

AGENDA FOR CITY COUNCIL MEETING

June 26, 2012 – 10:00 AM
Council Chamber - City Hall

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

OPENING ITEMS

1. Invocation - Dr. Tim Walker, First United Methodist 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 12, 2012
6. Consider a resolution adding one (1) Special Meeting, on August 7, 2012, and two (2) Regular Meetings, one on August 21, 2012, and the second on August 27, 2012, to the City Council Meetings scheduled for the 2012 calendar year. (FINANCE) (2012 - 186)
7. Consider a resolution authorizing the execution of an agreement for the purchase of a License Plate Recognition System with Associated Service Plan for use by the Midland Police Department from John Wright Associates, Incorporated, for \$21,200.00 through the Texas Multiple Award Schedule Purchasing Program; and accepting the City Manager's recommendation that

the purchase of said License Plate Recognition System from John Wright Associates, Incorporated, although not the lowest bid, is the best value. (GENERAL SERVICES) (2012 - 187)

8. Consider a resolution rejecting the single bid received for Bid Number 4440-12 for construction of a pavilion at Hogan Park. (GENERAL SERVICES) (2012 - 188)
9. Consider a resolution approving the purchase of one thousand (1,000) three cubic yard refuse containers with lids, three hundred (300) three and one-half cubic yard refuse containers with lids, three (3) thirty-five to fifty cubic yard self-contained compactors, and five (5) thirty cubic yard open top roll-off containers from Roll-Offs USA, Incorporated, of Durant, Oklahoma, at a total cost of \$627,625.00. (GENERAL SERVICES) (2012 - 189)
10. Consider a resolution approving the purchase of nine (9) Local Area Outdoor Weather Warning Systems from DFW Communications for \$124,750.00; and this item was not bid, but was purchased through the Local Government Purchasing Cooperative. (GENERAL SERVICES) (2012 - 190)
11. Consider a resolution approving Plans and Specifications and authorizing advertisement for bids for labor, material, equipment and supervision necessary to provide and install playground equipment at Butler Park, Grafa Park, House Park, Pioneer Park, Sparks Park, Ulmer Park and a pavilion at Hogan Park; the contract will also include the purchase and installation of trash receptacles, park benches, picnic tables, barbeque grills, basketball backboards, drinking fountains, shade structures, goal posts, dug out benches, disc golf nets, athletic bleachers and senior access wellness stations for various Midland parks. (GENERAL SERVICES) (2012 - 191)
12. Consider a resolution authorizing the issuance of a Request For Proposals for Terminal Food And Beverage Concessions at the Midland International Airport. (AIRPORTS) (2012 - 192)
13. Consider a resolution authorizing issuance of a Request For Proposals for Terminal Gift and News Concessions at the Midland International Airport. (AIRPORTS) (2012 - 193)
14. Consider a resolution appropriating \$250,000.00 to the Wireless System Project. (CISD) (2012 - 194)
15. Consider a resolution appropriating \$350,000.00 to the Software Upgrade Project. (CISD) (2012 - 195)
16. Consider a resolution appropriating \$400,000.00 to the Computer and Accessories Upgrade Project. (CISD) (2012 - 196)

17. Consider a resolution appropriating \$258,500.00 to the Central Hardware Upgrade Project. (CISD) (2012 - 197)
18. Consider a resolution authorizing the execution of an agreement with Rock The Desert Ministries, Incorporated as authorized by Chapter 351 of the Texas Tax Code; the funds allocated by this resolution shall be used to promote tourism and the motel and hotel industry; the allocated funds are expended in a manner directly enhancing and promoting tourism and the motel and hotel industry; the use and allocation of these funds are authorized by Chapter 351 of the Texas Tax Code; and the approval of this resolution should not be construed or interpreted as endorsing the message or activities promoted by Rock The Desert Ministries, Incorporated; and allocating funds. (CITY ATTORNEY'S OFFICE) (2012 - 198)
19. Consider a resolution establishing Project Number 8996 "Hike and Bike Trail Development" for further development of a Hike and Bike Trail; and appropriating funds in the amount of \$200,000.00. (COMMUNITY SERVICES) (2012 - 199)
20. Consider a resolution authorizing the execution of an Amendment to the Professional Services Agreement with Parkhill, Smith & Cooper, Inc. regarding the development of the Sparks Park Target Area; and authorizing payment therefor. (ENGINEERING SERVICES) (2012 - 200)
21. Consider a resolution authorizing the Midland Fire Department to file an application with the United States Government for the 2012 Assistance to Firefighters Grant; said funds will be used to purchase individual breathing regulators for firefighters; said grant is a matching funds grant in which the Assistance to Firefighters Grant would fund 80% (\$40,000.00) of the total amount (\$50,000.00) and the City of Midland would fund 20% (\$10,000.00) of the total amount. (FIRE) (2012 - 201)
22. Consider a resolution authorizing the City of Midland Police Department to accept the Fiscal Year 2012 Edward Byrne Memorial Justice Assistance Grant in the amount of \$60,339.00 provided by the Governor's Office; said grant funds will be used for a Use-Of-Force Training Technology Project; authorizing the execution of acceptance documents; and appropriating funds. (POLICE) (2012 - 202)
23. Consider a resolution authorizing the execution of a Professional Services Agreement Task Order with CDM Smith Inc., for Professional Engineering Support Services regarding the Design and Construction Management of the T-Bar Chlorination Station, at an estimated total cost of \$551,066.00; and appropriating funds. (UTILITIES) (2012 - 203)
24. Consider a resolution authorizing the execution of a Professional Services Agreement Task Order with CDM Smith Inc., for Professional Engineering

Support Services regarding the Membrane Biological Reactor Satellite Reclaimed Water Production Facility Project, at an estimated total cost of \$585,980.00; and appropriating funds. (UTILITIES) (2012 - 204)

25. Consider a resolution authorizing the execution of Change Order Number One with A&M Construction & Utilities, Incorporated, adding \$163,970.00 for additional work to the existing contract for the Water System Improvements - Rehabilitation and Lead Abatement of Airport and Shell Elevated Storage Tanks Project; and appropriating \$163,970.00; the original contract was for \$1,432,500.00; this change order brings the total contract price to \$1,596,470.00. (UTILITIES) (2012 - 205)

SECOND READINGS

26. Consider an ordinance on second reading changing the zoning classification by amending Chapter One, Title XI, of the City Code of Midland, Texas, by permitting Lots 1-33, Block 1, and Lots 1-51, Block 2, Mockingbird Oaks, City and County of Midland, Texas, which is presently zoned PD, Planned District for a Housing Development, to be used as an Amended Planned District (Generally located on the north side of Mockingbird Lane, 700 feet west of Garfield Street); providing for such use to be subject to certain special conditions and restrictions as set out herein; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2,000.00); and ordering publication. (DEVELOPMENT SERVICES) (9031)
27. Consider an ordinance on second reading prohibiting parking on the north side of Faulkner Drive from a point 185 feet west of the centerline of Melville Drive and continuing east a distance of 640 feet to the north/south alley and the east and west sides of Melville Drive beginning at the centerline of Faulkner Drive and continuing north a distance of 130 feet to the east/west alley except to residents whose property abuts such street and have obtained a valid parking permit; authorizing and directing the Traffic Engineer to erect appropriate signs; declaring any vehicle in violation of the provisions of this ordinance a nuisance and providing for the removal of same; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two hundred dollars (\$200.00); and ordering publication. (ENGINEERING SERVICES) (9032)
28. Consider an ordinance on second reading establishing intersection stops at various locations within the City of Midland, Texas; requiring and authorizing the posting of appropriate signs at intersections; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two hundred dollars (\$200.00); and ordering publication. (ENGINEERING SERVICES) (9033)

29. Consider an ordinance on second reading vacating and abandoning a 0.08-acre portion of West Louisiana Avenue right-of-way and North Colorado Street right-of-way adjacent to the south 200 feet of the west half of Block 12, Homestead Addition, City and County of Midland, Texas (Generally located on the northeast corner of North Colorado Street and West Louisiana Avenue); adopting the appraisal by the City Manager of \$1,742.40; retaining a general utility easement; and ordering recordation by the City Secretary. (DEVELOPMENT SERVICES) (9034)

PUBLIC HEARINGS

30. At approximately 10:30 a.m. hold a public hearing and consider an ordinance changing the zoning classification by amending Chapter One, Title XI, of the City Code of Midland, Texas, by permitting a 20.22-acre tract of land out of Section 9, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas, and more specifically described in Section One hereof, which is presently zoned PD, Planned District for a Shopping Center, to be used as an Amended Planned District (Generally located on the northeast corner of Mockingbird Lane and Midkiff Road); providing for such use to be subject to certain special conditions and restrictions as set out herein; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2,000.00); and ordering publication. (DEVELOPMENT SERVICES) (9035)
31. At approximately 10:33 a.m. hold a public hearing and consider an ordinance changing the zoning classification by amending Chapter One, Title XI, of the City Code of Midland, Texas, by permitting Block 31A, the vacated 0.10-acre north/south alley, and the vacated adjacent 0.05-acre portion of North Marienfeld Street right-of-way, Homestead Addition, City and County of Midland, Texas, which is presently zoned O-1 Office District, to be used as a PD, Planned District for an Office Center (Generally located on the southwest corner of the intersection of West Kansas Avenue and North Marienfeld 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) (9036)
32. At approximately 10:36 a.m. hold a public hearing and consider a resolution authorizing the temporary use of land for outdoor sales on Lots 1, 2, 10, 11 and 12, Block 58, Original Town, City and County of Midland, Texas (Generally located on the south side of West Texas Avenue, between Pecos Street and Marienfeld Street); making said permit subject to certain special conditions and restrictions contained herein. (DEVELOPMENT SERVICES) (2012 - 206)

MISCELLANEOUS

33. Consider a resolution approving the issuance of a permit to Callon Petroleum Operating Company ("Operator") to drill a non-commercial salt-water disposal well within the City limits located 1,066 feet from the west line and 2,480 feet from the north line, Section 23, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas (Generally located on the west side of Golden Gate Drive, approximately 1/2 of a mile north of Briarwood Avenue). (DEVELOPMENT SERVICES) (2012 - 207)
34. Consider making appointments to various Boards and Commissions.

EXECUTIVE SESSION

35. Pursuant to Texas Government Code §551.101, the Council will hold an Executive Session which is closed to the public to discuss the following matters as permitted under the following Texas Government Code Sections:
 - a. Section 551.074 Personnel Matters
 - a.1. Deliberate the employment, evaluation, duties, and salary of the Presiding Municipal Court Judge, the Associate Municipal Court Judge, the City Manager, the City Attorney and the City Secretary.
 - b. Deliberation Regarding Real Property, Section 551.072
 - b.1. Discuss the purchase, lease and value of real property described as approximately 2.066 acres, all of Block 055, Original Town Addition, City of Midland, Midland County, Texas.
 - b.2. Discuss the purchase, lease and value of real property described as approximately 2.0 acres, all of Block 039, Original Town Addition, City of Midland, Midland County, Texas.
 - b.3. Discuss the purchase, lease and value of real property described as approximately 2.0 acres, Lot 10, Block 007, Original Town Addition, City of Midland, Midland County, Texas.
 - b.4. Discuss the purchase, lease and value of real property described as approximately 2.0 acres, all of Block 008, Original Town Addition, City of Midland, Midland County, Texas.
 - b.5. Discuss the purchase, lease and value of real property described as approximately 2.0 acres, all of Block 063, Homestead Addition, City of Midland, Midland County, Texas.

- b.6. Discuss the purchase, lease and value of real property described as approximately 2.0 acres, all of Block 088, Original Town Addition, City of Midland, Midland County, Texas.
- b.7. Discuss the sale, lease and value of two City of Midland-owned properties located east of the Midland Center described as:
 - (i) 100 North Main Street (parking lot due east of the Midland Center), being approximately 0.884 acres, Block 053, Lots 013 through 023, Original Town Addition, Midland, Texas. Recorded in Volume 0858, page 0111, Midland County, Texas.
 - (ii) North Baird Street (parking east and north of Wall Street Grill), being approximately 0.886 acres, Block 053, Lots 1 through 8 & 9 (N8 of W75), and the E65 of Lots 9 through 12, Original Town Addition, Midland, Texas. Recorded in Volume 0649, page 0762, Midland County, Texas.
- c. Section 551.087 Deliberation Regarding Economic Development Negotiations
 - c.1. Discuss business prospects that the City of Midland and/or the Midland Development Corporation seeks to have locate, stay, or expand in or near the City of Midland, Texas, and discuss possible incentives.

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 12, 2012**

BRIEFING SESSION

The City Council convened in a Briefing Session in the basement conference room, City Hall, Midland, Texas, at 9:30 a.m. on June 12, 2012.

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

Council Members absent: Mayor Pro Tem Jerry Morales (At-Large) (Morales arrived at 9:32 a.m.).

Staff members present: City Manager Courtney Sharp, City Attorney Keith Stretcher, Deputy City Manager Tommy Hudson, Assistant City Manager Jim Nichols, City Secretary Amy Turner, Utilities Director Stuart Purvis, City Engineer David Beard, Community Services Director Tina Jauz, Parks & Recreation Manager Michelle James, and Multimedia Developer Ryan Stout.

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

Community Services Director introduced Michelle James Parks & Recreation Manager.

Parks & Recreation Manager Michelle James reviewed the current map of hike and bike trails in Midland. She presented ideas of how future improvements could be made to the Hike and Bike Trail System, noting that many of the trails were not well marked. She suggested the parks be rebranded by placing signs in all of the parks marking the trails as fitness trails and showing the distance of each loop to encourage residents to engage in a more active lifestyle at a cost of just over \$14,000. This would show an immediate result to the residents while more extensive hike and bike trails could be planned and developed. She reviewed other areas of potential expansion.

Discussion ensued about using QR codes on signage to promote upcoming events or for advertising purposes. Consensus was received to move forward.

The foregoing agenda item was discussed by the City Council with no formal action taken. The Briefing Session was adjourned at 10:02 a.m.

REGULAR SESSION

The City Council convened in regular session in the Council Chamber, City Hall, Midland, Texas, at 10:08 a.m., June 12, 2012.

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

Council Member John James (District 3), and Council Member Michael Trost (District 4).

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

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

OPENING ITEMS

1. Invocation - Pastor Robert Pase, Grace Lutheran Church
2. Pledge of Allegiance

PRESENTATIONS

3. Presentation of special events, organizations, individuals, or periods of time including, but not limited to:
 - a. Council Member Dufford presented a Proclamation for Midland Christian Track & Field Team Day.
 - b. Mayor Perry and City Manager Sharp presented a Retirement Commendation to retiring city employee Robert Brian Bogart.

PUBLIC COMMENT

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

There were no requests by citizens to speak.

CONSENT AGENDA

Council Member Hailey moved to approve Consent Agenda items 5 - 20 excluding 13; seconded by Council Member Morales. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

5. Approved a motion approving the following minutes:
 - a. Regular Meeting of May 22, 2012
 - b. Special Meeting of May 30, 2012
6. Approved a resolution approving a contract to remove and replace the Uninterrupted

Power System at the Police & Communications Building - RFP 4849-12 (GENERAL SERVICES)

RESOLUTION NO. 2012 - 170

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

7. Approved a resolution approving a professional services agreement with Rhotenberry-Wellen Architects for the renovation of Midland Center. (GENERAL SERVICES)

RESOLUTION NO. 2012 - 171

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

8. Approved a resolution approving the purchase of a boom mower for the Garage Division. Bid 4848-12 (GENERAL SERVICES)

RESOLUTION NO. 2012 - 172

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

9. Approved a resolution approving a contract for audio and video equipment for the Council Chambers for the Communications and Information Systems Department. RFP 4983-12 (GENERAL SERVICES)

RESOLUTION NO. 2012 - 173

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

10. Approved a resolution approving a contract and appropriating funds for windows at the Martin Luther King Jr. Community Center for the Parks Division. Bid 5040-12 (GENERAL SERVICES)

RESOLUTION NO. 2012 - 174

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

11. Approved a resolution approving the purchase of LED traffic lights for the Transportation Division. Bid 5046-12 (GENERAL SERVICES)

RESOLUTION NO. 2012 - 175

RESOLUTION APPROVING THE PURCHASE OF LED TRAFFIC LIGHTS IN ASSORTED CONFIGURATIONS FROM LEOTEK ELECTRONICS USA CORPORATION, AT A TOTAL COST OF \$85,666.00

12. Approved a resolution approving the purchase of an asphalt distributor body for the Garage Division. Bid 5072-12 (GENERAL SERVICES)

RESOLUTION NO. 2012 - 176

RESOLUTION APPROVING THE PURCHASE OF ONE (1) ASPHALT DISTRIBUTOR BODY FROM YELLOWHOUSE MACHINERY COMPANY, OF ODESSA, TEXAS, AT A TOTAL COST OF \$94,500.00; AND YELLOWHOUSE MACHINERY COMPANY WAS THE SOLE BIDDER

14. Approved a resolution authorizing the execution of Land Lease Agreement for Airport Hangar Facility between W-T Hangar, LLC and the City of Midland, Texas (AIRPORTS)

RESOLUTION NO. 2012 - 178

RESOLUTION AUTHORIZING THE EXECUTION OF A LAND LEASE AGREEMENT WITH W-T HANGAR, LLC FOR HANGAR DEVELOPMENT LOCATED ON A 0.48 ACRE TRACT OF LAND LOCATED IN LOT 4B, BLOCK 11, MIDLAND INTERNATIONAL AIRPORT, INDUSTRIAL PARK ADDITION, SECTION 6, AN ADDITION TO THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS

15. Approved a resolution approving the acceptance of a bid for the purchase of real property located at 309 South Stonewall Street. (CITY MANAGER'S OFFICE)

RESOLUTION NO. 2012 - 179

RESOLUTION APPROVING THE ACCEPTANCE OF A BID MADE FOR THE PURCHASE OF REAL PROPERTY DESCRIBED AS LOTS 7 AND 8, BLOCK 34, GREENWOOD ADDITION, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS

16. Approved a motion authorizing the staff to proceed with the voluntary annexation of approximately 77 acres including 76 acres in Section 37, Block 40 and a 1/2 acre tract located in Section 26, Block 40. (DEVELOPMENT SERVICES)
17. Approved a motion on a request by Newton Engineering on behalf of Southwest Baptist Church for the Midland City Council to approve items requested for deferral in the amount of \$32,804, and to waive the associated public improvement guarantee; and authorizing the City Manager to negotiate a development agreement, which must be approved by City Council, regarding the construction of a water main extension along State Highway 191 frontage. This property is positioned in the City Limits, generally located on the north side of State Highway 191 approximately four miles west of Loop 250. (ENGINEERING SERVICES)
18. Approved a resolution accepting additional grant funding in the amount of \$22,000 from the High Intensity Drug Trafficking Areas (HIDTA) Program and appropriating funds (POLICE)

RESOLUTION NO. 2012 - 180

RESOLUTION ACCEPTING ADDITIONAL GRANT FUNDING FROM THE SOUTHWEST BORDER HIGH INTENSITY DRUG TRAFFICKING AREAS PROGRAM IN THE AMOUNT OF \$22,000.00; THESE FUNDS WILL BE DIRECTED TO THE FISCAL YEAR 2012 HIGH INTENSITY DRUG TRAFFICKING AREAS PROJECT 7080; AND APPROPRIATING FUNDS

19. Approved a resolution approving to apply to the U.S. Department of Homeland Security Transportation Security Administration's FY2013 LEO Reimbursement Program for partial reimbursement for costs associated with the deployment of a Law Enforcement Officer at the Airport passenger screening checkpoint (POLICE)

RESOLUTION NO. 2012 - 181

RESOLUTION AUTHORIZING THE SUBMISSION OF AN APPLICATION TO THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY TRANSPORTATION SECURITY ADMINISTRATION'S FISCAL YEAR 2013 LAW ENFORCEMENT OFFICER REIMBURSEMENT PROGRAM; THIS APPLICATION WILL BE FOR PARTIAL REIMBURSEMENT FOR COSTS ASSOCIATED WITH THE DEPLOYMENT OF A LAW ENFORCEMENT OFFICER AT THE AIRPORT PASSENGER SCREENING CHECKPOINT; THIS REIMBURSEMENT, IF AWARDED, WILL BE USED TO OFFSET THE COST OF PROVIDING A MANDATED LAW ENFORCEMENT OFFICER AT THE PASSENGER SCREENING CHECKPOINT AT THE MIDLAND INTERNATIONAL AIRPORT

20. Approved a resolution accepting grant funds from the Permian Basin Regional Planning Commission for the Backyard Composting Grant and appropriating funds. (SOLID WASTE)

RESOLUTION NO. 2012 - 182

RESOLUTION ACCEPTING A GRANT FROM THE PERMIAN BASIN REGIONAL PLANNING COMMISSION IN THE AMOUNT OF \$8,000.00 FOR BACKYARD COMPOSTING PROJECTS; AUTHORIZING THE EXECUTION OF ACCEPTANCE DOCUMENTS; AND APPROPRIATING THE GRANT FUNDS TO THE BACKYARD COMPOSTING GRANT PROJECT; THE GRANT FUNDS WILL BE USED TO PURCHASE COMPOSTING BINS AND ASSOCIATED TOOLS; AND THE GRANT FUNDS CONSIST OF A PORTION OF THE \$1.25 PER TON TIPPING FEE THAT CITIES ACROSS THE STATE COLLECT AT LANDFILLS

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

13. Consider resolution authorizing issuance of Request for Proposals for City Owned Facilities. (GENERAL SERVICES)

RESOLUTION NO. 2012 - 177

RESOLUTION AUTHORIZING THE ISSUANCE OF A REQUEST FOR PROPOSALS FOR DEVELOPMENT OF FACILITIES TO BE USED BY THE CITY OF MIDLAND, OTHER GOVERNMENTAL ENTITIES AND THE PRIVATE SECTOR

Discussion ensued regarding the new municipal courthouse. It was determined that this

will not slow down the progress. General Services Director Patrick clarified this item would address the needs for City facilities for the next 30 years.

Council Member Hailey moved to adopt Resolution No. 2012 - 177; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

SECOND READINGS

21. Consider an ordinance on second reading on a City-initiated proposal to delete Section 11-2-1(E) 9 of the Subdivision Code. (DEVELOPMENT SERVICES)

ORDINANCE NO. 9022

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

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

Council Member Morales moved to approve the second and final reading of Ordinance No. 9022 in accordance with the Charter of the City of Midland; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

22. Consider an ordinance on second reading on a request by Glenn Miller Homes for a zone change from PD, Planned District for a Housing Development to Amended Planned District. (DEVELOPMENT SERVICES)

ORDINANCE NO. 9023

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

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

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

No. 9023 in accordance with the Charter of the City of Midland; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

23. Consider an ordinance on second reading on a request by Mockingbird Oaks Development for a zone change from FD, Future Development District to 1F-3, One-Family Development District and TH, Townhouse Development District. (DEVELOPMENT SERVICES)

ORDINANCE NO. 9024

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

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

Council Member Hailey moved to approve the second and final reading of Ordinance No. 9024 in accordance with the Charter of the City of Midland; seconded by Council Member James. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

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

ORDINANCE NO. 9025

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

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

Council Member Hailey moved to approve the second and final reading of Ordinance No. 9025 in accordance with the Charter of the City of Midland; seconded by Council

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

PUBLIC HEARINGS

25. At approximately 10:30 a.m. conduct a Public Hearing for the 2012/13 Community Development Block Grant (CDBG) Program. (DEVELOPMENT SERVICES)

Community Development Manager Sylvester Cantu reported this public hearing was a continuation of the CDBG process in which the funds for the upcoming year would be distributed. He reported that the final resolution would come to the City Council for approval at the second meeting in July.

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

26. At approximately 10:33 a.m. hold a public hearing and consider an ordinance on a request by Mike Jackson for a Zone Change from PD, Planned District for a Housing Development to Amended Planned District. (DEVELOPMENT SERVICES)

ORDINANCE NO. 9031

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOTS 1-33, BLOCK 1, AND LOTS 1-51, BLOCK 2, MOCKINGBIRD OAKS, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT, TO BE USED AS AN AMENDED PLANNED DISTRICT (GENERALLY LOCATED ON THE NORTH SIDE OF MOCKINGBIRD LANE, 700 FEET WEST OF GARFIELD STREET); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

Planning Division Manager Walker gave an overview of the item noting the proposal was to reduce the front yard setback to 15 feet. No letters of objection had been received and staff recommended approval.

Mayor Perry opened the public hearing at 10:44 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Deputy City Secretary Reyes read the caption of Ordinance No. 9031.

Council Member Hailey moved approval of the first of two readings of Ordinance No. 9031 in accordance with the Charter of the City of Midland; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

27. At approximately 10:36 a.m. hold a public hearing and consider an ordinance on a request by San Miguel Archangel Catholic Church for a Temporary Land Use Permit for

a Church Fair. (DEVELOPMENT SERVICES)

RESOLUTION NO. 2012 - 183

RESOLUTION AUTHORIZING THE TEMPORARY USE OF LAND FOR A CHURCH FAIR ON LOT 1A, BLOCK 19, MIDLAND HEIGHTS ADDITION, SECTION 4, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTHWEST CORNER OF CAMP STREET AND DAKOTA AVENUE); AND MAKING SAID PERMIT SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS CONTAINED HEREIN

Planning Division Manager Walker gave an overview of the item noting the request was for a Temporary Land Use Permit for the church to hold a fair July 21-22. No alcoholic beverages would be served, the applicant would have five security officers on site, and additional restroom facilities would be brought to the location. One letter of objection had been received citing concern for ability to get in and out of their driveway.

Mayor Perry opened the public hearing at 10:46 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Council Member Hailey moved to adopt Resolution No. 2012 - 183; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

MISCELLANEOUS

28. Consider a resolution approving the issuance of a permit to Bluestem Energy Holdings, LLC (Operator), to Drill an Oil and Gas Well within the City Limits, (Evans M 1) located 1,949 feet from the south line and 1,927 feet from the west line located in Section 8, Block "X", H.P Hilliard Survey, City and County of Midland, Texas. (Generally located on the east side of N. Midland Drive, approximately 1/3 mile north of Mockingbird Lane.) (DEVELOPMENT SERVICES)

RESOLUTION NO. 2012 - 184

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO BLUESTEM ENERGY HOLDINGS, LLC ("OPERATOR") TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 1,949 FEET FROM THE SOUTH LINE AND 1,927 FEET FROM THE WEST LINE, SECTION 8, BLOCK "X", H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF NORTH MIDLAND DRIVE, APPROXIMATELY 1/3 OF A MILE NORTH OF MOCKINGBIRD LANE); AND PROVIDING THAT SAID PERMIT DOES NOT REQUIRE A NEW ROAD REPAIR AGREEMENT BUT SHALL BE CONSOLIDATED UNDER AN EXISTING ROAD REPAIR AGREEMENT

Oil & Gas Compliance Officer Ron Jenkins reported that a public hearing for this item was held on April 10th and that six letters of objection had been received. Council gave direction to Bluestem to hold a neighborhood meeting which was held on May 3rd at Midland College. Since that time Bluestem has altered their application to include the following changes: changed the contact representative on the application page to match the previously amended permits, the pad location on survey was rotated away from the Mockingbird Heights Addition, they added a sound impact barrier on the north

and south as well as on the rig floor, hospital grade mufflers would be used on the drilling rig, access routes would be off Midkiff, a polymer will be used in the pits to prevent foul odors, and a new pad site and drainage plan was included for the battery and well sites. The Oil & Gas Advisory Committee is recommending that the landscape variance be for no more than two years.

Council Member Sparks moved to adopt Resolution No. 2012 - 184; seconded by Council Member Hailey.

Discussion ensued about the consolidation of the road repair agreement deposits and sound barrier walls.

A representative from Bluestem was invited forward to answer questions.

Jim Mason, Andrews, Texas, representing Bluestem, reported that the sound impact wall would be in place during fracing and drilling and that the wall would be 24 feet on the neighborhood side. When asked to clarify if the wall would be 16 feet on the ground and 8 feet on the drilling rig or would it be one wall of 24 feet Mr. Mason reported it would be one wall 24 feet tall. He asked the Acoustic Mitigation Engineer to clarify.

Tyler Boswell, Weatherford, Texas, reported that the wall on the west side would be 24 feet tall, and the other sides of the wall would be 16 feet tall. In addition there would be a treatment on the platform at the 16 foot level so that on the 24 foot side there would be a double treatment at the 16 foot level.

Discussion ensued about redirecting traffic. It was reported that traffic coming off of Midkiff would have less impact because it would not be going through residential neighborhoods.

Council Member Sparks moved to amend the motion to change the wall from 16 feet to 24 feet on the residential side and to allow for a landscape variance for no more than two years; seconded by Council Member Hailey.

Discussion ensued about road repair agreements.

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

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

29. Consider a resolution approving the issuance of a permit to Bluestem Energy Holdings, LLC (Operator), to Drill an Oil and Gas Well within the City Limits, (Evans N 1) located 623 feet from the south line and 2,035 feet from the east line located in Section 8, Block "X", H.P Hilliard Survey, City and County of Midland, Texas. (Generally located on the west side of N. Midkiff Road, approximately 625 feet north of Mockingbird Lane.) (DEVELOPMENT SERVICES)

RESOLUTION NO. 2012 - 185

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO BLUESTEM ENERGY HOLDINGS, LLC ("OPERATOR") TO DRILL AN OIL AND GAS WELL WITHIN THE

CITY LIMITS LOCATED 623 FEET FROM THE SOUTH LINE AND 2,035 FEET FROM THE EAST LINE, SECTION 8, BLOCK "X", H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF NORTH MIDKIFF ROAD, APPROXIMATELY 625 FEET NORTH OF MOCKINGBIRD LANE); AND PROVIDING THAT SAID PERMIT DOES NOT REQUIRE A NEW ROAD REPAIR AGREEMENT BUT SHALL BE CONSOLIDATED UNDER AN EXISTING ROAD REPAIR AGREEMENT

Oil & Gas Compliance Officer Jenkins reported that this well was discussed at the same neighborhood meeting as the last item on the agenda. Nine letters of objection had been received as well as a petition containing 94 signatures. This well had the same changes as the previous item including rotation of the pad site further away from the neighborhood, same barrier on the outside with an 8-foot barrier on the rig, hospital grade mufflers on the drilling rig, access will be off Midkiff, the same monitoring of the odors with the pits, and updated drainage plans. The Oil & Gas Advisory Committee recommended allowing a landscape variance of no more than two years. He clarified that the 94 signatures on the petition were from the Mockingbird neighborhood and not necessarily within the 1000 feet of the well.

Council Member Sparks moved to adopt Resolution No. 2012 - 185 with the amendment to allow a landscape variance of no more than two years and changing the wall height from 16 feet to 24 feet on the neighborhood side; seconded by Council Member Hailey. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

Council Member James moved to reconsider Agenda Item number 4; seconded by Council Member Morales. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

PUBLIC COMMENT (Continued)

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.

Gary Simmons, 3905 Edgebrook, stated he lived in Mockingbird Heights and reported on their meeting with Bluestem Energy. He asked that before the City Council approved the item, he would like to suggest some amendments. Mayor Perry reported that both of the permits were just approved.

Don Washburn, 3901 Baybrook, reported that he was not privy to what was included in the ordinance and felt it would be beneficial if Bluestem notified the residents of changes that had been made. He suggested better communication would be helpful.

There were no other requests by citizens to speak.

