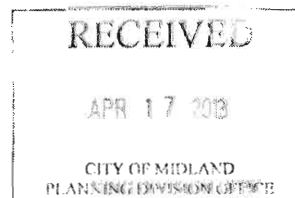
THENCE S 75°32'58" W with the South line of said 20-Foot Alley, and with the North lines of Lots 18 - 21, said Block 166, to the POINT OF BEGINNING.

Subject tract contains a total of 0.13 Acres (5,551 Sq. Feet) 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 of 1983.

I Hereby Certify That This Plat Was Made From Notes Taken in the Field in a Bona Fide Survey Made Under my Supervision.


MARCUS L. HOSTAS TEXAS R.P.L.S. No. 5643
 DATE SURVEYED FEBRUARY 12, 2013



LEGEND

-  DENOTES SET 1/2-INCH IRON ROD W/RED PLASTIC CAP MARKED "WEST CO. MIDLAND"
-  DENOTES FOUND 1/2-INCH IRON ROD W/RED PLASTIC CAP MARKED "WEST CO. MIDLAND"
-  DENOTES POINT OF CURVATURE
-  DENOTES CALCULATED POINT
-  DENOTES BOUNDARY LINE
-  DENOTES ADJACENT TRACT



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

SHEET 2 OF 2

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T: /CIVIL DRAWINGS/2013/2013-0206/ROW VACATIONS/2013-0206 ROW VACATIONS.dwg

Exhibit "A"

CASE NO. 13-008

VACATED RIGHT OF WAY EXHIBIT

20' ALLEY

LEGAL DESCRIPTION of a 0.25 acre tract of Public Alley Right-of-Way out of Wilshire Park, Section 11, an Addition to the City of Midland Texas as recorded in Cabinet "C", Page 90 of the Plat Records of Midland County, Texas, and being located in Section 31, Block 39, T-1-S, T&P RR Co. Survey, Midland County, Texas, Subject Tract being more particularly described as follows:

BEGINNING at (N: 10,687,161.87, E: 1,734,864.40) the most Westerly Southwest corner of this tract, a point at the Southeast corner of the intersection of Beal Parkway, a 60-foot public road, and a 20-Foot Alley, the Northwest corner of Lot 1, Block 165, said Wilshire Park, Section 11, from which a 1/2" Iron Rod with Red plastic cap marked "West Co Midland" found at the Northwest corner of the tract to Fasken Land & Minerals, Ltd as recorded in Volume 1346, Page 598 of the Deed Records of Midland County, Texas and for an exterior corner of said Wilshire Park, Section 11, bears S 14°19'26" E a distance of 183.00 feet;

THENCE N 14°19'26" W with the East line of said Beal Parkway, with the West line of said 20-Foot Alley, a distance of 20.00 feet to (N: 10,687,181.25, E: 1,734,859.46) a point at the Southwest corner of Lot 15, said Block 165, for the Northwest corner of this tract;

THENCE N 75°33'28" E with the South lines of Lots 15 - 9, said Block 165, and with the North line of said 20-Foot Alley, a distance of 403.70 feet to a point in the South line of said Lot 9, for the most Northerly Northeast corner of this tract;

THENCE S 48°45'52" E with the Southwest lines of Lots 9 - 8, said Block 165, and with the Northeast line of said 20-Foot Alley, a distance of 22.56 feet to a point at the Southwest corner of said Lot 8, the Northwest corner of Lot 7, said Block 165, for the most Easterly Northeast corner of this tract;

THENCE S 06°54'38" W with the West lines of Lots 7 - 6, said Block 165, and with the East line of said 20-Foot Alley, a distance of 137.39 feet to a point at the Northeast corner of the intersection of said 20-Foot Alley and Kristie Lane, a 60-foot public road, the Southwest corner of said Lot 6, for the Southeast corner of this tract;

THENCE Westerly with the North line of said Kristie Lane, and with the South line of said 20-Foot Alley, through a curve having a Radius of 307.00 feet, an Arc Length of 20.66 feet, a Chord length of 20.66 Feet, a Chord Bearing of S 82°24'11" W, and a Delta Angle of 03°51'18", to a point at the Northwest corner of the intersection of said Kristie Lane and said 20-Foot Alley, the Southeast corner of Lot 5, said Block 165, for an Exterior corner of this tract;

THENCE N 06°54'38" E with the West line of said 20-Foot Alley, and with the East line of said Lot 5, a distance of 113.27 feet to a point for the most Easterly Northeast corner of said Lot 5, for an Interior corner of this tract;

THENCE N 48°45'52" W with the Northeast line of said Lot 5 and with the Southwest line of said 20-Foot Alley a distance of 22.56 feet, to a point for the most Northerly Northeast corner of said Lot 5, for an Interior corner of this tract;

THENCE S 75°33'28" W with the North lines of Lots 5 - 1, said Block 165, a distance of 374.45 feet to the POINT OF BEGINNING.

Subject tract contains a total of 0.25 Acres (11,086 Sq. Feet) 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 of 1983.

I Hereby Certify That This Plat Was Made From Notes Taken in the Field in a Bona Fide Survey Made Under my Supervision.

MARCUS L. HOSTAS TEXAS R.P.L.S. No. 5643
DATE SURVEYED FEBRUARY 12, 2013



LEGEND



- DENOTES SET 1/2-INCH IRON ROD W/RED PLASTIC CAP MARKED "WEST CO. MIDLAND"
- ⊙ DENOTES FOUND 1/2-INCH IRON ROD W/RED PLASTIC CAP MARKED "WEST CO. MIDLAND"
- 9 DENOTES POINT OF CURVATURE
- DENOTES CALCULATED POINT
- DENOTES BOUNDARY LINE
- - - DENOTES ADJACENT TRACT



RECEIVED

APR 17 2013

CITY OF MIDLAND
PLANNING DEPARTMENT

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

SHEET 2 OF 2

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Exhibit "B"

CASE NO. V-13-008

VACATED RIGHT OF WAY EXHIBIT

20' ALLEY

LEGAL DESCRIPTION of a 0.14 acre tract of Public Alley Right-of-Way out of Wilshire Park, Section 11, an Addition to the City of Midland Texas as recorded in Cabinet "C", Page 90 of the Plat Records of Midland County, Texas, and being located in Section 31, Block 39, T-1-S, T&P RR Co. Survey, Midland County, Texas, Subject Tract being more particularly described as follows:

BEGINNING at (N: 10,687,059.38, E: 1,735,200.20) a 1/2" Iron Rod with Red plastic cap marked "West Co Midland" found at the Northeast corner of the tract to Fasken Land & Minerals, Ltd as recorded in Volume 1346, Page 598 of the Deed Records of Midland County, Texas and for an interior corner of said Wilshire Park, Section 11, a point at the Southwest corner of the intersection of a 20-Foot Alley and of Kristie Lane, a 60-foot public road, for the Northwest corner of this tract;

THENCE N 75°33'22" E with the South line of said Kristie Lane a distance of 20.00 feet to a point at the Northeast corner of said 20-Foot Alley, and at the Northwest corner of Lot 4, Block 167, said Wilshire Park, Section 11, for the Northeast corner of this tract;

THENCE S 14°19'26" E with the West lines of Lots 1-4, said Block 167, a distance of 300.00 feet to a point in the North line of Graceland Drive, a 60-foot public road, for the Southwest corner of said Lot 1, for the Southeast corner of this tract;

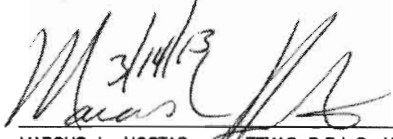
THENCE S 75°33'22" W with the North line of said Graceland Drive a distance of 20.00 feet to a 1/2" Iron Rod with Red plastic cap marked "West Co Midland" set at the Southeast corner of said Fasken tract, an interior corner of said Wilshire Park, Section 11, for the Southwest corner of this tract;

THENCE N 14°19'26" W with the East line of said Fasken tract and with a Western line of said Wilshire Park, Section 11, a distance of 300.00 feet to the POINT OF BEGINNING.

Subject tract contains a total of 0.14 Acres (6,000 Sq. Feet) 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 of 1983.

I Hereby Certify That This Plat Was Made From Notes Taken in the Field in a Bona Fide Survey Made Under my Supervision.


 MARCUS L. HOSTAS TEXAS R.P.L.S. No. 5643
 DATE SURVEYED FEBRUARY 12, 2013



LEGEND

-  DENOTES SET 1/2-INCH IRON ROD W/RED PLASTIC CAP MARKED "WEST CO. MIDLAND"
-  DENOTES FOUND 1/2-INCH IRON ROD W/RED PLASTIC CAP MARKED "WEST CO. MIDLAND"
-  DENOTES POINT OF CURVATURE
-  DENOTES CALCULATED POINT
-  DENOTES BOUNDARY LINE
-  DENOTES ADJACENT TRACT



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

SHEET 2 OF 2

Exhibit "C"

CASE NO. 13-008

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T:/CIVIL DRAWINGS/2013/2013-0206/ROW VACATIONS/2013-0206 ROW VACATIONS.dwg

VACATED RIGHT OF WAY EXHIBIT LESLIE DRIVE

LEGAL DESCRIPTION of a 1.78 acre tract of Leslie Drive Right-of-Way out of Wilshire Park, Section 11, an Addition to the City of Midland Texas as recorded in Cabinet "C", Page 90 of the Plat Records of Midland County, Texas, and being located in Section 31, Block 39, T-1-S, T&P RR Co. Survey, Midland County, Texas, Subject Tract being more particularly described as follows:

BEGINNING at (N: 10,687,300.43, E: 1,734,829.02) a point at the Northwest corner of Lot 15, Block 165, said Wilshire Park, Section 11, said point at the Southeast corner of the intersection of Beal Parkway, a 60-foot public road, and Leslie Drive, a 60-foot public road, from which a 1/2" Iron Rod with Red plastic cap marked "West Co Midland" found at the Northwest corner of the tract to Fasken Land & Minerals, Ltd as recorded in Volume 1346, Page 598 of the Deed Records of Midland County, Texas and for an Exterior corner of said Wilshire Park, Section 11, bears S 14°19'26" E a distance of 326.00 feet, for the most Westerly Southwest corner of this tract;

THENCE N 14°19'26" W with the East line of said Beal Parkway, in and across said Leslie Drive, a distance of 60.00 feet to a point at the Southwest corner of Lot 21, Block 166, said Wilshire Park, Section 11, for the Northwest corner of this tract;

THENCE N 75°32'58" E with the South lines of Lots 21 - 14, said Block 166, and with the North line of said Leslie Drive, a distance of 500.08 feet to a point of curvature in the South line of said Lot 14;

THENCE Easterly with a the South lines of Lot 14 - 13, said Block 166, and with the North line of said Leslie Drive, through a curve having a Radius of 103.73 feet, an Arc Length of 31.13 feet, a Chord Length of 31.01 feet, a Chord Bearing of N 84°09'09" E, and a Delta Angle of 17°11'42", to a point in the South line of said Lot 3, for an Interior corner of this tract;

THENCE with the curved South and West lines of Lots 13 - 10, said Block 166, and with the Northeast line of said Leslie Drive, through a curve having a Radius of 50.00 feet, an Arc Length of 181.42 feet, a Chord length of 97.05 feet, a Chord Bearing of S 59°21'28" E, and a Delta Angle of 207°53'32", to a point in the West line of said Lot 10, to the point of tangency;

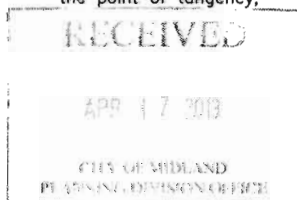
THENCE Southerly with the curved West line of said Lot 10 and with the East line of said Leslie Drive, through a curve having a Radius of 103.73 feet, an Arc Length of 31.19 feet, a Chord Length of 31.01 feet, a Chord bearing of S 22°52'04" E, and a Delta Angle of 17°11'01", to a point for the Southwest corner of said Lot 10, and for the Northwest corner of Lot 9, said Block 166, for an Exterior corner of this tract;

THENCE S 14°12'32" E with the West line of said Lot 9 and with the East line of said Leslie Drive a distance of 45.02 feet to the beginning of a curve to the Right;

THENCE Southerly with the West lines of Lots 9 - 7, said Block 166, and with the East line of said Leslie Drive, through a curve having a Radius of 214.57 feet, an Arc Length of 79.09 feet, a Chord Length of 78.74 feet, a Chord Bearing of S 03°39'45" E and a Delta Angle of 21°08'43" to a point in the West line of said Lot 7, for an Exterior corner of this tract;

THENCE S 06°54'38" W with the East line of said Leslie Drive, and with the West line of Lots 7 - 4, said Block 166, a distance of 229.94 feet to a point in the West line of said Lot 4 for the beginning of a curve to the left;

THENCE Southerly with the curved West lines of Lots 4 - 3, said Block 166, and with the East line of said Leslie Drive, through a curve having a Radius of 292.58 feet, an Arc Length of 108.00 feet, a Chord Length of 107.39 feet, a Chord Bearing of S 03°39'52" E, and a Delta Angle of 21°07'47", to a point at the Southwest corner of said Lot 3 and the Northwest corner of Lot 2, said Block 166, the point of tangency;



CONTINUED ON NEXT PAGE



LEGEND



- DENOTES SET 1/2-INCH IRON ROD W/RED PLASTIC CAP MARKED "WEST CO. MIDLAND"
- ⊙ DENOTES FOUND 1/2-INCH IRON ROD W/RED PLASTIC CAP MARKED "WEST CO. MIDLAND"
- 9 DENOTES POINT OF CURVATURE
- DENOTES CALCULATED POINT
- DENOTES BOUNDARY LINE
- - - DENOTES ADJACENT TRACT



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

SHEET 2 OF 3

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T: /CIVIL DRAWINGS/2013-0206/ROW VACATIONS/2013-0206 ROW VACATIONS.dwg

Exhibit "D"

CASE NO. V-13-008

VACATED RIGHT OF WAY EXHIBIT LESLIE DRIVE

THENCE S 14°14'23" E with the West line of Lots 2 - 1, said Block 166, and with the East line of said Leslie Drive, a distance of 140.00 feet to a point at the Northeast corner of the intersection of said Leslie Drive, and of Graceland Drive, a 60-foot public road, at the Southwest corner of said Lot 1, for the Southeast corner of this tract;

THENCE S 75°33'12" W with the North line of said Graceland Drive, and the South line of said Leslie Drive, a distance of 60.00 feet to (N: 10,686,800.14, E: 1,735,396.46), a point at the Southeast corner of Lot 1, Block 167, said Wilshire Park, Section 11, from which a 1/2" Iron Rod with Red plastic cap marked "West Co Midland" found at the Southwest corner of said Fasken tract bears S 75°33'15" W a distance of 426.02 feet, for the most Southerly Southwest corner of this tract;

THENCE N 14°14'23" W with the East lines of Lot 1 - 3, said Block 167 a distance of 140.21 feet to a point in the East line of said Lot 3, to the beginning of a curve to the right;

THENCE Northerly with the East lines of Lots 3 - 4, said Block 167, and with the West line of said Leslie Drive, through a curve having a Radius of 352.58 feet, an Arc Length of 130.15 feet, a Chord Length of 129.41 feet, a Chord Bearing of N 03°39'43" W, and a Delta Angle of 21°08'59", to a point at the Southwest corner of the intersection of Kristie Lane, a 60-foot public road, and said Leslie Drive, the Northeast corner of said Lot 4, Block 167, the point of tangency;

THENCE N 06°54'38" E with the West line of said Leslie Drive, with the Southeast line of said Kristie Lane and with the East lines of Lots 6 - 7, Block 165, said Wilshire Park, Section 11, a distance of 229.94 feet to a point at the Northeast corner of said Lot 7, to the beginning of a curve to the left;

THENCE Northerly with the curved West line of said Leslie Drive, and with the East line of Lot 8, said Block 165, through a curve having a Radius of 154.57 feet, an Arc Length of 56.98 feet, a Chord Length of 56.76 feet, a Chord Bearing of N 03°40'27" W, and a Delta Angle of 21°09'34", to a point in the East line of said Lot 8, for the point of tangency;

THENCE N 14°12'32" W with the West line of said Leslie Drive and with the East line of said Lot 8, Block 165, a distance of 45.02 feet to the beginning of a curve to the Left;

THENCE Northwesterly with the Northeast lines of Lots 8 - 9, said Block 165, and with the Southwest line of said Leslie Drive, through a curve having a Radius of 43.73 feet, an Arc Length of 68.87 feet, a Chord Length of 61.89 feet, a Chord Bearing of N 59°23'52" W, and a Delta Angle of 90°06'30", to a point in the North line of said Lot 9, the point of tangency;

THENCE S 75°32'58" W with the South line of said Leslie Drive and with the North lines of Lots 9 - 15, said Block 165, a distance of 500.21 feet to the POINT OF BEGINNING.