30. Receive notification regarding no legal action filed pertaining to dilapidated structures Ordinance No. 8907, approved March 20, 2012. (DEVELOPMENT SERVICES)

Building Official Steve Thorpe reported this was a new step that was the result of a

Supreme Court ruling. He reported that no lawsuits had been filed with the County Court System, the City Attorney, the City Manager or with him. He reported they would now proceed with the demolition of the previously approved dilapidated structures.

31. Consider an ordinance establishing No Parking except by Permit - Faulkner Drive (ENGINEERING SERVICES)

ORDINANCE NO. 9032

AN ORDINANCE PROHIBITING PARKING ON THE NORTH SIDE OF FAULKNER DRIVE FROM A POINT 185 FEET WEST OF THE CENTERLINE OF MELVILLE DRIVE AND CONTINUING EAST A DISTANCE OF 640 FEET TO THE NORTH/SOUTH ALLEY AND THE EAST AND WEST SIDES OF MELVILLE DRIVE BEGINNING AT THE CENTERLINE OF FAULKNER DRIVE AND CONTINUING NORTH A DISTANCE OF 130 FEET TO THE EAST/WEST ALLEY EXCEPT TO RESIDENTS WHOSE PROPERTY ABUTS SUCH STREET AND HAVE OBTAINED A VALID PARKING PERMIT; AUTHORIZING AND DIRECTING THE TRAFFIC ENGINEER TO ERECT APPROPRIATE SIGNS; DECLARING ANY VEHICLE IN VIOLATION OF THE PROVISIONS OF THIS ORDINANCE A NUISANCE AND PROVIDING FOR THE REMOVAL OF SAME; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO HUNDRED DOLLARS (\$200.00); AND ORDERING PUBLICATION

Transportation Manager Gary Saunders reported that this item was similar to the parking restrictions previously approved by the City Council on Northrup near Midland Christian. He reported the apartments in the area were saturating on-street parking. A petition was circulated and signed by every property that would be affected by the parking restriction. Those residents could obtain a permit from the Police Department.

Joanna Wagman, 2524 Faulkner Drive, reported that ever since the apartment complex placed restrictions on parking on their property, it has caused parking problems for her neighborhood and asked the Council to approve the item.

Deputy City Secretary Reyes read the caption of Ordinance No. 9032.

Council Member Morales moved approval of the first of two readings of Ordinance No. 9032 in accordance with the Charter of the City of Midland; seconded by Council Member James. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

32. Consider an ordinance establishing intersection stops at various locations within the City of Midland. (ENGINEERING SERVICES)

ORDINANCE NO. 9033

AN ORDINANCE ESTABLISHING INTERSECTION STOPS AT VARIOUS LOCATIONS WITHIN THE CITY OF MIDLAND, TEXAS; REQUIRING AND AUTHORIZING THE POSTING OF APPROPRIATE SIGNS AT INTERSECTIONS; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO HUNDRED DOLLARS (\$200.00); AND ORDERING PUBLICATION

Transportation Manager Gary Saunders noted this was to update new stop signs.

Deputy City Secretary Reyes read the caption of Ordinance No. 9033.

Council Member James moved approval of the first of two readings of Ordinance No. 9033 in accordance with the Charter of the City of Midland; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Dufford.

33. Consider an ordinance on a request by BRW Investments for the vacation of a 0.08-acre portion of the rights-of-way of W. Louisiana Avenue and N. Colorado Street adjacent to the south 200 feet of the west half of Block 12, Homestead Addition, City and County of Midland, Texas. (DEVELOPMENT SERVICES)

ORDINANCE NO. 9034

AN ORDINANCE VACATING AND ABANDONING A 0.08-ACRE PORTION OF WEST LOUISIANA AVENUE RIGHT-OF-WAY AND NORTH COLORADO STREET RIGHT-OF-WAY ADJACENT TO THE SOUTH 200 FEET OF THE WEST HALF OF BLOCK 12, HOMESTEAD ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTHEAST CORNER OF NORTH COLORADO STREET AND WEST LOUISIANA AVENUE); ADOPTING THE APPRAISAL BY THE CITY MANAGER OF \$1,742.40; RETAINING A GENERAL UTILITY EASEMENT; AND ORDERING RECORDATION BY THE CITY SECRETARY

Planning Division Manager gave an overview of the item noting the applicant is requesting to purchase the ten feet of right-of-way and would maintain the utility easement.

Deputy City Secretary Reyes read the caption of Ordinance No. 9034.

Council Member James moved approval of the first of two readings of Ordinance No. 9034 in accordance with the Charter of the City of Midland; seconded by Council Member Morales. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

34. Consider making appointments to various Boards and Commissions.

No appointments were made.

EXECUTIVE SESSION

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

- a. Section 551.071, Consultation with the City Attorney

- a.1. Discuss litigation styled Lemon v. Kurtzman, 403 U.S. 602 (1971) and cases that have interpreted the Lemon decision. The Lemon test will also be discussed and how it relates to the First Amendment to the United

States Constitution and the Establishment Clause.

- a.2. Discuss with the City Attorney contemplated litigation with the U.S. Fish and Wildlife Service regarding the Dunes Sagebrush Lizard.
- b. Section 551.087, Deliberation Regarding Economic Development Negotiations
 - b.1. Discuss business prospects that the City of Midland and/or the Midland Development Corporation seeks to have locate, stay, or expand in or near the City of Midland, Texas, and discuss possible incentives.

Mayor Perry recessed the meeting to executive session at 11:39 a.m.

All of the business at hand having been completed, the meeting adjourned at 1:05 p.m.

PASSED AND APPROVED the 26th day of June, 2012.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary



City Council Agenda

Approved for Agenda:
csharp
City Manager's Office

MEETING DATE: 6/26/2012

TO: City Council / City Manager

FROM: Bob McNaughton, Finance Director

SUBJECT: Consider a Resolution adding one (1) Special Meeting on August 7, 2012 and Two (2) Regular Meetings, one on August 21, 2012 and the Second on August 27, 2012 to the City council Meetings Scheduled for the 2012 Calendar Year

Purpose:

Comply with Truth-in-Taxation schedule

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

None

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 28.

A special meeting on August 7 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 21 and August 27 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 14 at the regular Council meeting.

Two regularly scheduled Council meetings must be set for August 21 and August 27 to hold a public hearing on the 2012 - 2013 budget on August 21 and conduct the two readings of the ordinance to adopt the 2012 - 2013 budget and the ordinance setting the tax rate for 2012 - 2013 on August 21 and August 27.

RESOLUTION NO.

**RESOLUTION ADDING ONE (1) SPECIAL MEETING,
ON AUGUST 7, 2012, AND TWO (2) REGULAR
MEETINGS, ONE ON AUGUST 21, 2012, AND THE
SECOND ON AUGUST 27, 2012, TO THE CITY
COUNCIL MEETINGS SCHEDULED FOR THE 2012
CALENDAR YEAR**

WHEREAS, the City of Midland must hold one special meeting in August, 2012, and three regularly scheduled City Council meetings in August, 2012, 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 7, 2012, 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 21, 2012, and August 27, 2012, 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 21, 2012, and August 27, 2012, to hold a public hearing on the 2012-2013 budget on August 21, 2012, and conduct the two readings of the ordinance to adopt the 2012 - 2013 budget and the ordinance setting the tax rate for 2012 - 2013 on August 21, 2012, and August 27, 2012.

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 7, 2012, 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 21, 2012, and August 27, 2012, 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 21, 2012, and August 27, 2012, to hold a public hearing on the 2012-2013 budget on August 21, 2012, and conduct the two readings of the ordinance to adopt the 2012 - 2013 budget and the ordinance setting the tax rate for 2012 - 2013 on August 21, 2012, and August 27, 2012.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:
thudson
City Manager's Office

MEETING DATE: June 26, 2012

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving a service agreement for a license plate recognition system through TXMAS contract 8-840130 from John Wright and Associates, Inc. for the Police Department. File 4187-11

Purpose:

Consider a resolution approving a service agreement for a license plate recognition system.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$21,200 Task Force Funds Project (8892)

Discussion:

After Bid requests were issued for an automated license plate recognition system, two police officers were assigned to evaluate the systems from bidders. Please see recommendation from Chief Price Robinson concerning their recommendation. We recommend awarding the bid to John Wright Associates Inc. representing ELSAG in the amount of \$21,200, although they are not lowest bid. This purchase is available on our TXMAS contract and appears to be the best value, due to witnessed performance, lower maintenance costs, and 24 hour customer service.

Therefore, please consider approval of a resolution authorizing the purchase of an automated license plate recognition system from John Wright Associates Inc. of Arlington, Texas for \$21,200.

RESOLUTION NO.

RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT FOR THE PURCHASE OF A LICENSE PLATE RECOGNITION SYSTEM WITH ASSOCIATED SERVICE PLAN FOR USE BY THE MIDLAND POLICE DEPARTMENT FROM JOHN WRIGHT ASSOCIATES, INCORPORATED, FOR \$21,200.00 THROUGH THE TEXAS MULTIPLE AWARD SCHEDULE PURCHASING PROGRAM; AND ACCEPTING THE CITY MANAGER'S RECOMMENDATION THAT THE PURCHASE OF SAID LICENSE PLATE RECOGNITION SYSTEM FROM JOHN WRIGHT ASSOCIATES, INCORPORATED, ALTHOUGH NOT THE LOWEST BID, IS THE BEST VALUE

WHEREAS, the Texas Multiple Award Schedule Program ("TX-MAS") is a cooperative purchasing program, established by the Texas Procurement and Support Service, with which the City participates on purchases; and

WHEREAS, through TX-MAS, the City of Midland has received a quote from John Wright Associates, Inc., for a license plate recognition system with associated service plan, at a total cost of \$21,200.00, as shown on the bid tabulation attached hereto as Exhibit "A" and incorporated herein for all legal purposes; and

WHEREAS, the Council finds the price for said license plate recognition system from John Wright Associates, Inc., although not the lowest bid, is the best value; and

WHEREAS, the City Council finds it to be in the public interest to authorize the execution of an agreement for the purchase of said license plate recognition system with associated service plan from John Wright Associates, Inc.;

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

SECTION ONE. That the City Council hereby accepts the City Manager's recommendation that the purchase of said license plate recognition system from John Wright Associates, Incorporated, although not the lowest bid, is the best value.

SECTION TWO. That the City Manager is hereby authorized and directed to

execute an agreement for the purchase of said license plate recognition system with associated service plan from John Wright Associates, Inc., through TX-MAS, at a total cost not to exceed \$21,200.00, said agreement being on file in the office of the City Secretary, referenced by the date and number of this Resolution.

SECTION THREE. That the City Treasurer is hereby authorized and directed to pay John Wright Associates, Inc., for said license plate recognition system with associated service plan from funds available in the Task Force Funds Project (8892) budget account.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, General Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

City of Midland - Bid Tabulation

BID NO.: 4187-12			ELSAG NA		Voice Products Inc		PIPS Technology	
FOR: License Plate Recognition System			205 H Creek Ridge Rd Greensboro, NC 27406 Craig Duncan (910)986-0596		8555 E 32nd Street North Wichita, KS 67226 Stuart Peters (316)616-1111		804 Innovation Drive Knoxville, TX 37932 Greg Lary (865)392-5540	
CLOSES: 11/9/2011								
ITEM	QTY	DESCRIPTION	COST EA.	TOTAL	COST EA.	TOTAL	COST EA.	TOTAL
		Please see notes following this list.....						
1	1	License Plate Recognition System	\$21,200.00000	\$21,200.00	\$17,472.000	\$17,472.00	\$21,106.000	\$21,106.00
			2 Camera					
			\$24,250.000	\$24,250.00				
			3 Camera					
		Delivery	30 Days		30-45 Days		Within 60 Days	
TOTALS:				\$21,200.00		\$17,472.00		\$21,106.00
		Discount if all awarded to your company...Discounted Total:	\$	21,200.00	\$	17,472.00	\$	21,106.00

Bidding Summary:

10 Bid requests were issued.

3 Bids listed above

0 NO BIDS were received.

7 Bidders did not respond.

CDW Government LLC, PC Mail Gov, Technique Data Systems Inc, Dell Marketing Inc, L-3 Communications, Genetic Inc
PCS Mobile

City of Midland
Police Department

Interoffice Memorandum

DATE: May 16, 2012

TO: Courtney Sharp, City Manager

FROM: Price Robinson, Chief of Police

SUBJECT: Purchase of a License Plate Recognition System

A fundamental element of policing is locating vehicles that are wanted because the vehicle is stolen, wanted in connection with a crime, or driven by a subject who is wanted or suspected of committing a crime or otherwise of interest to law enforcement.

Currently, patrol officers are furnished with this type of information on a daily basis and are asked to be on the look out for these vehicles. They have to refer to their paper list or list on their computer many times during a shift. Managing these paper lists is both difficult and time consuming.

The department would like to take advantage of technology and purchase an automated license plate recognition (LPR) system. We have evaluated two systems, sent out an RFP, and have made site visits to departments that currently use a LPR system.

LPR systems work by taking digital and infrared pictures of vehicles and license plates as they pass through their field of view. The system is then able to recognize, read, and compare the license plate against those on various "hot lists" and other databases. When a positive match is made, the system alerts the officer, whereby a manual verification is made.

The system will be purchased with funds from the Midessa Auto Theft Task Force which is no longer in existence.

Quotation



DATE MARCH 8, 2012

Customer ID MIDLAND P.D.
601 N. LORAIN
MIDLAND, TX 79701

CHIEF PRICE ROBINSON

Quotation valid until:
Prepared by:

Comments or special instructions:

Qty		Part #	Description	Unit Price	Ext.
Texas State Contract #TXMAS-8-840130					
1			MPH-900 ADM3 SP2 25/16 10 FT TRUNK MT(110062)	\$ 16,350.00	\$ 16,350.00
1			ONE YEAR EXTENDED WARRANTY***EL SAG TWO(2) CAMERA ALPR SYSTEM FOR TWO PLATE STATE, HARDWARE, SOFTWARE, CABLES	\$ 1,600.00	\$ 1,600.00
0				\$ -	\$ -
0				\$ -	\$ -
1			ELSAG Operations Center (EOC) License Fee (410322) ***EL SAG OPERATIONS CENTER (EOC) BACK END SERVER LICENSE TO MANAGE DATA AND HOT LIST	\$ 1,275.00	\$ 1,275.00
0				\$ -	\$ -
1	LABOR		INSTALLATION AND ENGINEERING SUPPORT (210023)***ONSITE INSTALLATION, NETWORKING AND TRAINING	\$ 1,975.00	\$ 1,975.00
0				\$ -	\$ -
0				\$ -	\$ -
0				\$ -	\$ -
0				\$ -	\$ -
0				\$ -	\$ -
0				\$ -	\$ -
0				\$ -	\$ -

Quotation



DATE MARCH 8, 2012

Customer ID MIDLAND P.D.
601 N. LORRAINE
MIDLAND, TX 79701

CHIEF PRICE ROBINSON

Quotation valid until:
Prepared by:

Comments or special instructions:

Texas State Contract #TXMAS-8-840130

Qty	Part #	Description	Unit Price	Ext.
0			\$ -	\$ -
0			\$ -	\$ -
0			\$ -	\$ -
0			\$ -	\$ -
0			\$ -	\$ -
0			\$ -	\$ -
0			\$ -	\$ -
0			\$ -	\$ -
Tax			\$	-
Shipping				
Subtotal			\$	21,200.00
Total			\$	21,200.00

If you have any questions concerning this quotation, contact Derek Wright, 817-538-4939, derek@johnwrightassoc.com

City of Midland
Police Department
Interoffice Memorandum

DATE: March 5, 2012
TO: Purchasing Department
FROM: Chief Price Robinson
SUBJECT: Bid Recommendation # 4187-11

A total of 10 bid requests were issued for an automated license plate recognition system for the Midland Police Department.

Bids were received from ELSAG, NA; Voice Products, Inc.; and PIPS Technology. Voice Products, Inc. did not furnish references as requested, therefore their bid was eliminated.

Evaluation of the systems

Representatives from ELSAG, NA and PIPS Technology came to the Police Department and demonstrated their respective systems. Members from the MPD and the City's IT department were in attendance. Two police officers from the MPD evaluated the PIPS system which is being used by the San Angelo Police Department and the Lubbock County District Attorney's Office. They then traveled to the Round Rock Police Department to evaluate the ELSAG system.

After reviewing all of the information, a decision was made to purchase a system from ELSAG, NA. This company was not the low bid, however the following will justify our decision to recommend this system:

- The heavy-duty construction of the ELSAG system.
- Very accurate reading of license plate numbers
- Customer service is 24/7/365, whereas PIPS is 8 am to 5 pm CST
- Several of the HIDTA's utilize ELSAG which will make it easy for us to obtain information from their databases. The format of the data is proprietary with each company and we could not obtain this database information with a PIPS system.
- The ELSAG system has more options.
- PIPS licensing offers 1 administrative license and 2 concurrent user licenses. The concurrent user licenses mean that only 2 users can be

accessing the system at the same time. Additional licenses are fee-based.

- ELSAG offers 1 administrative license and an unlimited number of concurrent user licenses.
- ELSAG's annual maintenance agreement cost is \$291 per year less that that of PIPS Technology.



THE CITY OF MIDLAND

CONTRACT

Contract No.4187-11

THIS CONTRACT, effective the 27th day of June, 2012, by and between the City of Midland, hereinafter referred to as the "Owner", and John Wright Associates, Incorporated, hereinafter referred to as the "Contractor", is made for the following considerations:

1. **Cost:** Total Proposal: \$ 21,200.00 DOLLARS
2. **Scope of Work:** The Contractor supply, install and provide service for a License Plate Recognition System as shown in Exhibit "A" attached hereto and incorporated herein by reference for all legal purposes.

EXHIBIT A..... Specifications, Proposal or Cost Summary
EXHIBIT B..... Intentionally Omitted
EXHIBIT C..... Intentionally Omitted.
EXHIBIT D..... Intentionally Omitted.

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

4. **Term:** The effective date of the initial term of service coverage shall commence with the effective date of this Contract. The term for this Contract is for one (1) year with the option of an extended warranty for up to four (4) additional years at \$1,600.00 per year.

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

precautions incident thereto. Owner's representative will not be responsible for the Contractor's failure to perform the work in accordance with the contract.

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

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

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

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

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

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

9. **INDEMNITY: THE CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS**

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

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

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

than 30 calendar days after release to proceed.

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

10.1. TIME IS OF THE ESSENCE IN THIS CONTRACT.

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

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

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

13.1. Defective work not remedied; or

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

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

13.4. Damages to another contractor or subcontractor.

When the above grounds to withhold payment are removed, or the Contractor provides a surety

bond satisfactory to the Owner, which will protect the Owner in the amount withheld, payment shall be released.

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

15. **Payment:** After all work is completed by the Contractor, and the Owner has inspected and approved that work, the Owner shall within thirty-one (31) days thereafter issue payment to the Contractor in the amount of the contract and subsequent verified Change Orders. The Owner shall be the final judge of when work is completed by the Contractor. The Owner shall not make periodic payments to the Contractor, but shall make payment pursuant to this paragraph only after all work is completed by the Contractor.

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

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

ATTORNEY'S FEES TO WHICH SAID PARTY MIGHT OTHERWISE BE ENTITLED.

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

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

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

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

19. **Insurance**

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

Commercial General Liability (including Contractual liability):

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

-Property Damage: \$500,000.00 per occurrence

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

Worker's Compensation: Statutory limits

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

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

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

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

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

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

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

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

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

21. **Governing Law and Venue:** This Contract shall be governed by the laws of the State of Texas.

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

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

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

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

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

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

Contract No: 4187-11

OWNER, City of Midland

CONTRACTOR

Courtney B. Sharp, City Manager

APPROVED AS TO FORM

Keith Stretcher, City Attorney

ATTEST

Amy M. Turner, City Secretary

Contractor Corporate Acknowledgment: Contract: Contract No.4187-11

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

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

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the ____ day of _____, 2012.

Notary Public, State of Texas

Quotation

HAYIS WHELEN[®] Pro-gard
ENGINEERING COMPANY, INC.
Engineers for all Emergency Warning Systems

JOHN WRIGHT
ASSOCIATES, INC.
www.johnwrightassociates.com
1111 West Abram Street
Arlington, Texas 76013
derek@johnwrightassociates.com

Derek Wright
Sales Manager
mobile: 817.538.4939
office: 800.869.8597
fax: 817.459.2515

DATE MARCH 8, 2012

Customer ID MIDLAND P.D.
601 N. LORRAINE
MIDLAND, TX 79701

CHIEF PRICE ROBINSON

Quotation valid until:
Prepared by:

Comments or special instructions:

Texas State Contract #TXMAS-8-840130

Qty	Part #	Description	Unit Price	Ext.
1		MPH-900 ADM3 SP2 25/16 10 FT TRUNK MT(110062)	\$ 16,350.00	\$ 16,350.00
1		ONE YEAR EXTENDED WARRANTY***EL SAG TWO(2) CAMERA ALPR SYSTEM FOR TWO PLATE STATE, HARDWARE, SOFTWARE, CABLES	\$ 1,600.00	\$ 1,600.00
0			\$ -	\$ -
0			\$ -	\$ -
1		ELSAG Operations Center (EOC) License Fee (410322) ***EL SAG OPERATIONS CENTER(EOC) BACK END SERVER LICENSE TO MANAGE DATA AND HOT LIST	\$ 1,275.00	\$ 1,275.00
0			\$ -	\$ -
1	LABOR	INSTALLATION AND ENGINEERING SUPPORT(210023)**ONSITE INSTALLATION NETWORKING AND TRAINING	\$ 1,975.00	\$ 1,975.00
0			\$ -	\$ -
0			\$ -	\$ -
0			\$ -	\$ -
0			\$ -	\$ -
0			\$ -	\$ -
0			\$ -	\$ -
0			\$ -	\$ -
0			\$ -	\$ -

Exhibit "A"

Quotation

HAVIS WHELEN[®] Pro-gard
ENGINEERING COMPANY, INC.
 Engineers for the Temporary Retention Industry

JOHN WRIGHT
 ASSOCIATES, INC.

Derek Wright
 Sales Manager

www.johnwrightassoc.com

mobile: 817.538.4939

1111 West Abram Street
 Arlington, Texas 76013

office: 800.869.8597
 fax: 817.459.2515

derek@johnwrightassoc.com

DATE MARCH 8, 2012

Customer ID MIDLAND P.D.
 601 N. LORRAINE
 MIDLAND, TX 79701

CHIEF PRICE ROBINSON

Quotation valid until:
 Prepared by:

Comments or special instructions:

Texas State Contract #TXMAS-8-840130

Qty	Part #	Description	Unit Price	Ext.
0			\$ -	\$ -
0			\$ -	\$ -
0			\$ -	\$ -
0			\$ -	\$ -
0			\$ -	\$ -
0			\$ -	\$ -
0			\$ -	\$ -
0			\$ -	\$ -
0			\$ -	\$ -
0			\$ -	\$ -

Tax

\$

-

Shipping

\$

-

Subtotal

\$

21,200.00

Total

\$

21,200.00

If you have any questions concerning this quotation, contact Derek Wright, 817-538-4939, derek@johnwrightassoc.com



City Council Agenda

Approved for Agenda:
thudson
City Manager's Office

MEETING DATE: 6/26/2012

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution rejecting the single bid received from Onyx Contractors Operations, LP for the construction of a pavilion at Hogan Park for the Community Services Department. File 4440-12

Purpose:

Reject the single bid received for the construction of a pavilion at Hogan Park.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

No funding required.

Discussion:

The single bid received from Onyx Contractors Operations, LP of Midland, Texas for the construction of a pavilion at Hogan Park exceeded the available budget of \$130,000.00 by \$99,000.00. Staff is requesting that the project be re-bid as a gable-rectangle structure. The gable-rectangle structure is included in the request for approval of plans and specification for Playground and Recreational Equipment on this agenda. Please see the memo from the Community Services Director for more discussion on this item.

Therefore, please consider a resolution rejecting the single bid received from Onyx Contractors Operations, LP for construction of a pavilion at Hogan Park.

RESOLUTION NO.

**RESOLUTION REJECTING THE SINGLE BID
RECEIVED FOR BID NUMBER 4440-12 FOR
CONSTRUCTION OF A PAVILION AT HOGAN PARK**

WHEREAS, the City Manager approved plans and specifications and authorized advertisement for competitive bids for the construction of a pavilion at Hogan Park; and

WHEREAS, the single bid received exceeded available funds for this purchase by approximately \$99,000.00; and

WHEREAS, the City Council finds it to be in the public interest to reject the bid on request 4440-12;

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

SECTION ONE. The recitals stated above are hereby adopted.

SECTION TWO. That the bid received on Bid Number 4440-12 for the construction of a pavilion at Hogan Park, as shown on the bid tabulation attached hereto as Exhibit "A" and incorporated herein for all legal purposes, is hereby rejected.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, General Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

City of Midland - Bid Tabulation

BID # 4440-12 Pavilion at Hogan Park OPENED April 18, 2012 Est. Cost: \$91,000.00			Onyx Contractors PO Box 60547 Midland, TX 79711 John Darnell (432) 561-8900	
ITEM	QTY	DESCRIPTION	COST EA.	TOTAL
1	1	Material Portion Incorporated Into the Project	\$172,000.00	\$172,000.00
2	1	Labor Portion Incorporated Into the Project	\$57,000.00	\$57,000.00
3	1	Other Costs Not Incorporated Into Project		None
		Project completed by:	168 Calendar Days	
TOTALS:				\$229,000.00
TOTAL OF LOW BID ITEMS BY VENDOR:				\$229,000.00

Bidding Summary:

8 Bid requests were issued.

1 Bids listed above

1 NO BIDS were received.

Playwell Group

6 Bidders did not respond.

Gametime by Total Recreation Products (2), Master Builders, Playwell Group, Simmons Builders, JFA Constructions

CITY OF MIDLAND
Community Services Department
Interoffice Memorandum

Date: June 26, 2012
To: Tommy Hudson, Deputy City Manager
From: Tina Jauz, Community Services Director
Subject: Pavilion at Hogan Park

In August 2009, the City Council deferred the purchase and construction of a pavilion at Hogan Park. The pavilion is the final component of the renovations at Hogan Park with the playground and surrounding area being completed in the Spring of 2011.

Under the City Council's authorization, staff solicited qualified bidders in April 2012 for the Hogan Pavilion. The project holds an available budget of \$130,000 from the 2007 Certificate of Obligation funds. Onyx Contractors was the only responsive bidder at a price of \$229,000. Because this cost exceeds the available funds by \$99,000, it's recommended that the City Council reject this bid and allow staff to re-bid an alternate pavilion structure that would better fit the available budget.

The current bid required contractors to build a 70' octagon pavilion. In order to bring the price of this project within budget, staff is recommending that the project be rebid as a gable-rectangle structure at 40' wide by 60' long. The pavilion would include a galvanized metal roof with steel pillars and construction would take place in the southeast area of Hogan Park.

The purchase price would not include the 45' x 65' x 6" thick cement foundation, which would be bid out separately. We estimate the foundation expense at approximately \$10,000, leaving \$120,000 for the pavilion construction.



City Council Agenda

Approved for Agenda:
thudson
City Manager's Office

MEETING DATE: 6/26/2012

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving the purchase of 1000 – 3 CY Refuse Containers, 300 – 3.5 CY Refuse Containers, 3 – 35 to 50 CY Self Contained Compactors and 5 – 30 CY Open Top Roll-Off Containers for the Solid Waste Department. Bid 5083-12

Purpose:

Approval of a resolution authorizing the purchase of refuse containers for the Solid Waste Department.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$627,625.00 Sanitation Fund

Discussion:

We received three bids from major refuse container manufacturers for 1000 – 3 CY refuse containers, 300 – 3.5 CY refuse containers, 3 – 35 to 50 CY self contained compactors and 5 – 30 CY open top roll-off containers. The low bidder, Roll Offs USA, met all of our specification requirements.

Therefore, please consider approval of a resolution authorizing the purchase of the refuse containers from Roll-Offs USA of Durant, Oklahoma for a total cost of \$627,625.00.

RESOLUTION NO.

RESOLUTION APPROVING THE PURCHASE OF ONE THOUSAND (1,000) THREE CUBIC YARD REFUSE CONTAINERS WITH LIDS, THREE HUNDRED (300) THREE AND ONE-HALF CUBIC YARD REFUSE CONTAINERS WITH LIDS, THREE (3) THIRTY-FIVE TO FIFTY CUBIC YARD SELF-CONTAINED COMPACTORS, AND FIVE (5) THIRTY CUBIC YARD OPEN TOP ROLL-OFF CONTAINERS FROM ROLL-OFFS USA, INCORPORATED, OF DURANT, OKLAHOMA, AT A TOTAL COST OF \$627,625.00

WHEREAS, the City Manager approved plans and specifications and authorized advertisement for bids for one thousand (1,000) three cubic yard refuse containers with lids, three hundred (300) three and one-half cubic yard refuse containers with lids, three (3) thirty-five to fifty cubic yard self-contained compactors, and five (5) thirty cubic yard open top roll-off containers ("Refuse Containers"); and

WHEREAS, Bid No. 5083-12 was opened on June 6, 2012, with the lowest and most advantageous bid being submitted from Roll-Offs USA, Inc., at a cost of \$627,625.00, as shown on the bid tabulation attached hereto as Exhibit "A" and incorporated herein for all legal purposes; and

WHEREAS, the Council finds the price proposed by Roll-Offs USA, Inc., for said Refuse Containers to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to authorize the purchase of said Refuse Containers from Roll-Offs USA, Inc.;

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

SECTION ONE. That the City Manager is hereby authorized and directed to purchase the above listed Refuse Containers from Roll-Offs USA, Inc., at an estimated total price not to exceed \$627,625.00.

SECTION TWO. That the City Treasurer is hereby authorized and

directed to pay Roll-Offs USA, Inc., for said Refuse Containers from funds available in the Fiscal Year 2011 – 2012 Sanitation Fund (430) Sanitation (430) Solid Waste Management (0400) budget account upon proper receipt of invoices or statements approved by the City Manager.

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

Council members voting "AYE":

Council members voting "NAY":

—

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, General Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:
thudson
City Manager's Office

MEETING DATE: 6/26/2012

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving the purchase of 9 LAWS Hazard Alert Warning Systems (Outdoor NOAA Weather Alert System) from DFW Communications of Fort Worth, Texas through the Buyboard for the Fire Department.

Purpose:

Approve a resolution to purchase 9 outdoor public warning systems for the Fire Department.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$124,750.00 General Fund

Discussion:

The current siren warning systems have reached the end of their useful life and should be replaced. The LAWS Hazard Alert Warning System is available through the Buyboard. We are members of this cooperative and Subchapter F, Section 271.102 of the Local Government Code provides that a local government may participate in a cooperative purchasing program and that purchasing goods or services under Subchapter F satisfies any state law requiring the local government to seek competitive bids for those purchases. City staff will install the warning systems. Please refer to the memo from the Fire Department for further discussion on this purchase.

Therefore, please consider a resolution approving the purchase of 9 LAWS Hazard Alert Warning Systems from DFW Communications of Fort Worth, Texas through the Buyboard for a total cost of \$124,750.00.

RESOLUTION NO.