Subject tract contains a total of 1.78 Acres (77,434 Sq. Feet) 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 of 1983.

I Hereby Certify That This Plat Was Made From Notes Taken in the Field in a Bona Fide Survey Made Under my Supervision.

[Signature]
MARCUS L. HOSTAS TEXAS R.P.L.S. No. 5643
DATE SURVEYED FEBRUARY 12, 2013



LEGEND



- DENOTES SET 1/2-INCH IRON ROD W/RED PLASTIC CAP MARKED "WEST CO. MIDLAND"
- ⊙ DENOTES FOUND 1/2-INCH IRON ROD W/RED PLASTIC CAP MARKED "WEST CO. MIDLAND"
- 9 DENOTES POINT OF CURVATURE
- DENOTES CALCULATED POINT
- DENOTES BOUNDARY LINE
- - - DENOTES ADJACENT TRACT



WEST COMPANY



OF MIDLAND, INC.
ENGINEERS - PLANNERS - SURVEYORS
REGISTRATION: FIRM 2184
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SHEET 3 OF 3

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CASE NO. V-13008

VACATED RIGHT OF WAY EXHIBIT

KRISTIE LANE

LEGAL DESCRIPTION of a 0.64 acre tract of Kristie Lane Right-of-Way out of Wilshire Park, Section 11, an Addition to the City of Midland Texas as recorded in Cabinet "C", Page 90 of the Plat Records of Midland County, Texas, and being located in Section 31, Block 39, T-1-S, T&P RR Co. Survey, Midland County, Texas, Subject Tract being more particularly described as follows:

BEGINNING at (N: 10,686,984.56, E: 1,734,909.68) a 1/2" Iron Rod with Red plastic cap marked "West Co Midland" found at the Northwest corner of the tract to Fasken Land & Minerals, Ltd as recorded in Volume 1346, Page 598 of the Deed Records of Midland County, Texas and for an Exterior corner of said Wilshire Park, Section 11, a point at the Southeast corner of the intersection of Beal Parkway, a 60-foot public road, and of Kristie Lane, a 60-foot public road, for the Southwest corner of this tract;

THENCE N 14°19'26" W with the East line of said Beal Parkway, with the West line of said said Kristie Lane, a distance of 60.00 feet to (N: 10,687,042.70, E: 1,734,894.83), a point at the Southwest corner of Lot 1, Block 165, said Wilshire Park Section 11, for the Northwest corner of this tract;

THENCE N 75°33'28" E with the South lines of Lots 1-5, said Block 1, and with the North line of said Kristie Lane, a distance of 319.88 feet to the beginning of a curve to the Right;

THENCE Easterly with the curved North line of said Kristie Lane and with the South lines of said Lot 5 and of a 20-Foot Alley and of Lot 6, said Block 165, through a curve having a Radius of 307.00 feet, an Arc Length of 114.41 feet, Chord Length of 113.75 feet, Chord Bearing of N 86°14'11" E, and Delta Angle of 21°21'10", to a point in the South line of said Lot 6, the point of tangency;

THENCE S 83°05'22" E with the South line of said Lot 6 a distance of 43.12 feet to the Southeast corner of said Lot 6, a point in the West line of Leslie Drive, a 60-foot public road, for the Northeast corner of this tract;

THENCE S 06°54'38" W with the West line of said Leslie Drive, and the East line of said Kristie Lane, a distance of 60.00 feet to a point at the Northeast corner of Lot 4, Block 167, said Wilshire Park, Section 11, for the Southeast corner of this tract;

THENCE N 83°05'22" W with the North line of said Lot 4, Block 167, and with the South line of said Kristie Lane, a distance of 43.12 feet to the beginning of a curve to the Left;

THENCE Westerly with the curved South line of said Kristie Lane and with the North line of said Lot 4, Block 167, through a curve having a Radius of 247.00 feet, an Arc Length of 92.05 feet, a Chord Length of 91.52 feet, a Chord Bearing of S 86°14'11" W and a Delta Angle of 21°21'10", to the point of tangency, a point at the Northwest corner of said Lot 4, Block 167, at the Southeast corner of the intersection of a 20-Foot Alley and of said Kristie Lane;

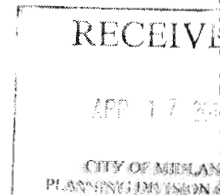
THENCE S 75°33'28" W with the South line of said Kristie Lane, and the North line of said 20-Foot Alley, at a distance of 20.00 feet passing a 1/2" Iron Rod with Red plastic cap marked "West Co Midland" found at the Northeast corner of said Fasken tract, and continuing on with the North line of said Fasken tract for a total distance of 320.00 feet to the POINT OF BEGINNING.

Subject tract contains a total of 0.64 Acres (27,978 Sq. Feet) 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 of 1983.

I Hereby Certify That This Plat Was Made From Notes Taken in the Field in a Bona Fide Survey Made Under my Supervision.

Marcus L. Hostas
 MARCUS L. HOSTAS TEXAS R.P.L.S. No. 5643
 DATE SURVEYED FEBRUARY 12, 2013



LEGEND

- DENOTES SET 1/2-INCH IRON ROD W/RED PLASTIC CAP MARKED "WEST CO. MIDLAND"
- DENOTES FOUND 1/2-INCH IRON ROD W/RED PLASTIC CAP MARKED "WEST CO. MIDLAND"
- DENOTES POINT OF CURVATURE
- DENOTES CALCULATED POINT
- DENOTES BOUNDARY LINE
- DENOTES ADJACENT TRACT



WEST COMPANY



OF MIDLAND, INC.
 ENGINEERS - PLANNERS - SURVEYORS
 REGISTRATION: FIRM 2184
 110 W. LOUISIANA AVE., SUITE 110
 MIDLAND, TEXAS 79701
 (432) 687-0665 - FAX (432) 687-0888

SHEET 2 OF 2

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Exhibit "E"

CASE NO. 13-008



June 14, 2013

Midland City Council
City of Midland, Texas

RE: Request for vacation of a 0.13-acre portion of alley right-of-way adjacent to Lots 18-21, Block 166, a 0.25-acre portion of alley right-of-way adjacent to Lots 1-15, Block 165, a 0.14-acre portion of alley right-of-way adjacent to Lots 1-4, Block 167, a 1.78-acre portion of Leslie Drive right-of-way, and a 0.64-acre portion of Kristie Lane right-of-way, all out of Wilshire Park Addition, Section 11, 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 \$192,073.50. The property can be vacated and recorded in the Midland County Clerk's office when the City of Midland has received this amount from the adjoining property owner(s).

Very truly yours,

A handwritten signature in black ink that reads "Courtney SP". The signature is stylized, with the first name "Courtney" written in a cursive script and the initials "SP" written in a more bold, blocky style.

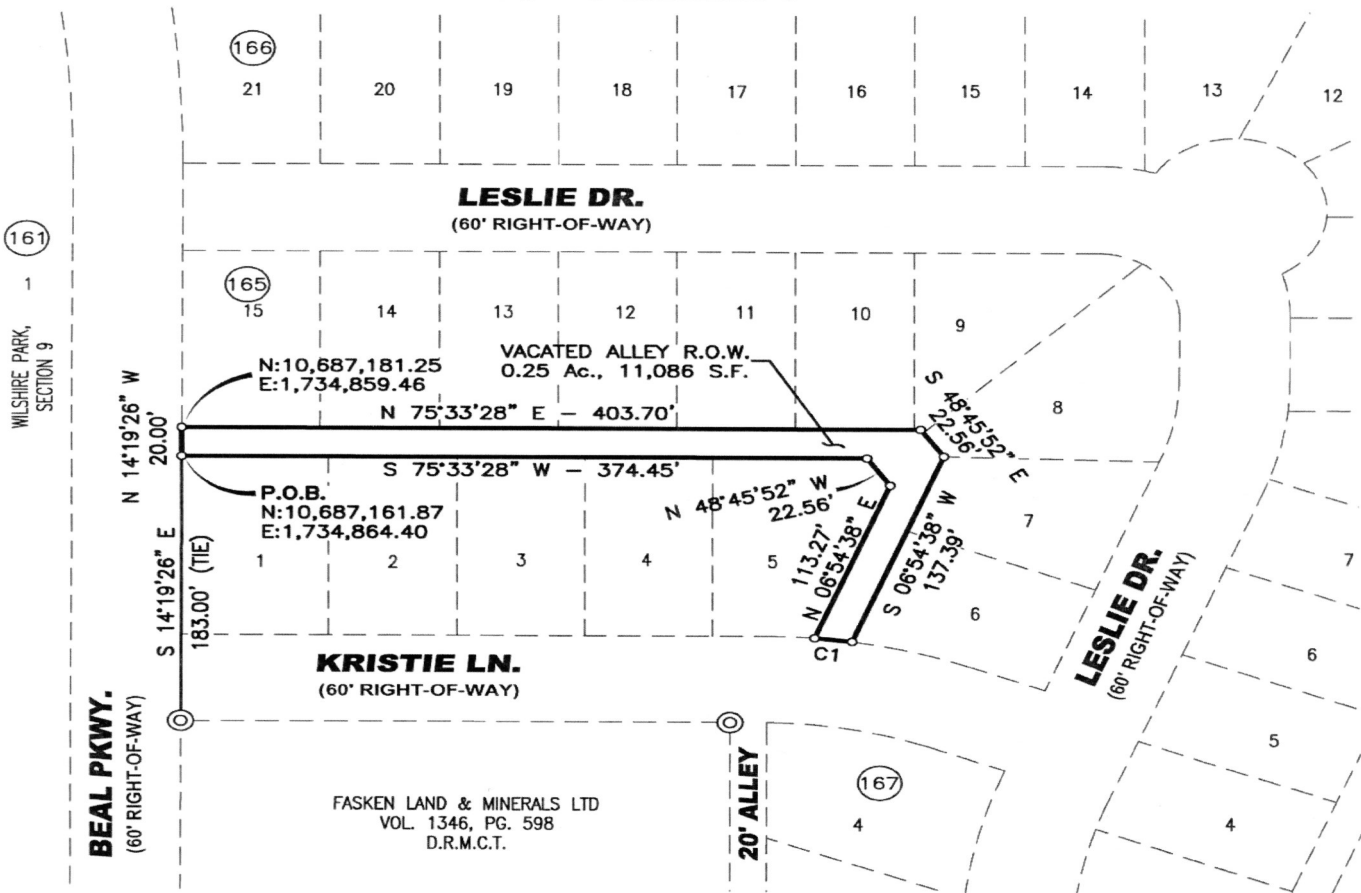
Courtney Sharp
City Manager

Exhibit "F"

L:\Ordinances\Planning\Vacate & Abandon\2013\Wilshire Park Addition Appraisal Letter.wpd

CASE NO. V-13-008

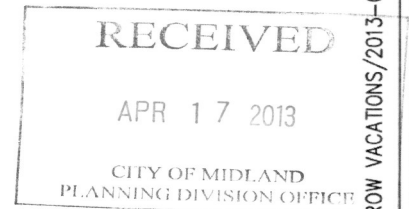
VACATED RIGHT OF WAY EXHIBIT 20' ALLEY



CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C1	307.00'	20.66'	20.66'	S 82°24'11" W	3°51'18"

I Hereby Certify That This Plat Was Made From Notes Taken in the Field in a Bona Fide Survey Made Under my Supervision.

MARCUS L. HOSTAS TEXAS R.P.L.S. No. 5643
DATE SURVEYED FEBRUARY 12, 2013



LEGEND

- DENOTES SET 1/2-INCH IRON ROD W/RED PLASTIC CAP MARKED "WEST CO. MIDLAND"
- DENOTES FOUND 1/2-INCH IRON ROD W/RED PLASTIC CAP MARKED "WEST CO. MIDLAND"
- DENOTES POINT OF CURVATURE
- DENOTES CALCULATED POINT
- DENOTES BOUNDARY LINE
- DENOTES ADJACENT TRACT



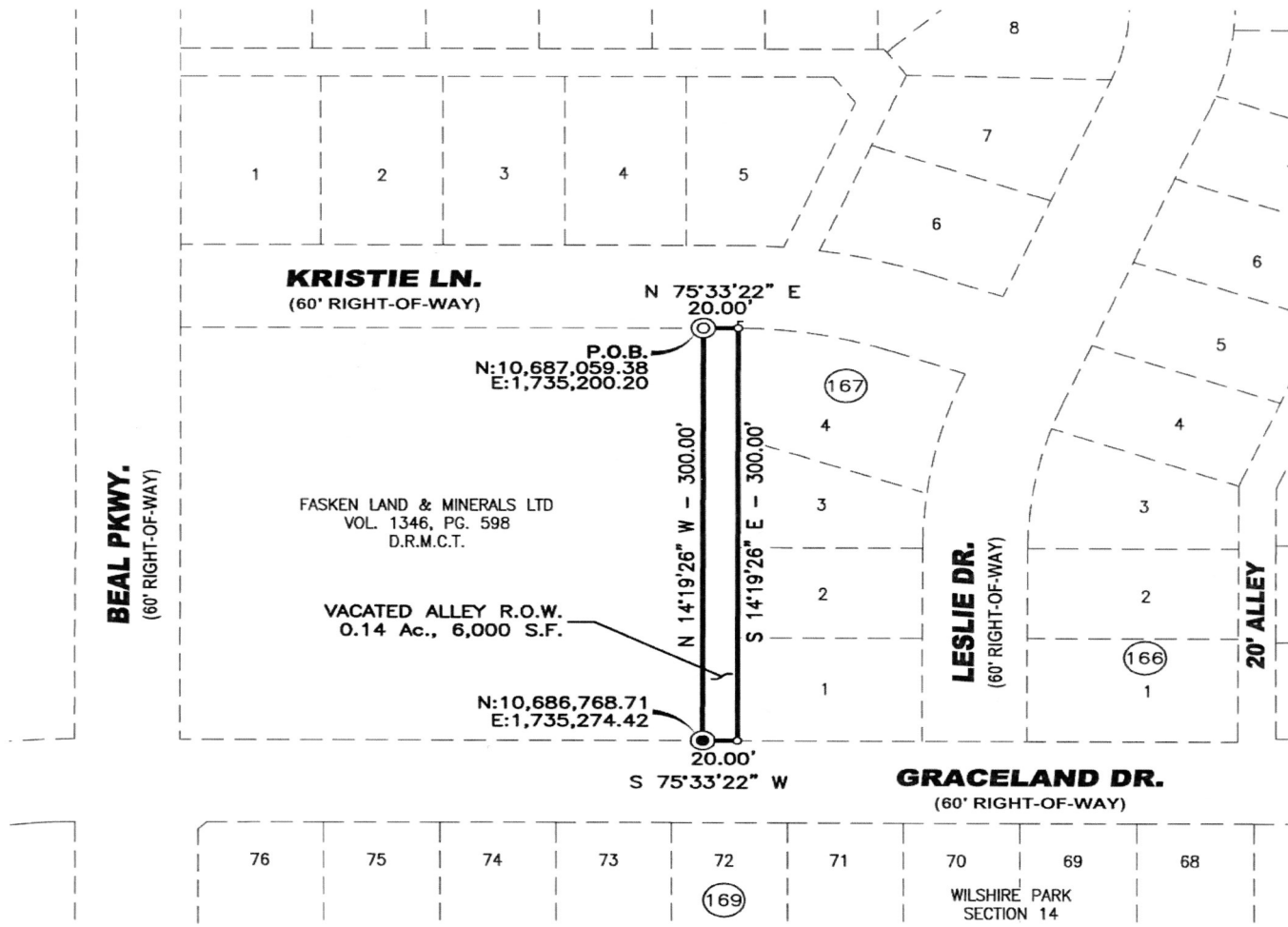
WEST COMPANY

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

SHEET 1 OF 2

VACATED RIGHT OF WAY EXHIBIT 20' ALLEY



I Hereby Certify That This Plat Was Made From Notes Taken in the Field in a Bona Fide Survey Made Under my Supervision.