**RESOLUTION APPROVING THE PURCHASE OF
NINE (9) LOCAL AREA OUTDOOR WEATHER
WARNING SYSTEMS FROM DFW
COMMUNICATIONS FOR \$124,750.00; AND THIS
ITEM WAS NOT BID, BUT WAS PURCHASED
THROUGH THE LOCAL GOVERNMENT
PURCHASING COOPERATIVE**

WHEREAS, the Local Government Purchasing Cooperative (“LGPC”) is a cooperative purchasing agency with which the City participates on purchases; and

WHEREAS, through the LGPC, the City of Midland has received a quote from DFW Communications for Nine (9) local area outdoor weather warning systems at a total cost of \$124,750.00, said quote being attached hereto as Exhibit “A” and incorporated herein for all legal purposes; and

WHEREAS, the Council finds the price for said local area outdoor weather warning systems from DFW Communications to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to purchase said outdoor weather warning systems from DFW 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 outdoor weather warning systems from DFW Communications, through the LGPC at a total cost not to exceed \$124,750.00.

SECTION TWO. That the City Treasurer is hereby authorized and directed to pay for said outdoor weather warning systems from funds available in the Fiscal Year 2011 – 2012 General Fund (001) Fire (115) Emergency Management (0125) budget account.

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

_____ day of _____, A.D., 2012, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, General Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



DATE: April 24, 2012
COMPANY: City of Midland
ATTN: Chief Robert Isbell
ADDRESS: 1500 West Wall Street
 Midland, TX
PHONE: (432) 685-7332
FAX: -

ITEM	QTY	DESCRIPTION	UNIT \$	TOTAL
1	9	LAWS Hazard Alert Warning System LAWS-100R	\$14,500.00	\$130,500.00
		Outdoor NOAA Weather Alert System		-
		Includes - Auxiliary Radio Interface, customizable scripting,		-
		fail safe battery back-up, Strobe Lighting for Warning and		-
		Watch.		-
2	9	Buyboard Discount	-\$750.00	(6,750.00)
		Buyboard Contract 363-10		-
				-
				-
				-
				-
				-
		Installation and Poles are not included as part		-
		of this proposal		-
				-
				-
		From additional pages		-

Customer Approval _____

Sales Consultant
 Robert Willis
 Phone: (817) 730-4339
 Cell: (817) 730-4339
 Fax: (817) 284-8369

Sub Total - \$123,750.00
 Shipping - 1,000.00
 Install - -
 Tax - -
 Total - \$124,750.00

PRICING VALID FOR 30 DAYS FROM ABOVE DATE
 DFW Communications Confidential and Proprietary
 2413 Gravel Dr / Fort Worth, Texas 76118 / 817.730.4339 / fax 817.284.8369

Laws-100 Hazard Alert System

LAWS™ Local Area Warning System immediately delivers official Common Alerting Protocol (CAP V1.2) warnings via NOAA Weather Radio, an important part of FEMA's Integrated Public Alert Warning System (IPAWS)

System Operation

The **LAWS™** Hazard Alert System delivers local area broadcasts of NOAA Weather Radio warnings and watches- the type of official information that can save lives during critical events.

With the **LAWS™** System the proven level of preparedness currently available through NOAA Weather Radio is now offered to persons in public venues.

The **LAWS™** Hazard Alerting System, a patented innovation in outdoor hazard warnings, provides a useful and cost effective solution to the need for public notification of potential risks in areas where citizens are the most vulnerable.

The **LAWS™** System is engineered and manufactured in the United States. It was designed and developed by an experienced public safety officer to help provide warnings and hazard alerts to person potentially at risk from a variety of hazardous situations.

The **LAWS™** System provides full coverage at special event venues with optional public safety radio interface. Other Interfaces available.

The **LAWS™** solar option allows installation in remote areas.

Excellent for unsupervised areas.

LAWS™
HAZARD ALERT SYSTEMS



**Local Area
Warning System**

Features

- Delivers High Power Alerting Siren Tone, Voice Hazard Message and Visual Notification
- Activated automatically by NOAA Weather (NWR) Radio Broadcasts
- Alerts for Any Type of Hazard Covered by NWR
- An excellent way to provide local hazard notification for parks and recreation areas without activating a municipality's general siren system, or to supplement existing systems
- NWR Voice Messaging System provides more than a siren, it clarifies the threat and advises appropriate actions to be taken
- Broadcasts specific messages, for specific audiences in specific areas
- Provides visual Hazard Alerts for the hearing impaired
- A cost effective alternative to traditional sirens for hazard alerts

- Parks & Playgrounds
- School & Corporate Campuses
- Hospitals
- Industrial, Nuclear Plants
- Marinas, Recreational Sites
- Sports Complexes
- Stadiums
- Campsites
- Shopping Centers
- Mobile Home/RV Parks
- Highway Rest Stops
- Resorts/Beaches
- Country Clubs/Golf Courses
- Downtown Areas
- Special Events

warnings you can live with™

LAWS™
HAZARD ALERT SYSTEMS

How it Works

The **LAWS™** System receives NWR transmissions and broadcasts them through amplified speakers to the covered area.

The real time broadcasts are preceded by about an 8-10 second siren tone. As the siren tone sounds, a high intensity beacon is activated - AMBER for watches and a RED for potentially life threatening emergencies.

The warning beacons remain active for the duration of the event as defined by the National Weather Service(NWS). This provides a continuous visual signal to the hearing impaired and audible broadcast to the general public.

Other alerting options are available.

NOAA Activated

The **LAWS™** System is designed to provide a NOAA activated stand alone warning and emergency notification at a reasonable cost. The LAWS System can be configured by the user to receive only the desired warnings and statements.

The Structure and Specifications

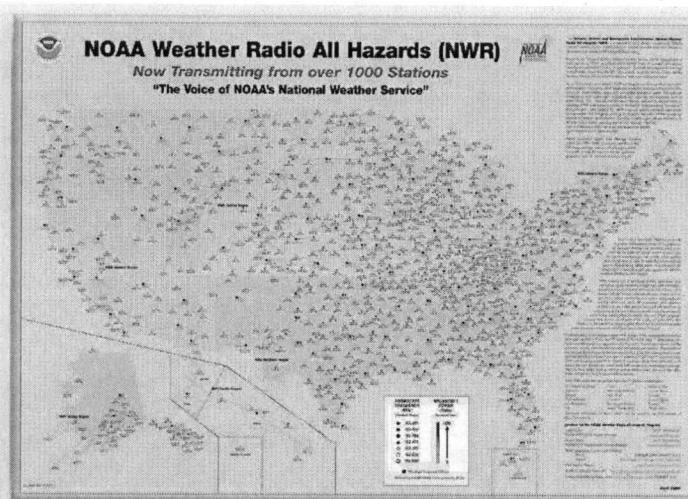
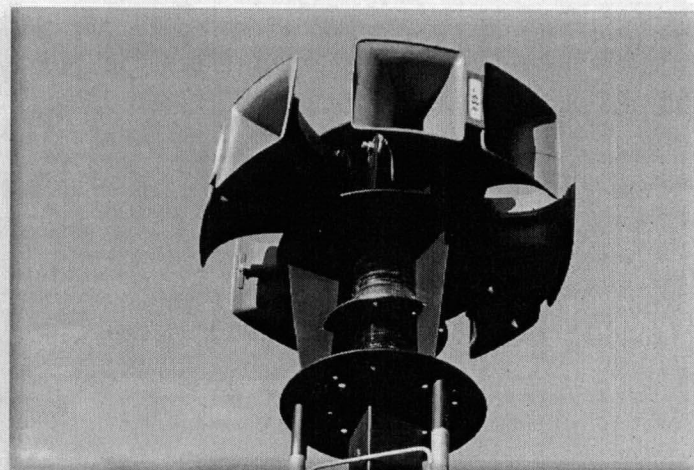
The **LAWS™** System typically mounts on a rigid steel mono-pole or truss-work tower. The beacons and speaker array stand >20 feet above the base of the structure allowing better sound dispersion and visibility of the beacons.

LAWS™ operates on DC battery power with a 110VAC charging circuit. Solar power is an available option.

Nominal 70 db(c) audible range approximately 1200'.

Speaker Horns are reentrant wide angle type, providing excellent sound penetration for public warnings.

Speaker drivers are heavy duty 100 Watt weather proof compression drivers, designed for high-power output and excellent intelligibility. (*Specifications subject to change.*)



NOAA Weather Radio (NWR), FEMA and Homeland Security

NWR has long been known as a reliable source of information for All Hazard notification. This has been reaffirmed by NOAA's "Weather-Ready Nation" initiative. NWR is officially designated by the Office of Homeland Security for the distribution of "All Hazard Warnings". See www.weather.gov for more info.

For More Information Contact:

Robert Willis
DFW Communications, Inc.
2120 Regency Drive
Irving, Texas 75062
817-688-3325 (cell)



**CITY OF MIDLAND
MIDLAND FIRE DEPARTMENT**

INTEROFFICE MEMORANDUM

DATE: June 12, 2012

TO: Regina Stephenson, Purchasing Manager

CC: Robert Patrick, General Services Director

FROM: Robert Isbell, Fire Chief

SUBJECT: Outdoor Warning Siren Installation

The outdoor warning sirens the City of Midland currently employ are not supported by any vendor, distributor or manufacturer. The system is in a slow decline due to non-existent external support. When a siren has an issue, the repair is made by our transportation department by utilizing parts from another siren currently in use. The system is proprietary to a now defunct manufacturer and parts are not available by other means.

This proposal is to purchase a new system for our critical coverage in outdoor locations only. The proposed system (LAWS) utilizes non-proprietary parts and is supported by a reputable vendor located in Texas. This system will have features that are consistent with our current system as well as with technologies to enhance specific warning notices from the National Weather Service (NWS) as well. The NWS warnings will allow automatic delivery of any warnings the city deems necessary without any interaction from a dispatch center.



City Council Agenda

Approved for Agenda:
thudson
City Manager's Office

MEETING DATE: 6/26/2012

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving plans and specifications and authorizing advertisement for bids for playground and recreational equipment for the Community Services Department.

Purpose:

Approval of a resolution approving plans and specifications and authorizing advertisement for bids for playground and recreational equipment for the Community Services Department.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

No funding required at this time.

Discussion:

Please consider approval of a resolution approving plans and specifications and authorizing advertisement for bids for labor, material, equipment and supervision necessary to provide and install playground equipment at Butler Park, Grafa Park, House Park, Pioneer Park, Sparks Park, Ulmer Park and a pavilion for Hogan Park. This contract will also include the purchase and installation of trash receptacles, park benches, picnic tables, barbecue grills, basketball backboards, drinking fountains, shade structures, goal posts, dug out benches, disc golf nets, athletic bleachers, and Senior Access Wellness Stations for various Midland parks for the Community Services Department.

RESOLUTION NO.

RESOLUTION APPROVING PLANS AND SPECIFICATIONS AND AUTHORIZING ADVERTISEMENT FOR BIDS FOR LABOR, MATERIAL, EQUIPMENT AND SUPERVISION NECESSARY TO PROVIDE AND INSTALL PLAYGROUND EQUIPMENT AT BUTLER PARK, GRAFA PARK, HOUSE PARK, PIONEER PARK, SPARKS PARK, ULMER PARK AND A PAVILION AT HOGAN PARK; THE CONTRACT WILL ALSO INCLUDE THE PURCHASE AND INSTALLATION OF TRASH RECEPTACLES, PARK BENCHES, PICNIC TABLES, BARBEQUE GRILLS, BASKETBALL BACKBOARDS, DRINKING FOUNTAINS, SHADE STRUCTURES, GOAL POSTS, DUG OUT BENCHES, DISC GOLF NETS, ATHLETIC BLEACHERS AND SENIOR ACCESS WELLNESS STATIONS FOR VARIOUS MIDLAND PARKS

WHEREAS, plans and specifications have been prepared for labor, material, equipment and supervision necessary to provide and install playground equipment at Butler Park, Grafa Park, House Park, Pioneer Park, Sparks Park, Ulmer Park and a pavilion at Hogan Park, as well as the purchase and installation of trash receptacles, park benches, picnic tables, barbeque grills, basketball backboards, drinking fountains, shade structures, goal posts, dug out benches, disc golf nets, athletic bleachers and senior access wellness stations for various Midland parks ("Playground and Recreational Equipment"); and

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

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

SECTION ONE. That the plans and specifications for the above-referenced Playground and Recreational Equipment are hereby approved, those plans and specifications being substantially in the form as those on file with the office of the City Secretary, referenced by the date and number of this Resolution.

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

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, General Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

CITY OF MIDLAND
Community Services Department
Interoffice Memorandum

Date: June 26, 2012
To: Tommy Hudson, Deputy City Manager
From: Tina Jauz, Community Services Director
Subject: Recreation Playground, Structures, and Equipment Bid

The Parks Division of the Community Services Department seeks to solicit bids for various recreational items, including:

- 6 Playgrounds (funded by the 2012 CO Bonds). They include: Butler, Grafa, House, Sparks, Pioneer, and Ulmer.
- Hogan Park Pavilion (funded by the 2007 CO Bonds).
- Trash receptacles, park benches, picnic tables and barbecue grills (funded in part by the 2009 CO Bonds, as well as the Park's approved General Fund budget). Items will be installed at various parks including Taylor, Halff, and Ratliff.
- Basketball backboards, drinking fountains, shade structures, goal posts, dug out benches, disc golf nets, athletic bleachers and public-pool lounge chairs (all funded by the Park's approved General Fund budget). Equipment will be installed at multiple parks.
- Senior Accessible Wellness Stations at Pioneer Park (approved FY2012 General Fund).

Under the City Council's authorization, staff would immediately bid this project with the intention of completing work during the current fiscal year, noting a few minor exceptions: the playgrounds and Hogan Park pavilion project are not funded through the Park's approved General Fund budget and therefore, may be carried forward into the following fiscal year if work cannot be completed before September 30, 2012.



THE CITY OF MIDLAND

CONTRACT

Contract No.5185-12

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

1. **Cost:** Total Proposal: \$ _____ DOLLARS
2. **Scope of Work:** The Contractor shall perform all work described for labor, material, equipment and supervision necessary to purchase and install Parks and Recreational Equipment as shown in the following documents, attached hereto and incorporated herein by reference for all legal purposes.

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

EXHIBIT B..... Intentionally Omitted

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

EXHIBIT D..... Wage Scale

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 12.1. Defective work not remedied; or
- 12.2. Claims filed or reasonable evidence indicating possible filing of claims; or
- 12.3. Failure of the Contractor to make payments promptly to subcontractors or for material or labor which the Owner may pay as an agent for the Contractor; or
- 12.4. Damages to another contractor or subcontractor.

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

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

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

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

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

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

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

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

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

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

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

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

19. **Insurance**

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

Commercial General Liability (including Contractual liability):

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

-Property Damage: \$500,000.00 per occurrence

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

Worker's Compensation: Statutory limits

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

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

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

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

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

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

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

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

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

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

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

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

occurred in Midland County, Texas.

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

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

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

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

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

Contract No: 5185-12

OWNER, City of Midland

CONTRACTOR

Courtney B. Sharp, City Manager

APPROVED AS TO FORM

Keith Stretcher, City Attorney

ATTEST

Amy M. Turner, City Secretary

Contractor Corporate Acknowledgment: Contract No.5185-12

STATE OF TEXAS §

§

COUNTY OF MIDLAND §

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

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

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the ____ day of _____, 2012.

Notary Public, State of Texas



Contractor's Name _____

PROPOSAL Bid #5185-12

To: Purchasing Manager
City of Midland
Midland, Texas

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

Item	Qty	Unit	Description	Unit Cost	Total Cost
1	25	ea	Benches	\$	\$
1a	1	lot	Installation	\$	\$
2	25	ea	Tables	\$	\$
2a	1	lot	Installation	\$	\$
3	20	ea	Players' Benches without backs	\$	\$
4	5	ea	Bleachers	\$	\$
5	15	ea	Soccer Goals	\$	\$
6	6	ea	Basketball backboard with posts and nets	\$	\$
6a	1	lot	Installation	\$	\$
7	50	ea	Chaise lounge chairs for a pool deck	\$	\$
8	10	ea	Barbecue Pits	\$	\$
8a	1	lot	Installation	\$	\$
9	6	ea	Round Pedestal Drinking Fountains	\$	\$
9a	1	lot	Installation	\$	\$
10	20	ea	Disc Golf Nets and Posts	\$	\$
10a	1	lot	Installation	\$	\$
11	50	ea	Steel Trash Cans to match existing park receptacles originally purchased from Wabash Valley	\$	\$
11a	1	lot	Installation	\$	\$
12			Cost per square foot for finished shade material – fabric and related items only.	\$ _____/sqft	
12a	1	lot	Installation	\$	\$
13	1	ea	Picnic pavilion for Hogan Park	\$	\$
13a	1	lot	Installation must be included for the pavilion.	\$	\$
14	2	ea	Sections of Senior Wellness Stations/Fitness Stations	\$	\$
14a	1	lot	Installation	\$	\$
15	1	lot	Playground equipment for Butler Park	\$	\$
15a	1	lot	Installation	\$	\$
16	1	lot	Playground equipment for Grafa Park	\$	\$
16a	1	lot	Installation	\$	\$
17	1	lot	Playground equipment for House Park	\$	\$
17a	1	lot	Installation	\$	\$
18	1	lot	Playground equipment for Pioneer Park	\$	\$
18a	1	lot	Installation	\$	\$

19	1	lot	Playground equipment for Sparks Park	\$	\$
19a	1	lot	Installation	\$	\$
20	1	lot	Playground equipment for Ulmer Park	\$	\$
20a	1	lot	Installation	\$	\$
			Total Cost		\$

Bidders who have the capacity to offer installation may submit a bid for installation of items requiring installation. Installation is an alternate bid and may not be part of the total purchase unless otherwise stated.

The undersigned bidder hereby declares that he has visited the site of the work and has carefully examined the Contract Documents pertaining to the work covered by the above bid and he further agrees to commence work within ten (10) days after the date of written notice to do so and to substantially complete same no later than September 25, 2012 (with the exception of the six playgrounds and the Hogan park pavilion project—which must be finished by December 2012).

VENDOR CONTACT:

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

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

OR

FAX: (432) 685-0523

E-mail: purchasing@midlandtexas.gov

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

AWARD

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

BID WAIVERS:

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

BIDDER AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL

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

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

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

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

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

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

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

that Bidder's notice is insufficient. Owner reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

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

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

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

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

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

- ☐ PROOF OF AUTOMOBILE, WORKER'S COMPENSATION AND GENERAL LIABILITY INSURANCE COVERAGE AS REQUIRED BY THE TERMS OF THE CONTRACT. **(Upon award and prior to execution of the contract The City of Midland will have to be added to the policy as an additional insured and a certificate issued reflecting that provision, including a waiver of subrogation as stated in the contract)**
- ☐ 5% BID BOND FOR CONTRACTS IN AMOUNTS OF \$50,000 OR MORE. (ONLY WHEN EXHIBIT "C" IS INCLUDED IN THE CONTRACT).* **THE SUCCESSFUL BIDDER SHALL BE REQUIRED TO PROVIDE A PAYMENT BOND AND PERFORMANCE BOND FOR BIDS OF \$50,000 OR MORE. IF BOND FORMS WERE NOT INCLUDED, THEY MAY BE OBTAINED FROM THE OFFICE OF THE PURCHASING MANAGER. Call (432) 685-7234 for information.**

PLEASE NOTE:

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

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

THE CITY OF MIDLAND

SPECIFICATION

Playground and Recreational Equipment

1. SCOPE

The City of Midland has a need for playground, recreation, and park equipment—as specified (or equivalent in durability and construction for large-scale use in public parks):

1. Twenty five (25) benches and twenty five (25) picnic tables:
 - a. Steel frame
 - b. Benches should include a back
 - c. Picnic tables and benches should be at least 6' in length
 - d. Benches must be surface mounted and picnic tables must be a concrete-base mount
 - e. Picnic tables should be ADA accessible
 - f. Powder coated color options or alternate durable surface covering with color options
 - g. Bidders who have the capacity to offer installation may submit a quote for installation of the picnic tables and park benches as an **optional** item; do NOT include this cost in the total price of the proposal.
2. Twenty (20) Players' Benches without Backs:
 - a. Aluminum plank with steel legs
 - b. Powder coated color options
 - c. Surface mounted
 - d. At least 7' long
3. Five (5) Bleachers:
 - a. Eight rows with railing
 - b. At least 20 feet in length
 - c. Aluminum frame with steel bolts and fittings.
 - d. Must meet requirements of the Consumer Product Safety Commission standards
4. Fifteen (15) Soccer Goals
 - a. Steel Frame, powder coated with color options
 - b. Concrete-based mount
 - c. Dimensions: 7' high (above ground) x 23' width (or similar)
 - d. Purpose: recreational soccer for pick up games and organized play in parks
5. Six (6) Basketball backboard with posts and nets
 - a. Single curved basketball backboard and post
 - b. At least 13' length and 4' extension (or similar)

- c. Galvanized steel frame and parts
 - d. Concrete-based mount
 - e. Chain link nets with goal rings
 - f. Fan shaped steel backboard with targets and borders
 - g. Bidders who have the capacity to offer installation may submit a quote for installation of the basketball backboards and posts as an **optional** item; do NOT include this cost in the total price of the proposal.
6. Fifty (50) Chase lounge chairs for a pool deck
- a. Resin frame with adjustable recline positions
 - b. Wheeled frame for easy movement
 - c. Stackable
 - d. At least 75" in length and 27" wide (or similar)
7. Ten (10) Barbecue Pits
- a. At least 18" x 24", steel frame, vandal resistant grill—including post-mount
 - b. Vandal resistant and adjustable grate, allowing at least three levels of height
 - c. Concrete-based mount
 - d. Black surface
 - e. Swivel and locking device on post that allows the grill to rotate 360° for wind draft control, but will not allow vandals to remove grill from pedestal.
 - f. Bidders who have the capacity to offer installation may submit a quote for installation of the barbecue pits as an **optional** item; do NOT include this cost in the total price of the proposal.
8. Six (6) Round Pedestal Drinking Fountains
- a. 11-gauge steel frame with pedestrian and wheelchair access
 - b. Lead-free
 - c. Push-button operated valve
 - d. Concrete and bolt-based mount
 - e. Must comply with the Federal Safe Drinking Water Act
 - f. Powder coated color options
 - g. Bidders who have the capacity to offer installation may submit a quote for installation of the drinking fountains as an **optional** item; do NOT include this cost in the total price of the proposal.
9. Twenty (20) Disc Golf Nets and Posts
- a. Steel constructed frame, chain, and fittings
 - b. At least 20 chains per net, utilizing a single chain design (or equivalent)
 - c. 18 of the nets should be numbered 1 through 18, with numbers prominently marked on two sides. Nets 19 and 20 should be left unnumbered and will be used as replacement nets in the future.

- d. Product should be able to withstand heavy use in an unprotected outdoor environment.
 - e. Concrete-based mount.
 - f. Bidders who have the capacity to offer installation may submit a quote for installation of the disc golf nets and posts as an **optional** item; do NOT include this cost in the total price of the proposal.
10. Fifty (50) Powder Coated, 32-Gallon, Steel Trash Cans to Match Existing Park Receptacles, Originally purchased from Wabash Valley. Product Specs include:
- a. Perforated steel receptacle
 - b. Green
 - c. 32 gallon with liner
 - d. In-ground post
 - e. Black flat top lid with 8" diameter
 - f. Outward opening
 - g. Bidders who have the capacity to offer installation may submit a quote for installation of the receptacles as an **optional** item; do NOT include this cost in the total price of the proposal.
11. Shade Structure Fabric:
- a. Seeking a square-foot cost for finished shade material, built to exact measurements (size not yet identified).
 - b. Shade structure (steel frame) is not needed for this project; this bid will include fabric and related items only.
 - c. Shade material should withstand a 90MPH windload and a 5Lbs/Sqft snowload.
 - d. Fabric must carry at least a 5-year manufacturer's (limited) warranty.
 - e. Sewing thread must carry at least a 3-year manufacturer's (limited) warranty.
 - f. Fabric must sustain long-term color saturation when exposed to constant and direct sunlight.
 - g. Bidders who have the capacity to offer installation may submit a quote for installation of the shade fabric as an **optional** item; do NOT include this cost in the total price of the proposal.
12. One Picnic Pavilion:
- a. Shelter will be located at Hogan Park, 1201 E. Wadley Avenue (southeast area of the park).
 - b. Gabled rectangle design with a 4:12 roof pitch.
 - c. 40 feet wide by 60 feet long.
 - d. Frame must be galvanized steel with powder coated color options.
 - e. 26 gauge tongue and groove metal roof (or better). Roofing must withstand strong gusts of winds as well as sustained wind speeds of 14 miles per hour.
 - f. **Installation must be included:** drilled piers, installation of frame, and installation of metal roof.
 - g. City to provide footing plans and concrete pour for a 45 x 65 x 6" foundation, designed by a licensed engineer in the state of Texas.
 - h. Permits, if required, are the responsibility of the contractor.

- i. Colors will be selected after award. A color selection chart/guides should be included with the bid.
- j. See Section 4.1 and 4.3 for additional specifications.

13. Two Sections of Senior Wellness Stations/Fitness Stations

- a. Each station should include at least four apparatus that focus on different muscle groups and are functional for all skill levels, including seniors.
- b. Units must be made of durable steel construction with powder coated color options.
- c. Each station should include a sign with illustrations for use.
- d. Stations should be surface mounted for concrete.
- e. Bidders who have the capacity to offer installation may submit a quote for installation of the fitness stations as an **optional** item; do NOT include this cost in the total price of the proposal.
- f. See section 4.1 through 4.3 for additional specifications.

14. Six (6) **unique** playgrounds to replace existing structures as follows:

- a. Butler Park located at 3801 Bluebird Lane. This site has approximately 4810 square feet of playground space and measures 54'-6" x 111'-9".
- b. Grafa Park located at Midkiff Road and Ma Mar Avenue. This site has approximately 3405 square feet of playground space and measures 43'-5" x 48', with an additional pocket of usable space.
- c. House Park located at 4800 Ric Drive. This site has approximately 2070 square feet of playground space and is octagon in shape (7-sides). Each side of the area measures 28'-4" x 12'-11" x 21'-5" x 17'-4" x 17'-3" x 17' x 28'-2".
- d. Pioneer Park located at 2001 Lindora Way. This site has approximately 2320 square feet of playground space and has eight sides. Each side of the area measures 38'-7" x 7'-11" x 36'-11" x 7'-11" x 38'-5" x 7'-11" x 36'-8" x 7'-11".
- e. Sparks Park located at 1500 E. Golf Course Road. This site has approximately 3590 square feet of playground space and measures 51'-9" x 85'-4".
- f. Ulmer Park located at 2700 West Kentucky Avenue. This site has approximately 2230 square feet of playground space and has eight sides. Each side of the area measures 26'-6" x 36' x 10'-4" x 13'-8" x 32' x 15'-8" x 37' x 8'-4".

PLAYGROUND DESIGN ELEMENTS:

- i. Bids should include the installation of a resilient surface-material to cover entire playground footprint according to measurements above, unless an alternate recommendation is made to adjust the footprint.
- ii. Design should focus on minimizing the opportunity for vandalism—including graffiti and extreme heat (matches, lighters etc). In addition, all playgrounds should have ADA accessible features (meeting the 2010 ADA Standards for Accessible Design, published Sept. 15, 2010 by the Department of Justice) to ensure play for a wide range of abilities.
- iii. Each playground design should be unique and non-repetitive from site to site. The City strives to expand the variety of play experiences throughout the community and seeks to encourage cross-utilization of its parks.

- iv. Due to the climate in Midland Texas, it's preferred that at least 3 of the six play structures incorporate shade elements.
- v. Each playground, at a minimum, should accommodate ages 5 through 12.
- vi. Preferred option: Provision of a smart phone application that tracks product information and allows for user-interaction with the play apparatus.
- vii. See Section 4, **REQUIREMENTS** for additional playground specifications.

2. VENDOR CONTACT:

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

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

OR

FAX: (432)685-0523

Email: purchasing@midlandtexas.gov

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

3. DEFINITIONS

3.1. OWNER

City of Midland

3.2. CONTRACTOR

Successful Bidder

4. REQUIREMENTS

Vendor shall comment in the right margin as to whether or not his or her bid meets or exceeds the minimum specification shown. Please explain how it exceeds or falls short of the requirement. Use blue or black ink if completed by hand or typewriter. A separate sheet may be used as long as each item is identified and the sheet(s) are signed.

Requirement

Vendor Comment

4.1. TAXES:

- 4.1.1. Portions of the contract qualify for exemption pursuant to the provisions of the Texas Limited Sales, Excise and Use Tax Act. (Refer to Texas Tax Code, Title 2, Subtitle E, Chapter 151, Subchapter H, Subsections 151.309, 151.311 and 151.3111.)
- 4.1.2. Tax Exemption Certificate

4.1.2.1. The Contractor may obtain a sales tax exemption certificate from the City of Midland upon request from the Purchasing Office.

4.2. PLAYGROUND/FITNESS STATION MATERIAL:

4.2.1. The cost of each item shall include all freight charges for that item.

4.2.2. All equipment shall conform to applicable safety standards and dimensions.

4.2.3. Playground materials should include a percentage of both pre-consumer and post-consumer recycled content.

4.2.4. Playground components (where applicable) must be IPEMA Certified.

4.2.5. The system shall meet or exceed the Texas Accessibility Standards of the Texas Architectural Barriers Act and the standards as required under the Americans with Disabilities Act. Playground layout must comply with ASTM 1487.

4.2.6. All materials shall be structurally sound and suitable for safe play, low maintenance and long life.

4.2.7. Frame shall be of metal construction with powder coat finish (unless made of an approved alternate surface).

4.2.8. Decks shall be plastic coated expanded metal (or better).

4.2.9. All equipment shall conform to applicable safety standards including CPSC Guidelines.

4.2.10. Slides shall be polyethylene material (or better). Metal slides will not be accepted.

4.2.11. Colors will be selected after award. A color selection chart/guides should be included with the bid.

4.2.12. The cost summary shall include the total system cost with a breakdown of each item with its individual cost. Please provide the individual cost with freight as a stand-alone cost. This is to provide costs for adding or deleting equipment from the system if necessary.

4.2.13 Chain Climbers are NOT allowed.

4.3. PLAYGROUND/PAVILION SITE PREPARATION AND INSTALLATION:

4.3.1 Installation costs for equipment and ground-surface shall be included in bid.

4.3.2 Site preparation costs shall be included in bid.

4.3.3 Bid shall include removal and disposal of all packing materials and related debris during installation.

4.3.4 Security fencing shall be included in bid to enclose the project area during installation.

4.4 IMPACT ABSORBENT ACCESSIBLE SURFACING MATERIAL FOR PLAYROUNDS

- 4.4.1 Ground surfacing materials must comply with ASTM 1951 "Accessibility of Surface Systems Under and Around Playground Equipment", as well as ASTM 1292 "Impact Attenuation of Surfacing Materials Within the Use Zone of Playground Equipment".

5 QUALITY ASSURANCE

Vendor shall supply all necessary hardware to assemble and install the Systems. A minimum of three sets of assembly, installation and maintenance manuals/sheets shall be delivered with the playground systems equipment. All material shall be new and unused.

6 BID WAIVERS:

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

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

By Execution and submission of this bid, the bidder hereby represents and warrants to the City of Midland that the bidder has read and understands the Bid Documents and the Contract Documents and this bid is made in accordance with the Bid Documents. Bidder acknowledges that it understands all terms within the bid Documents that include the waiver provisions, and that it had the right to consult with counsel regarding all of the above documents.

B. WAIVER:

By submitting a bid, **EACH BIDDER AGREES TO AND DOES HEREBY WAIVE ANY CLAIM THE BIDDER HAS OR MAY HAVE AGAINST THE CITY OF MIDLAND, TEXAS AND THE CITY'S EMPLOYEES, AGENTS AND OFFICERS, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE FOLLOWING:**

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

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

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

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

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

Company Name

Phone

Authorized Signature

Fax

Print Above Name

Date

EXHIBIT C

Bonding Requirements

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

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

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

BID BOND

THE STATE OF TEXAS §

SURETY NO. _____

COUNTY OF MIDLAND §

KNOW ALL MEN BY THESE PRESENTS, THAT _____

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

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

_____ DOLLARS

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

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

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

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

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

IN WITNESS THEREOF, THE SAID PRINCIPAL AND SURETY do sign and seal this instrument, this

_____ day of _____, 20____.

Principal

Surety

By _____

By _____

Address _____

Address _____

APPROVED AS TO FORM:

City Attorney

NOTE: ATTACH POWER OF ATTORNEY

PAYMENT BOND

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

SURETY'S NO. _____

KNOW ALL MEN BY THESE PRESENTS, THAT _____,

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

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

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated the _____ day of _____, 20____, to _____, which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

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

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

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

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

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

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

Principal

Surety

By _____

By _____

Address _____

Address _____

APPROVED AS TO FORM:

City Attorney

NOTE: ATTACH POWER OF ATTORNEY

PERFORMANCE BOND

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

SURETY'S NO. _____

KNOW ALL MEN BY THESE PRESENTS, THAT _____

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

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

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

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

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

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

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

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

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

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

Principal

Surety

By _____

By _____

Address _____

Address _____

APPROVED AS TO FORM:

City Attorney

NOTE: ATTACH POWER OF ATTORNEY

EXHIBIT "D"

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

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

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

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

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

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

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

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.

- [illegible]

6

Date _____

CITY OF MIDLAND

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

Affidavit of Eligibility

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

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

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

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

Complete all areas below. Incomplete affidavits may be rejected.

Local Business Name: _____

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

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

Reseller Permit Number: _____

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

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

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

☐ Yes ☐ No

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

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

Authorized Signature: _____ Date: _____

Printed Name and Title: _____

**No-Bid
Response
For**

Request #: 5185-12 Parks & Recreational Equipment

If your firm has made a decision not to bid on this request, please complete this form and return to:

Office of the Purchasing Agent
City of Midland
P.O. BOX 1152
Midland, TX 79702-1152

Fax to: (432) 685-0523

or

Email: purchasing@midlandtexas.gov

Please Check all reasons below that apply:

- ☐ Cannot provide items requested.
- ☐ Cannot be competitive.
- ☐ Cannot meet the specifications in the request.
- ☐ Cannot provide the liability insurance required by the City of Midland.
- ☐ Cannot provide the Worker's Compensation Insurance required by the City of Midland.
- ☐ Cannot provide the required bonding.
- ☐ Cannot comply with the indemnification requirements.
- ☐ Job too large.
- ☐ Job too small.
- ☐ Do not wish to do business with the City of Midland.
- ☐ Other. Please explain below:

Company Name: _____

Authorized Officer or Agent Signature: _____

Telephone Number: _____ Fax: _____

Email Address: _____

**PLEASE NOTE: THIS COMPLETED FORM MAY BE FAXED TO 432-685-0523.
IT IS NOT NECESSARY TO RETURN ANY OTHER DOCUMENTS.**



City Council Agenda

Approved for Agenda:
thudson
City Manager's Office

MEETING DATE: 6/12/2012

TO: City Council / City Manager

FROM: Marv Esterly, Director of Airports

SUBJECT: Consider a resolution authorizing the advertisement of a Request for Proposals (RFP) for Terminal Food & Beverage Concessions at the Midland International Airport

Purpose:

Consider a resolution authorizing the advertisement of a Request for Proposals (RFP) for Terminal Food & Beverage Concessions at the Midland International Airport, City of Midland, Midland County, Texas.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Discussion:

The City of Midland executed a 10-year agreement in 1997 with Creative Host Services, Inc. after which a one-time five-year renewal option was exercised. The agreement is scheduled to expire on September 30, 2012, and it is now necessary for us to re-bid this service at Midland International Airport.

A Request for Proposal (RFP) has been drafted, and with Council's approval, the Department of Airports will initiate the advertisement for proposal.

RESOLUTION NO.

**RESOLUTION AUTHORIZING ISSUANCE OF A
REQUEST FOR PROPOSALS FOR TERMINAL FOOD
AND BEVERAGE CONCESSIONS AT THE MIDLAND
INTERNATIONAL AIRPORT**

WHEREAS, the Terminal Food and Beverage Concessions Agreement at the Midland International Airport is scheduled to expire on September 30, 2012; and

WHEREAS, a request for proposals has been prepared for Terminal Food and Beverage Concessionaires at the Midland International Airport; and

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

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

THAT the City Manager or his designee is hereby authorized to issue said request for proposals pursuant to the statutes of the State of Texas for accomplishing the work set forth therein. Said Request for Proposals shall be placed on file in the City Secretary's office referenced by the number and date of this resolution.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Marv Esterly, Director of Airports

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

City of Midland, Texas
MIDLAND INTERNATIONAL AIRPORT
ADVERTISEMENT FOR PROPOSALS
NOTICE INVITING PROPOSALS

Sealed bids addressed to the Honorable Mayor and City Council of Midland, Texas, will be received at the office of the City Secretary, City Hall, Midland, Texas, until 2:00 p.m., August 15, 2012.

The City of Midland ("City") is seeking requests for proposals for the operation and management of the food and beverage concession at Midland International Airport.

The term of the agreement will commence on October 1, 2012.

A pre-proposal conference has been scheduled for 2:00 P.M. on July 25th, 2012, in the Airport Media Room located on the third floor of the Terminal Building at Midland International Airport. Interested parties are encouraged to attend this pre-proposal meeting.

All bids shall be enclosed in sealed envelopes addressed to:

Honorable Mayor and City Council of Midland, Texas
c/o Office of the City Secretary
City Hall - Room 340
300 N. Lorraine
P.O. Box 1152
Midland, Texas 79702

and clearly marked:

**PROPOSAL FOR THE FOOD AND BEVERAGE CONCESSION
AT MIDLAND INTERNATIONAL AIRPORT**

Each bid must conform to the requirements contained in the "Instructions to Proposers" and must include a complete set of all required documents and forms.

All questions and comments concerning these opportunities and the Request for Proposal document should be directed **in writing** to Justine Ruff, Deputy Director of Airports at Midland International Airport, PO Box 60305, Midland, Texas 79711. Any questions arising during the advertising period as to the meaning or intent will be answered by an addendum which will be sent to all who have been furnished plans and contract documents. All requests for clarifications to specifications and plans shall be received at least five (5) calendar days prior to the date for receipt of bids.

The receipt of each addendum shall be acknowledged by the Proposer in the space provided and each addendum shall be enclosed with the Proposal when it is submitted. All addenda shall become a part of the contract documents.

Information for proposers, proposal forms, specifications and plans are on file in the office of the Director of Airports, Midland International Airport, Midland, Texas at 9506 LaForce Office Center, Airport Administration (3rd Floor), Midland, Texas 79706, phone 432.560.2200.

Complete sets of documents may be obtained from Midland International Airport, upon request, accompanied by a non-refundable deposit of \$25.00.

The action to award Agreement is subject to approval by the Midland City Council. The submission of a proposal by any Proposer does not in any way commit the City of Midland to enter into an agreement with that Proposer, or any other Proposer.

DATED this _____ day of June, 2012.

CITY OF MIDLAND, TEXAS

Amy Turner
City Secretary



Request for Proposals

Contract Documents

CITY OF MIDLAND, TEXAS

MIDLAND INTERNATIONAL AIRPORT

FOOD & BEVERAGE CONCESSION AGREEMENT

JUNE 2012

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SECTION I

BACKGROUND AND PURPOSE FOR THE REQUEST FOR PROPOSALS

It is the goal of the Midland International Airport, Department of Airports to develop, provide and maintain concession facilities and services at the Airport that are of first-class quality and enhance the image, quality and service at the terminal building. It is also the Department's objective to make available high quality products, efficient service and reasonable prices.

SECTION II

**INSTRUCTIONS FOR SUBMISSION OF PROPOSAL FOR THE FOOD
AND BEVERAGE CONCESSIONS AT THE MIDLAND
INTERNATIONAL AIRPORT**

A. Introduction

The Midland International Airport (“Airport”) is a primary commercial service airport owned and operated by the City of Midland. The Midland City government is directed by a seven-member city council elected for three-year terms, and a city manager. The mayor is the Council’s presiding officer. An Airport Planning and Development Board, composed of ten (10) members appointed by City Council, serves as an advisory board to monitor the development and operation of the City’s airport system.

The City is inviting concessionaire proposals for the financing, designing, construction, operating, and managing certain food and beverage concessions at the Midland International Airport from interested parties that meet the minimum qualifications for operators set forth in this request for proposals (RFP). Additional information regarding the City and Airport can be found at www.flymaf.com.

The Airport is situated on approximately 1,600 acres of land and is located within the City of Midland, Midland County, Texas. The Airport’s four runways range in length from 4,245 feet to 9,501 feet.

The terminal building consists of approximately 155,000 square feet of enclosed space and was built in 1999. The concourse has multiple aircraft parking positions with five (5) passenger loading bridges and two (2) ground level loading positions. The food and beverage concession, as well as the gift/news concession, are located post-security on the concourse level. The pre-security/landside portion of the terminal building consists of the Departure Area (ticketing) and the Arrival Area (baggage claim). The Departure Area consists of airline offices, as well as passenger ticketing and baggage facilities. The Arrival Area consists of passenger baggage claim facilities, rental car agency service desks, hotel courtesy phone bank and access to ground transportation.

B. Airlines Serving the Airport

As of February 2012 following scheduled airlines serve the Airport, with non-stop service to DFW, Dallas Love field, Houston Intercontinental, Houston Hobby, Albuquerque, Las Vegas and Denver:

Southwest

American Eagle

United

C. Statistical Information

Historical enplanement activity and food and beverage concession gross revenue may be found in Appendix 1 and 2 of this RFP.

D. Concession Operation History

The current food and beverage concessions are operated and managed by Creative Food Group LLC under a food and beverage concessionaire agreement with the City, which began on August 26, 1997 (with Creative Host Services, Inc.) and will expire on September 30, 2012. The current concession has a food court and a bar both located on the concourse level post-security.

SECTION III

GENERAL CONDITIONS

A. General Description

It is the intent of the City to award one exclusive (with the exception of employee vending as approved by the Director of Airports) concessionaire lease and concession agreement to an experienced firm for the privilege of providing food and beverage services within the Airport Terminal Building. The Midland International Airport is a source of pride for the community and is designed to enhance the image of the City and to provide an enjoyable experience to passengers, employees and visitors. It is the intention of the City to award the concession contracts to those qualified Proposers whose proposals most closely meet the objectives of the City relative to the Airport.

More specifically, the successful proposer will be expected to meet or exceed the following goals and objectives of the City throughout the term of the lease and concession agreement to be awarded:

- (1) Offer a variety of quality food and beverage services that meets the needs of Airport customers at competitive prices not to exceed street pricing plus 10%;
- (2) Maximize the use of terminal space and ensure that the operating hours are targeted to passenger traffic schedules;
- (3) Provide restaurant and bar designs that are attractive and meet the design criteria of the City;
- (4) Enhance concession revenue to the City.

B. Informational Exhibits

The Exhibits are furnished for informational purposes only and should not be construed as a guarantee of business to be generated in the future. Data provided to prospective Proposers shall in no way relieve a proposer from the responsibility of determining for itself the business potential of the proposed food and beverage concessions program.

Appendix 1 provides a summary of total enplanements at the Airport for the calendar years 2001 through 2011. Appendix 2 summarizes gross receipts generated by the existing food and beverage concession program at the Airport by product category by year from 2006 through 2011. Appendix 3 shows the terminal building layout of the existing food and beverage concession locations.

C. Current Concession Program

The current food and beverage concessions are operated by Creative Food Group, LLC under a food and beverage concessionaire agreement with the City that began on October 1, 1997, and expires on September 30, 2012. The current concession program at the Airport includes a food court concept and a bar. The current concession operates in the concourse post-security. The concession storage area is located on the lower level and consists of approximately 741 sq. ft.

D. Concession Program Opportunity

This RFP offers the opportunity to finance, design, construct, operate, and manage the food and beverage concessions at the Midland International Airport. One food and beverage concession agreement may be awarded. The concession units to be leased are shown in Appendix 3. Proposals for less than both the food court area and bar area will not be considered. The City reserves the right to modify the spaces allocated at its sole discretion. The City reserves the right to modify, amend, or withdraw RFP documents at any time prior to the date and time specified for receipt of proposals.

E. Minimum Qualification Criteria

Bidders will be required to demonstrate that they possess the following minimum qualifications in order for bids to be accepted:

1. In at least three of the last five years, the Proposer must have owned (a minimum of 25% interest) and operated a similar or comparable business grossing not less than \$750,000 per year for each of the three years.
2. The Proposer must provide satisfactory evidence that the Proposer is able to finance the proposed investment. In the event that the Proposer intends to finance the investment utilizing a lending institution, a commitment letter must be included. If the Proposer intends to utilize its own resources or the resources of a third party to provide the investment, financial information must be submitted indicating that the

Proposer and/or the third party has access to the required capital and has committed the capital to the project.

3. The Proposer must also provide satisfactory evidence that it is able to finance start-up costs of the Concession. Proposers will be required to provide anticipated working capital needs and to provide satisfactory evidence that these needs can be met.
4. It is mandatory that the company, partnership, joint venture, corporation, or the officers or principals thereof, submitting a proposal, either as presently constituted or existing as a result of some business reorganization or executive affiliation, have the applicable minimum qualifications. If such is found not to be the case, any proposal submitted by any such company, partnership, joint venture or corporation may be rejected.

F. ACDBE Participation

The requirements of 49 CFR Part 23, regulations of the US Department of Transportation, applies to this concession. It is the policy of the Midland International Airport to practice nondiscrimination based on race, color, sex, or national origin in the award of performance of this contract. All firms qualifying under this solicitation are encouraged to submit proposals. Award of this concession will be conditioned upon satisfying the requirements of this proposal specification. These requirements apply to all concessions firms and suppliers, including those who qualify an ACDBE. An ACDBE concession specific goal of .31 percent of annual gross receipts (value of leases and/or purchases of goods

and services) has been established for this concession. The concession firm shall make good faith efforts, as defined in Appendix A, 49 CRF Part 26 to meet the concession specific goal for ACDBE participation in the performance of this concession.

ACDBE participation may be in the form of a sublease, joint venture, partnership, or other legal arrangement meeting the eligibility standards in 49 CFR Part 23, Subpart C. In the event that the Concessionaire qualifies as an ACDBE, the goal shall be deemed to have been met. ACDBE firms that are not certified as such by the Proposal due date must have submitted a certification application before the proposal due date and be certified by the State of Texas by the date of Lease execution. The foregoing requirements with respect to ACDBE participation are not intended to force the Proposer to change its business structure.

Proposers shall submit, in the format required by the City, and ACDBE Utilization form (ATTACHMENT J) identifying the amount of ACDBE participation that each proposer expects to obtain for the first year of the lease and concession agreement.

In addition, each proposer is required to submit a signed ACDBE Letter of Intent (ATTACHMENT K) from each ACDBE firm or supplier that will participate in the concession. The ACDBE firm or supplier will be required to submit the following information: (1) The names and addresses of ACDBE firms that suppliers that

will participate in the concession; (2) A description of the work that each ACDBE will perform; (3) The dollar amount of the participation of each ACDBE firm participating; (4) Written and signed documentation of commitment to use a ACDBE whose participation it submits to meet a contract goal; (5) Written and signed confirmation from the ACDBE that it is participating in the concession as provided in the prime concessionaire's commitment; and (6) If the contract goal is not met, evidence of good faith efforts. Good faith efforts to achieve ACDBE participation that by their scope, intensity and appropriateness to the objective can reasonable be expected to accomplish the objective of ACDBE participation.

For additional information on currently certified ACDBE's and on obtaining ACDBE certification, please see www.flymaf.com or contact the Airport's DBE Liaison Officer at 432-560-2200 extension 3006.

G. Capital Investment and Development

The existing concession locations will be turned over to the successful proposer in the condition left by the outgoing tenant. The City assumes, but does not guarantee, that a certain amount of kitchen and restaurant equipment may be left by the outgoing tenant. Proposers may, at their sole discretion, attempt negotiation for the purchase or lease of any equipment currently located in the concession locations from the incumbent concessionaire.

The successful proposer is responsible, at their sole expense, for the plan, design, and renovations of the existing concession locations subject to approval by the City.

The successful proposer shall:

- (1) Invest the amount necessary to accommodate the proposed food service. No minimum investment is specified in this RFP.
- (2) Be responsible for all costs and expenses necessary to maintain the concession locations in an attractive and inviting condition.

Prior to construction, the successful proposer must submit a transition plan to conduct interim operations during construction of renovations at the existing concession locations as applicable and as described herein. In addition, the successful proposer must comply with all plan submittal requirements and obtain City approval of building designs and finishes for all tenant improvements. The successful proposer shall comply with all applicable accessibility requirements in the American with Disabilities Act and in all other Federal, State, and Local Government laws and regulations.

At the time of any termination of the lease and concession agreement either to term or termination by the City because of failure of the successful proposer to satisfy the terms or conditions of the lease and concession agreement, all improvements become property of the City without financial obligation to the successful proposer. Should the lease and concession agreement be terminated early due to default by the City, all damages shall be limited to the remaining value of the fixed capital improvements based on the straight-line

depreciation calculation over the term of the Lease, with a zero salvage value at the end of the lease and the concession term. Depreciated costs shall include only fixed capital improvements that cannot be removed without demolition; and design and engineering costs limited to no more than 15% of the depreciated cost of the fixed improvements. The cost of inventory, small wares, soft costs, office equipment, costs of doing business, and lost profits shall not be included in the calculation of fixed capital investments and are not recoverable upon expiration of the lease and concession agreement or early termination thereof due to default.

H. Interim Concessions Program

Interim food and beverage operations are intended to meet customer demand during any renovation of current concession spaces that interrupts service in the areas described in this RFP. Until the renovations are complete, the successful proposer will be required to sustain interim concession operations. The interim concession program will be operated from temporary locations agreed upon by the successful proposer and the City. Proposers must include concept renderings and floor plans for all proposed temporary facilities.

I. Security

The Airport requires all tenants to help enforce its security regulations. The successful proposers shall comply with all Airport security regulations as prescribed by 49 CFR Part 1542 and agree to employ such measures as are necessary to prevent or deter the unauthorized access of persons or vehicles into the secure area of the Airport. The successful proposers shall comply with

Transportation Security Regulations Part 1542 (Airport Security) and Airport security policies as presently outlined in the Airport Security Plan; said plan may be amended from time to time. The Transportation Security Administration (TSA) has the regulatory power to assess fines for breaches of Airport Security. Accordingly, if the successful proposer is found culpable for security breaches, fines assessed to the Airport will be collected from the successful proposer.

The successful proposer is directly responsible to the Airport for authorizing its employees into the secured areas. The successful proposer shall be held accountable for photo-ID badges and controlled keys that are issued to its employees. The successful proposer shall collect all Airport photo-ID badges and controlled keys that are issued to its employees at the conclusion of their employment and return them to the Airport Operations Control Center. If a badge and/or key are not returned, the successful proposer will be invoiced for its cost and any associated fines.

Employees that require unescorted access to restricted areas must possess an active Airport Identification Badge. Prior to obtaining any kind of ID Media at the Midland International Airport, a Security Threat Assessment (STA) must be successfully approved by the Transportation Security Administration (TSA). Instructions for obtaining and a list of the fees associated with an Airport ID Badge at Midland International Airport are available at www.flymaf.com.

J. Term of Agreements

1. Initial Term: The Agreement term will commence October 1, 2012, and shall be a minimum of seven (7) years.

2. Options to Extend Term: Options may be included in the proposals, and will be executed at the mutual consent of the City and the concessionaire. Options to extend the proposed term at the sole discretion of the concessionaire will not be considered.
3. Monthly Rent: Commencing on the inception of the Agreement term, the successful proposer shall pay the established percentage rent. The concessionaire shall pay a monthly rent that is the greater of one twelfth (1/12) of the Minimum Annual Guarantee or the established Percentage Rent.
4. Percentage Rent: Proposers shall propose Percentage Rents as a percentage of gross receipts by service category, as necessary. For this opportunity, Proposers should offer a minimum percentage rent no lower than the following rates:

Food & Beverage – 10%

Alcohol – 14%

Proposers shall be prepared, upon request during the evaluation process, to submit supporting information from an existing facility verifying that the proposed Percentage Rent can be supported while maintaining reasonable profitability and acceptable service and quality levels. Percentage rentals will not be renegotiated during the term of the Agreement. Proposed percentage rents shall be completed on Attachment I – proposed Minimum Annual Guarantee (MAG) and Percentage Rents. Percentage rent will be due no later than the 20th of the following month.

5. Minimum Annual Guarantee: The Minimum Annual Guarantee for the first Lease Year shall be the greater of the amounts proposed on Attachment I – Proposed Minimum Annual Guarantee and Percentage Rents. The lowest acceptable Minimum Annual Guarantee for Year 1 of the agreement shall be \$160,000.

The Minimum Annual Guarantee will be adjusted annually as follows:

- A. Effective on the first anniversary date of the Lease Year the Minimum Annual Guarantee for the second year will be the greater of eight-five percent (85%) of the actual rent paid to the City during the first Lease Year, or the Minimum Annual Guarantee for the first year of Lease Year, as established in the lease and concession agreement.
- B. Effective on the second anniversary date of the Lease Year, the Minimum Annual Guarantee will be the greater of adjusted to eighty five percent (85%) of the actual rent paid to the City for the second Lease Year, or the Minimum Annual Guarantee for the second Lease Year, as established in the lease and concession agreement.

- C. The annual adjustment to the Minimum Annual Guarantee will continue using the above format through the final year of the lease and concession agreement and extension term if applicable.
6. Pricing Policy: The successful proposer shall sell all food and beverage items for no more than 10% above the average prices charged for like size and quality products in comparable restaurants within the Midland/Odessa area. All printed material shall be priced as listed on the inside or outside of the cover and staple items shall be priced at no more than the “street price”. For each menu item and retail product listed in the proposal, Proposers shall designate three (3) restaurants and retail outlets in the Midland/Odessa area that sell the item and are comparable in concept, size, and quality to the food and beverage service concessions proposed for the Airport. All restaurants to be used for price comparisons shall receive prior written approval by the Director of Airport or his designee. During the term of the Agreement, the successful proposers shall at least annually provide documentation to the City comparing prices it charges at the Airport with the prices charged by the designated comparable outlets to establish the successful proposer’s compliance with the Pricing Policy.

7. Utilities: The successful proposer shall pay for all utilities consumed at or delivered to the assigned premises, including but not limited to electrical, gas, water, and sewage consumption.
8. Insurance: The successful proposer shall procure and maintain at proposer/Concessionaire's own cost and expense for the duration of the agreement the following insurance against claims for injuries to person or damages to property which may arise from or in connection with the performance of the work or services hereunder by the Concessionaire, its agents, representatives, employees, or subcontractors.
 - A. Comprehensive general liability insurance in an amount of at least Five Million Dollars (\$5,000,000) combined single limit for bodily injury and property damage.
 - B. Legal liability coverage for property in its care of at least One Million Dollars (\$1,000,000).
 - C. Workers Compensation and Employers Liability insurance in the amounts and forms required by the State of Texas.

K. Competition

The award under this RFP will be for the exclusive privilege to finance, design, construct, operate, and manage the food and beverage concession within the Airport Terminal Building, with the exception of employee vending as approved by the Director of Airport.

L. Management, Operations, and Marketing Plan

Each proposer will be required to submit a complete management, operations, and marketing plan. The overall program emphasis should be placed on identifying how the proposers will improve the food and beverage concession operation at the Airport.

M. Confidentiality

Details of the proposals will not be discussed by the City with other proposers during the selection process. However, proposers acknowledge that all proposals and information submitted therein will be considered public record and may become subject to public inspection following award of the lease and concession agreement. A Proposer must clearly designate any information submitted with a Proposal that it claims is not subject to disclosure as a public record. Proposer should provide justification of what constitutes proprietary information is not binding on the City. In any event, the City shall have no liability for inadvertent or mandated disclosure of information submitted with a Proposal.

N. RFP Schedule

The current RFP schedule is shown below:

Task	Prospective Date
Proposal Documents Available	June 29, 2012
Pre-Proposal Meeting (Airport Media Room)	July 25, 2012
Proposals Due (City Hall)	August 15, 2012
Proposer Interviews, if necessary	August 21, 2012
Award	September 11, 2012

The City reserves the right to extend or change any of the dates shown above at its sole discretion.

O. Commencement of Operations

The successful proposer shall be operational and open for business on October 1, 2012. Operators shall undertake and assume operations during hours to cause as little disruption and inconvenience as possible to patrons of the Airport.

P. Existing Facilities, Operations and Products

The following are the existing concessions operations. The successful proposer shall propose the concept, menus (if applicable), product lines, and hours of operations for each facility.

Facility	SF	Daily Hours	Location	Existing Concept
Food Court	2,067 (food court) 714 (kitchen) 1,600 (dining area)	One hour before first departure until last departure	Upper-level post security	Fresh Market Concept
Bar	2,580	mid morning until last departure	Upper-level post security	Bar

Q. Support Space

Facility	SF	Location
Storage Space	741	Lower Level Post-Security

SECTION IV

PROPOSAL REQUIREMENTS

A. Submission

Proposals must be received no later than 2:00 p.m. on August 15, 2012 at the following address:

Office of the City Secretary
City Hall – Room 340
300 N. Loraine
PO Box 1152
Midland, TX 79702

Proposals must be submitted in an envelope that is completely sealed, bears the name and complete mailing address of the proposer, and be clearly marked “Proposal for Food and Beverage Concessions at Midland International Airport.” Proposals received after the deadline may be returned unopened.

Submitted proposals may not be retrieved or withdrawn until after the public opening. Proposals must be submitted on the official Proposal form, which is included with these instructions. No additions, alterations, or conditions other than those requested in the form will be permitted. Qualifications of any part of the proposal may void the proposal. There shall be no conflict between the proposal and the evidence of performance ability or other documents required to be included with the proposal. Verbal, telephonic, or electronic proposals or modifications will not be considered.

More than one proposal submitted by a proposer under the same or different names will not be considered. Reasonable grounds for believing that the Proposer is submitting more than one may cause all proposals to be rejected if there is reason for

believing that collusion exists among proposers and not participant in such collusion will be considered in future proposals for operations of the concession.

In order to expedite the evaluation of proposals, each proposer must organize its proposal into the following actions. Proposals that do not follow the specified format outlined below may be deemed unresponsive and disqualified from the process. In addition, failure on the part of the proposer to provide the required documentation may be cause for rejection of the proposal. In the event of any conflict between any of the proposal documents, resolution thereof shall be in the City's sole discretion.

1. COVER/TRANSMITTAL LETTER
2. BUSINESS INFORMATION QUESTIONNAIRE AND ATTACHMENTS FOR PROPOSER AND ALL JOINT VENTURER PARTNERS **(ATTACHMENT A)**
3. BUSINESS AND FINANCIAL REFERENCES FOR PROPOSERS AND ALL JOINT VENTURE PARTNERS **(ATTACHMENT B)**
4. EXPERIENCE AND QUALIFICATIONS STATEMENT FOR PROPOSERS AND ALL JOINT VENTURE PARTNERS **(ATTACHMENT C)**
5. TEMPORARY FACILITIES **(ATTACHMENT D)**
6. CONCEPT DEVELOPMENT **(ATTACHMENT E)**
7. FACILITIES DESIGN AND CAPITAL INVESTMENT **(ATTACHMENT F)**
8. FINANCIAL PROJECTIONS **(ATTACHMENT G)**

**9. MANAGEMENT, OPERATIONS, & MARKETING PLAN
(ATTACHEMENT H)**

**10. PROPOSED MINIMUM ANNUAL GUARANTEE (MAG) AND
PERCENTAGE RENT (ATTACHMENT I)**

**11. AIRPORT CONCESSION DISADVANTAGE BUSINESS
ENTERPRISE (ACDBE) PROGRAM PARTICIPATION FORMS
(ATTACHMENT J and ATTACHMENT K)**

B. Pre-Proposal Meeting

A pre-proposal meeting will be held in the Media room on the third floor of the Midland International Airport Terminal Building, 9506 LaForce Blvd., Midland, TX 79706 on Wednesday, July 11, 2012 at 2:00 p.m. The purpose of this meeting is to provide an opportunity for prospective proposers to review the RFP, ask questions, and view the existing facilities. It is the Proposer's responsibility to attend the pre-proposal meeting, though the meeting is not mandatory. The City will not be responsible for providing information discussed at the pre-proposal meeting to proposers who do not attend the pre-proposal meeting.

C. Submission of Questions/City Contact:

All inquiries should be directed to:

Justine Ruff, Deputy Director of Airports
Midland International Airport
PO BOX 60305
Midland, TX 79711-0305
Telephone: 432-560-2200 ext. 3010
E-Mail: jruff@midlandtexas.gov

Inquires submitted in writing should be clearly marked "Inquiry Food and Beverage Concession" and reference paragraph number to which the questions

pertain. If questions concerning the Request for Proposal, either submitted in writing prior to or verbally at the pre-proposal meeting, are deemed to indicate a need for clarification of the documents, it will be done in the form of an addendum to the Request for Proposals. Any clarification or interpretation of the RFP will be made in writing, and signed by the Deputy Director of Airports. Any change, clarification, or interpretations of the RFP shall not be effective unless it is made by written addendum. The City will not be responsible for any oral instructions or interpretations given by or to anyone whomsoever.

A copy of each addendum will be mailed, delivered, or e-mailed to the designated representative for each proposer receiving RFP documents. Any addendum so issued is to be considered a part of this RFP document. Should a proposer find a discrepancy in, or omission from, the general terms and conditions included in the request for proposal documents or instructions to proposals or should there be any doubt as to their meaning, proposer shall notify the Deputy Director of Airports in writing not later than July 31, 2012. Instructions and/or clarifications will be provided, in writing, to all prospective proposers of record.

D. Proposal Preparation Costs

Issuance of this RFP does not commit the City in any way, to pay any costs incurred in the preparations and submission of a proposal. Nor does the issuance of this proposal obligate the City to enter into an agreement for any services or equipment. All costs related to the preparation and submission of a proposal shall be paid by the proposer.

E. Bid Bond (or Deposit), Faithful Performance Bond and Fidelity Bond

1. Bid Bond or Deposit

Each bidder is required to submit with its bid a check certified by a responsible bank in the City of Midland or a cashier's check issued by a responsible bank, payable to the City of Midland, Department of Airports, for an amount equal to 10% of its proposed first full year minimum annual fee, or a bid bond in a form acceptable to the City for a like amount and so payable, as a guarantee that the bidder will enter into the Terminal Concession Agreement if the same is awarded to it. No bid will be considered unless accompanied by such certified or cashier's check or bid bond.

2. It is likely that such guarantees will be held by the City for a period of approximately 90 days, during which the City will review all bids. Such guarantees will be returned to all bidders as soon as possible if all bids for the same Concession are rejected, or as soon as possible after the successful bidders for the same Concession have been selected and approved by the Midland City Council, and after said successful bidder provides an acceptable Faithful Performance and Fidelity Bond, described below, or other security deposit.