Marcus L. Hostas
MARCUS L. HOSTAS TEXAS R.P.L.S. No. 5643
DATE SURVEYED FEBRUARY 12, 2013



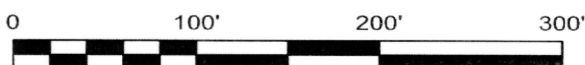
RECEIVED

APR 17 2013

CITY OF MIDLAND
PLANNING DIVISION

LEGEND

- DENOTES SET 1/2-INCH IRON ROD W/RED PLASTIC CAP MARKED "WEST CO. MIDLAND"
- ⊙ DENOTES FOUND 1/2-INCH IRON ROD W/RED PLASTIC CAP MARKED "WEST CO. MIDLAND"
- DENOTES POINT OF CURVATURE
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- - - DENOTES ADJACENT TRACT



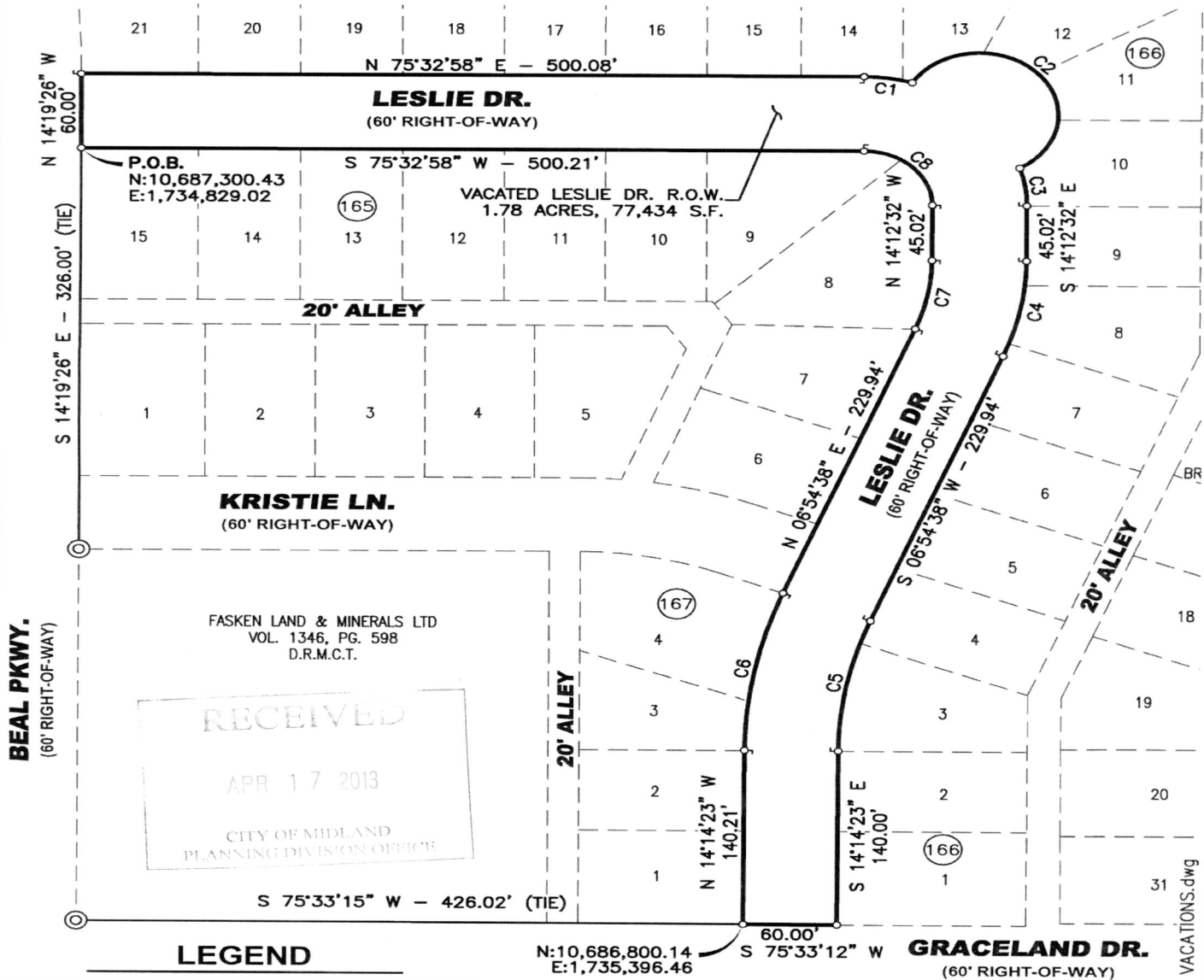
WEST COMPANY

OF MIDLAND, INC.
ENGINEERS - PLANNERS - SURVEYORS
REGISTRATION: FIRM 2184
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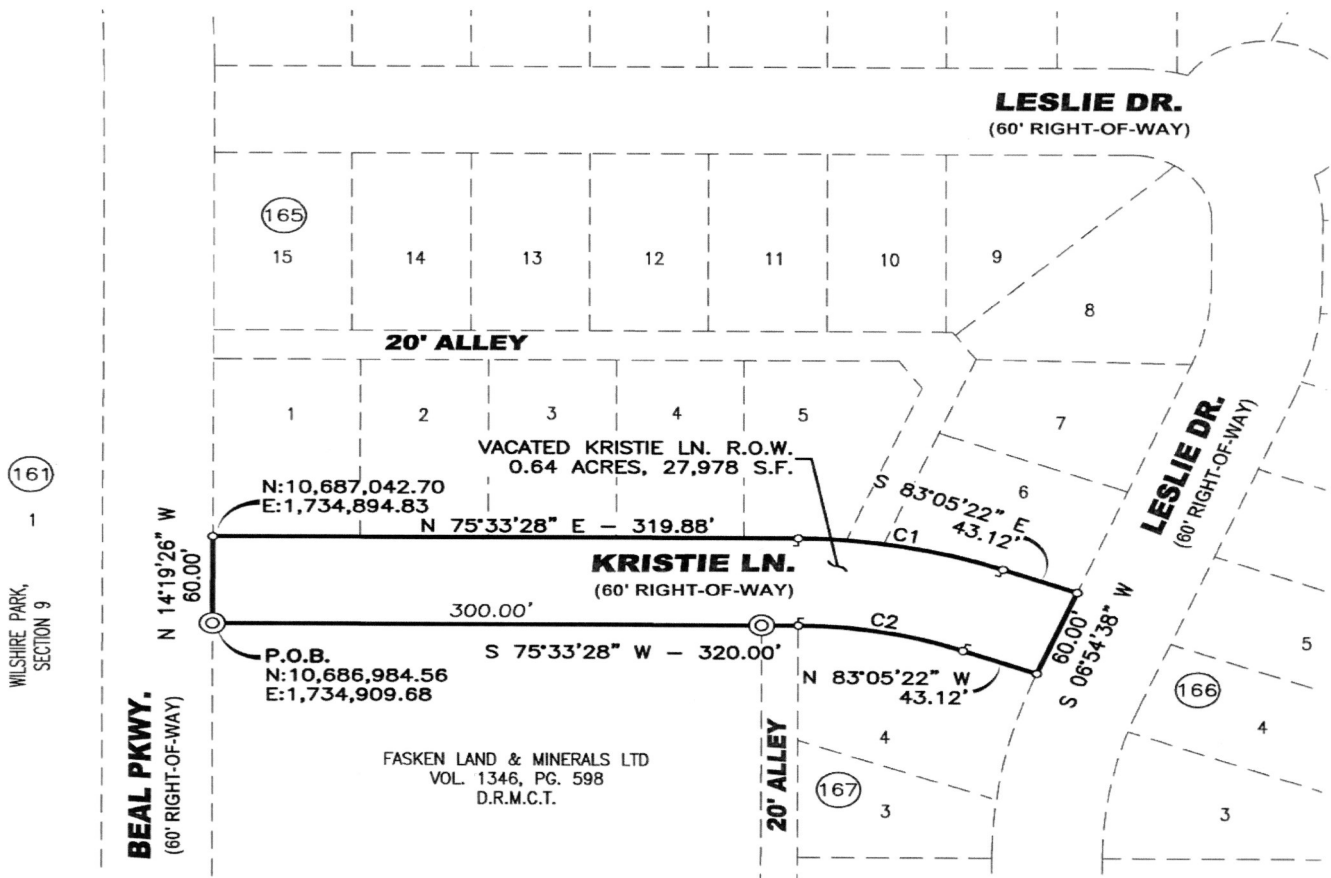
SHEET 1 OF 2

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VACATED RIGHT OF WAY EXHIBIT LESLIE DRIVE



VACATED RIGHT OF WAY EXHIBIT KRISTIE LANE



CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C1	307.00'	114.41'	113.75'	N 86°14'11" E	21°21'10"
C2	247.00'	92.05'	91.52'	S 86°14'11" W	21°21'10"

I Hereby Certify That This Plat Was Made From Notes Taken in the Field in a Bona Fide Survey Made Under my Supervision

MARCUS L. HOSTAS TEXAS R.P.L.S. No. 5643
DATE SURVEYED FEBRUARY 12, 2013



RECEIVED

APR 17 2013

CITY OF MIDLAND
PLANNING DIVISION OFFICE

LEGEND

- DENOTES SET 1/2-INCH IRON ROD W/RED PLASTIC CAP MARKED "WEST CO. MIDLAND"
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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

SHEET 1 OF 2

CASE NO. V-13008

31.16

Case Number: V-13-008

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:
Leslie Drive, Kristie Lane, Alley
- II. Reason for Request: Owners of the surrounding lots plans to re-plot into two lots, in which case the city roads will no longer be needed.
- III. Reasons, in applicant's opinion, why the requested vacation will not adversely affect the public welfare or will contribute to it in a positive way:
The roads are unimproved. No lots except those being replatted will lose road or alley access.

IV. REQUIRED ITEMS:

1. Applicant(s) Information: (Attach extra sheets as necessary.)
Name: Leslie Diann Hahn, Trustee and Peggy Sue Jones Hahn
Address: Individually and as Independent Street Trustee U/W/O Lawrence H. Hahn, Deceased City 3307 Stanolind Ct., Midland, TX State 79707 / Zip Code 432-694-5730 Phone Executrix and
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.

Lisli Deann Hahn, Trustee

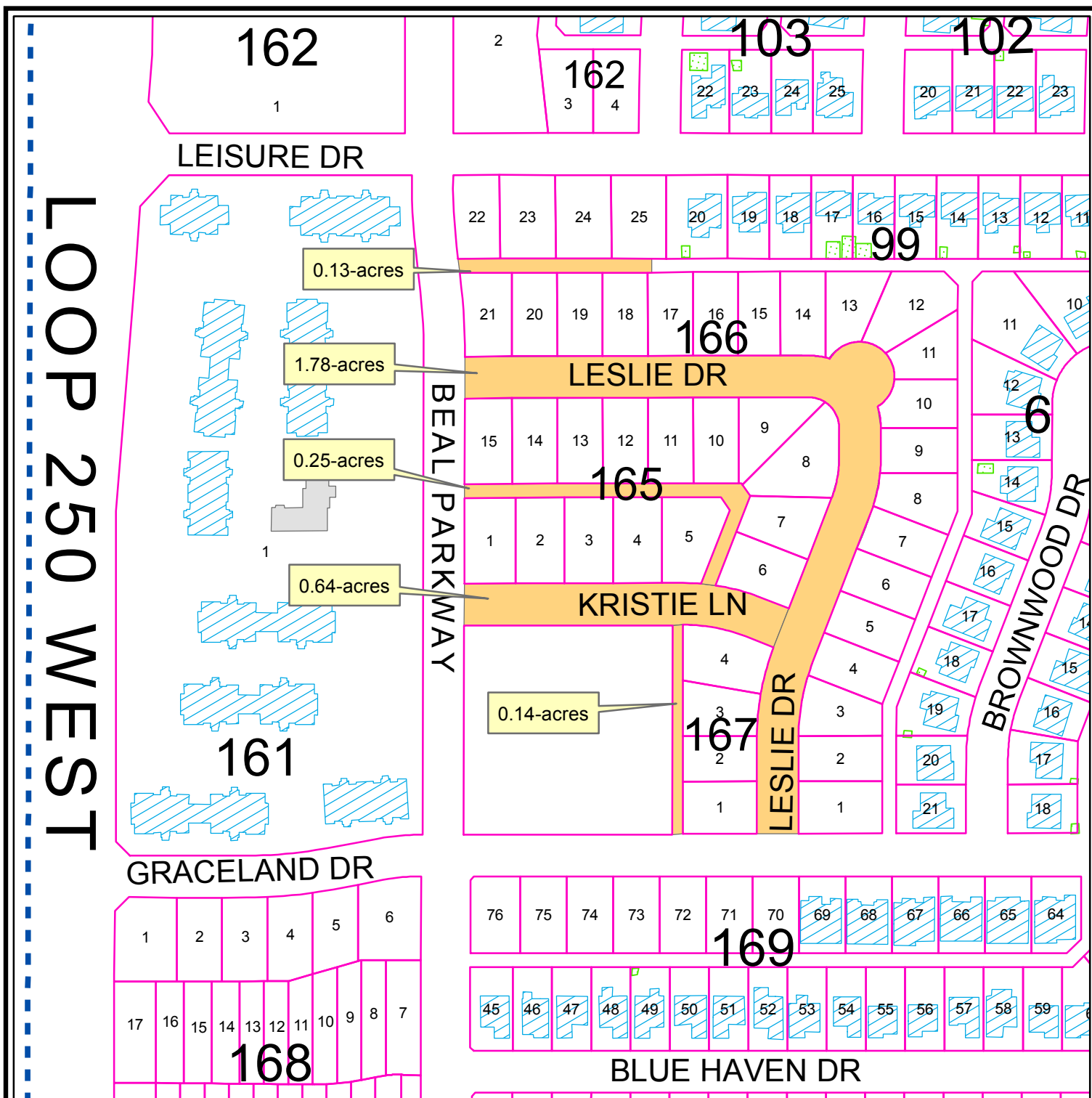
Signature of applicants: *Peggy Sue Jones Hahn* Date: 3/15/13

****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>ES</u>	Date: <u>4/17/13</u>
Assigned: _____	
For: _____	On: _____



LOCATION MAP

V - 13- 008

Scale: 1" = 200'

Consider a request for the vacation of alley right-of-ways being a 0.13-acre portion adjacent to Lots 18 – 21, Block 166; of the 0.25-acres adjacent to Lots 1 – 15, Block 165; of the 0.14-acres adjacent to Lots 1 – 4, Block 167; and for the vacation of street right-of-ways being the 1.78-acres of Leslie Drive and of the 0.64-acres of Kristie Lane, all out of Wilshire Park Addition, Section 11, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: June 25, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Ken Van Dyne, Acting Planning Division Manager

SUBJECT: Consider a motion directing staff to begin the annexation of approximately 36 acres of land upon request by the property owner.

Purpose: Consider a motion directing staff to begin the annexation of approximately 36 acres of land upon request by the property owner.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

Additional land to be developed under City regulations in an expanded growth area.

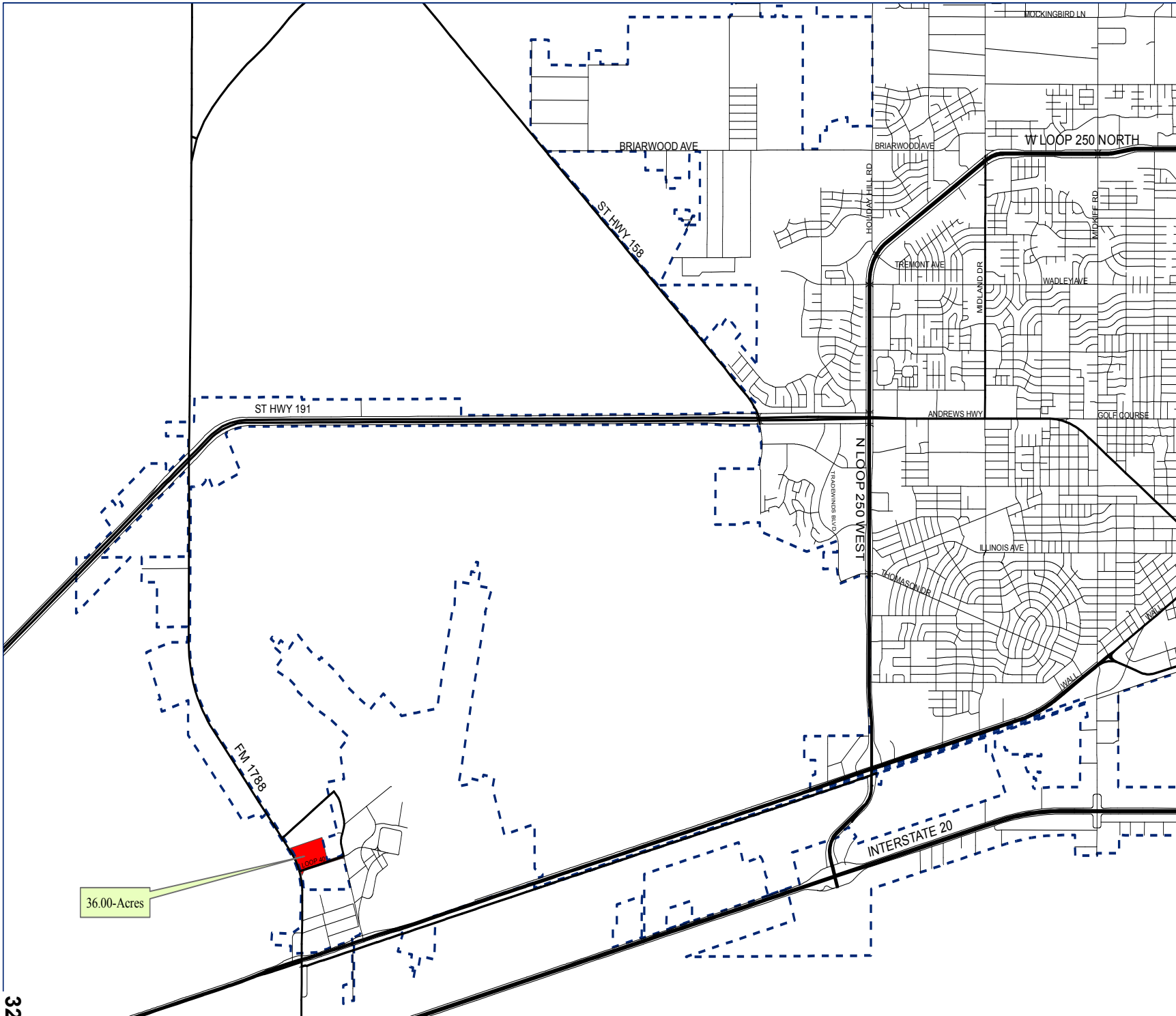
Discussion:

Staff has met with the owner's representative and discussed development in this area located at FM 1788 and Loop 40 (adjacent to the U.S. Post Office) and has received an application and materials to begin the platting process. The owner would like to be annexed into the City for the benefit of City services. This is considered a voluntary annexation in accordance with the Agricultural Exemption Agreement that is currently in effect on this property.

Staff is requesting Council's direction to add this land parcel to the proposed annexation.

Attachment:

Location map



Proposed Annexation

June 25, 2013

LEGEND

- Streets
- - - City Limits
- Annexation Tract

MIDLAND
Developmental Services
PLANNING DIVISION
Map by MH

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THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA. WHILE THIS DATA IS MADE AVAILABLE TO THE PUBLIC, IT WAS CREATED FOR INTERNAL USE BY THE CITY OF MIDLAND WHICH MAKES NO CLAIM AS TO ITS ACCURACY OR COMPLETENESS. THIS DATA IS NOT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING, CILING, OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.

36.00-Acres



City Council Agenda

Approved for Agenda:

City Manager's Office

MEETING DATE: June 25, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Ken VanDyne, Acting Planning Division Manager

SUBJECT: Continue consideration of an ordinance on a request by GBT Realty Corp. for a zone change from PD, Planned District for an Office Center to PD, Planned District for a Transition District on a 1.011-acre tract of land being the north 141 feet of Block 1, Harrison Tract, City and County of Midland, Texas. (Generally located on the east side of N. Midland Drive, approximately 160 feet north of Shell Avenue.)

Purpose: Continue consideration of an ordinance on a request by GBT Realty Corp. for a zone change from PD, Planned District for an Office Center to PD, Planned District for a Transition District on a 1.011-acre tract of land being the north 141 feet of Block 1, Harrison Tract, 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:

This item was deferred at the June 11th Council meeting for the rezoning of the above described property from PD, Planned District for an Office Center, to PD, Planned District for a Transition District. The proposed development under consideration is for a Dollar General store, and the item was deferred because of new information provided to staff regarding conditions within the restrictive covenants. Staff will provide an overview of the underlying conditions of the restrictive covenants to assist Council with the determination of the covenant's effects on the property.

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 1.011-ACRE TRACT OF LAND BEING THE NORTH 141 FEET OF BLOCK 1, HARRISON TRACT, CITY AND COUNTY OF MIDLAND, TEXAS, AND MORE SPECIFICALLY DESCRIBED IN SECTION ONE HEREOF, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR AN OFFICE CENTER, TO BE USED AS A PD, PLANNED DISTRICT FOR A TRANSITION DISTRICT (GENERALLY LOCATED ON THE EAST SIDE OF NORTH MIDLAND DRIVE, APPROXIMATELY 160 FEET NORTH OF SHELL 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 “Planned Districts” under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by the creation of a PD, Planned District for a Transition 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 an Office Center, and it shall be used as a PD, Planned District for a Transition District,

subject to the special conditions and restrictions hereinafter set out, said property being described as follows:

A 1.011-acre tract of land being the north 141 feet of Block 1, Harrison Tract, City and County of Midland, Texas, said tract being more specifically described by metes and bounds in Exhibit “D”, which is attached hereto and incorporated herein.

SECTION TWO. That said property shall be subject to the following special conditions and restrictions:

1. That the use and development of this property shall conform to the regulations of the NS, Neighborhood Service District.
2. That the development of this property shall conform to the conditions shown on the site plan attached hereto and incorporated herein as Exhibit “A”.
3. That the development of this property shall conform to the elevations and materials shown on Exhibits “B” and “C”, which are attached hereto and incorporated herein.
4. That the development of this property shall conform to the requirements of the Fire Marshal, the Building Official, and the regulations of the City of Midland Landscaping Code.

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

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

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

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

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

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

Council members voting "AYE":

Council members voting "NAY":

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

Council members voting "AYE":

Council members voting "NAY":

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

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

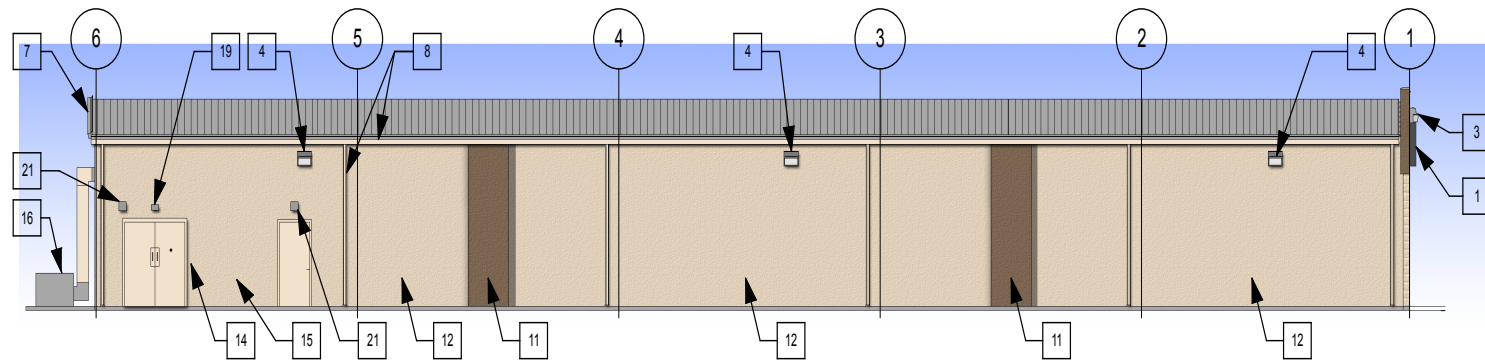
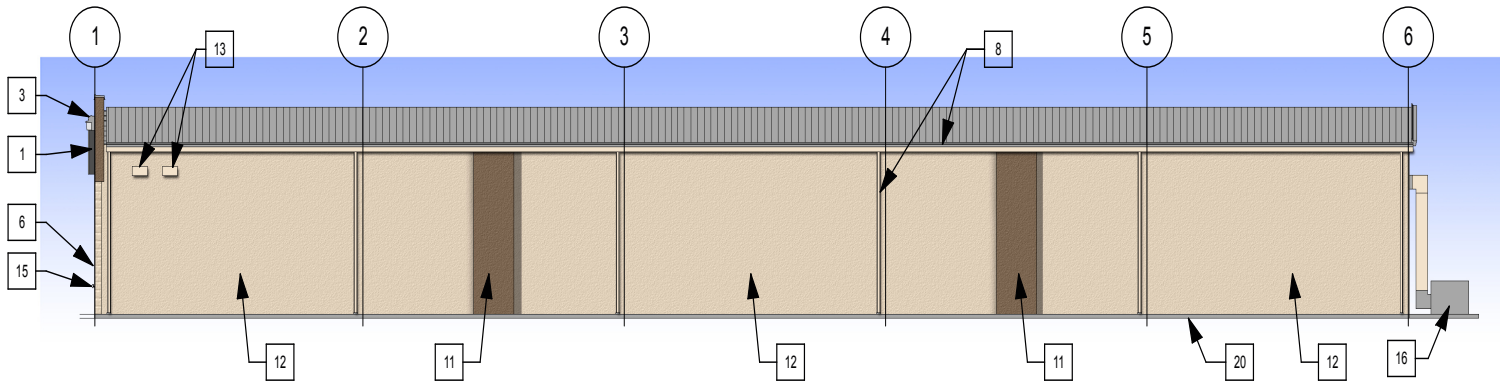
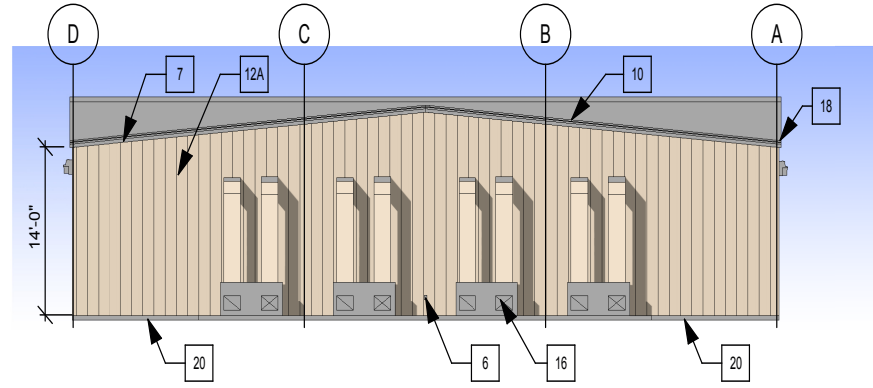
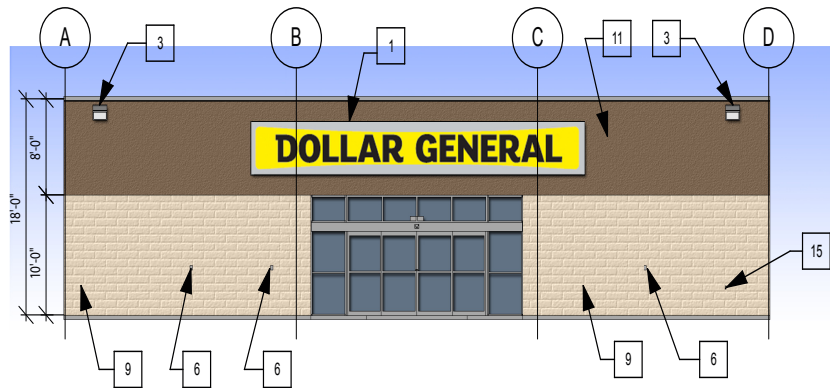
APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney





KEYED NOTES

- 1 SIGN FURNISHED AND INSTALLED BY DOLLAR GENERAL CORP. WITH CIRCUIT AS NOTED ON ELECTRICAL PLAN. SIGN TO BE CENTERED ON FRONT OF BUILDING. CONTRACTOR IS TO PROVIDE ADEQUATE BLOCKING AS REQUIRED BY SIGN MANUFACTURER TO SUPPORT SIGN WEIGHT OF UP TO 1,400 LBS. EXTERIOR CANOPY SIGN SHALL BE SUPPORTED BY THE FACE OF CANOPY. CONTRACTOR IS TO PROVIDE ADEQUATE STRUCTURE TO SUPPORT SIGN. COORDINATE THE PROPER SIGNAGE TO BE USED WITH DOLLAR GENERAL.
- 2 NOT USED.
- 3 WALL PACK. 16'-6" A.F.F. TO TOP OF WALL PACK. REFER TO ELECTRICAL DRAWINGS FOR ADDITIONAL INFORMATION.
- 4 ALL PACK 12'-0" A.F.F. TO TOP OF WALL PACK. REFER TO ELECTRICAL DRAWING E2.0 FOR ADDITIONAL INFORMATION.
- 5 NOT USED.
- 6 RECEPTACLE. REFER TO ELECTRICAL DRAWING E1.0 FOR ADDITIONAL INFORMATION.
- 7 TRIM - SEE SHEET S1.0 FOR COLOR
- 8 GUTTER AND DOWNSPOUT - SEE SHEET S1.0 FOR COLOR - DOWNSPOUT TO GO TO CHANNEL UNDER SIDEWALK OR TO SPLASHBLOCK (SEE CIVIL.)
- 9 SPLIT FACE CONCRETE MASONRY UNIT. PAINT TO MATCH SIDE WALL PANELS.
- 10 ROOF PANEL. GALVALUME FINISH.
- 11 FLAT METAL PANEL WITH DRYVIT "SWISS MOCHA" COLOR EIFS FINISH (VP BUILDINGS "TEXTURE CLAD PANEL" OR APPROVED EQUAL.)
- 12 FLAT METAL PANEL WITH EIFS FINISH (VP BUILDINGS "TEXTURE CLAD PANEL" OR APPROVED EQUAL.) COLOR TO MATCH "LIGHT STONE" OR DOLLAR GENERAL PROTOTYPICAL METAL PANELS.