3. If the successful bidder fails or refuses to perform as described above, the City may award the Terminal Concession Agreement to the next best responsible and qualified bidder as determined by the City. This bidder, subject to forfeiture of its bid bond or certified or cashier's check for non-performance, shall thereupon deliver to the City the required Faithful

Performance and Fidelity Bond or other security deposits. Each non-selected bidder may be selected in such manner until a bidder complies or until all bids are rejected.

4. Bidders are hereby advised that only a Bond, in a form acceptable to the City, guaranteeing to the City the full sum thereof, regardless of the City's actual damages, should the bidder fail to enter into the Terminal Concession Agreement and furnish the required Performance Bond, will be acceptable. Submission of an incorrect Bond may cause the Bid to be non-responsive and may result in its rejection.
5. Letters of Credit are not acceptable to satisfy Bid Bond requirements.
6. Should the successful bidder fail or refuse to enter into the Terminal Concession Agreement or to file the required Faithful Performance and Fidelity Bond or other security deposit with the City after award to such bidder of the Agreement, the entire penal sum of the bid bond submitted by said bidder shall be payable to the City on demand, or the certified or cashier's check so submitted and the proceeds thereof shall become the property of the City, not as a penalty, but as liquidated damages. Such payment shall not preclude recovery by City of any amount over and above said sum to which City sustains damage by reason of such failure or refusal.
7. Faithful Performance and Fidelity Bonds
Within thirty (30) days after award of this Terminal Concession Agreement, each successful bidder shall furnish to the City, at bidder's sole cost and expense, Faithful Performance and Fidelity Bonds, in a

form acceptable to the City, or other security deposit acceptable to the City, as specified in the Terminal Concession Agreement. **A bidder may not submit a Letter of Credit to satisfy the Performance Bond requirements.**

8. If, at any time during the term of the Terminal Concession Agreement, a surety on a Bond shall, in the opinion of the City, become unacceptable, the City shall have the right to require an additional and sufficient surety which the bidder shall furnish to the satisfaction of the City within ten (10) days after written notice to do so.

F. Proposer's Qualification

Each proposal must also be accompanied by the Proposer's references, background, experience, and financial references as described in Section IV Proposal Requirements herein. Proposer's integrity, reputation, experience, and financial responsibility shall be important factors in awarding of any contract under this specification and the City reserves the right to be the sole judge of this determination and to accept or reject any or all proposals. The City will be the sole judge as to the best qualified, responsible proposer to serve the best interests of the Airport, and may waive any informalities or technical errors that, in their judgment, will best serve these interests.

SECTION V

AWARD OF CONTRACT

A. Opening of Proposals

All proposals will be opened and publicly read at 2:00 p.m. on August 15, 2012 at the following address:

Office of the City Secretary
City Hall – Room 340
300 N. Lorraine
PO Box 1152
Midland, TX 79702

The proposals will be acted upon at a time and date to set by the City. The City reserves the right to reject any and all proposals and the right to waive any irregularity or technical deficiencies in any proposal.

B. Evaluation of Proposals

The City will evaluate the proposals received and award the lease and concession agreement to the proposer making the best proposal as determined by the discretion of the City. Consideration will be given to the following elements:

1. Financial return to the City, consideration will be given to the following three elements:
 - The proposed Minimum Annual Guarantee (MAG) as proposed by each proposer. The minimum acceptable MAG is \$160,000. There is no maximum acceptable MAG. MAGs will be evaluated with respect to the extent they support projected sales and percentage rents.
 - Percentage rents proposed by each proposer.

- The reasonableness of each proposer's pro forma gross revenue and expense statements that are required in the format described in Section IV Proposals Requirements.
2. Proposed concession plan, the following elements will be evaluated:
- The proposed concession plan layout identifying the category (i.e., food and beverage), size, and concept for each concession site.
3. Capital Investment Improvements, consideration will be given to the following three elements:
- The reasonableness and level of capital investment proposed. The dollar value of the overall proposed investment must be in the format described in Attachment F, Required Proposal Documents, and must meet the minimum acceptable threshold described previously.
 - The quality and creativity of the concession plan design concept and theme. Each proposer must submit color renderings, material boards, and a detailed concession layout plan identifying each site and the proposed concepts for each.
 - The proposed detailed construction schedule identifying the estimated construction period for each renovated site and the projected Date of Beneficial Occupancy for each renovated site.

4. Experience of Proposer, consideration will be given to the extensiveness and quality of the proposer's experience, in operating and managing a food and beverage concession operation similar in size to the Midland International Airport.
 - Management, Operations, and Marketing Plans submitted by each proposer will be evaluated.
5. ACDBE Participation, consideration will be given to the viability and level of good faith efforts in attempting to meet the ACDBE Goal.
6. Financial Capability will be considered for each proposer by reviewing each proposer's submitted financial statements and banking references, plus the proposed financing plan to fund the capital improvements at the Airport

The City will make the final judgment and determination as to which proposer has offered the best proposal and will employ such analysis techniques, as it deems necessary to make such judgment. The City is not obligated to accept the best economic proposal.

The City may request the submission of additional information to assist in the evaluation of a proposal and the proposer will be expected to cooperate fully with such a request. In addition to the references submitted in Attachment B, the City may obtain information on past performance of any previous or existing contracts. The City may conduct interviews of the proposers either by phone or in person.

C. Disqualification of Proposals

Although not intended to be an exhaustive list of causes for disqualification, any one or more of the following, among others, may be considered sufficient for the disqualification of a proposer and the rejection of the proposal:

1. Evidence of collusion among proposers.
2. Incomplete submittal or Proposal Submittal as outlines in Section IV.
3. Lack of business skills or financial resources necessary to operate a food and beverage concession successfully, as determined in the City's sole discretion through review of financial statements, reference checks, or review of experience statement.
4. Proposers who are in arrears or in default, as surety or otherwise, upon any obligation to City, or has failed to faithfully perform any previous agreement with the City, in City's sole determination.
5. Other causes as City deems appropriate in its sole and absolute discretion.

D. General Airport Information

1. Representation and Warranties

The proposal and other requested information must be completed, in its entirety, to the best of each Proposer's ability and must represent and warrant that all information contained therein is true and correct to the best of each Proposer's knowledge.

2. Conflict of Interest

Successful proposers' employees may not be involved with any other Airport related business during the term of the lease and concession agreement, as an employee, owner, partner, consultant, etc. in a manner that could give rise to a conflict of interest. All determinations regarding potential conflicts of interest under the lease and concession agreement for any affected employee of the successful proposers shall be resolved by the Airport Director, who's decision shall be final.

3. Proposer's Responsibilities

Any person, firm, or corporation desiring to submit a proposal shall examine the terms of this RFP as outlined in the proposal documents and shall independently judge all the circumstances and conditions affecting the proposal. Failure on the part of any proposer to make such examination or to investigate thoroughly the conditions of the proposal shall not be grounds for a declaration that the proposer did not understand the proposal package. The City is not responsible for any Proposer's errors or omissions.

4. City's Reservation of Rights

The City reserves the right to: (i) reject any or all proposals and reissue the RFP; or (ii) waive any informality in any proposal or proposing procedure; or (iii) take such other course of action as the City deems appropriate at the City's sole and absolute discretion.

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	JAN 2001		FEB 2001		MAR 2001		APR 2001		MAY 2001		JUN 2001		JUL 2001		AUG 2001		SEP 2001		OCT 2001		NOV 2001		DEC 2001		TOTAL 2001	
AIRLINE:	ENPL.	%CHG. 2000	ENPL.	%CHG. 2000	ENPL.	%CHG. 2000	ENPL.	%CHG. 2000	ENPL.	%CHG. 2000	ENPL.	%CHG. 2000	ENPL.	%CHG. 2000	ENPL.	%CHG. 2000	ENPL.	%CHG. 2000	ENPL.	%CHG. 2000	ENPL.	%CHG. 2000	ENPL.	%CHG. 2000	ENPL.	%CHG. 2000
SOUTHWEST	23,235	3.09	22,807	-10.52	28,812	-2.26	26,403	-0.59	30,514	1.61	30,858	-1.66	31,707	7.35	28,993	10.08	19,018	-27.29	25,351	-13.33	22,289	-18.12	23,194	-13.42	313,181	-5.32
AMER. EAGLE	5,239	2.32	4,230	-17.11	5,431	-5.37	5,426	-4.10	6,046	-15.13	6,503	-19.64	6,515	-12.33	5,640	-14.00	3,454	-43.92	4,796	-29.18	5,562	-8.71	5,289	-6.09	64,131	-15.04
CONTINENTAL	4,647	13.07	4,376	6.34	5,661	13.65	5,772	33.06	6,678	41.15	6,147	23.63	5,959	19.78	5,817	12.56	3,355	-25.11	4,741	-12.79	4,728	-2.96	4,821	-4.99	62,702	9.52
A. WEST EXP.	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A
TOTAL	33,121	0.34	31,413	-12.41	39,904	-5.14	37,601	-1.37	43,238	1.12	43,508	-2.11	44,181	5.34	40,450	6.27	25,827	-29.81	34,888	-15.85	32,579	-14.68	33,304	-11.18	440,014	-6.42

	JAN 2002		FEB 2002		MAR 2002		APR 2002		MAY 2002		JUN 2002		JUL 2002		AUG 2002		SEP 2002		OCT 2002		NOV 2002		DEC 2002		TOTAL 2002	
AIRLINE:	ENPL.	%CHG. 2001	ENPL.	%CHG. 2001	ENPL.	%CHG. 2001	ENPL.	%CHG. 2001	ENPL.	%CHG. 2001	ENPL.	%CHG. 2001	ENPL.	%CHG. 2001	ENPL.	%CHG. 2001	ENPL.	%CHG. 2001	ENPL.	%CHG. 2001	ENPL.	%CHG. 2001	ENPL.	%CHG. 2001	ENPL.	%CHG. 2001
DELTA CONN.											912	N/A	1,801	N/A	1,346	N/A	1,080	N/A	1,654	N/A	1,470	N/A	2,035	N/A	10,308	N/A
SOUTHWEST	19,027	-18.11	18,955	-16.89	24,233	-15.89	23,206	-12.11	27,500	-9.88	25,479	-17.43	24,781	-21.84	23,312	-19.59	20,475	7.66	25,754	1.59	21,872	-1.87	24,686	6.43	279,280	-10.82
AMER. EAGLE	4,451	-15.04	4,231	0.02	4,883	-10.09	4,867	-10.30	5,841	-3.39	5,854	-9.98	5,618	-13.77	5,115	-9.31	4,278	23.86	5,042	5.13	4,279	-23.07	4,550	-13.97	59,009	-7.99
CONTINENTAL	4,226	-9.06	4,037	-7.75	4,691	-17.13	5,008	-13.24	5,626	-15.75	5,193	-15.52	5,462	-8.34	5,086	-12.57	4,332	29.12	4,917	3.71	4,415	-6.62	4,816	-0.10	57,809	-7.80
TOTAL	27,704	-16.36	27,223	-13.34	33,807	-15.28	33,081	-12.02	38,967	-9.88	37,438	-13.95	37,662	-14.76	34,859	-13.82	30,165	16.80	37,377	7.13	32,036	-1.67	36,087	8.36	406,406	-7.64

	JAN 2003		FEB 2003		MAR 2003		APR 2003		MAY 2003		JUN 2003		JUL 2003		AUG 2003		SEP 2003		OCT 2003		NOV 2003		DEC 2003		TOTAL 2003	
AIRLINE:	ENPL.	%CHG. 2002	ENPL.	%CHG. 2002	ENPL.	%CHG. 2002	ENPL.	%CHG. 2002	ENPL.	%CHG. 2002	ENPL.	%CHG. 2002	ENPL.	%CHG. 2002	ENPL.	%CHG. 2002	ENPL.	%CHG. 2002	ENPL.	%CHG. 2002	ENPL.	%CHG. 2002	ENPL.	%CHG. 2002	ENPL.	%CHG. 2002
DELTA CONN.	1329	N/A	1092	N/A	1497	N/A	136	N/A	0	N/A														4,054	-60.67	
SOUTHWEST	20,996	10.35	19,238	1.49	23,132	-4.54	21,973	-5.31	24,633	-10.43	26,261	3.07	26,265	5.99	23,969	2.82	22,880	11.75	25,180	-2.23	22,935	4.86	24,459	-0.92	281,921	0.95
AMER. EAGLE	3,475	-21.93	3,146	-25.64	3,913	-19.86	4,183	-14.05	4,490	-23.13	4,439	-24.17	4,554	-18.94	4,269	-16.54	4,096	-4.25	4,391	-12.91	3,895	-8.97	4,829	6.13	49,680	-15.81
CONTINENTAL	3,855	-8.78	3,542	-12.26	4,167	-11.17	4,813	-3.89	5,494	-2.35	5,495	5.82	5,961	9.14	5,133	0.92	4,820	11.27	5,136	4.45	4,965	12.46	5,433	12.81	58,814	1.74
TOTAL	29,655	7.04	27,018	-0.75	32,709	-3.25	31,105	-5.97	34,617	-11.16	36,195	-3.32	36,780	-2.34	33,371	-4.27	31,796	5.41	34,707	-7.14	31,795	-0.75	34,721	-3.79	394,469	-2.94

	JAN 2004		FEB 2004		MAR 2004		APR 2004		MAY 2004		JUN 2004		JUL 2004		AUG 2004		SEP 2004		OCT 2004		NOV 2004		DEC 2004		TOTAL 2004	
AIRLINE:	ENPL.	%CHG. 2003	ENPL.	%CHG. 2003	ENPL.	%CHG. 2003	ENPL.	%CHG. 2003	ENPL.	%CHG. 2003	ENPL.	%CHG. 2003	ENPL.	%CHG. 2003	ENPL.	%CHG. 2003	ENPL.	%CHG. 2003	ENPL.	%CHG. 2003	ENPL.	%CHG. 2003	ENPL.	%CHG. 2003	ENPL.	%CHG. 2003
DELTA CONN.	0	N/A	0	N/A																			0	N/A		
SOUTHWEST	19,095	-9.05	21,283	10.63	27,304	18.04	24,652	12.19	25,941	5.31	26,053	-0.79	26,620	1.35	24,061	0.38	23,253	1.63	27,375	8.72	24,774	8.02	26,470	8.22	296,881	5.31
AMER. EAGLE	4,076	17.29	3,429	9.00	4,463	14.06	4,589	9.71	5,038	12.20	4,654	4.84	4,695	3.10	4,217	-1.22	4,484	9.47	5,467	24.50	4,787	22.90	5,130	6.23	55,029	10.77
CONTINENTAL	4,292	11.34	4,209	18.83	5,037	20.88	5,017	4.24	5,506	0.22	5,830	6.10	6,080	2.00	5,484	6.84	5,008	3.90	5,502	7.13	5,150	3.73	5,497	1.18	62,612	6.46
TOTAL	27,463	-7.39	28,921	7.04	36,804	12.52	34,258	10.14	36,485	5.40	36,537	0.94	37,395	1.67	33,762	1.17	32,745	2.98	38,344	10.48	34,711	9.17	37,097	6.84	414,522	5.08

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AIRLINE:	JAN 2005		FEB 2005		MAR 2005		APR 2005		MAY 2005		JUN 2005		JUL 2005		AUG 2005		SEP 2005		OCT 2005		NOV 2005		DEC 2005		TOTAL 2005	
	%CHG. 2004		%CHG. 2004		%CHG. 2004		%CHG. 2004		%CHG. 2004		%CHG. 2004		%CHG. 2004		%CHG. 2004		%CHG. 2004		%CHG. 2004		%CHG. 2004		%CHG. 2004		%CHG. 2004	
	ENPL.		ENPL.		ENPL.		ENPL.		ENPL.		ENPL.		ENPL.		ENPL.		ENPL.		ENPL.		ENPL.		ENPL.		ENPL.	
SOUTHWEST	21,673	13.50	21,424	0.66	27,921	2.26	25,343	2.80	28,397	9.47	27,855	6.92	28,984	8.88	25,929	7.76	24,694	6.20	27,984	2.22	26,493	6.94	26,565	0.36	313,262	5.52
AMER. EAGLE	4,757	16.71	4,326	26.16	5,358	20.05	5,182	12.92	6,024	19.57	6,385	37.19	6,262	33.38	5,528	31.09	5,729	27.77	6,193	13.28	6,027	25.90	6,058	18.09	67,829	23.26
CONTINENTAL	4,872	13.51	4,498	6.87	5,615	11.48	5,280	5.24	6,080	10.42	6,226	6.79	5,987	-1.53	5,522	0.69	4,720	-5.75	5,765	4.78	5,545	7.67	5,736	4.35	65,846	5.17
TOTAL	31,302	13.98	30,248	4.59	38,894	5.68	35,805	4.52	40,501	11.01	40,466	10.75	41,233	10.26	36,979	9.53	35,143	7.32	39,942	4.17	38,065	9.66	38,359	3.40	446,937	7.82

AIRLINE:	JAN 2006		FEB 2006		MAR 2006		APR 2006		MAY 2006		JUN 2006		JUL 2006		AUG 2006		SEP 2006		OCT 2006		NOV 2006		DEC 2006		TOTAL 2006	
	%CHG. 2005		%CHG. 2005		%CHG. 2005		%CHG. 2005		%CHG. 2005		%CHG. 2005		%CHG. 2005		%CHG. 2005		%CHG. 2005		%CHG. 2005		%CHG. 2005		%CHG. 2005		%CHG. 2005	
	ENPL.		ENPL.		ENPL.		ENPL.		ENPL.		ENPL.		ENPL.		ENPL.		ENPL.		ENPL.		ENPL.		ENPL.		ENPL.	
SOUTHWEST	22,558	4.08	23,429	9.36	27,923	0.01	25,525	0.72	29,330	3.29	30,421	9.21	28,858	-0.43	27,045	4.30	25,124	1.74	28,468	1.73	27,915	5.37	27,152	2.21	323,748	3.35
AMER. EAGLE	5,331	12.07	4,929	13.94	5,952	11.09	5,511	6.35	6,597	9.51	6,679	4.60	6,599	5.38	5,952	7.67	5,649	-1.40	6,557	5.88	6,424	6.59	6,995	15.47	73,175	7.88
CONTINENTAL	4,988	2.38	4,832	7.43	6,444	14.76	6,027	14.15	7,061	16.13	7,090	13.88	7,174	19.83	6,947	25.81	6,078	28.77	7,031	21.96	6,703	20.88	6,553	14.24	76,928	16.83
TOTAL	32,877	5.03	33,190	9.73	40,319	3.66	37,063	3.51	42,988	6.14	44,190	9.20	42,631	3.39	39,944	8.02	36,851	4.86	42,056	5.29	41,042	7.82	40,700	6.10	473,851	6.02

AIRLINE:	JAN 2007		FEB 2007		MAR 2007		APR 2007		MAY 2007		JUN 2007		JUL 2007		AUG 2007		SEP 2007		OCT 2007		NOV 2007		DEC 2007		TOTAL 2007	
	%CHG. 2006		%CHG. 2006		%CHG. 2006		%CHG. 2006		%CHG. 2006		%CHG. 2006		%CHG. 2006		%CHG. 2006		%CHG. 2006		%CHG. 2006		%CHG. 2006		%CHG. 2006		%CHG. 2006	
	ENPL.		ENPL.		ENPL.		ENPL.		ENPL.		ENPL.		ENPL.		ENPL.		ENPL.		ENPL.		ENPL.		ENPL.		ENPL.	
SOUTHWEST	21,575	-4.36	23,084	-1.47	28,864	3.37	26,842	5.16	30,692	4.64	32,048	5.35	31,120	7.84	29,578	9.37	26,133	4.02	29,353	3.11	27,962	0.17	27,487	1.23	334,738	3.39
AMER. EAGLE	5,460	2.42	5,241	6.33	6,256	5.11	6,253	13.46	6,974	5.71	6,848	2.53	7,161	8.52	7,136	19.89	6,579	16.46	7,185	9.58	7,664	19.30	6,740	-3.65	79,497	8.64
CONTINENTAL	5,372	7.70	5,641	16.74	6,419	-0.39	6,173	2.42	7,312	3.55	7,299	2.95	6,736	-6.11	6,799	-2.13	5,976	-1.68	6,935	-1.37	6,285	-6.24	6,139	-6.32	77,086	0.21
TOTAL	32,407	-1.43	33,966	2.34	41,539	3.03	39,268	5.95	44,978	4.63	46,195	4.54	45,017	5.60	43,513	8.94	38,688	4.98	43,473	3.37	41,911	2.12	40,366	-0.82	491,321	3.69

	JAN 2008		FEB 2008		MAR 2008		APR 2008		MAY 2008		JUN 2008		JUL 2008		AUG 2008		SEP 2008		OCT 2008		NOV 2008		DEC 2008		TOTAL 2008	
AIRLINE:	ENPL.	%CHG. 2007	ENPL.	%CHG. 2007	ENPL.	%CHG. 2007	ENPL.	%CHG. 2007	ENPL.	%CHG. 2007	ENPL.	%CHG. 2007	ENPL.	%CHG. 2007	ENPL.	%CHG. 2007	ENPL.	%CHG. 2007	ENPL.	%CHG. 2007	ENPL.	%CHG. 2007	ENPL.	%CHG. 2007	ENPL.	%CHG. 2007
SOUTHWEST	23,780	10.22	25,160	8.99	29,006	0.49	27,572	2.72	30,261	-1.40	31,239	-2.52	29,874	-4.00	28,310	-4.29	22,864	-12.51	27,912	-4.91	23,261	-16.81	25,353	-7.76	324,592	-3.03
AMER. EAGLE	6,400	17.22	6,372	21.58	6,920	10.61	6,728	7.60	7,530	7.97	8,446	23.34	7,695	7.46	7,239	1.44	6,440	-2.11	6,736	-6.25	6,287	-17.97	6,416	-4.81	83,209	4.67
CONTINENTAL	5,561	3.52	5,842	3.56	6,169	-3.89	6,624	7.31	7,159	-2.09	6,860	-6.01	7,931	17.74	7,264	6.84	5,610	-6.12	7,246	4.48	6,407	1.94	6,688	8.94	79,361	2.95
NEW MEXICO AIRL.	6	N/A	25	N/A	95	N/A	25	N/A	52	N/A	38	N/A												241	N/A	
TOTAL	35,747	10.31	37,399	10.11	42,190	1.57	40,949	4.28	45,002	0.05	46,583	0.84	45,500	1.07	42,813	-1.61	34,914	-9.75	41,894	-3.63	35,955	-14.21	38,457	-4.73	487,403	-0.80

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	ENPL.	%CHG. 2008	ENPL.	%CHG. 2008	ENPL.	%CHG. 2008	ENPL.	%CHG. 2008	ENPL.	%CHG. 2008	ENPL.	%CHG. 2008	ENPL.	%CHG. 2008	ENPL.	%CHG. 2008	ENPL.	%CHG. 2008	ENPL.	%CHG. 2008	ENPL.	%CHG. 2008	ENPL.	%CHG. 2008	ENPL.	%CHG. 2008
SOUTHWEST	20,272	-14.75	20,472	-18.63	23,850	-17.78	22,862	-17.08	23,812	-21.31	24,795	-20.63	24,611	-17.62	21,984	-22.35	21,195	-7.30	22,994	-17.62	20,781	-10.66	21,529	-15.08	269,157	-17.08
AMER. EAGLE	4,910	-23.28	4,590	-27.97	5,979	-13.60	5,952	-11.53	7,259	-3.60	7,749	-8.25	8,050	4.61	6,904	-4.63	6,051	-6.04	6,332	-6.00	6,250	-0.59	6,314	-1.59	76,340	-8.26
CONTINENTAL	5,502	-1.06	5,369	-8.10	6,495	5.28	5,919	-10.64	6,105	-14.72	7,074	3.12	7,071	-10.84	6,346	-12.64	5,894	5.06	6,192	-14.55	6,063	-5.37	6,138	-8.22	74,168	-6.54
SKYWEST																							1,180	N/A	1,180	N/A
TOTAL	30,684	-14.16	30,431	-18.63	36,324	-13.90	34,733	-15.18	37,176	-17.39	39,618	-14.95	39,732	-12.68	35,234	-17.70	33,140	-5.08	35,518	-15.22	33,094	-7.96	35,161	-8.57	420,845	-13.66

AIRLINE:	JAN 2010		FEB 2010		MAR 2010		APR 2010		MAY 2010		JUN 2010		JUL 2010		AUG 2010		SEP 2010		OCT 2010		NOV 2010		DEC 2010		TOTAL 2010	
	ENPL.	%CHG. 2009	ENPL.	%CHG. 2009	ENPL.	%CHG. 2009	ENPL.	%CHG. 2009	ENPL.	%CHG. 2009	ENPL.	%CHG. 2009	ENPL.	%CHG. 2009	ENPL.	%CHG. 2009	ENPL.	%CHG. 2009	ENPL.	%CHG. 2009	ENPL.	%CHG. 2009	ENPL.	%CHG. 2009	ENPL.	%CHG. 2009
SOUTHWEST	18,241	-10.02	17,825	-12.93	21,778	-8.69	21,026	-8.03	22,135	-7.04	24,793	-0.01	25,414	3.26	22,957	4.43	22,592	6.59	25,676	11.66	22,456	8.06	24,302	12.88	269,195	0.01
AMER. EAGLE	4,714	-3.99	3,750	-18.30	5,513	-7.79	5,768	-3.09	6,168	-15.03	6,691	-13.65	6,256	-22.29	6,010	-12.95	6,525	7.83	6,999	10.53	6,849	9.58	6,786	7.48	72,029	-5.65
CONTINENTAL	5,034	-8.51	5,268	-1.88	5,986	-7.84	6,193	4.63	6,373	4.39	7,317	3.44	7,418	4.91	6,621	4.33	6,504	10.35	6,798	9.79	6,378	5.20	6,840	11.44	76,730	3.45
SKYWEST	1,775	n/a	1,668	n/a	1,896	n/a	1,850	n/a	2,009	n/a	2,178	n/a	2,416	n/a	2,049		2,164		2,128		2,119		2,337	N/A	24,589	N/A
TOTAL	29,764	-3.00	28,511	-6.31	35,173	-3.17	34,837	0.30	36,685	-1.32	40,979	3.44	41,504	4.46	37,637	6.82	37,785	14.02	41,601	17.13	37,802	14.23	40,265	14.52	442,543	5.16

AIRLINE:	JAN 2011		FEB 2011		MAR 2011		APR 2011		MAY 2011		JUN 2011		JUL 2011		AUG 2011		SEP 2011		OCT 2011		NOV 2011		DEC 2011		TOTAL 2011	
	ENPL.	%CHG. 2010	ENPL.	%CHG. 2010	ENPL.	%CHG. 2010	ENPL.	%CHG. 2010	ENPL.	%CHG. 2010	ENPL.	%CHG. 2010	ENPL.	%CHG. 2010	ENPL.	%CHG. 2010	ENPL.	%CHG. 2010	ENPL.	%CHG. 2010	ENPL.	%CHG. 2010	ENPL.	%CHG. 2010	ENPL.	%CHG. 2010
SOUTHWEST	20,104	10.21	19,087	7.08	24,769	13.73	22,871	8.77	24,696	11.57	27,143	9.48	26,643	4.84	24,373	6.17	23,654	4.70	24,397	-4.98	24,460	8.92	25,785	6.10	287,982	6.98
AMER. EAGLE	5,025	6.60	4,298	14.61	5,893	6.89	5,837	1.20	6,083	-1.38	6,618	-1.09	6,428	2.75	6,307	4.94	6,411	-1.75	6,542	-6.53	6,095	-11.01	5,912	-12.88	71,449	-0.81
CONTINENTAL	5,635	11.94	6,840	29.84	5,012	-16.27	4,803	-22.44	4,255	-33.23	6,513	-10.99	6,032	-18.68	5,331	-19.48	7,199	10.89	7,282	7.12	7,322	14.80	7,628	11.52	73,852	-3.75
SKYWEST	2,023	13.97	2,135	28.00	3,901	105.75	3,606	94.92	4,465	122.25	2,689	23.46	2,801	15.94	2,471	20.60	2,255	4.21	2,282	7.24	2,219	4.72	2,223	-4.88	33,070	34.49
TOTAL	32,787	10.16	32,360	13.50	39,575	12.52	37,117	6.54	39,499	7.67	42,963	4.84	41,904	0.96	38,482	2.25	39,519	4.59	40,503	-2.64	40,096	6.07	41,548	3.19	466,353	5.38

AIRLINE:	JAN 2012		FEB 2012		MAR 2012		APR 2012		MAY 2012		JUN 2012		JUL 2012		AUG 2012		SEP 2012		OCT 2012		NOV 2012		DEC 2012		TOTAL 2012	
	ENPL.	%CHG. 2011	ENPL.	%CHG. 2011	ENPL.	%CHG. 2011	ENPL.	%CHG. 2011	ENPL.	%CHG. 2011	ENPL.	%CHG. 2011	ENPL.	%CHG. 2011	ENPL.	%CHG. 2011	ENPL.	%CHG. 2011	ENPL.	%CHG. 2011	ENPL.	%CHG. 2011	ENPL.	%CHG. 2011	ENPL.	%CHG. 2011
SOUTHWEST	20,493	1.93	23,122	21.14	26,024	5.07	N/A		N/A		N/A		N/A		N/A		N/A		N/A		N/A		N/A		69,639	-75.82
AMER. EAGLE	5,473	8.92	5,325	23.89	5,910	0.29	N/A		N/A		N/A		N/A		N/A		N/A		N/A		N/A		N/A		16,708	-76.62
CONTINENTAL	5,670	0.62	6,095	-10.89	4,144	-17.32	N/A		N/A		N/A		N/A		N/A		N/A		N/A		N/A		N/A		15,909	-78.46
SKYWEST	1,969	-2.67	1,951	-8.62	4,638	18.89	N/A		N/A		N/A		N/A		N/A		N/A		N/A		N/A		N/A		8,558	-74.12
TOTAL	33,605	2.49	36,493	12.77	40,716	2.88	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	110,814	-76.24