- 12A STANDARD METAL PANEL PER DOLLAR GENERAL PROTOTYPE. COLOR TO MATCH "LIGHT STONE" OR OTHER DOLLAR GENERAL PROTOTYPICAL METAL PANEL COLORS.
- 13 VENT FOR BATHROOM EXHAUST. REFER TO MECHANICAL M1.0 FOR ADDITIONAL INFORMATION.
- 14 DOOR BUZZER. REFER TO ELECTRICAL DRAWING E1.0 FOR ADDITIONAL INFORMATION.
- 15 WALL HYDRANT. REFER TO PLUMBING DRAWING P1.0 FOR ADDITIONAL INFORMATION.
- 16 PACKAGE UNITS - SEE MECHANICAL
- 17 NOT USED.
- 18 MINIMUM EAVE HEIGHT IS 14'-0" A.F.F.
- 19 OUTSIDE AIR TEMP. SENSOR MOUNTED OVER RECEIVING DOORS @ 8'-0" A.F.F.

- 20 FINISH GRADE AT EXTERIOR WALLS SHALL BE A MINIMUM OF 6" BELOW FINISHED FLOOR AT ALL NON-PAVED AREAS.
- 21 EXTERIOR EMERGENCY LIGHTS AT EXITS - SEE ELECTRICAL

DOLLAR GENERAL® 2009 Logo - 6'-0" X 16'-1" Double Face Center Pole Sign



Cabinet Size: 6'-0" X 16'-1"

Mldg: 2 1/4" G molding (EX-275), removable for servicing.

V.O. 5'-7 1/2" X 15'-8 1/2"

One piece pan formed and embossed SPARTECH UV polycarbonate face (no exceptions).

Cabinet finish: Spraylat FM 171 brushed aluminum.

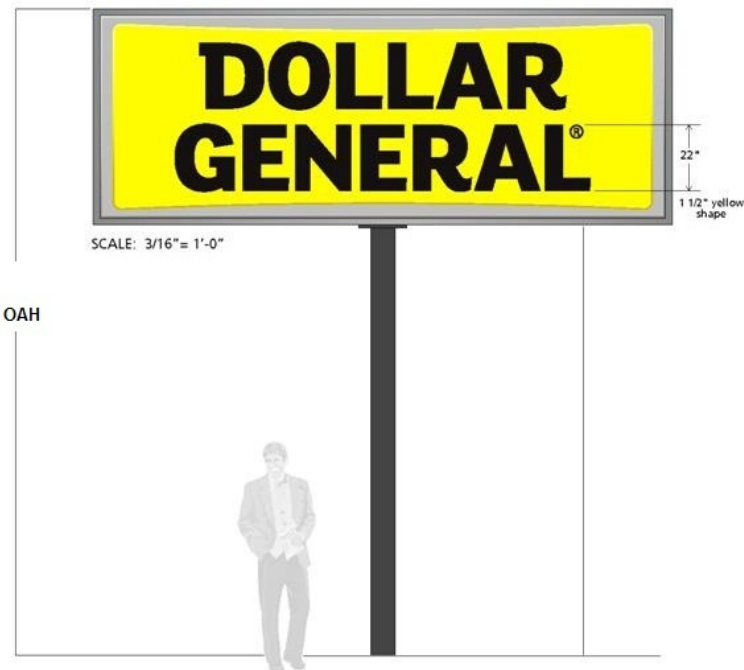
Black logotype embossed 1/2" on special yellow embossed shape (Spraylat C8-2633 yellow, no exceptions) on Gray (PMS Cool Gray 5) background and returns.

Decorative process: Production quantities are to have screen printed graphics (yellow, black, gray & white), no mask and spray.

Labeling: Requires UL Label and Union Label.

• NOTE: MUST be COOL WHITE LAMPS

NOTE: All signs come complete with ON/OFF switch and electric eye (when requested).



Dualite Sales & Service, Inc.

WILLIAMSBURG, OHIO • CEDAR HILL, TEXAS

Dualite Sales & Service, Inc.

One Dualite Lane

Williamsburg, Ohio 45176

Customer Approval
and Comments

This design is exclusive property of Dualite Sales & Service, Inc. • 1 Dualite Lane • Williamsburg, OH 45176 • Copyright 2010 Dualite Sales & Service, Inc. All Rights Reserved. Reproduction of this proprietary work without the permission of Dualite Sales & Service, Inc. will subject the user to liability under the copyright statutes of the United States.

NOTES CORRESPONDING TO SCHEDULE B

1.2. RESTRICTIVE COVENANTS RECORDED IN VOLUME 94, PAGE 322 DO AFFECT THIS TRACT.

MAIN BENCHMARK

SITE ELEVATION DATUM IS NAVD 83 BASED ON A RADIO-STATIC OBSERVATION ON NOVEMBER 28, 2012. THE FOLLOWING COORDINATES WERE USED FOR AN OPEN SOLUTION:

NO.	DESCRIPTION	COORDINATES	APP.
204764	TX01	CEDESA	APP.
204765	TX02	STANTON	APP.
204766	TX03	ANDREWS	APP.
204767	TX04	CHAVEZ	APP.
204768	TX05	MCKINNEY	APP.
204769	TX06	ALBERT	APP.
204770	TX07	MCCOY	APP.
204771	TX08	STOLING CITY	APP.
204772	TX09	FORT STOCKTON	APP.

CONTOUR INTERVAL = 0.5'

SITE BENCHMARK 1
CORNER OF CONCRETE
NORTH-EAST CORNER OF CONCRETE ON SOUTH LINE OF SUBJECT TRACT.
ELEVATION = 2650.16'

STATEMENT OF ENCROACHMENTS

THERE ARE NO VISIBLE ENCROACHMENTS, EXCEPT AS SHOWN.

UTILITY NOTES

THE LOCATION OF UTILITIES SHOWN HEREON ARE FROM OBSERVED EVIDENCE OF ABOVE GROUND APPURTENANCES ONLY. THE SURVEYOR WAS NOT PROVIDED WITH UNDERGROUND PLANS OR SURFACE GROUND MARKINGS TO DETERMINE THE LOCATION OF ANY SUBTERRANEAN UTILITIES.

GENERAL NOTES

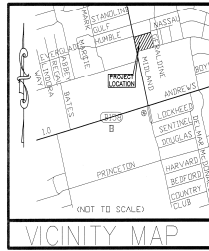
LEGAL DESCRIPTION SHOWN HEREON.
BEARINGS ARE ORIENTED TO THE TEXAS STATE PLANE
COORDINATE SYSTEM, CENTRAL ZONE 4203.
CONTOUR INTERVAL = 0.5'

ZONING INFORMATION

ZONED: CS - PUDC (PLANNING DISTRICT) WITH AN UNDERLYING ZONING OF 0-1 (OFFICE DISTRICT)
SECTION 2.1
FRONT YARD - 20 FEET
SIDE YARD - 5 FEET
REAR YARD - 10 FEET
HEIGHT - TWO AND ONE HALF STORES
LOT SIZE - MINIMUM 5000 SQUARE FEET AND MUST BE 50 FEET WIDE
LANDSCAPE REGULATIONS - SEE ARTICLE X

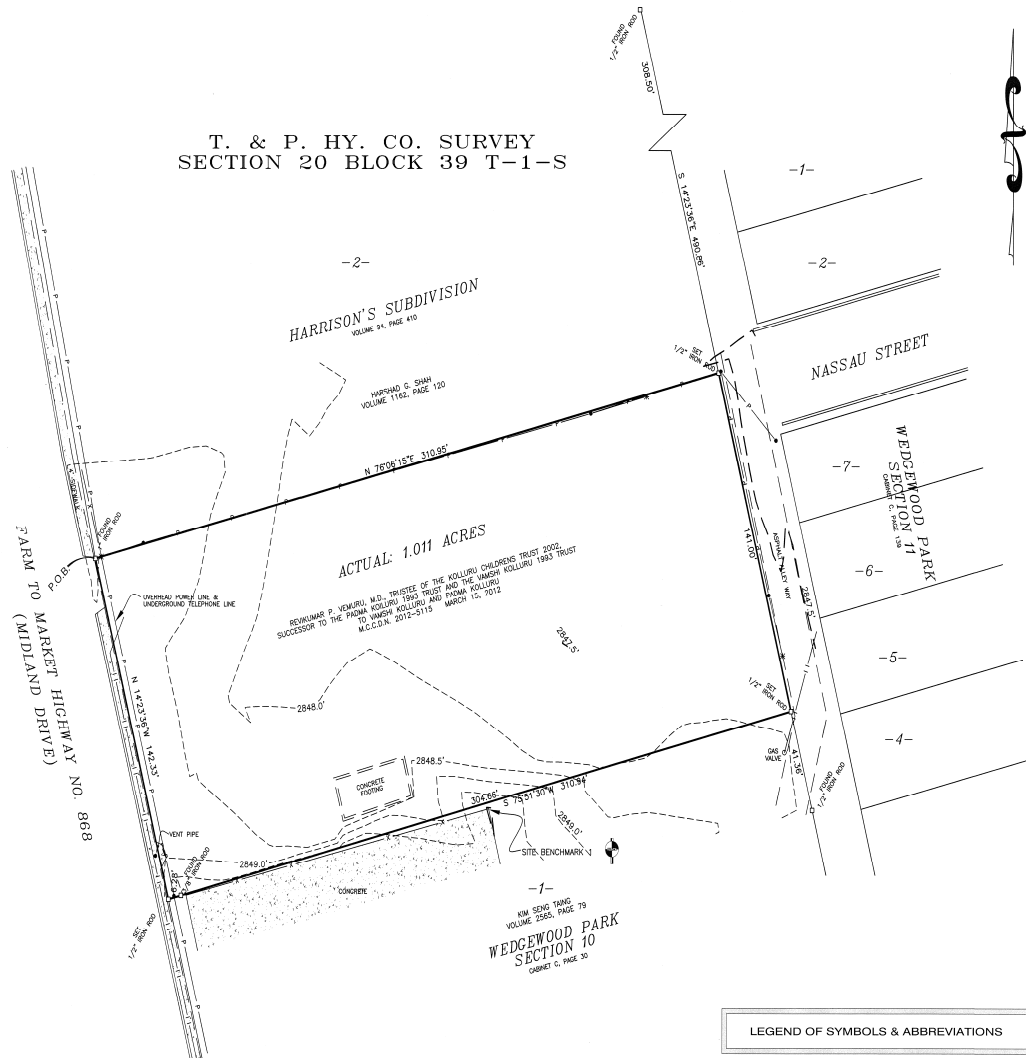
FLOOD NOTE

THE SUBJECT TRACT IS WITHIN ZONE "X" AREAS DETERMINED TO BE OUTSIDE THE 500 YEAR FLOODPLAIN ACCORDING TO: FIRM (FLOOD INSURANCE RATE MAP) MAP NO. 483300008 E, EFFECTIVE DATE: DECEMBER 6, 1999. SEE MAP BELOW.



ALTA/ACSM LAND TITLE SURVEY FOR GBT REALTY SHOWING PART OF THE SUPPLEMENTARY PLAT OF ORIGINAL OF HARRISON'S SUBDIVISION SECTION 20 BLOCK 39 T-1-S OF THE T. & P. HY. CO. SURVEY CITY OF MIDLAND, MIDLAND COUNTY, TEXAS

GRAPHIC SCALE - FEET 12-376 1205/18



LEGEND OF SYMBOLS & ABBREVIATIONS

⊙	WATER VALVE	x	LIGHT POLE
—SS—	SANITARY SEWER	•	GUY ANCHOR
□	PEDESTAL BOX	○	MANHOLE
—F—	FENCE	+	FIRE HYDRANT
—P—	POWER LINE	⌂	HANDICAPPED PARKING
⊠	WATER METER	□	PROPERTY CORNER
•	POWER POLE	⊠	ELECTRIC BOX
—W—	WATER LINE	—G—	GAS PIPELINE
—T—	TELEPHONE LINE	⊙	GAS VALVE
—FO—	FIBER OPTIC LINE	—C—	UNDERGROUND CABLE

AS SURVEYED LEGAL DESCRIPTION

All that certain lot, tract or parcel of land, being part of Section 20, Block 39, Township 1 South of the City of Midland, part of Tract 1 of the Original Harrison's Subdivision as shown by plat of same recorded in Volume 94, Page 410 of the Deed Records of Midland County, Texas, being all of that certain tract of land described in a deed from Rev. J. M. Harrison, Trustee to the Kollar Trust, dated March 13, 2012, and recorded in Midland County Clerk's Document No. 2012-5115, being more completely described as follows, to-wit:

BEGNNING at a 1" iron rod (found) for the Northwest corner of the above mentioned Kollar tract, the Northwest corner of the above mentioned Tract 1, the Southwest corner of Tract 2, in the West right-of-way line of Farm to Market Highway No. 868 (Midland Drive);

THENCE North 76 deg. 06 min. 15 sec. East with the South line of Tract 2 and the North line of Tract 1 and Kollar tract, a distance of 310.95 ft. to a 3/4" iron rod (set) for the Northeast corner of same, the Southeast corner of Tract 2, from which a 3/4" iron rod (found) for the Northeast corner of same bears North 14 deg. 23 min. 36 sec. West - 208.50 ft.;

THENCE South 14 deg. 23 min. 36 sec. East with the East line of the Kollar tract and Tract 1, a distance of 141.00 ft. to a 3/4" iron rod (set) for the Southeast corner of same, the Northeast corner of Wedgewood Park Section 10 as shown by plat of same recorded in Cabinet C, Page 30 of the Plat Records;

THENCE South 75 deg. 51 min. 30 sec. West with the North line of Wedgewood Park Section 10 and the South line of the Kollar tract, a distance of 310.94 ft. to a 3/4" iron rod (set) for the Southwest corner of same, the Northwest corner of Wedgewood Park Section 10, the West line of Tract 1, in the East right-of-way line of Farm to Market Highway No. 868;

THENCE North 14 deg. 23 min. 36 sec. West with the East right-of-way line of Farm to Market Highway No. 868 and the West line of the Kollar tract and Tract 1, a distance of 142.00 ft. to the place of beginning, containing 1.011 acres of land.

RECORD TITLE DESCRIPTION

Being the North 141 feet of Tract one (1), Supplementary Plat of Original of Harrison's Subdivision, an addition to the City of Midland County, Texas, according to the map or plat thereon, recorded in Volume 94, Page 410, Deed Records, Midland County, Texas.

ALTA / ACSM LAND TITLE SURVEY

I, Philip W. Cornett, Registered Professional Land Surveyor do hereby certify to Franklin Land Associates, LLC, Republic (The State of Texas, Inc. 2007, Ltd. and Bank of Texas, and its respective successors and assigns and First American Title Insurance Company as of the date hereof that I have made a careful survey of a tract of land described as follows:

- The accompanying survey was made on the ground and correctly shows the location of all buildings, structures and other improvements situated on the above premises and the courses and distances shown thereon are correct; and there are no visible encroachments on the subject property or upon adjacent and abutting said property except as shown hereon.
- The title lines and the lines of actual possession are the same, except as shown.
- The Property described herein is the same as the property described in Title Commitment No. 1002-28375-011 (the Commitment), with an effective date of September 10, 2012 and that all easements, covenants and restrictions referenced in said title commitment are apparent from a physical inspection of the site or otherwise noted as to their effect on the subject property.
- Said described property is located within Zone "X" areas determined to be outside the 500 year floodplain, according to the Federal Emergency Management Agency (FEMA), on Flood Insurance Rate Map with an effective date of December 6, 1999, Map No. 483300008 E, County of Midland, Texas which is the current Flood Insurance Rate Map for the community in which said premises is situated.
- Midland Drive is immediately adjacent to the subject property and no strips, gores or gaps are present.
- The survey accurately indicates and locates all visible utility connections for all utilities required for the operation or proposed operation of the subject property including connections for electricity, gas, telephone, storm drainage, sanitary waste disposal and drinking water. All visible utility services required for the operation or proposed operation of the subject property enter the subject property through adjoining public road ways or existing easements as shown on the survey.
- The field-measured description of the subject property forms a mathematically closed figure.
- The legal description shown on this plan describes the same property as that in the Commitment.
- There are no gaps, gores, or strips in the parcels or lots that constitute the subject property.

This is to certify that this map or plat and the survey on which it is based were made in accordance with the Minimum Standards Detail Requirements for ALTA/ACSM Land Title Surveys, jointly established and adopted by ALTA and NSPS in 2011, and includes Items 1, 2, 3, 4, 6(b), 7(b), 7(b)(1), 8, 9, 11(c), 12, 14, 16, 17, 18, 19 and 20(c) of Table A thereof. Pursuant to the Accuracy Standards as adopted by ALTA and NSPS and in effect on the date of this certification, undersigned further certifies that in my professional opinion, as a land surveyor registered in the State of Texas, the maximum Relative Horizontal Accuracy of this survey does not exceed that which is specified therein.

REGISTRATION NO. 5515
WITHIN THE STATE OF TEXAS
DATE OF SURVEY, November 28, 2012 "ON THE GROUND"
DATE OF LAST REVISION, November 28, 2012
FIRM: J.C. COWAN & ASSOCIATES, INC.
SURVEY PREPARED BY:
JOHN COWAN & ASSOCIATES, INC.
2012 ANTHONY DRIVE
TYLER, TEXAS 75701
PHONE: (903) 581-2238
E-MAIL: jcowaninc@jcowaninc.com



PLANNING AND ZONING COMMISSION

May 20, 2013

CASE: Z-13-006

REQUEST: Hold a public hearing and consider a request for a zone change from PD, Planned District for an Office Center to PD, Planned District for a Transition District.

APPLICANT: GBT Reality

OWNER: Vamshi M. Kolluru & Padma Kolluru

REPRESENTATIVE: Bob Gage, GBT Reality

LEGAL DESCRIPTION: A 1.011-acre tract of land being the north 141 feet of Block 1, Harrison Tract, City and County of Midland, Texas.

LOCATION: Generally located at the east side of N. Midland Drive, approximately 160 feet north of Shell Avenue.

CURRENT ZONING: PD, Planned District for an Office Center

DETAILS OF REQUEST:

1. The applicant previously requested to rezone this property at the March 18th Planning and Zoning meeting from a Planned District for an Office Center to an LR-1, Local Retail District. The proposed development is for a Dollar General Store, and the item was deferred at this meeting due to several concerns raised by citizens of the surrounding neighborhood. Items of concern included increased traffic for the area, entry and exit from the property, screening of the alley and surrounding properties, and lighting.

SURROUNDING ZONING AND LAND USE:

2. This property has frontage along N. Midland Drive, and is presently zoned PD, Planned District for an Office Center. Immediately south of this property is a PD, Planned District for a Transition District, with an underlying zoning of NS, Neighborhood Service District. Immediately west of this property is a 1F-2, Single Family Residential District, and east of this property is a TH, Townhome District.

ANALYSIS:

3. The new request for this application is to rezone this property from a PD, Planned District for an Office Center to a PD, Planned District for a Transition District. This is to allow for the application of site plan controls to address the concerns mentioned in paragraph one from the previous public hearing. The property provides entry and exit from the northwest corner off of Midland Drive. The proposal satisfies the City's parking regulations by providing 36 parking spaces. An eight foot masonry screen wall has been provided along the north/south alley, and six foot tall wood screening fences along the northern and southern east/west property boundaries. A gate has been added to prevent traffic from exiting the property and dispersing via Nassau Street or through the alley. A Knox box will be required to provide adequate access for the Fire Department's purposes for the gate along the alley. A 15 foot pole sign is to be located in the northeastern most corner of the property. The building will be a total of 9,100 square feet with approximately 7,200 square feet of retail floor area. The dumpster is located in the northeast corner of the property, and will require private solid waste collection as the City would be unable to provide collection based on its location.

STAFF RECOMMENDATION:

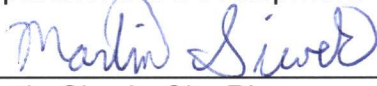
Staff recommends approval of the applicants request for a zone change from PD, Planned District for an Office Center to PD, Planned District for a Transition District subject to the following conditions.

- A. That the underlying zoning classification for this property be subject to the NS, Neighborhood Service District Standards.
- B. That the proposed development will significantly conform to the proposed site plan, Exhibit A.
- C. That the proposed development will significantly conform to elevations and proposed materials in Exhibits B and C.

- D. That the proposed development will conform to all requirements by the Fire Marshall's Office.
- E. That the proposed development will conform to all requirements by the Building Official's Office.
- F. The proposed development shall comply with all requirements of the City Landscape Code.



Ken VanDyne
Acting Planning Division Manager
Department of Development Services



Martin Siwek, City Planner
Department of Development Services

Attachments:

Application
Maps
Exhibits A, B, and C

Case Number: _____

CITY OF MIDLAND
Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

Austin Rogers, GBT Realty Corp. 615-370-0670/arogers@gbtrealty.com
Applicant Name (Phone/e-mail)

9010 Overlook Blvd., Brentwood, TN 37027
Address Zip Code

Vamshi M. Kolluru & Padma Kolluru 972-491-0309
Property Owner Name (Phone/e-mail)

1741 Case Dr., Plano, Tx 75025
Address Zip Code

Sarah Holley, GSP 615-770-8568/sarah-holley@gspnet.com
Representative Name (Phone/e-mail)

511 Union St, Suite 1400, Nashville, TN 37219
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. 2002 N. Midland Dr.

Blk 001, Lot N, 141, Addn: Harrison Tract,
Midland, Midland County, Texas

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

Reason for Zone Change Request: For use as a commercial
retail store

Present Use of Property: Vacant

Proposed Use of Property: Dollar General Store

How will zone change affect the public health, safety and welfare? It will benefit
the area by providing a convenient general store.

Describe how conditions affecting the property have changed since present zoning designation:
The property has not been developed since 1996,
so this change will allow new development.

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 (FOI,DED) 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): Pasha Kollar Date: 5/1/2013

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

STATE of TEXAS
COUNTY OF MIDLAND

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

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

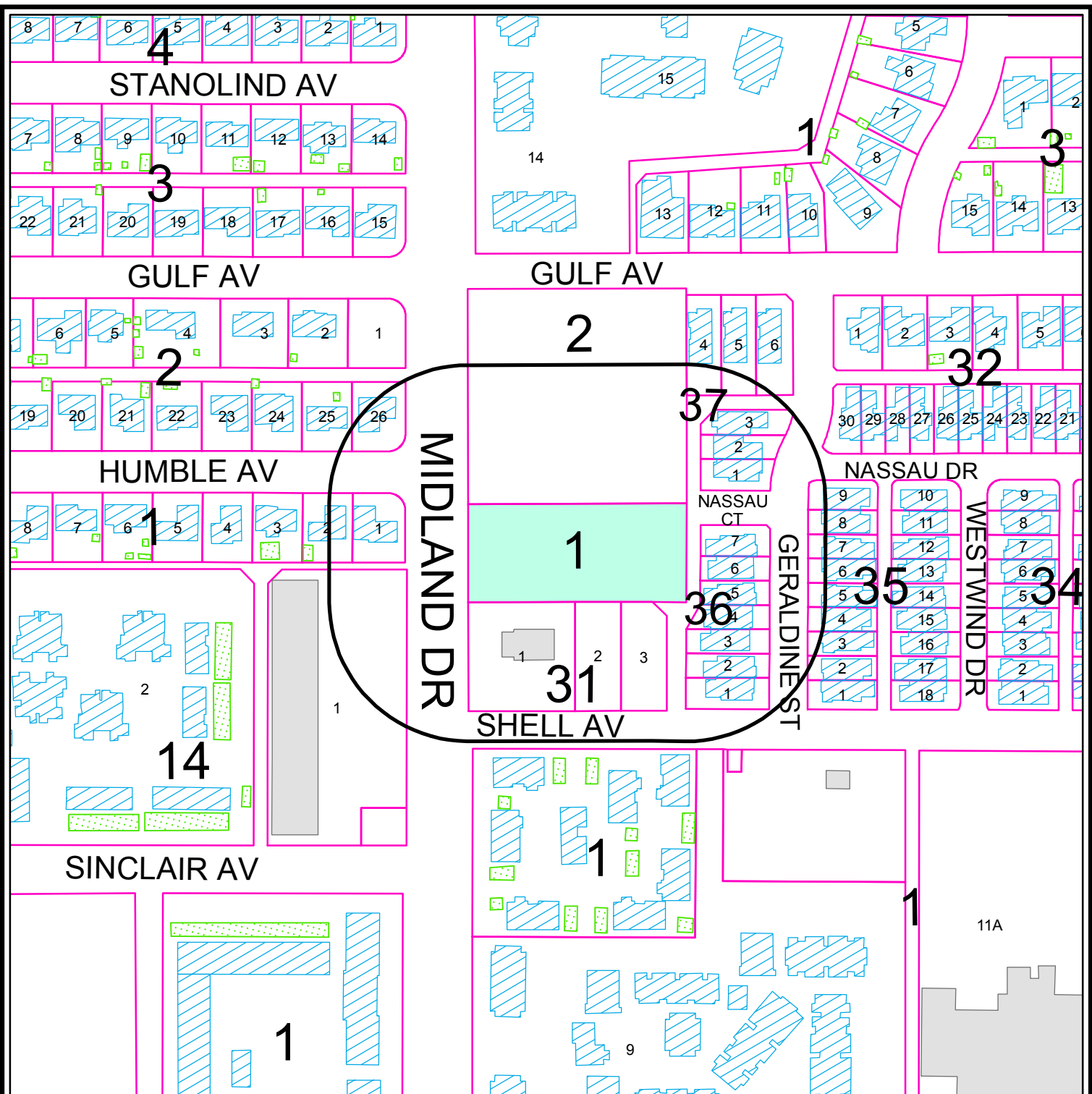
Authorized Agent (signature)

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

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: _____	Date: _____
Assigned: _____	
For: _____	On: _____

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



PROPERTY OWNER NOTIFICATION MAP

Z - 13 - 006

Scale: 1" = 200'

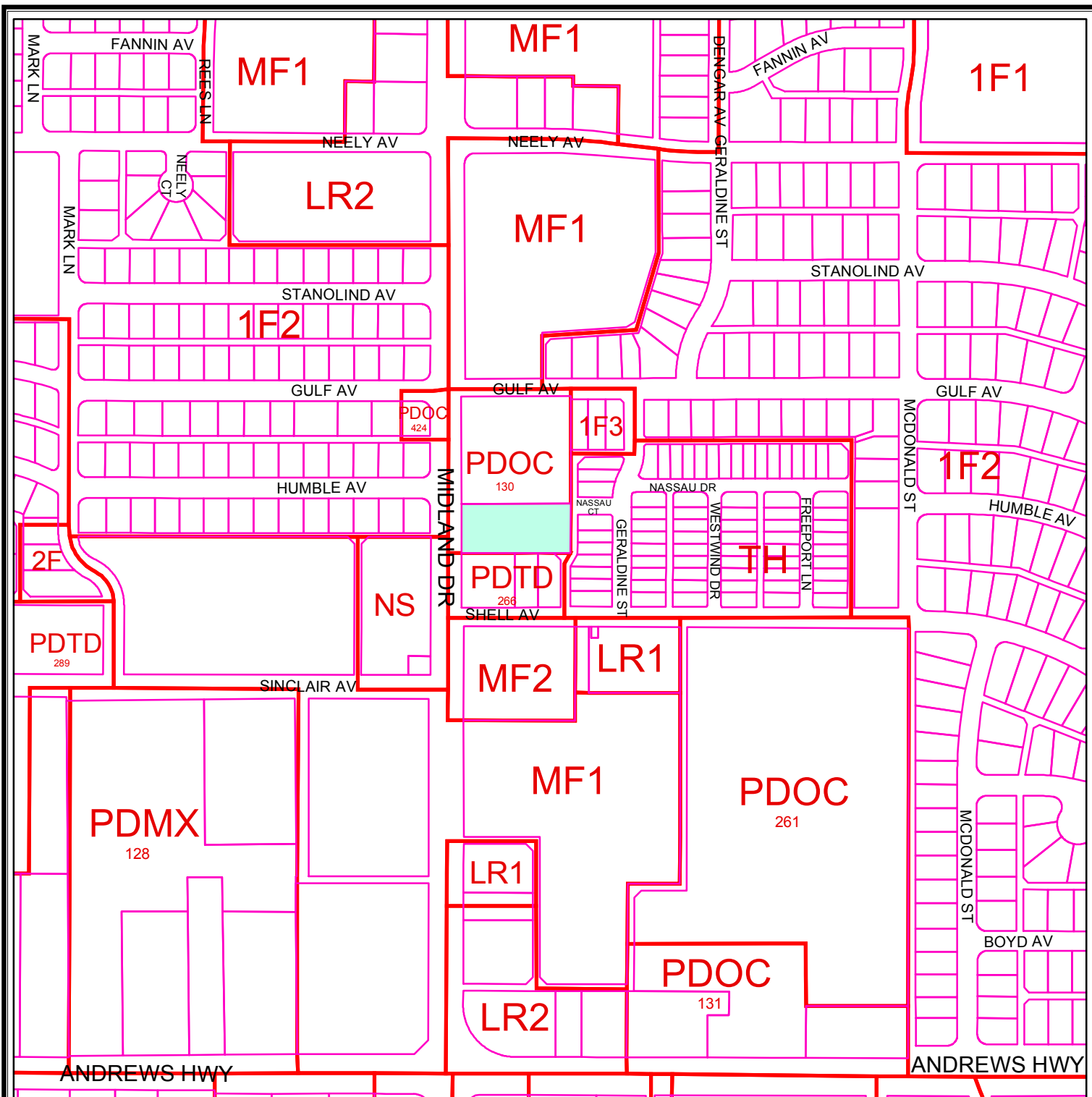
Consider a request for a zone change from PD, Planned District for an Office Center, to PD, Planned District for a Transition District on a 1.011-acre tract of and being the north 141.00 feet of Block 1, Harrison Tract, City and County of Midland, Texas.