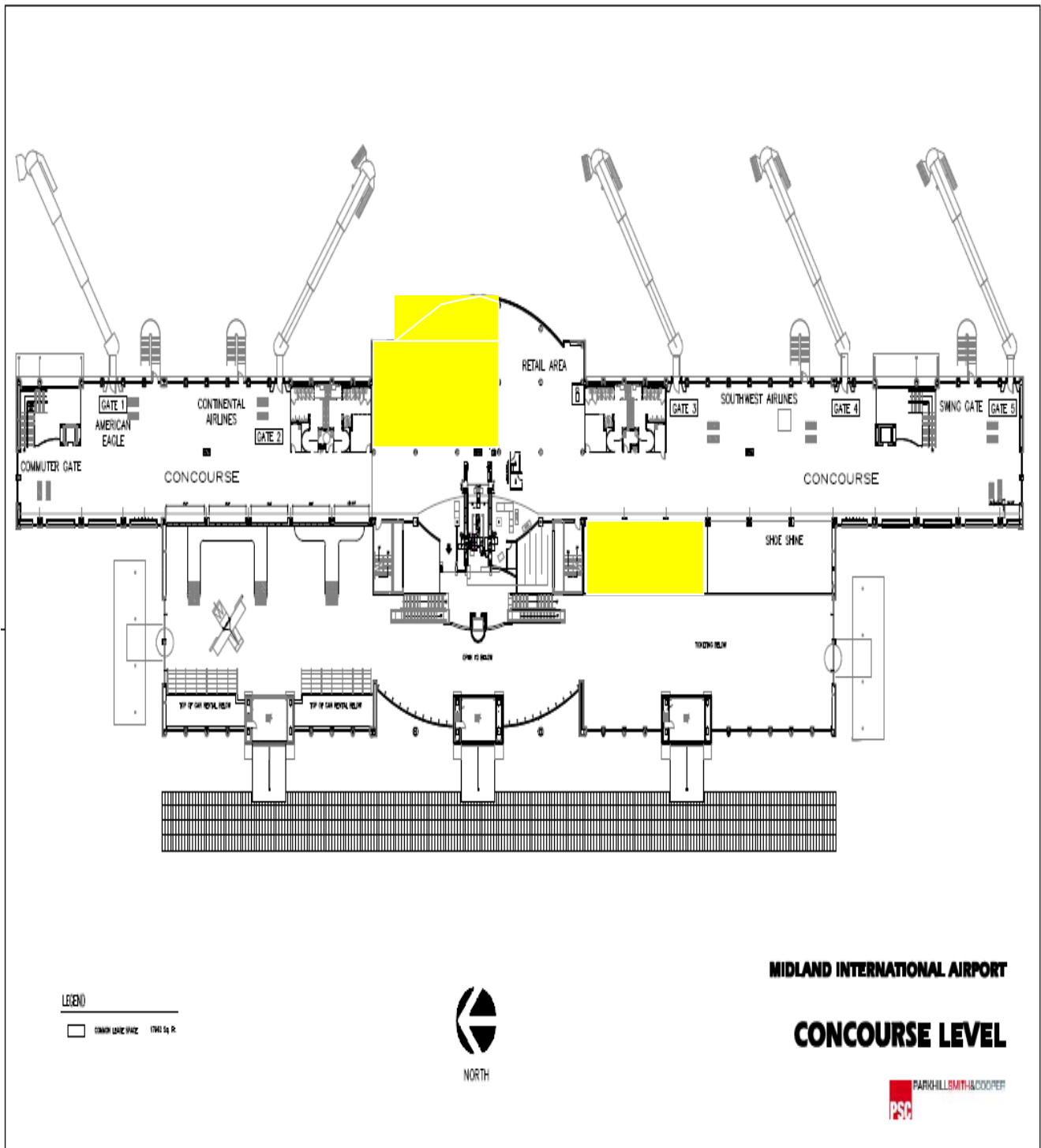
APPENDIX 2 GROSS RECEIPTS

	2006	2007	2008	2009	2010	2011
Total Gross Receipts	\$988,890	\$1,227,383	\$1,316,795	\$1,193,500	\$1,341,819	\$1,623,850
Total Enplaned Passengers	473,851	491,321	487,403	420,845	442,543	466,353
Receipts per Enplaned Passengers	\$2.08	\$2.50	\$2.70	\$2.83	\$3.03	\$3.48
Total Concession Payments to the Airport	\$141,874	\$141,874	\$147,899	\$141,874	\$148,317	\$184,984

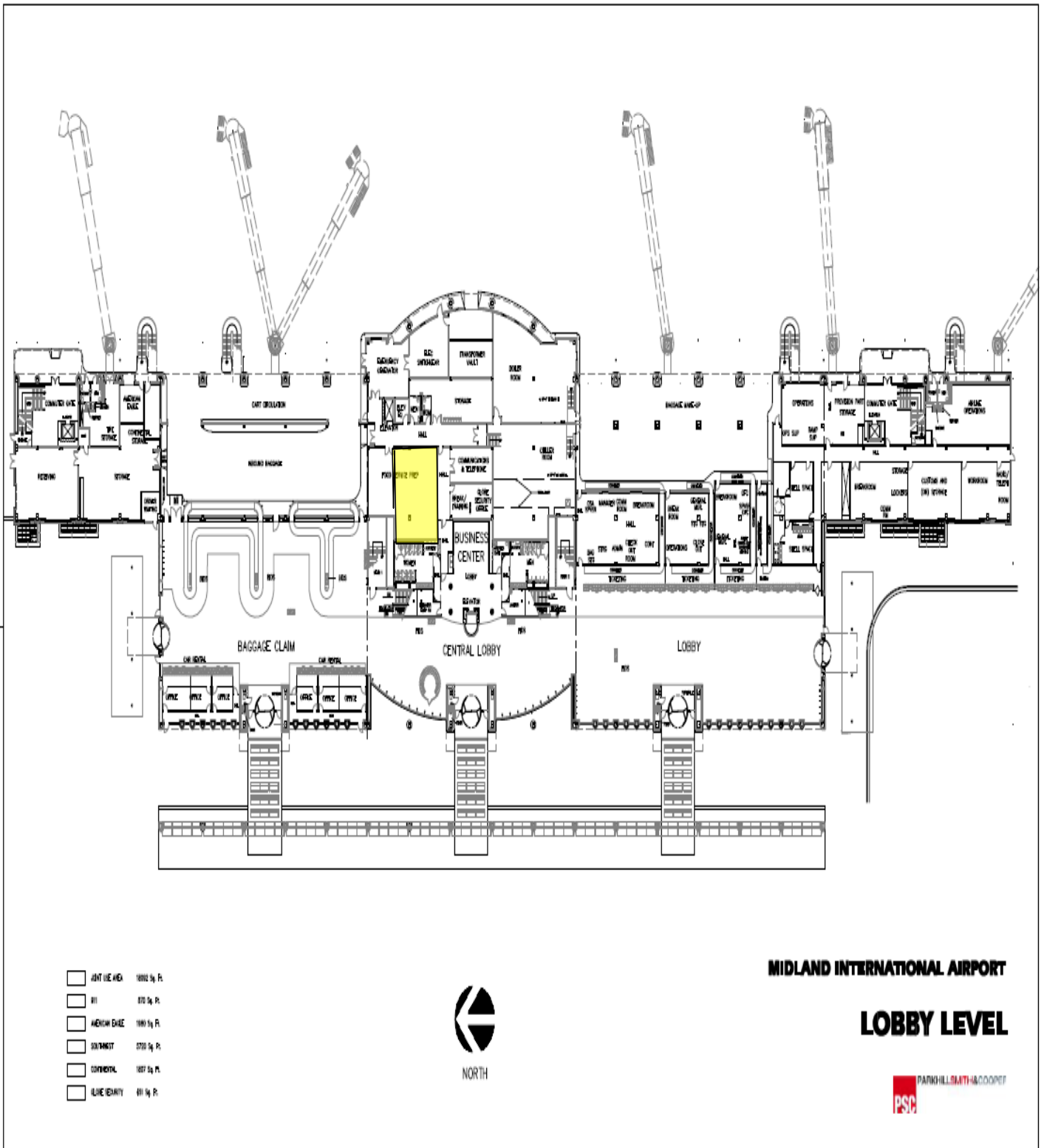
TOTAL GROSS RECEIPTS BY MERCHANDISE CATEGORY

Receipts by Category	2006	2007	2008	2009	2010	2011
Food & Catering	\$712,433	\$834,155	\$911,294	\$865,739	\$988,434	\$1,058,867
Alcohol	\$276,447	\$393,228	\$405,500	\$327,760	\$353,385	\$564,982
In-Flight Catering	0	0	0	0	0	0
Total Gross Receipts	\$988,890	\$1,227,383	\$1,316,795	\$1,193,500	\$1,341,819	\$1,623,850

APPENDIX #3



APPENDIX #3



ATTACHMENT A

BUSINESS INFORMATION QUESTIONNAIRE

All information requested in this Questionnaire **MUST** be furnished by the Bidder and **MUST** be submitted with the bid. Statements must be complete, accurate and in the form requested. Omission, inaccuracy or misstatement **may** be cause for rejection of the bid. Additional sheets may be attached hereto as necessary.

SECTION I - GENERAL INFORMATION

1. Bidder is submitting this Qualifications Questionnaire for the following Concession:

2. Name of applicant exactly as it would appear on the Terminal Concession Agreement if selected:_____

3. Address of applicant for purposes of notice or other communication relative to the bid:

Telephone Number of Applicant: _____

Fax Number of Applicant: _____

Contact Person: _____

5. Applicant intends to operate the proposed business as: (check one)

() Sole Proprietor

() Partnership

() Corporation

() Joint Venture

() Other (explain below)

6. Complete **one** of the four sections below: either A, B, C, or D, depending upon the organization of the applicant firm:

A. **SOLE PROPRIETORSHIP STATEMENT**

If a Sole Proprietorship, furnish the following:

1. Name in Full: _____

2. Residence Address: _____

3. Business Address: _____

B. **PARTNERSHIP STATEMENT**

If a Partnership, furnish the following:

1. Date of Organization: _____
2. Type of Partnership: (check one)
☐ General Partnership
☐ Limited Partnership
3. Has the Statement of Partnership been recorded?
☐ Yes ☐ No
If yes: Date: _____
 Book: _____
 Page: _____
 County: _____
4. Attach and mark as "Exhibit P-1" a complete copy of the Statement of Partnership and the Partnership Agreement.
5. For each partner, attach and mark as "Exhibit P-2" the following information:
 - a. Name
 - b. Residence Address
 - c. Percentage of ownership
 - d. Indicate if the partner is a general or a limited partner

C. **CORPORATION STATEMENT**

If a Corporation, furnish the following:

1. Date of Incorporation: _____

2. State Incorporated: _____

3. Is the corporation authorized to do business in Texas?

() Yes () No

4. The corporation is: () Public

() Private

5. If publicly held, how and where is the stock traded?

6. List the following:

	<u>Authorized</u>	<u>Issued</u>	<u>Outstanding</u>
a. Number of voting shares:	_____	_____	_____
b. Number of nonvoting shares:	_____	_____	_____
c. Number of shareholders:	_____	_____	_____
	<u>Par</u>	<u>Book</u>	<u>Market</u>
d. Value per share			
of common stock	_____	_____	_____

7. For the President, Secretary, Treasurer, each director, and principal shareholder (any shareholder owning more than 10% of any class of stock), attach and mark as "Exhibit C-1" the following information:
- a. Name
 - b. Title
 - c. Residence Address
 - d. Number of voting shares
 - e. Number of non-voting shares

D. **JOINT VENTURE STATEMENT**

If a Joint Venture, furnish the following:

1. Date of Organization:
2. Has the Venture done business before?
() Yes () No

If yes, attach and mark as "Exhibit JV-1" a description of the nature of the joint venture's prior business

3. Attach and mark as "Exhibit JV-2" a complete copy of the Joint Venture Agreement.
5. For each joint venture partner, attach and mark as "Exhibit JV-3" the following information:
 - a. Name
 - b. Residence Address
 - c. Percentage of ownership

(Principal/Owner/Authorized Officer)

ATTACHMENT B

BUSINESS AND FINANCIAL REFERENCES

FINANCIAL CAPABILITY

The Proposer must demonstrate its ability to successfully operate a food and beverage concession at an airport as outlined.

1. **Financial Statements**

The Proposer shall submit audited comparative financial statements for the last two (2) fiscal year periods prepared in accordance with generally accepted accounting principles by appropriately qualified professionals. If audited statements are not available, statements subjected to a review by an independent Certified Public Accountant are preferred, with compiled financial statements also being acceptable. If a Proposer submits financial statements for a parent company and is thereafter awarded the lease and concessions agreement, the parent company shall be required to also execute the lease and concession agreement such that it is bound jointly with the Proposer/subsidiary to the obligations of the lease and concession agreement. A parent company shall submit an acknowledgement of this obligation in the Proposal by action taken by the parent company authorizing the obligations of the lease and concession agreement.

(Attach Information)

2. **Bankruptcy Information:**

Have you or any entity in which you have had ownership interest ever been declared bankrupt? ____ Yes ____ No If yes, attach statement setting forth date, court location, docket number, amount of liabilities and assets, type, and resolution or current status.

3. Credit References:

Provide names, addresses, titles, phone numbers, type of business, and letter of reference from at least three (3) organizations, including one (1) banking reference, your company has conducted significant financial transactions with in the most recent three (3) years. If firms are used, give the name of the department and/or person who may be contacted.

PROPOSERS ARE TO ATTACH A LETTER OF REFERENCE FROM EACH OF THE BELOW LISTED FIRMS

Credit Reference #1

Name: _____

Title: _____

Firm: _____

Address: _____

Telephone: _____

Nature and magnitude of purchase, sale, loan, business association, etc.:

Credit Reference #2

Name: _____

Title: _____

Firm: _____

Address: _____

Telephone: _____

Nature and magnitude of purchase, sale, loan, business association, etc.:

Credit Reference #3

Name: _____

Title: _____

Firm: _____

Address: _____

Telephone: _____

Nature and magnitude of purchase, sale, loan, business association, etc.:

**THE CITY RESERVES THE RIGHT TO REQUEST ADDITIONAL FINANCIAL
INFORMATION FROM ANY PROPOSER**

The foregoing information has been submitted to the City of Midland, Department of Airports for the purpose of proposing for the Food and Beverage Concession at Midland International Airport. The undersigned hereby attests to the truth and accuracy of all statements, answers and representations made in this Questionnaire, including all supplementary statements attached hereto. The undersigned hereby authorizes The City of Midland, or its agents, to contact any appropriate third parties to verify the accuracy of the information provided herein. The undersigned affirms that he/she is a duly authorized representative of the proposing entity.

Date: _____

(Name of Proponent)

By: _____

ATTACHMENT C

EXPERIENCE AND QUALIFICATIONS STATEMENT

INSTRUCTIONS

1. Please detail previous business experience in providing the services as specified. Attach a statement detailing the experience. Include a brief history of the company or companies. Note any changes in company name(s) and ownership structure(s) and any other names under which the company or companies has been doing business. Describe current operations as they exist today. The Proposer may include any additional information it deems necessary to demonstrate experience in this type of services.
2. Provide a minimum of three (3) not to exceed five (5) descriptions of the proposer's operations at airports (other businesses can be substituted if you have not done business with three (3) airports) most relevant to those being proposed. For these relevant operations, list the square footage occupied, gross receipts for the last three (3) years, minimum annual guarantee obligations, percentage rent obligations, actual rent paid, term of lease, capital investment including initial build out and refurbishments, if applicable, and photographs of facilities if available. Also provide the names, addresses and telephone numbers of the landlords or property managers for each of these operations.
3. Have any Agreements or License Agreements held by the Proposer ever been cancelled or terminated during the past five (5) years? _____ Yes _____ No
If yes, attach statement setting forth details such as the name, location and date of termination, an explanation of the reason(s) for termination, and a contact name and telephone number for the landlord.

4. List any judgments or lawsuits currently pending against the Proposer or any lawsuit filed against or judgment offered against Proposer within the last ten (10) years. Also list any lawsuits filed by Proposer in the last ten (10) years.
5. List any affiliate of Proposer engaged in similar business activities and any corporation with a direct or controlling interest in the Proposer, and any subsidiary corporation in which the Proposer has a controlling interest and any affiliates thereof.

ATTACHMENT D
TEMPORARY FACILITIES

INSTRUCTIONS

1. Proposers shall submit concepts renderings and floor plans for all proposed temporary facilities for use prior to the beneficial occupancy of the concession locations that will be renovated. In lieu of sketches, Proposers may submit photographs of similar temporary facilities.
2. Proposers also must submit information regarding color schemes, signage, and graphics of the temporary facilities, and a plan indicating the manner in which the temporary facilities are to be moved, serviced and stocked.

ATTACHMENT E
CONCEPT DEVELOPMENT

INSTRUCTIONS

1. Proposers shall submit the following information in sufficient detail to clearly define the proposed concepts for each food and beverage concession location:
(a) specific concept descriptions and how they would be incorporated into the Airport program; (b) proposed restaurant and/or bar names; (c) menus for each concept and price ranges for each menu item; and (d) list of any branded merchandise that will be sold from any of the food and beverage locations and the prices for those items.
2. Proposers shall submit the following information in sufficient detail to clearly define the proposed concepts for each retail location; (a) specific concept descriptions and how they would be incorporated into the Airport program; (b) proposed names; and (c) a description of any unique attributes of the proposed concepts.

ATTACHMENT F

FACILITIES DESIGN AND CAPITAL INVESTMENT

INSTRUCTIONS

1. Proposers shall submit preliminary plans for each permanent concession location made available under the lease and concession agreement, providing information that details the design and quality of the materials proposed.
2. Proposers shall submit preliminary renderings of the proposed concepts that are a representative illustration of the designs and shows the exterior and interior concepts, color schemes, and graphics. If an existing facility concept will be duplicated, the Proposer may substitute pictures or photographs of an existing facility for the renderings.
3. Proposers shall submit a floor plan of each food and beverage unit indicating locations for counters, queuing, kitchens and seating.
4. Renderings or photographs and floor plans may not exceed 11" x 17" and must be bound within the Proposal.
5. Proposers shall submit a financial plan and indicate the sources of funding to be used for tenant improvements and working capital, including the following; (a) estimated costs for the initial renovations, mid-term refurbishment improvements, and future build-out improvements delineating expenses for leasehold improvements, furniture, fixtures, equipment, and design, engineering, and construction management costs. Architectural design and engineering costs must not exceed 15% of the total capital investment cost. The cost of inventory, start-up costs, uniforms, and any other costs not directly related to the renovation of leasehold improvements shall not be included in the cost estimate; (b) estimated working capital; and (c) sources of funding.

ATTACHMENT G
FINANCIAL PROJECTIONS

INSTRUCTIONS

1. Proposers shall submit a financial pro forma indicating the following items as applicable for each year of the initial lease and concession agreement term, and extension term; (a) anticipated gross receipts for food and beverage (non-alcohol) and alcohol beverage; (2) expenses including advertising and promotions by line item; (3) general and administrative costs; (4) debt service.
2. Proposers shall include data and information indicating the expected rent to be paid to the City for each year of the initial lease and concession agreement term and demonstrating that the Percentage Rent, as proposed, can be supported by the projected revenue stream.

ATTACHMENT H

MANAGEMENT, OPERATIONS, AND MARKETING PLAN

INSTRUCTIONS

1. Proposers shall attach a description of the management structure to be used in the proposed operation. Include a resume or job description for the on-site manager(s) proposed to be assigned to each concession operation at the Airport. If an individual has not been selected, then provide the general qualification and level of experience you would require. Illustrate the reporting relationships between corporate and on-site management and between all on-site staff.
2. List staffing and management schedule for each unit to cover the estimated hours of operation, including the number of employees by staff level.
3. List employee training practices, including a summary of customer service training program. Provide a description of any employee incentive programs that will monitor, measure, promote, and reward sales and customer service.
4. Attach a description of the revenue control system to be utilized at the Airport, including a description of the audit trail. Such system shall, at a minimum, permit a monthly summary, by location, by sale category.
5. Submit an operation and maintenance plan for your proposed daily and ongoing operations, such as facilities maintenance, deliveries, trash removal, inventory stocking and storage, pest control, janitorial services, grease trap cleaning and grease waste containment systems. Include a plan to monitor the facilities for cleanliness and maintenance.
6. Provide information outlining the marketing and promotional plans for the proposed food and beverage concessions. Information to include a description of the analysis conducted to determine the concepts, brands, menus, and product lines incorporated in this Proposal. Describe how you will monitor

customer satisfaction with said concepts, brands, menus and product lines.
Describe on-airport promotions likely to be used at the Airport if awarded the
lease and concession agreement.

ATTACHMENT I

PROPOSED MINIMUM ANNUAL GUARANTEE AND PERCENTAGE RENTS

During the term of the Lease and Concession Agreement, for the non-exclusive right and privilege of operating and managing the food and beverage concessions at the Midland International Airport, the undersigned Proposer hereby proposes to pay monthly to the City the greater of items 1 or 2 below:

1. List in the space provided below, the Minimum Annual Guarantee (MAG) you propose to pay the City during the first full year of the lease and concession agreement term. Minimum Annual Guarantee for Year 1 of the agreement shall be \$160,000.

Proposed MAG (in dollars per year) \$ _____

2. Proposers shall pay Percentage Rents as a percent of gross receipts by service category.

CATEGORY	MINIMUM PERCENTAGE RENT	PROPOSED PRECENTAGE RENT
Food and Beverage/ Non-alcohol	10%	
Alcohol Beverage	14%	

If awarded the concession, this proposed MAG and Percentage Rent structure will be incorporated in the lease and concession agreement as follows:

For the first full year of the Term after the date of beneficial occupancy (DBO), on a monthly basis, rent will equal the greater of one-twelfth of the MAG or the sum of Percentage Rents for each category. (Percentage Rent for a product category equals gross receipts for the category multiplied by the Percentage Rent Rate for the category).

For subsequent years of the lease and concession agreement term, the proposed MAG shall equal the greater of the previous year MAG or eighty-five (85%) of the previous year's payable Percentage Rent.

No erasure, alteration, or additions may be made to the Proposed Form as such might invalidate the proposal.

PROPOSALS MUST BE SIGNED IN THE APPROPRIATE SPACE BELOW.

If you are an INDIVIDUAL, sign here:

(Name)

(Doing Business As)

If you are a PARTNERSHIP, at least two (2) partners must sign here:

(Partnership Name)

By: _____

By: _____

If proposer is a CORPORATION, the UNDERSIGNED, by execution of this proposal, certifies the he/she(they) is(are) respectively:

_____ and
(Title)

_____ of the Corporation
(Title)

named below; that he/she(they) sign(s) the proposal on behalf of the Corporation; and that he/she(they) is(are) authorized to execute same on behalf of the Corporation.

(Corporate Name)

By: _____

(Title)

By: _____

(Title)

DATED: _____

ATTACHMENT J

Forms 1 & 2 for Demonstration of Good Faith Efforts

[Forms 1 and 2 should be provided as part of the solicitation documents.]

FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner (please check the appropriate space):

_____ The bidder/offeror is committed to a minimum of _____ % DBE utilization on this contract.

_____ The bidder/offeror (if unable to meet the DBE goal of _____ %) is committed to a minimum of _____ % DBE utilization on this contract and submits documentation demonstrating good faith efforts.

Name of bidder/offeror's firm: _____

State Registration No. _____

By _____
(Signature)

Title

ATTACHMENT K

FORM 2: LETTER OF INTENT

Name of bidder/offeror's firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Name of DBE firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____

Description of work to be performed by DBE firm:

The bidder/offeror is committed to utilizing the above-named DBE firm for the work described above. The estimated dollar value of this work is \$ _____.

Affirmation

The above-named DBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By _____

(Signature) (Title)

If the bidder/offeror does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void.

(Submit this page for each DBE subcontractor.)

CONCESSION AGREEMENT
FOOD AND BEVERAGE OPERATIONS
MIDLAND INTERNATIONAL AIRPORT
MIDLAND, TEXAS

THIS CONCESSION AGREEMENT, made and entered into this _____ day of _____, 2012, by and between the CITY OF MIDLAND, TEXAS, a municipal corporation organized and existing under and by virtue of the laws of the State of Texas (hereinafter referred to as "City") and _____, dba _____ a corporation organized and existing under the laws of the State of _____, (hereinafter called "Concessionaire"), having its principal offices at _____.

WITNESSETH THAT:

WHEREAS, City currently owns and operates an airport known as the Midland International Airport (hereinafter called the "Airport"), located in Midland, Midland County, Texas; and

WHEREAS, City deems it advantageous to itself and to its operation of the Airport to lease unto Concessionaire certain premises and to grant unto Concessionaire certain rights, privileges, and uses therein, as necessary to provide food and beverage service within the Terminal Building at the Airport;

NOW, THEREFORE, for and in consideration of payment of the fees and charges hereinafter provided, and of the covenants and conditions hereinafter contained to be kept and performed, DO HEREBY AGREE AS FOLLOWS:

ARTICLE I
TERM OF AGREEMENT

Section 1.1. **Term.** Subject to earlier termination and cancellation as hereinafter provided, the term of this Agreement shall be for a period of _____ (__) years, commencing on _____ and ending on _____.

Section 1.2. **Option Period.** City, at its sole discretion, may elect to extend the term of this Agreement, under the same terms and conditions, for one five year period upon written notice to Concessionaire. Said notice shall occur no later than 90 days prior to the expiration of the then current term of the Agreement. Concessionaire may accept or decline the extension within 30 days of the offer to extend. Failure of the Concessionaire to respond to the offer within 30 days shall be considered a declination of the offer.

ARTICLE II
PREMISES

Section 2.1. **Premises.** Concessionaire shall operate the Concession granted within the premises indicated on applicable pages of Exhibit "I" and "II" attached hereto and forming a part hereof. The Premises include areas designated for storage and support as indicated in Exhibit "I" and "II".

Section 2.2. **Square Footage.** The square footage figures appearing throughout Exhibits "I" and "II" are approximately only and are subject to on-site measurements to be performed by the proposers, at their option. City hereby leases to Concessionaire certain space in the Terminal Building hereinafter described together with certain attendant rights and privileges specifically set forth.

ARTICLE III
CONCESSION RIGHTS AND PRIVILEGES

Section 3.1. **Rights Granted.** Concessionaire shall have the right to sell to the public those food and beverage items submitted in its proposal dated _____, and such other Food and Beverage items as may be approved herein.

Section 3.2. **Right to Operate.** City hereby grants to Concessionaire the exclusive right and obligation to occupy, equip, furnish, operate and maintain food and beverage facilities in those portions of existing buildings at Airport shown on Exhibits "I" and "II" attached hereto, and made a part hereof. The rights granted shall be carried on solely and exclusively within the limits and confines of said areas; subject, however, to the expansion, reduction or relocation of any such area specified in Article X hereof and its sections.

Section 3.3. **General Obligation to Operate.** At the locations indicated herein, Concessionaire shall provide food and beverage service for passengers, every day of the term hereof, without exception. Concessionaire shall take all reasonable measures, in every proper manner, to develop, maintain and increase the business conducted by it under this Agreement. Concessionaire shall actively operate each food and beverage facility so as to best serve public needs.

Section 3.4. **Right to Advertise/Promote Products.** Concessionaire shall have the right to advertise brand-name products on its packaging and within the premises only upon the written approval of City. Such approval may be withheld if, in the sole discretion of the City, the advertising rights requested by Concessionaire conflict with rights granted under the advertising concession agreement.

Section 3.5. **Quiet-Enjoyment.** Concessionaire, upon payment of fees and charges as described in Article V hereof, and its sections, and upon observing and keeping the conditions

and covenants of this Agreement on its part to be observed and kept, shall lawfully and quietly hold, use and enjoy the concession premises during the term of this Agreement.

Section 3.6. **Ingress and Egress.** Concessionaire shall have the full and free right of ingress to and egress from the Leased Premises. City agrees to use its best efforts to keep the routes of ingress and egress to the Leased Premises free from obstruction including the removal of snow, ice, vegetation, stones, and other foreign matter. City has the right to alter or change the routes of ingress and egress upon giving reasonable notice to Concessionaire and upon providing other reasonably adequate means of ingress and egress.

Section 3.7. **Parking Facilities.** Concessionaire shall have the right to utilize vehicular parking facilities for Concessionaire's employees in a manner and of a type similar or equal to that provided for employees in areas designated by the Director of Airports.

Section 3.8. **Exclusivity.** The concession rights herein granted to the Concessionaire shall be exclusive within the Terminal Building with the following exceptions: Tenant employee vending machines and in-flight catering are non-exclusive.

Section 3.9. **Tenant Employee Dining.** City's other tenants may, at City's option, be granted the right to operate food and beverage vending facilities for their employees, but not for the general public, and not in locations to which the general public has access. Concessionaire shall not have the exclusive or first right to provide such services to said tenants.

Section 3.10. **Dispute with other Tenants.** In the event of a dispute between Concessionaire and any other Airport tenant as to the services to be offered or products to be sold, Concessionaire shall meet and confer with the Director of Airports and, if any parties to said dispute continue to disagree with the recommendation of the Director of Airports, City

shall determine the services to be offered or products to be sold by each, and Concessionaire shall be bound by said determination.

Section 3.11. **No Other Uses.** Concessionaire shall not use nor permit the concession premises to be used for any purpose other than as hereinabove set forth except with the prior written consent of City, nor for any use in violation of any applicable present or future law, ordinance, rule or regulation of any governmental authority, agency, department or officer thereof.

ARTICLE IV FEES AND TYPE OF PAYMENT

Section 4.1. **Monthly Rental Payments.** As the monthly rent during the term of this Agreement, Concessionaire shall pay the percentage fee applicable to each category of gross receipts as defined herein.

Section 4.1.1. **Percentage Fee.** The Percentage Fee shall be the sum of (1) _____ (___%) of the gross revenues earned from the sale of alcoholic beverages, and (2) _____ (___%) of the gross revenues earned from all other food and beverage sales in the Terminal covered by this Concession Agreement.

Section 4.1.2. **Minimum Annual Fee.** The minimum annual fee for the first full year of the term is \$_____. For the following four years after the first full year of the term, the minimum annual guarantee shall be the greater of \$_____ or eighty-five percent (85%) of the previous year's actual rent payments. For the sixth year of the original term of the agreement, the minimum annual guaranteed rental shall be the greater of eighty-five percent (85%) of the previous year's actual rent payments or \$_____ as adjusted pursuant to section 4.1.5 of this Agreement.

Section 4.1.3. **No Abatement.** City and/or Federal government shall retain the right to restrict access to areas “airside” of security checkpoints to ticketed passengers and Airport/airline personnel. City shall retain the right to restrict access for purposes of construction of City-approved improvements. During such actions, Concessionaire shall not be entitled to any fee abatement or percentage adjustment.

Section 4.1.4. **Annual Adjustment.** At the end of each twelve (12) month period during the term hereof, City shall prepare and submit to Concessionaire a statement showing the total percentage charge for the said twelve months. If the sums paid by Concessionaire during said 12 month period exceed the annual minimum fee as well as the annual percentage charge, whichever is greater, such over-payment shall be credited to the fees and charges next thereafter due from Concessionaire. If Concessionaire’s aggregate payments are less than the total due, Concessionaire shall, within ten (10) calendar days, pay City the difference.

Section 4.1.5. **Consumer Price Index Adjustment.** It is agreed and understood that pursuant to Article III, Section 1(a) of the City’s Charter, provision must be made herein for an adjustment of rentals at least once every five (5) years. Therefore, as of _____, it is further agreed and understood that the Minimum Annual Guaranteed rental shall be \$_____. Thereafter, as of _____. The Minimum Annual Guaranteed rent shall be increased only in the same proportion or percentage by which the cost of living has been increased as reflected by the “Consumer Price Index for All Items”, as maintained by the United States government’s Department of Labor, Bureau of Labor Statistics for the Dallas/Fort Worth SMA; such increase being measured by comparison with such cost-of-living indices at the end of the immediately preceding five-year period of this lease, as compared with the indices at the commencement of the immediately preceding five-year period of this lease.

Section 4.2. **Utilities.** Utilities, including electricity, gas and water, shall be separately metered at Concessionaire's expense, and shall be invoiced directly to Concessionaire.

Section 4.3. **Refuse Removal.** Concessionaire shall comply with the provisions of Section 5.9 herein with regard to the disposition of trash and garbage. City shall maintain garbage or refuse disposal areas for use by concessionaires. Reasonable use of the city maintained refuse disposal areas shall be without charge, however the City reserves the right to impose a fee for use of refuse disposal areas if, in the sole determination of the City, Concessionaire use of disposal areas cause an unreasonable increase in City costs.

Section 4.4. **Other Fees and Charges.** If City has paid any sum or sums or has incurred any obligations or expense which Concessionaire had agreed to pay or reimburse City for, or if city is required or elects to pay sum(s) or ensure obligation(s) or expense(s) by reason of the failure, neglect or refusal of Concessionaire to perform or fulfill any of the conditions, covenants or agreements contained in the Agreement, or as a result of an act or omission of Concessionaire contrary to said conditions, covenants and agreements, Concessionaire shall pay the sum(s) so paid or the expenses(s) so incurred, including all interest, costs, damages and penalties, and the same may be added to any installment of the fees and charges thereafter due hereunder, and each and every part of the same shall be and become additional fees and charges, recoverable by City in the same manner and with like remedies as if it were originally a part of the basic fees and charges.

Section 4.5. **Method of Payment.** The procedure for the payment of the fees and charges shall be as follows:

Section 4.5.1. **Payment Location.** All fees and charges payable hereunder shall be paid to Director of Airports, Midland International Airport, P. O. Box 60305, Midland, Texas 79711, unless and until City designates some other party to receive or place for the payment of said fees and charges.

Section 4.5.2. **Monthly Rental Payments.** The rental fees and charges to be paid by Concessionaire to City hereunder shall be payable in monthly installments throughout the term of this Agreement. Within ten (10) calendar days after the end of each calendar month, Concessionaire shall pay City, as the fees and charges for such calendar month, one-twelfth (1/12) of the guaranteed minimum annual fee or the percentage charge, whichever sum is greater.

Section 4.5.3. **Monthly Rental Report.** Concessionaire shall submit a monthly accounting of the gross receipts received at each location operated by Concessionaire under this Concession Agreement. Each facility shall be reported as a separate location. Each monthly accounting shall be in such manner and detail and upon such forms as are prescribed by City. Each monthly report shall be due on the same date and at the same address as the payment for that month is due.

Section 4.6. **Late Payment.** Any payment not received by the due date shall accrue interest payable at the rate of 1.5% per month from the due date until paid in full.

Section 4.7. **Pro Rata Payment.** If the commencement or termination of this Agreement falls upon any date other than the first or last day of any calendar month, the applicable fees and charges for said month shall be in the same proportion that the number of days the Agreement is in effect for that month bears to the total number of days in that month. Should this Agreement terminate or be terminated at any time other than at the end of the agreement year, the minimum fees for the agreement year in which such termination occurs shall be in the same proportion that the number of days the Agreement is in effect for that year bears to the total number of days in the year.

Section 4.8. **Audit Reports.** Concessionaire agrees to keep true and accurate accounts, records, books and data which will show in a standard acceptable form the income,

including taxes, surcharges, and gross receipts as herein defined, as separate line items of said business operated at the upon the Leased Premises of the Airport, which books and records shall be open for inspection by authorized representatives of City at all reasonable times during normal business hours. City reserves the right, either directly, or through an agent, to make necessary detailed audits as required at any time during the agreement period and for twelve (12) months after the termination of the agreement. In addition, Concessionaire agrees to furnish to City annually a certified copy of an audit thereon by Concessionaire's certified public accountant. Such audit shall be in a form acceptable to the auditors of City and shall be due to City at the office of the Director of Airports no later than ninety (90) days after the end of each agreement year.

Section 4.9. **Gross Receipts Defined.** "Gross Receipts" shall include all receipts, whether by coin or currency, on account, by check or credit card, collected or uncollected, whether conducted on or off airport, derived by Concessionaire as a result of its operation of the concession rights herein granted, without any exclusion whatever, except those expressly permitted under Sections 4.9.1 through 4.9.9. Gross receipts shall include the sales revenues received or billed by Concessionaire from the sale, dispensing and serving of food, food products and beverages, including alcoholic beverages, and other related services and products. Goods, work or services furnished by any person or firm in lieu of payment in exchange for value received shall be deemed to be Cash Sales. Gross Receipts shall exclude revenues from the following:

Section 4.9.1. **Taxes.** Retail sales taxes, excise taxes or related direct taxes on the consumer which are collected by Concessionaire on such sales provided all such taxes are properly accounted for and recorded;

Section 4.9.2. **Sales of Scrap, Equipment or Uniforms.** Receipts from the sale of waste or scrap materials resulting from the operation of Concessionaire's business on Airport; receipts from the sale of or the trade-in value of furniture, fixtures or

equipment used on the concession premises, and owned by Concessionaire; receipts from the sale at cost of uniforms/clothing to Concessionaire's employees where such uniforms/clothing are required to be worn by said employees;

Section 4.9.3. **Exchanges and Refunds from Suppliers.** The value of any merchandise, supplies or equipment exchanged or transferred from or to other business locations of Concessionaire, where such exchanges or transfers are not made for the purpose of avoiding a sale by Concessionaire which would otherwise be made from or at the concession premises; receipts in the form of refunds from or the value of merchandise, supplies or equipment returned to shippers, suppliers or manufacturers;

Section 4.9.4. **Refunded Receipts.** Receipts with respect to any sale where the subject of such sale, or some part thereof, is thereafter returned by the purchaser to and accepted by Concessionaire, to the extent of any refund actually granted or adjustment actually made, either in the form of cash or credit;

Section 4.9.5. **Employee Meals and Employee Discounts.** The cost or value of free meals given to employees of Concessionaire pursuant to such employees' employment contracts; the amount of a 10% discount on all items except alcoholic beverages which Concessionaire may give to those employees of Airport tenants of City and Airport employees of City who have been issued Airport Security Identification badges by City;

Section 4.9.6. **Supplier Discounts.** The amount of any cash or quantity discounts received from sellers, suppliers or manufacturers;

Section 4.9.7. **Tips.** The amount of any gratuity paid or given by patrons or customers to employees of Concessionaire;

Section 4.9.8. **Reimbursements**. Receipts in the form of reimbursements from Concessionaire's subcontractor(s) for any taxes, loan payments and/or license fees paid by Concessionaire for or on behalf of such subcontractor; and

Section 4.9.9. **Other Contracts**. Receipts from sales in non-public areas for services performed for one or more of City's other Airport tenants under separate contracts, such as sales to an airline's employees in an employee lunchroom, and to V.I.P. passengers in private airline lounges.

ARTICLE V OPERATING STANDARDS

Section 5.0. This Section and its sub-Sections address Concessionaire's operational obligations.

Section 5.1. **Concession Personnel**. Concessionaire shall, at its cost, furnish prompt, courteous and efficient service and shall ensure polite and inoffensive conduct and demeanor on the part of its representatives, agents and employees, collectively referred to herein as "personnel". Concessionaire shall employ or permit the employment of only such personnel as will assure a high standard of service to the public. All such personnel, while on or about the concession premises, shall be clean, neat in appearance and courteous at all times and shall be appropriately attired, with badges or other suitable means of identification, in such instances as are appropriate. No personnel, while on or about the concession premises, shall use improper language, act in loud, boisterous or otherwise improper way or be permitted to solicit business in an inappropriate manner.

Section 5.2. **Manager**. Concessionaire shall select and appoint, subject to approval by the Director of Airports, a Manager of Concessionaire's operations at the Airport. Such person must be an outstanding, highly qualified and experienced manager or supervisor of comparable

Food and Beverage operations, vested with full power and authority to accept service of all notices provided for herein and regarding operation of the concession business herein authorized, including the quality and prices of goods and beverages and the appearance, conduct and demeanor of Concessionaire's agents, servants and employees. Said Manager shall be assigned to a duty station or office at the Airport, where he or she shall ordinarily be available during regular business hours and where, at all times during his or other absences, a responsible subordinate shall be in charge and available.

Section 5.3. **Hours of Operation**. In each location and on each day, Concessionaire shall operate during those hours as are necessary to adequately serve the public demand, as said demand may be determined and re-determined by the Director of Airports. Concessionaire may advise the Director of Airports regarding optimum hours of operation at each location.

Section 5.3.1. **Minimum Hours of Operation**. Concessionaire shall be obligated to operate the facilities for the hours which are defined in this Section 5.3.1. until such time as the Director of Airports requests that hours be extended or authorizes hours to be contracted. The initial minimum hours each day shall be as follows:

Opening:	One hour prior to the first departure
Closing:	One hour following the last departure

Section 5.3.2. **Curtailment of Hours Beyond Control**. Concessionaire shall be excused from its obligations as set forth in Sections 5.3 through 5.3.1 in the event that its operations are closed or curtailed, in whole or in part, by reason of a strike, lockout or a cause beyond its control.

Section 5.3.3. **Director of Airports May Alter Hours**. The Director of Airports may, on 24 hours notice to Concessionaire require earlier opening times or later closing times for any location. Concessionaire shall comply with said hours. The Director of

Airports may, from time to time, authorize a later opening or earlier closing time for any location, provided it first finds that Concessionaire has submitted adequate justification therefore.

Section 5.4. **Food Services Plan and Menu.** Concessionaire's food services plan, prices and menu shall be as Concessionaire has proposed for each facility and City has approved. During the term, Concessionaire shall make no changes to the food services, plan, menu or prices of any item on the approved menu without first obtaining the prior written approval of the director of Airports. The Director of Airports shall require the same information, and apply the same criteria to each proposed change as is described in this Section 5.4 and its Subsections.

Section 5.4.1. **Menu.** Concessionaire's proposed menu and all subsequent menus shall include a description of each item, including the weight of each portion and the government grade of government quality (if any) for its component item(s). No menu shall misrepresent quality, grade or weight of any item.

Section 5.4.2. **Publicly Displayed Menu.** Prices for each item sold in each facility shall be conspicuously displayed to the satisfaction of the Director of Airports as to information given, design, type, size, style, color, and all other specifics. Said prices shall not exceed the approved prices for said items.

Section 5.4.3. **Amendments May Be Required.** The Director of Airports may re-evaluate the selection of items during the term. The Director of Airports' determination that the selection offered is inadequate (in general or at any particular location), or that any price is excessive, or that the quality or quantity of any item is deficient, shall be conclusive. Concessionaire may meet and confer with the Director of Airports regarding such matters.

Section 5.4.4. **Quality of Foods and Beverages.** All foods and beverages offered for sale by Concessionaire shall be of high quality, and comparable to first class food and beverage facilities of a similar type in the Midland area.

Section 5.4.5. **Prices.** All food and beverage products offered for sale by Concessionaire shall be priced reasonably in comparison to like facilities serving similar products to the general public in the Midland area. What constitutes “like facilities” and “comparability of prices” shall be determined solely by City but generally in accordance with the following guidelines: Like facilities shall generally mean casual dining establishments located within the City of Midland. Prices no more than ten percent (10%) over the average of a minimum of three (3) like facilities for similar menu items of similar portions and presentations shall be deemed to be reasonable.

Section 5.5. **Cash and Record Handling Requirements.** Concessionaire shall prepare a description of its cash handling and sales recording systems and equipment which shall be submitted to the Director of Airports for approval. When approved by the Director of Airports, such systems and equipment, including any revisions thereto approved by the Director of airports, shall be utilized by Concessionaire in its operations at Airport.

Section 5.5.1. **Cash Registers.** Concessionaire shall accurately record each sale on a point of sale register acceptable to the Director of Airports. Such register shall be non-resettable and sufficient to supply an accurate record of all sales on tape or otherwise as directed by the Director of Airports. Such register shall have a counter visible to the purchaser.

Section 5.6. **Credit Cards.** Customers shall be permitted to utilize at a minimum the following credit cards in payment for good and beverage sales over ten dollars (\$10.00): Visa, MasterCard and American Express.

Section 5.7. **Prohibited Acts.** Concessionaire shall not do or permit to be done anything specified in Sections 5.7.1 through 5.7.7. Specifically, it shall not:

Section 5.7.1. **Interfere with Access.** Do anything which may interfere with free access and passage in the concession premises or the areas adjacent thereto, or in the elevators, escalators, streets or sidewalks of the Airports, or hinder police, fire fighting or other emergency personnel in the discharge of their duties, or hinder access to utility, heating, ventilating or air-conditioning systems, or portions thereof, on or adjoining the concession premises.

Section 5.7.2. **Interfere with Systems.** Do anything which may interfere with the effectiveness of utility, heating, ventilating or air-conditioning systems or portions thereof on or adjoining the concession premises (including lines, pipes, wires, conduits and equipment connected with or appurtenant thereto) or interfere with the effectiveness of elevators or escalators in or adjoining the concession premises, or overload any floor in the concession premises;

Section 5.7.3. **Permit Smoking where Prohibited.** Do anything contrary to City's policy, or City's ordinance, prohibiting smoking. At the present time, said policy prohibits smoking in the Terminal Building, including all food and beverage areas.

Section 5.7.4. **Install Unauthorized Locks.** Place any additional lock of any kind upon any window or interior or exterior door in the concession premises, or make any change in any existing door or window lock or the mechanism thereof, unless a key therefore is maintained on the concession premises, nor refuse, upon the expiration or sooner termination of this Agreement, to surrender to the Director of Airports any and all keys to the interior or exterior doors on the concession premises, whether said keys were furnished to or otherwise procured by Concessionaire, and in the event of the loss

of any keys furnished by the Director of Airports, Concessionaire shall pay City, on demand, the cost for replacement thereof, and the cost of re-keying City's locks;

Section 5.7.5. **Increase Liability**. Do any act of thing upon the concession premises which will invalidate, suspend or increase the rate of any fire insurance policy required under this Agreement, or carrier by City, covering the concession premises, or the buildings in which the same are located or which, in the opinion of the Director of Airports, may constitute a hazardous condition that will increase the risks normally attendant upon the operations contemplated under this Agreement. If, by reason of any failure on the part of Concessionaire after receipt of notice in writing from City to comply with the provisions of this paragraph, any fire insurance rate on the concession premises, or any part thereof, or on the buildings in which the same are located, shall at any time be higher than it normally would be, then Concessionaire shall pay City, on demand, that part of all fire insurance premiums paid by City which have been charged because of such violation of failure of Concessionaire; provided, however, that nothing contained herein shall preclude Concessionaire from bringing, keeping or using on or about the concession premises such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its business, or from carrying on said business in all respects as is customary;

Section 5.7.6. **Permit Loitering or Lodging**. Permit undue loitering on or about the concession premises or use the concession premises, or any part thereof, for lodging or sleeping purposes; or

Section 5.7.7. **Permit Unlawful Use**. Use or allow the concession premises to be used for any improper, immoral, unlawful or objectionable purposes.

Section 5.8 **Signs, Advertising & Displays**. Concessionaire shall not erect, construct or place any sign, advertisement or display upon any portion of the premises without first

obtaining the prior written approval of City. Concessionaire shall not erect, construct or place any sign, advertisement or display outside the premises.

Section 5.8.1. **Removal of Signs.** Upon the termination, cancellation or expiration of this Agreement, Concessionaire shall remove, obliterate or paint out, any and all of its signs, advertising and displays as the Director of Airports may direct. If Concessionaire fails to do so, City may cause said work to be done at the expense of Concessionaire.

Section 5.9. **Removal of Garbage and Refuse.** Concessionaire shall strictly comply with all Airport and other rules and regulations regarding the disposition of trash and garbage, shall regularly remove from all concession premises to the garbage or refuse disposal area all rubbish, refuse and garbage and shall remove the accumulation of all such material in said garbage or refuse disposal area at frequent intervals. Accumulation of trash, boxes, cartons, barrels or other similar items shall not be permitted in any public area at Airport. Concessionaire shall not remove trash or garbage through public or common areas (including concourses and sidewalks).

Section 5.10. **Taxes.** Concessionaire shall pay all taxes of whatever character that may be levied or charged upon the rights of Concessionaire to use the concession premises, or upon Concessionaire's improvements, fixtures, equipment or other property thereon or upon Concessionaire's operations hereunder.

Section 5.11. **Licenses and Permits.** Concessionaire shall obtain and pay for all licenses and permits necessary or required by law for the conduct of said operations.

ARTICLE VI
OBLIGATIONS OF CITY

Section 6.0 **Obligations of City.** During the term of this Agreement, City agrees and covenants to meet the following obligations and provide the following services:

Section 6.1. **Maintenance of Public Areas.** City shall maintain the public areas of the Terminal Building in good order and safe condition, and shall maintain approaches to the Terminal Building and the public ways adjacent thereto in a safe and usable condition at all times, subject to reasonable interruptions due to inclement weather;

Section 6.2. **Maintenance of Electric Service.** City shall, at its sole expense, furnish and maintain to the Leased Premises electric power lines and service needed by Concessionaire in the conduct of its business;

Section 6.3. **Employee Parking.** City shall provide automobile parking space for employees of Concessionaire in such manner similar to or equal that provided for employees of other Airport agencies; and

Section 6.4. **City Shall Cooperate.** City shall cooperate with Concessionaire as reasonably necessary to facilitate concessionaire's activities in providing food and beverage service.

ARTICLE VII
DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

Section 7.0. **Disadvantaged Business Enterprise Program.** It is the policy of City of Midland that Disadvantaged Business Enterprises (DBEs) shall have the maximum opportunity to share in the benefits from airport concession leasing through substantial and meaningful participation.

Section 7.1. **Replacement/Substitutions of DBEs.** The Concessionaire is required to have a valid arrangement with the DBE(s) designated to fulfill the contract goal. The Concessionaire will be allowed to subtitle the originally designated DBE(s) only if it is demonstrated to City that the DBE(s) is unwilling or unable to perform. The Concessionaires ability to negotiate a more advantageous contract with another DBE firm will not be considered a valid basis for substitution. If a DBE is unwilling or unable to perform, the Concessionaire shall inform City in writing and include documentation to justify the substitution, including a statement from the DBE to be replaced acknowledging the substitution. The Concessionaire will identify a replacement DBE or document good faith efforts to replace the DBE with another DBE. If the Concessionaire or a non-DBE firm performs the work originally committed to a DBE, the Concessionaire shall submit a revised DBE plan to the Director of Airports detailing how the DBE goal will be met or will supply documentation detailing good faith efforts which have been made to meet the goal.

Section 7.2. **DBE Reports.** Concessionaire shall submit, in the format required by the Director of Airports, a monthly report of DBE utilization. Said report shall be submitted with the monthly report of gross receipts as required in Section 4.5 herein.

ARTICLE VIII
IMPROVEMENTS

Section 8.0. **Improvement Proposal**. Concessionaire shall design and improve the facilities as proposed by Concessionaire and accepted and approved by City.

Section 8.1. **Condition of Premises**. City shall deliver the concession areas specified herein to the Concessionaire, in the condition left by the prior tenant. Utilities will be delivered to the premises. The Concessionaire shall accept such premises “as is”.

Section 8.2. **Improvements Required of Concessionaire**. Concessionaire shall provide all improvements which are necessary to operate said concession to the satisfaction of City, including all improvements proposed to be provided in its proposal to City and accepted by City.

Section 8.3 **Improvements Financial Obligation**. The successful proposer is responsible, at their sole expense, for the plan, design and renovations of the existing concession locations subject to the approval by the City. The successful proposer shall invest the amount necessary to accommodate the proposed food service. No minimum investment is specified.

Section 8.4. **Mid-Term Refurbishment**. After the commencement of the fifth year, and before the end of the sixth year of the term hereof, Concessionaire shall refurbish the facilities. Said refurbishing shall include, but shall not be limited to, all refinishing, repair, replacement, redecorating and painting necessary to keep said areas in first-class condition. Concessionaire shall not expend less than \$110,000.00 for the required mid-term refurbishment. Concessionaire shall pay to City an amount equal to the shortfall, if any, between said refurbishment amount and its actual investment as of the last day of the sixth year hereof. Said payment shall be made on or before the thirtieth day of the seventh year hereof. The amount spent for mid-term refurbishment shall be exclusive of any amount spent

for normal repair and maintenance as determined in the sole discretion of the Director of Airports.

Section 8.5. **No Liens.** All construction work done, equipment supplied and installed and interior design and decor furnished by Concessionaire pursuant to this Section shall be at its sole cost and expense, free and clear of liens for labor and material and Concessionaire shall hold City harmless from any liability in respect thereto.

Section 8.6. **Construction Bond.** Prior to the commencement of construction by Concessionaire, Concessionaire shall furnish, at its sole cost and expense, both Performance and Payment Bonds in the principal sum of the amount proposed by Concessionaire in Section 8.3 herein, or the security deposit for said amount acceptable to the Director of Airports, to guarantee compliance with this Section. This Bond shall be in a form acceptable to City and be issued by a surety company authorized and licensed to transact business in the State of Texas and be for the full amount stated above with City of Midland as obligee conditioned upon full, faithful and satisfactory performance by Concessionaire of its obligations to construct and install the aforementioned facilities and improvements. The above-stated principal amount of said Bond or other security deposit, however, may be reduced during the term hereof as Concessionaire completes the improvements contemplated thereby.

Section 8.7. **City Approval of Improvements.** Prior to any work being done, Concessionaire shall obtain City's written approval of all plans, and shall obtain all other Permits and approvals required by law.

Section 8.8. **Overall Construction Program.** Prior to the construction and installation of improvements including furniture, furnishings, and equipment, Concessionaire shall first prepare a transition plan including a time schedule for same, which shall be subject to approval of City. Such schedule shall include as a minimum the following milestones: (1) Conceptual Design; (2) Design Development; (3) Construction Documents; (4) Plan Check and Permit; (5)

Bid; (6) Construction; and (7) Plan to conduct interim operations during construction of renovations at the existing concession locations.

Section 8.9. **Utilities – Installation.** Concessionaire shall provide distribution of utilities with the premises.

Section 8.10. **Plans and Specifications.** Concessionaire shall, at its own cost and expense, employ competent architects, engineers and interior designers who will prepare architectural, interior and engineering designs, including detailed plans, specifications, and cost estimates of all concession improvements, decor and equipment to be installed in the concession areas. Concessionaire shall at its' own cost and expense and prior to the start of construction, obtain all necessary permits. Concessionaire shall submit three (3) sets of plans, specifications and/or cost estimates for review and approval by City at each milestone, including the Overall Program, Conceptual Design, Design Development, and Construction Documents phases of the project.

Section 8.12. **Adherence to Plans and Specifications.** Upon approval by City of the detailed plans, specifications, equipment, cost estimates and the interior design and decor of the concession improvements, Concessionaire shall forthwith cause said work to be commenced and completed with reasonable dispatch. No substantial change, addition or alteration shall be made in the scope of the work so approved without first obtaining City's writing. No structural or other improvements, decor or equipment, other than as contemplated herein shall be made in or upon the concession areas without the written consent of City being first had and obtained, and any conditions relating thereto then stated by City shall become conditions hereof as if they had been originally stated herein.

Section 8.13. **Future Work.** After completion of the structural or other improvements and installation of equipment and interior design and decor, as above provided, Concessionaire shall not make any structural alterations to the ceilings, walls or floors of any permanent

improvements which it constructs or installs in the concession areas without first obtaining City's written consent; provided, however, that Concessionaire may make nonstructural alterations which the exigencies of the operation of its concession demand in order to promote efficiency in the operation thereof.

Section 8.14. **Building Codes**. All structural or other improvements, equipment and interior design and décor constructed or installed by Concessionaire in the concession areas, including the plans and specifications therefore, shall in all respects conform to and comply with the applicable statutes, ordinances, building codes, rules and regulations of City and such other authorities as may have jurisdiction over the concession areas or Concessionaire's operations therein. The approval by City provided above shall not constitute a representation or warranty as to such conformity or compliance, but responsibility therefore shall at all times remain in Concessionaire.

Section 8.15. **Other Permits**. Concessionaire, at its sole cost and expense, shall also procure all building, fire, safety and other permits necessary for the construction of the structural and other improvements, installation of the equipment and the interior design and décor.

Section 8.16. **Worker's Comp**. Prior to commencement of any such construction, Concessionaire shall first submit to City a certificate of insurance evidencing the fact that Concessionaire maintains workers' compensation and employers liability coverage in the amounts and form required by the Worker's Compensation Act and insurance laws of the State of Texas. Such certificate shall contain the applicable policy number and the inclusive date for same, shall bear an original signature of an authorized representative of the insurance carrier and shall also provide thereon that the insurance shall not be subject to cancellation except after notice by registered mail to City at least thirty (30) days prior to the date of cancellation.

Section 8.17. **Sub-Contractors Insurance**. Concessionaire shall require by any contract that it awards in connection with the structural or other improvements, the installation of any and all equipment and the interior designing and décor, that the contractor doing, performing or furnishing the same shall comply with all applicable statutes, ordinances, codes, rules and regulations, submit to City evidence of required insurance coverage and comply with all applicable provisions of the Civil Code of the State of Texas.

Section 8.18. **As-Builts**. Upon completion of the concession improvements, Concessionaire shall, within a reasonable time thereafter, furnish City, at no charge: (1) a certificate certifying that the improvements have been constructed in accordance with the approved plans and specifications and in strict compliance with all laws, rules, ordinance and governmental rules, regulations and orders; (2) two complete, reproducible sets of as-built drawings covering the structural and other improvements installed by Concessionaire in the concession areas plus the location and details of installation of all equipment, utility lines, heating, ventilating, air-condition ducts and related matters. Concessionaire shall keep said drawings current by updating the same in order to reflect thereon any changes or modifications which may be made in or to the premises; and (3) as installation of the foregoing structural and equipment items, including counters, partitions and furnishing and the interior design and décor is completed, duplicated receipted invoices on all materials and labor costs incurred in their installation which Concessionaire enters on its records as representing its capital expenditures in the concession areas.

Section 8.19. **Ownership of Improvements**. Concessionaire shall have the rights to the ownership of the improvements, installed as part of this agreement, subject to the conditions provided in Section 8.21 through 8.23.

Section 8.20. **Installation Costs**. All of the foregoing improvements, décor and equipment shall be furnished, supplied, installed and constructed by Concessionaire at its sole cost and expense.

Section 8.21. **Ownership During Term.** Federal investment tax credit applicable to concession improvements shall belong to Concessionaire.

Section 8.22. **Ownership Upon Termination.** Title to all leasehold improvements and furniture, fixtures and equipment which cannot be removed without causing structural damage shall vest in City upon termination of the contract. If the Concessionaire's occupancy of a given facility is terminated pursuant to Section 10.1 herein, City will reimburse Concessionaire for the unamortized Net Book Value of its existing structural improvements (and improvements which cannot be removed without doing structural damage) based upon a 10-year straight-line depreciation, with no residual value, provided the Concessionaire has reported each improvement, its costs, and the date upon which its depreciation began, and also provided that architectural and design costs do not exceed 10% of the cost of the improvements and all said costs are properly supported and made available for audit. All said costs must be direct costs paid by Concessionaire to independent contractors and suppliers for work actually performed on said premises, materials furnished or professional services rendered. Costs associated with Concessionaire's employees shall not be included in the calculation of these costs. To become reimbursable the Concessionaire shall at its expense provide City with "as-built" drawings and paid invoices, showing material and labor costs involved in the construction of the approved structural improvement within 90 days of the date that the improvement was put into service. The straight line depreciation shall begin on the first day of the month in which the improvement was placed in service. City may require Concessionaire to remove any or all of its removable improvements. Title to all improvements for which Concessionaire is reimbursed or which have been depreciated shall thereupon vest in City.

ARTICLE IX
MAINTENANCE AND REPAIR

Section 9.0. **Maintenance and Repair.** Concessionaire shall, at all times and at its expense, keep and maintain the concession premises, including all structural and other improvements installed on the premises together with all of its fixtures, plate and mirror glass, equipment and personal property therein, in good repair and in a clean and orderly condition and appearance and shall keep the areas immediately adjacent to the exits and entrances to the concession premises clean and orderly and free of obstructions.

Section 9.1. **Maintenance Program.** Concessionaire shall maintain and repair all interior areas and surfaces of the premises, including sweeping, washing, servicing, repairing, replacing, cleaning and interior painting that may be required to properly maintain the premises in a safe, clean, wholesome, sanitary, orderly and attractive condition. Concessionaire shall establish an adequate preventive maintenance program and the provisions of same shall be subject to periodic review by City. Said program shall include, without limitation, the cleaning and repair of all floors, interior walls, ceilings, lighting, décor and equipment. Regardless of Concessionaire's compliance with its preventive maintenance program, Concessionaire shall clean such surfaces and equipment immediately upon being instructed to do so by City or by other governmental agencies having such authority.

Section 9.2. **Maintenance of Plumbing.** Concessionaire shall be responsible for the repair and maintenance of all plumbing within the leasehold area. Concessionaire is responsible for all material that is deposited in the plumbing system from their leasehold and for cleaning the grease traps within their leasehold. Repair and maintenance of all piping within the leasehold is the responsibility of Concessionaire. Concessionaire is responsible for the repair and maintenance of all sewer lines from the leasehold to the point that the line connects to an Airports main sewer line. Concessionaire is responsible for the repair and maintenance of all domestic water lines, hot and cold, from the point of connection of the

Airports water meter throughout the leasehold. If Concessionaire fails to maintain the plumbing system or places liquid, grease, debris, etc. that results in stoppage or damage to Airports maintained plumbing, Concessionaire will be billed for the cost thereof, plus fifteen percent (15%) for administrative overhead, to be paid by Concessionaire to City on demand.

Section 9.3. **City May Repair.** In the event Concessionaire fails to accomplish such nonstructural repairs, replacements, rebuilding, redecorating or painting required hereunder within a period of ten (10) days after written notice from City so to do, or fails to diligently repair, replace, rebuild, redecorate or paint all the premises required to be repaired, replaced, rebuilt, redecorated or painted by Concessionaire pursuant to said schedule, City may, at its option, and in addition to all other remedies which may be available to it, repair, replace, rebuild, redecorate or paint any such premises included in said notice, the cost thereof, plus fifteen percent (15%) for administrative overhead, to be paid by Concessionaire to City on demand.

Section 9.4. **Right to Enter Premises.** City shall have the right to enter upon the concession premises at all reasonable times to make such repairs, alterations and replacements as may, in the opinion of the Director of Airports, be deemed necessary or advisable and, from time to time, to construct or install over, in, under or through the concession premises new lines, pipes, mains, wires, conduits and equipment; provided, however, that such repair, alteration, replacement or construction shall not unreasonable interfere with the use of the concession premises by Concessionaire and provided rather, that nothing herein shall be so construed as relieving Concessionaire of any obligation imposed upon it herein to maintain the concession areas and the improvement and utility facilities therein. City shall have the right to enter the premises at any time to maintain or repair emergency systems when loss of life or damage to property may result.

Section 9.5. **Pest Control.** Concessionaire shall be solely responsible for a pest free environment within its leasehold area by maintaining its own pest control services, in

accordance with the most modern and effective control procedures. All materials used in pest control shall conform to Federal, State and local laws and ordinances. All control substances utilized shall be used with all precautions to obviate the possibility of accidents to humans, domestic animals and pets. Pests referenced above include, but are not limited to, cockroaches, ants, rodents, silverfish, earwigs, spiders, weevils and crickets. Whenever City deems that pest control services must be provided to a building or area that includes premises under this Agreement, Concessionaire shall pay for the costs of services provided for its premises under this Agreement.

ARTICLE X EXPANSION, REDUCTION, RELOCATION

Section 10.0. **Reduction of Premises.** City may, by appropriate Resolution fully setting forth the reasons therefore, require Concessionaire to surrender any portion of the concession premises at any time. City will use its best efforts to provide substitute space of equal size, with equal frontage in an area accessible to the public.

Section 10.1. **Relocation of Premises.** City may, by appropriate Resolution, require Concessionaire to relocate a given operation to a new location.

Section 10.2. **Finding is Required.** Sections 10.0 and 10.1 shall only be implemented upon a finding by City that such enlargement/relocation is necessary to its operation of the airport or to meet the demands of the public.