LEGEND

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



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ZONING MAP

Z - 13 - 006

Scale: 1" = 400'

Consider a request for a zone change from PD, Planned District for an Office Center, to PD, Planned District for a Transition District on a 1.011-acre tract of and being the north 141.00 feet of Block 1, Harrison Tract, 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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COMPARER

FILE NO. 3829

TO

THE PUBLIC

JOHN S. HARRISON ET UX

JOHN S. HARRISON and

Elizabeth A. Harrison

To

Restrictive Covenants

Dated: Oct. 29, 1946

The Public

State of Texas

County of Midland: WHEREAS, John S. Harrison and Elizabeth A. Harrison own S 1/2 of NW 1/4 of SW 1/4 of Sec. 20, block 39, Township #1S., T & P Ry. Co. Survey as recorded Deed Records, Midland Co, book 90, Page 559, and which land has been divided into eight plats containing 2 1/2 acres more or less as shown by map attached to this document; and whereas John S. Harrison and Elizabeth A. Harrison desire to keep tracts 1, 2, 3, 4, 5, 6, 7 and 8 of S 1/2 of NW 1/4 of SW 1/4 of Sec. 20, block 39, Township #1S., T & P Ry. Co. Survey, residential property of the first class and to protect said tracts, 1, 2, 3, 4, 5, 6, 7 and 8 afore mentioned from encroachments foreign to residential property of such class; NOW THEREFORE, in consideration of the premises and for the purpose of enhancing the value of said tracts 1, 2, 3, 4, 5, 6, 7 and 8 of said plat afore mentioned of the division of S 1/2 of NW 1/4 of SW 1/4 of Sec. 20, block 39, Township #1S., T & P Ry. Co. Survey, and to insure its desirability for residential purposes, we, the said John S. Harrison and Elizabeth A. Harrison individually and jointly do hereby and herein create and place upon said tracts 1, 2, 3, 4, 5, 6, 7 and 8 of S 1/2 of NW 1/4 of SW 1/4 of Sec. 20, block 39, Township #1S., T & P Ry. Co. Survey, the following restrictions, to-wit:

1. No more than two principle dwellings shall be erected on each tract, and by principle dwellings it is meant the chief or primary building used as a residence, as distinguished from out buildings or servants quarters.
2. Each tract shall not be subdivided into more than two tracts - but the provision of #1 applies to the entire tract whether subdivided into two tracts or not.
3. No principle dwelling shall be erected containing less than four rooms and bath, and such dwelling shall be of frame or more substantial construction; box and strip type construction for main principle dwelling shall not be permitted; the principle dwelling shall contain not less than 800 sq. ft. of floor space, no building or plat of a building shall be moved from some other location to the tract, to be used in whole or in part as principle dwelling unless

such building conforms to afore mentioned construction requirements and is painted and in a good state of preservation.

4. All out bldings, stock and poultry pens shall be located not less than 150 ft. from property line fronting County maintained road or street - garages and servants quarters excepted. No out door toilets will be permitted.

5. No tract or subdivision of tract shall ever be used by or conveyed to any person of African descent, provided however, this restriction shall not prevent occupancy by domestic employees of such descent who may be employed by owners or tenants of such premises, and these restrictions shall not prevent construction of quarters for such employees upon the tract.

6. No noxious or offensive trade or activity shall be carried on upon any of the tracts, however these restrictions shall not prevent the drilling of oil wells and the development under an oil and gas lease and the production of oil, gas and other minerals and removing the same therefrom; this restriction shall not prohibit or prevent the keeping of a reasonable amount of live stock or poultry upon any of the tracts;

7. These covenants and restrictions are to run with tracts 1, 2, 3, 4, 5, 6, 7 and 8 and shall be binding on the parties executing this instrument, their heirs and assigns, and all persons claiming under them, or claiming said land or any part thereof, their heirs and assigns, until Jan. 1, 1980, at which time said covenants and restrictions shall be automatically extended for successive periods of ten years unless by a vote of the majority of the owners of tracts 1, 2, 3, 4, 5, 6, 7 and 8 it is agreed that said covenants and restrictions shall be changed in whole or in part;

8. If the parties executing this instrument, or their heirs and assigns, or any person whomsoever, shall violate or attempt to violate any of the restrictive covenants and restrictions herein set out, it shall be lawful for any other person or persons owning any building plot or premises located in or on tracts 1, 2, 3, 4, 5, 6, 7 and 8 to protect any proceedings, at law or in equity, against the person or persons violating or attempting to violate any restrictive covenants or restrictions and either to prevent him or them from so doing, or to recover damages or other dues arising out of or resulting from such violations.

John S. Harrison

Elizabeth A. Harrison

JOINT ACKNOWLEDGMENT

THE STATE OF TEXAS §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned, a Notary Public, M. I. Kroenlein, in and for said County, Texas, on this day personally appeared John S. Harrison and Elizabeth A. Harrison, his wife, both known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they each executed the same for the purposes and consideration therein expressed, and the said Elizabeth A. Harrison wife of the said John S. Harrison having been examined by me privily and apart from her husband, and having the same fully explained to her, she, the said Elizabeth A. Harrison acknowledged such instrument to be her act and deed, and she declared that she had willingly signed the same for the purposes and consideration therein expressed, and that she did not wish to retract it.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, This 29th day of October, A. D. 1946.

(SEAL)

M. I. Kroenlein, Notary Public in and for
Midland County, Texas. M. I. Kroenlein

Filed for record the 5th day of October, A. D. 1946 at 10:45 o'clock A. M.

Recorded on this the 6th day of October, A. D. 1946 at 11:00 o'clock A. M.

By Lucille Johnson Deputy, LUCILLE JOHNSON, Clerk County Court,
Midland County, Texas.

FILE NO. 5264
RESTRICTIONS

JOHN S. HARRISON ET UX
THE STATE OF TEXAS
COUNTY OF MIDLAND

TO

THE PUBLIC

WHEREAS, John S. Harrison and wife, Elizabeth Ann Harrison, filed for record on October 5, 1946, in volume 91, page 466, of the deed records of Midland County, Texas, certain restrictive covenants affecting a portion of the West 1/2 of the Southwest 1/4 of Section 20, Block 39, Township 1-South, T. & P. Ry. Co. Survey, Midland County, Texas; and

Whereas, they wish to execute this correction instrument, in order to describe the land affected with greater particularity:

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that we, John S. Harrison and wife, Elizabeth Ann Harrison, of the County of Midland, State of Texas, in consideration of the premises and for the purpose of enhancing the value of HARRISON'S TRACTS, a subdivision of a portion of the West 1/2 of the Southwest 1/4 of Section 20, Block 39, Township 1-South, T & P. Ry. Co. Survey, Midland County, Texas, as more particularly described by metes and bounds as follows:

Beginning at a point in the western boundary line of Said Section 20, a distance of 1302 feet North of its Southwest corner, and being the NW corner of a tract of land conveyed to Forest Hunter and wife, Jessie R. Hunter, recorded in volume 87, page 139, of the deed records of Midland County, Texas, as the place of beginning; thence North 74 deg. 45'

East 1330 feet along the North line of the Hunter tract to its NE corner as the SE corner of this tract of land; thence North 15 deg. 15' West 677 feet to a stake for the NE corner of this tract of land; thence South 74 deg. 45' West 1330 feet to a stake in the West boundary line of Section 20 as the NW corner of this tract of land; thence South 15 deg. 15' East 677 feet along the Western Boundary line of said Section 20 to the place of beginning; And for the purpose of insuring its desirability for residential purposes, hereby and herein create and place upon said HARRISON'S TRACTS, effective as of October 5, 1946 and relating back to said date, the following restrictions:

1. No more than two principal dwellings shall be erected on each tract, and by principal dwellings it is meant the chief or primary building used as a residence, as distinguished from out-buildings or servants quarters.
2. Each tract shall not be subdivided into more than two tracts - but the provision of paragraph 1 preceding applies to the entire tract whether subdivided into two tracts or not.
3. No principal dwelling shall be erected containing less than four rooms and bath, and such dwelling shall be of frame or more substantial construction; box and strip type construction for main principal dwellings shall not be permitted; the principal dwelling shall not contain less than 800 square feet of floor space, no building or part of a building shall be moved from some other location to the tract, to be used in whole or in part as a principal dwelling unless such building conforms to the aforementioned construction requirements and is painted and in a good state of preservation.
4. All out-buildings, stock and poultry pens shall be located not less than 150 feet from property line fronting County maintained road or street, - garages and servants' quarters excepted. No out-door toilets will be permitted.
5. No tract or subdivision of a tract shall ever be used by or conveyed to any person of African descent, provided, however, that this restriction shall not prevent occupancy by domestic employees of such descent who may be employed by owners or tenants of such premises, and these restrictions shall not prevent construction of quarters for such employees upon the premises.
6. No noxious or offensive trade or activity shall be carried on upon any of the tracts; however, these restrictions shall not prevent the drilling of oil wells and the development under an oil and gas lease and the production of oil, gas and other minerals and removing the same therefrom; this restriction shall not prohibit or prevent the keeping of a reasonable amount of live stock or poultry upon any of the tracts.
7. These covenants and restrictions are to run with the land and shall be binding on the parties executing this instrument, their heirs and assigns, and all persons claiming under them or independent of them, their heirs and assigns, until January 1, 1980, at which time said covenants and restrictions shall be automatically extended for successive periods of ten years unless by a vote of the majority of the owners of Harrison's Tracts it is agreed that said covenants and restrictions shall be changed in whole or in part.
8. If the parties hereto, their heirs and assigns, or any person whomever, shall violate or attempt to violate any of the restrictive covenants and restrictions herein set out, it shall be lawful for any other person or persons owning any building plot or premises located in said Harrison's Tracts to initiate and maintain any proceedings, at law or in equity, against the person or persons violating or attempting to violate any restrictive covenants or restrictions, and either to prevent him or them from so doing, or to recover damages or other dues and equities arising out of or resulting from such violations or attempted violations.

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Done at Midland, Texas, this the 14 day of February, 1947.

John S. Harrison

John S. Harrison

Elizabeth Ann Harrison

Elizabeth Ann Harrison

THE STATE OF TEXAS

COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared John S. Harrison and Elizabeth Ann Harrison, his wife, both known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they each executed the same for the purposes and consideration therein expressed, and the said Elizabeth Ann Harrison, wife of the said John S. Harrison, having been examined by me privily and apart from her husband, and having the same fully explained to her, she, the said Elizabeth Ann Harrison acknowledged such instrument to be her act and deed, and she declared that she had willingly signed the same for the purposes and consideration therein expressed, and that she did not wish to retract it.

Given under my hand and seal of office this the 14 day of February, 1947.
(SEAL)

D. Lord Murr

Notary Public Midland County, Texas.

D. LORD MURR

Notary Public in and for Midland County, Texas.

Filed for record the 17th day of March, A. D. 1947 at 11:00 o'clock A. M.

Recorded on this the 17th day of March, A. D. 1947 at 4:00 o'clock P. M.

LUCILLE JOHNSON, Clerk County Court,

Midland County, Texas.

By Lucille Johnson Deputy.

MIDLAND
City Attorney's Office
City of Midland
Office Memorandum

DATE: June 20, 2013

TO: The Honorable Mayor and City Council Members

FROM: Keith Stretcher, City Attorney

SUBJECT: City's legislative agenda in the 83rd Regular Session of the Texas Legislature

This item has been placed on your agenda so that we may discuss the recent legislative session with you in more detail.

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

Keith Stretcher

KS/lo

City of Midland
City Secretary's Office
Interoffice Memorandum

Date: June 20, 2013
To: The Honorable Mayor Perry and Council
From: Amy M. Turner, City Secretary
Subject: Membership - Boards and Commissions

Attached is an updated membership listing for the City's Boards and Commissions effective June 25, 2013. Remaining expirations and vacancies are listed below:

AIRPORT PLANNING AND DEVELOPMENT BOARD – Two terms expired on September 30, 2012.

ANIMAL SERVICES ADVISORY COMMISSION – One vacancy which will expire on September 30, 2013.

CITY DEVELOPMENT ADVISORY COMMITTEE – One terms expired on September 30, 2012.

CONSTRUCTION BOARD OF ADJUSTMENTS AND APPEALS – Two vacancies for Alternate terms expired on September 30, 2007.

HOUSING AUTHORITY COMMISSION – One vacancy as Alternate term expiring in October 2015

MIDLAND FOOTBALL-SOCCER AND BASEBALL COMPLEX DEVELOPMENT CORPORATION – Two terms expired in November 2011.

MIDLAND HIGHER EDUCATION FACILITIES CORPORATION – Three vacancies expired on January 1, 2007, one term expired on January 1, 2009, and two terms expired on January 1, 2010.

MIDLAND HOUSING FINANCE CORPORATION – One vacancy expired on September 30, 2010, two terms expired on September 30, 2011 and one term expired on September 30, 2012.

MIDLAND MUNICIPAL MANAGEMENT DISTRICT BOARD – One vacancy.

MIDLAND-ODESSA URBAN TRANSIT DISTRICT BOARD – Two terms expired on September 30, 2012.

PERMIAN BASIN AIRPORT BOARD – Two terms expired on September 30, 2010 (Carlsbad and Hobbs New Mexico), one term expired on September 30, 2011 and two terms expired on September 30, 2012.

TAX INCREMENT REINVESTMENT ZONE BOARD –Four terms expired on March 20, 2010, one term expired March 20, 2011, one terms expired on March 20, 2012 and two terms expired on March 20, 2013. (Four City representatives, two Hospital representatives and two County representatives.)

ZONING BOARD OF ADJUSTMENT AND AIRPORT ZONING BOARD OF ADJUSTMENT- One term expired on September 30, 2011, one term expired on September 30, 2012 and one vacancy for Alternate term expired on September 30, 2006 and one vacancy for Alternate term expired September 30, 2009.

BOARDS AND COMMISSIONS OF THE CITY OF MIDLAND

June 11, 2013

AIRPORT PLANNING AND DEVELOPMENT BOARD

(Advisory)

(Membership-10; Terms - 3 Years expiring 3-3-4.)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Ronald Schwisow	09/06	Sept 30 2012	Sept 30 2012
Herbert Blankinship	09/06	Sept 30 2012	Sept 30 2012
Jerry Walton	11/09	Sept 30 2015	Sept 30 2015
Mike Owen	10/07	Sept 30 2013	Sept 30 2013
Gregory F. Baiano	09/10	Sept 30 2013	Sept 30 2016
John T. Echols	09/10	Sept 30 2013	Sept 30 2016
Dallas L. Smith	09/10	Sept 30 2013	Sept 30 2016
Earl Erdmann, Chairman	09/08	Sept 30 2014	Sept 30 2014
J. Ross Lacy	09/12*	Sept 30 2014	Sept 30 2020
Don "Woody" Woodward	11/11	Sept 30 2014	Sept 30 2017

Ex-Officio members are Harry Spannaus, the City Manager and the City Attorney. The Secretary is the Director of Aviation.

ANIMAL SERVICES ADVISORY COMMISSION

(Advisory)

(Membership - 6; Terms - 4 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Vacancy-Tony Carrillo	09/09	Sept 30 2013	Sept 30 2017
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
Paul O'Neill	09/09	Sept 30 2013	Sept 30 2017

BUILDING CODES REVIEW COMMITTEE

(Membership – 9; Terms – 2 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
James Rigger	12/09	Dec 31 2013	Dec 31 2013
Chris Repman	12/09	Dec 31 2013	Dec 31 2013
John Cooper	12/09	Dec 31 2013	Dec 31 2013
Bill Routh	12/09	Dec 31 2013	Dec 31 2013
Tom Woodruff	12/09	Dec 31 2013	Dec 31 2013
Ron Ainsworth	12/09	Dec 31 2013	Dec 31 2013
Walter Pate	12/09	Dec 31 2013	Dec 31 2013
Robert Harrington	12/09	Dec 31 2013	Dec 31 2013
Jerry Morales	12/09	Dec 31 2013	Dec 31 2013

CITY DEVELOPMENT ADVISORY COMMITTEE

(Advisory)

(Membership - 5; Terms - 2 Years expiring 2 even & 3 odd)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Reggie Lawrence	09/10	Sept 30 2012	Sept 30 2014
Alonda Massey	11/11	Sept 30 2013	Sept 30 2015
Tim Bryson	11/11	Sept 30 2013	Sept 30 2015
W. Roger Beebe	02/13	Sept 30 2014	Sept 30 2016
Avery I. Pullins	02/13*	Sept 30 2013	Sept 30 2017

CONSTRUCTION BOARD OF ADJUSTMENTS AND APPEALS

(Decision Making)

(Membership - 7; Terms - 4 Years expiring 2-2-2-1)

Position to include: 1. Registered Architectural or Builder Superintendent, 2. Registered Structural Engineer, 3. Registered Mechanical and Plumbing, 4. Registered Electrical Engineer, 5. Registered Fire Protection Engineer

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>	<u>Position</u>
Don Woodward (At Large)	11/11*	Sept 30 2016	Sept 30 2020	5
Richard D. Dunham	10/05	Sept 30 2013	Sept 30 2013	1
Greg Turner	03/11*	Sept 30 2013	Sept 30 2021	4
Chris Repman	10/07*	Sept 30 2014	Sept 30 2018	3
Jay K. Bradford	09/10	Sept 30 2014	Sept 30 2018	2

ALTERNATES:

Vacancy	Sept 30 2007	Any
Vacancy	Sept 30 2007	Any

HOTEL/MOTEL TAX ADVISORY BOARD

(Advisory)

(Membership - 7; Terms - 2 Years Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Karmen Hendrix Bryant	02/12*	Sept 30 2013	Sept 30 2017
David Baur	09/10	Sept 30 2013	Sept 30 2014
Lisa Grissom	09/09	Sept 30 2013	Sept 30 2013
Steve Jones	02/09*	Sept 30 2013	Sept 30 2013
Annabell Ramirez	09/12	Sept 30 2014	Sept 30 2016
Brian Smith	09/12	Sept 30 2014	Sept 30 2016
Alex Singh-Hotel/Motel Assn. Rep.	09/09	Dec 31 2013	Assn. Appt.
Vicky Hailey (Liaison Officer)			

* Indicates appointment to an unexpired term.

HOUSING AUTHORITY COMMISSION

(Membership - 5; Terms - 2 Years expiring 2 even & 3 odd.)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Gregory Maes	11/11	Oct 2013	Oct 2015
Carla Repman, Vice Chairman	09/09	Oct 2013	Oct 2013
James A. Blischke	01/10	Oct 2013	Oct 2015
Dennis Bade	09/12	Oct 2014	Oct 2016
Norma Duran	11/08*	Oct 2014	Oct 2014

ALTERNATES:

Vacancy	Oct 2013	Oct 2015
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JOINT ECONOMIC DEVELOPMENT TASK FORCE

(Ad Hoc)

	<u>Appt. Date</u>
(Midland)	
Wes Perry	01/08
LuAnn Morgan	12/00
Keith Stretcher	12/00
Tommy Hudson	08/07
John Breier	01/04
(Odessa)	
Larry Melton	08/01
Jim Morris	11/00
Richard Morton	11/02
Joel Roberts	11/00
Neil McDonald	11/00

MANAGED COMPETITION COMMITTEE

(Ad Hoc)

	<u>Appt. Date</u>
Jon Morgan	01/02
Wes Perry	01/02
Roy Nelson	01/02
Hugh "Andy" Shaffer	12/03
Scott Dufford	01/02
Ted Tipton	04/04
Kevin Sparks	11/07
Scott Lovett	04/10
P. Lourcey Sams	04/10

Ex-Officio members are the Mayor and the City Manager.

* 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
Vicky Hailey	(CC)	01/13*	Sept 30 2014	N/A
Tracy Bacon	(CC)	12/11	Sept 30 2014	N/A
Jerry Morales (Liaison Officer)				

Ex-Officio members are the City Manager and Executive Director of the Chamber of Commerce.

MIDLAND CENTRAL APPRAISAL DISTRICT BOARD OF DIRECTORS

Five Directors, Elected by Local Taxing Entities.

City Nominates/Cast Vote for one Director

(Terms - 2 Years)

	<u>Appt Date</u>	<u>Term Expires</u>
Chad Clark	3/12*	Dec 31 2013

MIDLAND DEVELOPMENT CORPORATION

(Membership - 5; Terms -3 Years - Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Laura Roman	01/08	Jan 14 2014	Jan 14 2014
Robert Rendall, Chairman	01/09*	Jan 14 2014	Jan 14 2017
Michael Trost	02/11*	Jan 14 2016	Jan 14 2019
Cary J. Love	12/09	Jan 14 2016	Jan 14 2016
Gary Douglas	11/11*	Jan 14 2016	Jan 14 2019

MIDLAND FRESH WATER SUPPLY DISTRICT #1

(Ad Hoc)

(3 Non Voting Members)

Appt Date

Wes Perry
 Gary Harris
 Wayne Merritt

05/12
 05/12
 05/12

**MIDLAND FOOTBALL-SOCCER AND BASEBALL COMPLEX
 DEVELOPMENT CORPORATION**

(Decision Making)

Membership - 7; Terms - 2 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Ken Marks, Vice President	10/07	Nov 2011	Nov 2011
James G. Smith	12/07	Nov 2011	Nov 2011
Mike Thompson	11/11	Nov 2013	Nov 2015
Tim Bryson	11/11	Nov 2013	Nov 2015
Wesley D. Bownds	02/09*	Nov 2013	Nov 2013
John James	08/08*	Nov 2013	Nov 2013
Rick Davis (MISD Resp.)	10/10*	Nov 2013	Nov 2015

MIDLAND HIGHER EDUCATION FACILITIES CORPORATION

(Membership - 7; Terms - 2 Years Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Vacancy		Jan 1 2007	
Vacancy		Jan 1 2007	
Vacancy		Jan 1 2007	
Vacancy		Jan 1 2009	
Cathy Oestmann	11/05*	Jan 1 2010	Jan 1 2010
Steve Jones	09/08*	Jan 1 2010	Jan 1 2012
Curt Kamradt	11/05*	Jan 1 2014	Jan 1 2014

* Indicates appointment to an unexpired term.

MIDLAND HOUSING FINANCE CORPORATION

(Decision Making)

(Membership - 5; Terms - 2 Years - Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Vacancy - (Damon L. Blakeley)	07/07*	Sept 30 2010	
Adrienne Valencia	10/07	Sept 30 2011	Sept 30 2011
Melissa Wicker	10/07	Sept 30 2011	Sept 30 2011
Jerry Morales (Liaison Officer)	10/08	Sept 30 2012	Sept 30 2012
Nathan Miller	11/11*	Sept 30 2012	Sept 30 2016

MIDLAND MUNICIPAL MANAGEMENT DISTRICT BOARD

(Ad Hoc)

Appt. Date

Vacancy	
Richard Hatchett	11/08
W. L. "Scooter" Brown	09/04
Ken Burgess	09/04
Jim Hightower	11/08
Ted H. Jones	09/04
Mitch Malouf	11/08
Christi Newton	09/04
Dan Rush	09/04

MIDLAND-ODESSA URBAN TRANSIT DISTRICT BOARD

(Decision Making)

(Membership - 6; Terms - 2 Years Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Willie Barber	09/08	Sept 30 2012	Sept 30 2012
Michael Trost	09/08	Sept 30 2012	Sept 30 2012
John H. James	09/09	Sept 30 2013	Sept 30 2013
Karen York	06/09*	Sept 30 2013	Sept 30 2013
Guy McKenize	03/11*	Sept 30 2013	Sept 30 2015
Rebecca Bell	09/12	Sept 30 2014	Sept 30 2016

* Indicates appointment to an unexpired term.

OIL AND GAS ADVISORY COMMITTEE

(Advisory)

(Membership – 5; Terms – 3 Years expiring 2-2-1)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Russell Richards (Petroleum Eng.)	09/12	Sept 30 2015	Sept 30 2018
Perry Dan Taylor (Real Estate)	09/12	Sept 30 2015	Sept 30 2018
Lance Friday (Real Estate)	09/12*	Sept 30 2013	Sept 30 2019
Paul Brown (Petroleum Eng.)	11/11	Sept 30 2014	Sept 30 2017
David Rosen (Petroleum Eng.)	11/11	Sept 30 2014	Sept 30 2017

PARKS AND RECREATION COMMISSION

(Advisory)

(Membership - 9; Terms - 3 Years expiring 3-3-3.)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Charles A. Spence	01/10*	Sept 30 2013	Sept 30 2016
Susan Nichols	02/06*	Sept 30 2013	Sept 30 2013
Eric L. West	10/07	Sept 30 2013	Sept 30 2013
Kenny Harper	03/12*	Sept 30 2013	Sept 30 2019
P. Lourcey Sams	09/08	Sept 30 2014	Sept 30 2014
Tina Corbett	09/08	Sept 30 2014	Sept 30 2014
Katey Howard	09/12*	Sept 30 2014	Sept 30 2020
Amanda McCann	11/11*	Sept 30 2015	Sept 30 2018
Edward Mayberry	09/12	Sept 30 2015	Sept 30 2021

PERMIAN BASIN AIRPORT BOARD

(Advisory)

(Membership - 30; Terms - 1 year.)

	<u>Appt. Date</u>	<u>Term Expires</u>
10 Members of the Airport Planning and Development Board		
Bob Forrest (Carlsbad, NM)	10/04	Sept 30 2010
Larry Shed (Hobbs, NM)	10/01	Sept 30 2010
Larry Gill (Abilene)	10/10	Sept 30 2011
David Hardwick (Ft. Stockton)	10/07	Sept 30 2012
Lex Hinds (Seminole)	10/08	Sept 30 2012

PERMIAN BASIN AIRPORT BOARD CON'T

	<u>Appt. Date</u>	<u>Term Expires</u>
Elvin Brownlee III (Andrews)	12/10*	Sept 30 2013
Jim Little (Big Spring)	09/03	Sept 30 2013
Frankie Rolfe (Kermit)	09/12	Sept 30 2013
Don Bethel (Lamesa)	02/91	Sept 30 2013
Willie Taylor (Odessa)	02/00	Sept 30 2013
Gloria Pena (Odessa)	03/03*	Sept 30 2013
Barbara Graff (Odessa)	06/10*	Sept 30 2013
Henry Cutbirth (Monahans)	09/05	Sept 30 2013
Isabelle Blanchard (Pecos)	10/10	Sept 30 2013
Luis E. Elguezabal (San Angelo)	10/07	Sept 30 2013
Glenn Wortham (Sweetwater)	10/07	Sept 30 2013
John Rogotzke (Snyder)	01/12	Sept 30 2013
Lance Goodrich (Artesia, NM)	09/09	Sept 30 2013
Larry Fry (Roswell, NM)	09/00	Sept 30 2013

Ex-Officio members are the City Manager and the City Attorney. The Secretary is the Director of Aviation.

**PERMIAN BASIN COMMUNITY CENTER FOR MENTAL HEALTH
AND MENTAL RETARDATION**

(Decision Making)

(Membership - 2 (City); Terms - 2 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Janet R. Pritchett (City)	05/09*	June 2014	June 2014
Larry Edgerton	07/10*	June 2013	June 2015

PERSONNEL BOARD OF APPEALS

(Decision Making)

(Membership - 3; No designated terms.)

	<u>Appt. Date</u>
John James	03/08
Hugh A. "Andy" Shaffer	09/05
Michael Trost	01/10

PLANNING AND ZONING COMMISSION

(Advisory & Decision Making)
(Membership - 9; Terms - 3 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Jane Wolf	03/09*	Sept 30 2013	Sept 30 2016
Cindy Lanning	09/10	Sept 30 2013	Sept 30 2016
Jay Norris	11/11	Sept 30 2014	Sept 30 2017
Galen Gatten, Vice Chairman	09/08	Sept 30 2014	Sept 30 2014
Kevin Wilton	09/08*	Sept 30 2015	Sept 30 2017
Royce Watkins	02/08*	Sept 30 2015	Sept 30 2017
Karen York	10/10*	Sept 30 2015	Sept 30 2018
Sharla Hotchkiss	10/12	Sept 30 2015	Sept 30 2018
Warren Lvey	10/12*	Sept 30 2014	Sept 30 2020
<u>ALTERNATES:</u>			
Tony Carrillo	11/11	Sept 30 2014	Sept 30 2017

TAX INCREMENT REINVESTMENT ZONE BOARD

(Decision Making)
(Membership - 12; Terms - 2 Years, or 3 Years if appointed after 3/1/07)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Mark T. Wellen (City), Chairman	07/01	Mar 20 2010	Mar 20 2010
Randy Prude (County)	03/07	Mar 20 2010	Mar 20 2013
Ken Burgess (City)	10/12*	Mar 20 2013	Mar 20 2018
Judge Mike Bradford (County)	01/07*	Mar 20 2010	Mar 20 2014
Bob Lanier (City), Secretary	04/03	Mar 20 2011	Mar 20 2011
Pete Hulder (Hospital)	03/10	Mar 20 2016	Mar 20 2016
Michael Blonkvist (City)	09/12*	Mar 20 2014	Mar 20 2020
John L. Kennedy (City)	10/09*	Mar 20 2015	Mar 20 2018
Link Grimes (City)	12/12*	Mar 20 2015	Mar 20 2021
Charlene McBride (College)	12/12	Mar 20 2016	Mar 20 2019
Steve Castle (College)	04/13*	Mar 20 2015	Mar 20 2021
Russell Meyer (Hospital)	12/12	Mar 20 2016	Mar 20 2019

Ex-Officio member is President, Board of Trustees, Midland Independent School District

ZONING BOARD OF ADJUSTMENT
AND
AIRPORT ZONING BOARD OF ADJUSTMENT

(Decision Making)

(Membership - 5; Terms - 2 Years expiring 3 odd & 2 even.)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Manny Ribera	10/07	Sept 30 2011	Sept 30 2011
Ken Morgan	01/10*	Sept 30 2012	Sept 30 2014
Carla Repman	01/10*	Sept 30 2013	Sept 30 2015
Scott Young	09/12*	Sept 30 2013	Sept 30 2017
Todd Byars	02/08*	Sept 30 2014	Sept 30 2014

ALTERNATES: (not applicable to Airport Zoning)

Vacancy		Sept 30 2006	
Vacancy		Sept 30 2009	
Annabel Holguin	11/11	Sept 30 2013	Sept 30 2015
Greg Turner	11/11	Sept 30 2013	Sept 30 2015

Paul O'Neill

From: Tony Carrillo [tpcarrillo@gmail.com]
Sent: Monday, June 17, 2013 9:22 AM
To: Paul O'Neill
Subject: Resignation

Paul,

As you know I was in the process of leaving Midland.
This has now occurred. Please accept this as my
official resignation from your board/commission.
It has been a pleasure serving with you and the rest
of the members. If I can be of any further assistance, please
let me know. Best of luck to you.

Your friend,
Tony Carrillo