Section 10.3. **Buy-Out.** In the event that Concessionaire is required to surrender in whole or relocate any of its operating premises, City will reimburse Concessionaire for the unamortized Net Book Value of its existing structural improvements (and improvements which cannot be removed without doing structural damage) for that facility based upon a 10-year straight-line depreciation, with no residual value, provided the Concessionaire has obtained all

necessary approvals for their construction, and also provided the Concessionaire has reported each improvement, its costs, and the date upon which its depreciation began, and also provided that architectural and design costs do not exceed 10% of the cost of the improvements and all of said costs are properly supported and made available for audit. All said costs must be direct costs paid by Concessionaire to independent contractors and suppliers for work actually performed on said premises, materials furnished or professional services rendered. Costs associated with Concessionaire's employees shall not be included in the calculation of these costs. To become reimbursable the Concessionaire shall at its expense provide City with "as-built" drawings and paid invoices, showing material and labor costs involved in the construction of the approved structural improvement within 90 days of the date that the improvement was put into service. The straight line depreciation shall begin on the first day of the month in which the improvement was placed in service. The Director of Airports may require Concessionaire to remove any or all of its removable improvements. City may, at its sole discretion, enter into good faith negotiations with Concessionaire relating to the impact of the change in Premises upon Concessionaires financial investment as well as Concessionaires Minimum Annual Fee.

ARTICLE XI

TERMINATION/CANCELLATION

Section 11.1. **Cancellation or Termination by City.** City shall have the right to cancel or terminate this Agreement in its entirety and all rights ensuing therefrom upon giving a thirty (30) day written notice to Concessionaire and allowing Concessionaire a thirty (30) day period to cure any one or more of the events appearing in provisions 11.1.1 through 11.1.15 occur:

Section 11.1.1. **Delinquent Payments/Reports.** Concessionaire fails to pay the fees and charges or to make any other payments required hereunder or fails to file gross receipts reports or other financial reports when due to City within ten (10) days after receipt of written notice from City of delinquency therefore;

Section 11.1.2. **Recurring Disputes.** Concessionaire disputes deficiency assessments repeatedly or is assessed liquidated damages of more than \$5,000 annually;

Section 11.1.3. **Incomplete Records.** Concessionaire fails to maintain adequate records and accounts reflecting its business and gross receipts;

Section 11.1.4. **Revocation of Licenses.** An act occurs which results in the suspension or revocation of the rights, powers, licenses, permits and authorities necessary for the conduct and operation of the business authorized herein for a period of more than thirty (30) days;

Section 11.1.5. **Transfer of Interest.** The interest of Concessionaire under this agreement is transferred, passes to or devolves upon, by operation of law or otherwise, any other person, firm or corporation without the written consent of Board;

Section 11.1.6. **Consolidation or Dissolution.** Concessionaire becomes, without the prior written approval of City, a successor or merged corporation in a merger, a constituent corporation in a consolidation or a corporation in dissolution;

Section 11.1.7. **Failure to Perform.** Concessionaire fails to keep, perform and observe each and every promise, covenant and condition set forth in this Agreement on its part to be kept, performed or observed after receipt of written notice of default from City, except where fulfillment of Concessionaire's obligation requires activity over a period of time and Concessionaire has commenced to perform whatever may be required within ten (10) days after receipt of such notice and continues such performance without interruption except for causes beyond its control;

Section 11.1.8. **Attachment.** An attachment or execution is levied, or a receiver is appointed or of any other process of any court of competent jurisdiction is executed which is not vacated, dismissed or set aside within a period of ninety (90) days and which does, or as a direct consequence of such process will, interfere with Concessionaire's use of the concession premises or with its operations under this Agreement.

Section 11.1.9. **Insolvency.** Concessionaire comes insolvent, or takes the benefit of any present or future insolvency statute, or makes a general assignment for the benefit of creditors, or files a voluntary petition in bankruptcy, or a petition or answer seeking an arrangement for its reorganization, or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States, or of any state law, or consents to the appointment of a receiver, trustee or liquidator of all or substantially all of its property or its property located within the concession areas;

Section 11.1.10. **Bankruptcy.** By order or decree of court, Concessionaire is adjudged bankrupt, or an order is made approving a petition filed by any of the creditors or stockholders of Concessionaire seeking its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws, or under any law or statute of the United States, or any state thereof;

Section 11.1.11. **Petition for Bankruptcy.** A petition under any part of the federal bankruptcy laws, or an action under any present or future solvency laws or statute is filed against concessionaire and is not dismissed within one hundred twenty (120) days;

Section 11.1.12. **Control by Receiver.** By or pursuant to, or under authority of, any legislative act, resolution or rule, order or decree of any court, governmental

board, agency or officer having jurisdiction, a receiver, trustee or liquidator takes possession or control of all or substantially all of the property of concessionaire, and such possession or control continues in effect for a period of one hundred twenty (120) days;

Section 11.1.13. **Adverse Operation.** Service ceases or deteriorates for any period which, in the opinion of city materially and adversely affects the operation of service required to be performed by Concessionaire under this Agreement;

Section 11.1.14. **Lien.** Any lien is filed against the concession premises because of any act or omission of Concessionaire and such lien is not removed, enjoyed or a bond for satisfaction of such lien is not posted within sixty (60) days; or

Section 11.1.15. **Abandonment.** Concessionaire voluntarily abandons, deserts, vacated or discontinues its operation of the business herein authorized.

Section 11.2. **City's Rights of Reentry.** City shall, as an additional remedy, upon the giving of written notice of cancellation or termination as above provided in Section 11.1 and its subsections, have the right to reenter the premises and every part thereof on the effective date of cancellation or termination without further notice of any kind, remove any and all persons therefrom and regain and resume possession either with or without the institution of summary or legal proceedings otherwise. Such reentry, however, shall not in any manner affect, alter or diminish any of the obligations of Concessionaire under this Agreement.

Section 11.3. **Surrender of Possession.** Concessionaire covenants and agrees to yield and deliver possession of the concession premises to City on the date of the termination, cancellation or expiration of this Agreement promptly, peaceably, quietly and in as good order and condition as the same now are or may be hereafter improved by Concessionaire of city, reasonable use and wear and tear thereof excepted.

Section 11.4. **Right to Remove Equipment.** Subject to the provisions of Article VIII and its subsections herein, Concessionaire shall have the right to remove its equipment, supplies, furnishings, inventories, removable fixtures and other trade fixtures and personal property from the concession premises. If Concessionaire fails to remove said property, said property shall be considered abandoned and City may dispose of same as it sees fit.

Section 11.5. **Acceptance is Not a Waiver.** No acceptance by City of the fees and charges for other payments specified herein, in whole or in part, and for any period or periods, after a default of any of the terms, covenants and conditions to be performed, kept or observed by Concessionaire, other than the default in the payment thereof, shall be deemed a waiver of any right on the part of City to cancel or terminate this Agreement on account of such default.

Section 11.6. **Waiver is Not Continuous.** No waiver by City at any time of any default on the part of Concessionaire in the performance of any of the terms, covenants or conditions hereof to be performed, kept or observed by Concessionaire shall be or be construed to be a waiver at any time thereafter by City of any other or subsequent default in performance of any of said terms, covenants or conditions, and no notice by City shall be required to restore or revive time as of the essence hereof after waiver by City of default in one or more instances.

Section 11.7. **Survival of Concessionaire's Obligations.** In the event this Agreement is terminated or canceled by City, or in the event City reenters, regains or resumes possession of the concession premises, all of the obligations of Concessionaire hereunder shall survive and shall remain in full force and effect for the full term of this Agreement.

Section 11.8. **Exercising City's Right of Cancellation.** City may exercise such rights of termination and cancellation as provided herein by written notice to Concessionaire after passage of the applicable time period provided herein and this Agreement shall terminate as of the date of receipt of said notice by Concessionaire. Any fees due hereunder shall be payable

only to said date of termination and cancellation and thereafter all of Concessionaire's rights and privileges and City's obligations shall cease and all improvements made by Concessionaire upon the Leased Premises shall remain in or upon the Leased Premises and shall become the property of City. It is agreed that failure of City to declare this Agreement terminated or canceled upon the default of Concessionaire for any of the reasons set forth herein shall not operate to bar or stop City from declaring this Agreement terminated or canceled by reason of any subsequent violation of the terms of this Agreement.

Section 11.9. **Cancellation or Termination by Concessionaire.** This Agreement may be canceled or terminated by Concessionaire by giving a thirty (30) day written notice to City upon the happening of one or more of the occurrences specified in Sections 11.9.1 through 11.9.5.

Section 11.9.1. **Permanent Abandonment.** The permanent abandonment of Airport's passenger terminals for use by airlines or the permanent removal of all certificated passenger airline service from Airport;

Section 11.9.2. **Material Restriction of Operation.** The lawful assumption by the United States government, or any authorized agency thereof, of the operation, control or use of Airport, or any substantial part thereof, in such manner as to materially restrict Concessionaire from operating thereon for a period of at least ninety (90) consecutive days;

Section 11.9.3. **Major Destruction of Premises.** The complete destruction of one third or more of the concession premises from a cause other than the negligence or omission-to-act of Concessionaire, its subcontractors, agents, or employees, and the subsequent failure of City to repair or reconstruct said premises within twelve (12) months after such destruction;

Section 11.9.4. **Federally-Required Amendments.** Any exercise of authority as provided in Section 15.25 hereof which shall so interfere with

Concessionaire's use and enjoyment of the concession premises as to constitute a termination, in whole or in part, of this Agreement by operation of law in accordance with the laws of the United States; or

Section 11.9.5. **Default by City.** The default by city in the performance of any covenant or agreement herein required to be performed by City and the failure of City to remedy such default for a period of sixty (60) days after receipt from Concessionaire of written notice to do so.

Section 11.10. **Exercising Concessionaire's Right of Cancellation.** Concessionaire may exercise such rights of cancellation and termination by written notice to City at any time after the passage of the applicable period provided herein and the fees due under this Agreement shall be payable only to the date of said termination or cancellation and thereafter all of Concessionaire's rights and privileges and City's obligations shall cease, and all improvements made by Concessionaire upon the Leased Premises shall remain in or upon the Leased Premises and shall become the property of City. It is agreed that the failure of Concessionaire to declare this Agreement terminated or canceled upon the default of City for any of the reasons set forth herein shall not operate to bar or stop Concessionaire from declaring this Agreement terminated or canceled by reason of any subsequent violation of the terms of this Agreement by City.

Section 11.11. **Removal of Improvements.** Concessionaire shall have the rights to the removal of the improvements, installed as part of this Agreement, subject to the conditions provided in Section 11.11.1 through 11.11.2.

Section 11.11.1 **Damaged Improvements.** In the event that the structural or other improvements or furnishings and supplies constructed or installed by Concessionaire in any or on all of the various concession premises are damaged or destroyed, in whole or in part, from any cause whatsoever, Concessionaire shall

forthwith proceed with the removal of the debris and damaged or destroyed structural or other improvements, equipment, furnishings and supplies and thereafter shall proceed with all dispatch with the reconstruction work necessary to restore the damaged or destroyed concession premises to the condition they were in prior to the occurrence of such damage or destruction and all costs and expense incurred in connection therewith shall be paid by Concessionaire.

Section 11.11.2. **City may Renovate.** If, during the last month of this Agreement, Concessionaire has removed all or substantially all of its property from the concession premises, City may enter said premises and alter, renovate and redecorate the same.

ARTICLE XII

DAMAGE OR DESTRUCTION OF PREMISES

Section 12.1. **Damage or Destruction to Premises.** In the event of Damage or Destruction to Premises, Sections 12.1.1 through 12.1.4 shall apply.

Section 12.1.1. **Partial Damage.** If all or a portion of the concession premises are partially damaged by fire, explosion, the elements, public enemy or other casualty, but not rendered uninhabitable, the same will be repaired with due diligence by City at its own cost and expense, subject to the limitations as hereinafter provided, however, that if said damage is caused by the negligence or omission to act of Concessionaire, its subcontractors, agents or employees, Concessionaire shall be responsible for reimbursing City for the cost and expenses incurred in such repair.

Section 12.1.2. **Extensive Damage.** If the damages are so extensive as to render the concession premises or a portion thereon uninhabitable, but are capable of being repaired within thirty (30) days, the same shall be repaired with due diligence by City at its own

cost and expense, subject to the limitations as hereinafter provided, and an appropriate portion of the fees and charges payable herein shall abate from the time of the damage until such time as the premises are fully restored and certified by City as again ready for use; provided, however, that if said damage is caused by the negligence or omission to act of Concessionaire, its subcontractors, agents or employees, said fees and charges will not abate and Concessionaire shall be responsible for reimbursing City for the cost and expenses incurred in such repair.

Section 12.1.3. **Complete Destruction.** In the event all or a substantial portion of the concession premises are completely destroyed by fire, explosion, the elements, public enemy or other casualty, or are so damaged that they are uninhabitable and cannot be replaced except after more than thirty (30) days, City shall not be obligated to repair, replace or reconstruct said premises, and a proportionate portion of the fees and charges payable hereunder shall abate as of the time of such damage or destruction and shall henceforth cease until such time as the said premises are fully restored. If within twelve (12) months after the time of such damage or destruction said premises have not been repaired or reconstructed, Concessionaire may cancel this Agreement in its entirety as of the date of such damage or destruction.

Section 12.1.4. **Destruction due to Negligence.** Notwithstanding the foregoing, if the said premises, or a substantial portion thereof, are completely destroyed as a result of the negligence or omission to act of Concessionaire, its subcontractors, agents or employees, said fees and charges shall not abate and City may, in its discretion, require Concessionaire to repair and reconstruct said premises within twelve (12) months of such destruction and may pay the cost therefore, or City may repair and reconstruct the same within twelve (12) months of such destruction and Concessionaire shall be responsible for reimbursing City for the cost and expenses incurred in such repair.

Section 12.2. **Limits of City's Obligations.** In the application of the foregoing provisions, City's obligations shall be limited to repair or reconstruction of the concession premises to the same extent and of equal quality as obtained by Concessionaire at the commencement of its operations hereunder. Redecoration and replacement of furniture, equipment and supplies shall be the responsibility of Concessionaire and any such redecoration and refurbishing/ reequipping shall be equivalent in quality to that originally installed.

ARTICLE XIII INSURANCE AND INDEMNIFICATION

Section 13.0. **Liability.** Concessionaire shall comply with the Hold Harmless, Faithful Performance Bond & Insurance provisions which follow.

Section 13.1. **Indemnity.** **CONCESSIONAIRE WILL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF CONCESSIONAIRE,** its agents or employees, or any subcontractor, arising out of, or resulting from, Concessionaire's use of, or activities on, the Agreement Premises, and Concessionaire will be required to pay any judgment with costs which may be obtained against City or any of its officers, agents or employees, including reasonable attorney's fees.

CONCESSIONAIRE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, PROPERTY DAMAGE, LOSSES, AND EXPENSE OF ANY CHARACTER WHATSOEVER INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR

PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF CITY, CITY'S OFFICERS, AGENTS AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH CONCESSIONAIRE OR CONCESSIONAIRE'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 CONCESSIONAIRE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF CITY'S OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

Section 13.2. **Performance and Payment Bonds.** Within thirty (30) days after award of this Agreement, Concessionaire shall furnish to City, at Concessionaire's sole cost and expense, and shall keep in force and effect during the complete term of this Agreement and for thirty (30) days thereafter, Performance and Payment Bonds in the continuing penal sum of not less than one fourth of the minimum annual proposal amount inserted by proposer in Section 4.1.4 herein, guaranteeing full performance by Concessionaire of all of the terms, covenants and conditions herein, including, but not limited to, payment of the compensation specified herein.

Section 13.3. **Bond Requirements.** Said Bond shall be issued by a surety company authorized and licensed to transact business in the State of Texas, be for the amount stated above with City of Midland, as obligee and shall not be subject to cancellation or non-renewal except after the expiration of thirty (30) days written notice by certified mail, return receipt requested, to City of Midland.

Section 13.4. **Insurance.** Concessionaire 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
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Worker's Compensation:	Statutory limits
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Employers' Liability:	\$500,000.00 per accident or occurrence
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The Commercial General Liability shall be on a per project or policy aggregate, including completed operations, and shall be on an occurrence basis.

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

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

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

required pursuant to this Agreement, including Worker's Compensation Insurance, shall provide for a waiver of subrogation as to the City.

The parties agree that, prior to the execution of the Agreement, Concessionaire shall provide one or more certificates of insurance showing that the requirements of this article have been met, and specifically containing, without limitations, the following endorsement:

"The City of Midland is included as an additional insured, on a claims occurred basis, on all policies except for Worker's Compensation. The Concessionaire and Insurer hereby waive all rights of subrogation with respect to claims against the City of Midland, its agents, employees and officers, on all policies of insurance."

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

Concessionaire 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).

ARTICLE XIV
FAA PROVISIONS

Section 14.1. **Non-Discrimination**. During the term of this Agreement, Concessionaire shall comply with the following:

Concessionaire, for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this Agreement, for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, Concessionaire shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR, Part 21, Non-Discrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

Concessionaire, for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that Concessionaire shall use the premises in compliance with all other requirements imposed by or pursuant to 49 CFR, Part 21, Non-discrimination in Federally Assisted Programs or the Department of Transportation, and as said Regulations may be amended.

Section 14.2. **Civil Rights**. Concessionaire assures that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This Provision obligates Concessionaire or its transferee for the period which Federal Assistance is extended to the airport program, except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases, the Provision obligates the party or any transferee for the longer of the following periods: (1) the period during which the property is used by the sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (2) the period during which the airport sponsor or any transferee retains ownership or possession of the property. In the case of contractors, this Provision binds the contractors from the bid solicitation period through the completion of the contract.

Section 14.3. **Just Services**. Concessionaire agrees to furnish service on a fair, equal and not unjustly discriminatory basis to all users thereof, and to charge fair, reasonable and not unjustly discriminatory prices for each unit of service; PROVIDED, that Concessionaire may make reasonable and non-discriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

Section 14.4. **Subordination to Agreements**. This Agreement is subject and subordinate to the provisions of any agreements heretofore or hereafter made between City and the United States and/or the State of Texas relative to the operation, maintenance, development, or administration of the Airport, the execution of which has been required as a condition precedent to the transfer of Federal rights or property to City for Airport purposes, or to the expenditure of Federal or State of Texas funds for the improvement or development of the Airport, including the expenditure of Federal funds for the development of the Airport in

accordance with the provisions of the Federal Aviation Act of 1958, and as said act may be amended from time to time.

ARTICLE XV GENERAL PROVISIONS

Section 15.0. **Other Provisions.** The appearance of any provision in this section shall not diminish its importance.

Section 15.1. **Assignment.** Concessionaire 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.

Section 15.2. **Agreement Binding Upon Successors.** This Agreement shall be binding upon and shall inure to the benefit of the successors, heirs and assigns of the parties hereto. The term “concessionaire” shall include any assignee of Concessionaire on any assignment permitted and approved by Board.

Section 15.3. **City’s Right of Access and Inspection.** City, by its officers, employees, agents, representatives and contractors, shall have the right at all reasonable times to enter upon the concession premises for the purpose of inspecting the same, for observing the performance by Concessionaire of its obligations under this Agreement or for doing any act or thing which City may be obligated or have the right to do under this Agreement, or otherwise, and no abatement of fees and charges shall be claimed by or allowed to Concessionaire by reason of the exercise of such right. City shall not be obliged to inform Concessionaire that an inspection or observation is planned, or in progress.

Section 15.4. **Attorney's Fees.** BY EXECUTING THIS AGREEMENT, CONCESSIONAIRE 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 CONCESSIONAIRE SPECIFICALLY AGREES THAT IF THE CONCESSIONAIRE 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 CONCESSIONAIRE AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH CONCESSIONAIRE MIGHT OTHERWISE BE ENTITLED.

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

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

Section 15.5. **Third Party Beneficiary.** The City's approval of this contract does not create a third party beneficiary. There is no third party beneficiary to this contract. No person or entity who is not a party to this contract shall have any third party beneficiary or other rights hereunder.

Section 15.6. **Release.** **NOTWITHSTANDING ANY OTHER PROVISIONS, CONCESSIONAIRE 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 CONCESSIONAIRE 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.**

Section 15.7. **Independent Contractor.** It is expressly understood and agreed that Concessionaire 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 Concessionaire 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 Concessionaire, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and Concessionaire. No person performing any of the work and services described hereunder by Concessionaire 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. Concessionaire 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 Concessionaire’s work. Concessionaire shall assume exclusive responsibility for the work. Concessionaire is entirely free to do the work in its own way.

Section 15.8. **Sovereign Immunity.** By executing this contract the City is not waiving its right of sovereign immunity. The City is retaining its immunity from suit. The City is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

Section 15.9. **Notice of Alleged Breach.** As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, Concessionaire or his legal representative, shall give the City Manager, or any other reasonable official of the City, notice in writing (consisting of one original and seven copies of notice attached to a copy of this agreement) of such damages, duly verified, within one hundred and 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 Concessionaire will settle, the physical and mailing addresses of Concessionaire at the time and date the claim was presented and the physical and mailing addresses of Concessionaire for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Concessionaire 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 Concessionaire that Concessionaire'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, Concessionaire's failure to comply with the requirements herein shall perpetually bar Concessionaire'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. Concessionaire agrees that the requirements of this entire agreement are reasonable.

Section 15.10. **Compliance with Law**. Concessionaire shall comply, at all times during the term of this Agreement, at its own cost and expense with all applicable present and future ordinances and laws of City, county, or state government or of the United States Government, and of any political division or subdivision or agency, authority or commission thereof which may have jurisdiction to pass laws or ordinances with respect to the uses hereunder or the Leased Premises. In addition, Concessionaire shall not allow any illegal activity to be conducted, to be operated, or to occur on any Airport area leased or assigned to Concessionaire.

Section 15.11. **Reservation of Rights**. Any and all rights and privileges not granted to Concessionaire by this Agreement are hereby reserved for and to City.

Section 15.12. **Governing Law**. This Agreement shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this Agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this Agreement or the performance of this Agreement shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this Agreement shall be deemed to have occurred in Midland County, Texas.

Section 15.8. **Nonwaiver of Rights**. No waiver of default by either party of any of the terms, covenants, and conditions hereof to be performed, kept, and observed by the other party shall be construed as, or shall operate as, a waiver of any subsequent default of any of the terms, covenants, or conditions herein contained, to be performed, kept, and observed by the other party.

Section 15.9. **Severability**. If one or more clauses, sections, or provisions of this Agreement, or the application thereof, shall be held to be unlawful, invalid, or unenforceable, the remainder and application hereof of such provision shall not be affected thereby.

Section 15.10. **Paragraph Headings**. The paragraph headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.

Section 15.11. **Conditions and Covenants**. Each covenant herein is a condition, and each condition herein is as well a covenant by the parties bound thereby, unless waived in writing by the parties hereto. The invitation for proposals, instructions to proposers, including Concessionaire's certification form and affirmative action plan, the basic specification, including any addenda thereto, the affidavit of non-collusion and the bonds or other security deposits required under said instructions are a part of this Concession Agreement, and each of the parties hereto does hereby expressly covenant and agree to carry out and fully perform each and all of the provisions of said documents upon its part to be performed.

Section 15.12. **Disabled Access**. Concessionaire will be solely responsible for fully complying with any and all applicable present and/or future rules, regulations, restrictions, ordinances, statutes, laws and/or orders of any Federal, State and/or local government entity and/or court regarding disabled access to improvements on the leasehold including any services, programs, or activities provided by Concessionaire. Concessionaire will be solely responsible for any and all damages caused by and/or penalties levied as the result of its non-compliance. Further Concessionaire agrees to fully cooperate with City in its efforts to comply with Title II of the Americans with Disability Act of 1990.

Section 15.13. **Force Majeure**. Neither party hereto shall be liable to the other for any failure, delay or interruption in the performance of any of the terms, covenants or conditions of this Agreement due to causes beyond the control of that party including, without limitation,

strikes, boycotts, labor disputes, embargoes, shortage of material, acts of God, acts of the public enemy, action superior governmental authority, weather conditions, floods, riots, rebellion, sabotage or any other circumstance for which such party is not responsible or which is not in its power to control.

Section 15.14. **Gender and Plural Usage.** The use of any gender herein shall include all genders and the use of any number shall be construed as the singular or the plural, all as the context may require.

Section 15.15. **Entire Agreement.** This Agreement, together with all exhibits attached hereto, constitutes the entire Agreement between the parties hereto, and all other representations or statements heretofore made, verbal, or written, are merged herein, and this Agreement may be amended only in writing, and executed by duly authorized representatives of the parties hereto. Concessionaire acknowledges that this Agreement supersedes and cancels any and all previous agreements on this matter between Concessionaire and City.

Section 15.16. **Copartnership Disclaimer.** It is mutually understood that nothing in this Agreement is intended or shall be construed as in any way creating or establishing the relationship of copartners between the parties hereto, or as constituting Concessionaire as an agent or representative of City for any purpose or in any manner whatsoever.

Section 15.17. **Development and Protection of Airport.** City hereby reserves the following rights for the Airport.

Section 15.17.1. **Airport Development.** City reserves the right to further develop or improve the Airport as it sees fit, regardless of the desires or view of Concessionaire, and without interference or hindrance.

Section 15.17.2. **Airspace**. City hereby reserves the use and benefit of the public, the right of aircraft to fly in the airspace overlying the land herein leased, together with the right of said aircraft to cause such noise as may be inherent in the operation of aircraft landing at, taking off from, or in the vicinity of the Airport, and the right to pursue the operations of same. City reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstructions, together with the right to prevent Concessionaire from erecting, or permitting to be erected, any building or other structure on any Leased Premises, which, in the opinion of City, would limit the usefulness of the Airport, or constitute a hazard to aircraft.

Section 15.18. **Amendments**. All amendments to this Agreement shall be in writing and duly executed by all parties.

Section 15.19. **License, Fees, and Taxes**. Concessionaire shall take or obtain all licenses and/or permits as required by Federal, State, or Local law. Concessionaire shall pay any and all lawful taxes and assessments which during the term of this Agreement or any part thereof may become a lien upon or which may be levied by the State, County, City or any other tax levying body, upon any and all of the Leased Premises of this Agreement, and upon any taxable interest of concessionaire acquired in this Agreement, as well as all taxes on taxable property, real or personal, owned by Concessionaire in or about said Leased Premises, but deferment of payment of any tax by Concessionaire shall not constitute a default or breach of this Agreement during the time Concessionaire is contesting in good faith the payment of said tax before any duly constituted authority, and pending the final determination of such contest.

Section 15.20. **Compliance with Federal Aviation Regulations (FAR)**. Concessionaire agrees to comply at all times with Federal Aviation Regulations, including Part 107 and Part 139, City's policies, regulations and ordinances, City's Federal Aviation Administration approved Airport Security Program, and any other applicable rules and regulations. Concessionaire further agrees that any fines levied upon City, its officers, employees, agents, and members of

City's boards and commissions and employees, agents or officers of city's boards and commissions pursuant to enforcement of Federal Aviation Regulations due to acts or omissions by Concessionaire, Concessionaire's agents, servants, employees, independent contractors, or patrons shall be borne by Concessionaire. Concessionaire further agrees to indemnify and hold harmless City, its officers, employees, agents, and members of City's boards and commissions, and employees, agents, or officers of City's boards and commissions from any and all fines so levied and from any and all claims, demands, liabilities, or expenses of every kind or nature related to such levy or defense to such levy (including, but not limited to, salary of attorneys employed by City) which City or any of its officers, employees, or other persons set out above shall or may at any time sustain or incur by reason of or in consequence of such acts or omissions.

Section 15.21. **War or National Emergency**. During the time of war or national emergency, City shall have the right to lease the landing area or any part thereof to the United States Government for military or naval use, and, if such lease is executed, the provisions of this instrument insofar as they are inconsistent with the provisions of the lease to the Government, shall be suspended.

Section 15.22. **Subordination to Bond Ordinance**. This Agreement shall be subordinate to the provisions of any Airport Bond Resolution enacted by City. In the event of any conflicts between this Agreement and the Bond Resolution, the Bond Resolution shall govern.

Section 15.23. **Americans with Disabilities Act (1990)**. Concessionaire agrees to comply with the Americans with Disabilities Act (1990) and any amendments and regulations thereto with regards to Concessionaire's operations and Leased Premises on the Midland International Airport.

Section 15.24. **Agreement Construction**. Words and phrases herein shall be construed as in the singular or plural number, and a masculine, feminine, or neuter gender, according to the text.

Section 15.25. **Right to Amend**. In the event that the Federal Aviation Administration or its successors requires modifications or changes in this Agreement as a condition precedent to the granting of funds for the improvement of Airport, Concessionaire agrees to consent to such amendments, modifications, revisions, supplements or deletions or any of the terms conditions or requirements of this Agreement as may be reasonably required to obtain such funds; provided, however, that in no event will Concessionaire be required, pursuant to this paragraph, to agree to an increase in the fees and charges provided for herein or to a change in the use, provided it is an authorized use, to which Concessionaire has put the concession premises.

Section 15.26. **Section Headings**. The section headings appearing herein are for the convenience of City and Concessionaire, and shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of this Concession Agreement.

Section 15.27. **Security – General**. Concessionaire shall be responsible for fully complying with any and all applicable present and/or future rules, regulations, restrictions, ordinances, statutes, laws and/or orders of any federal, state and/or local governmental entity regarding airfield security.

Section 15.28. **Security – Transportation Security Administration (TSA)**. Concessionaire shall be responsible for the maintenance and repair of gates and doors, that are located on the leased premises or controlled by Concessionaire. Concessionaire shall comply fully with applicable provisions of Transportation Security Administration Regulations, 49 CFR Part 1542 Airport Security, including the establishment and implementation of procedures acceptable to City to control access from the leased premises to air operation areas in accordance with the

Airport Security Program required by Part 1542. Further, Concessionaire shall exercise exclusive security responsibility for the leased premises.

Section 15.29. **Notices.** Notices required herein shall be given by certified mail by depositing the same in the United States mail in the continental United States, postage prepaid. Any such notice so mailed shall be presumed to have been received by the addressee 96 hours after deposit of same in the mail. Either party shall have the right, by giving written notice to the other, to change the address at which its notices are to be received. Until any such change is made, notices shall be delivered as follows:

City: Director of Airports
 P. O. Box 60305
 9506 LaForce Boulevard
 Midland, Texas 79711

With Copy To: City Manager
 P. O. Box 1152
 300 North Lorraine
 Midland, Texas 79702

Concessionaire: _____

If notice is given in any other manner or at any other place, it will also be given at the place and in the manner specified above.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be legally executed
induplicate this _____ day of _____ 20_____.

THE CITY OF MIDLAND, TEXAS

CONCESSIONAIRE

W. Wesley Perry, Mayor

By:

ATTEST:

Amy Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Marv Esterly, Director of Airports

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

BID BOND

THE STATE OF TEXAS §

§

COUNTY OF MIDLAND) §

SURETY'S NO. _____

KNOWN ALL MEN BY THESE PRESENTS, THAT _____

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

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

WHEREAS, the Principal has submitted a Bid or Proposal to enter into a certain written contract with the Obligee to _____

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

IT IS EXPRESSLY UNDERSTOOD AND AGREED that if said Principal should withdraw its Bid anytime after such Bid is opened and before official rejection of such Bid or, if successful in

BID BOND

securing the award thereof, said Principal should fail to enter into the Contract and furnish satisfactory Performance Bond and Payment Bond, the Oblige, in either of such events, shall be entitled and is hereby given the right to collect this Bid Bond as liquidated damages.

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

IN WITNESS WHEREOF, the said Principal and Surety do sign and seal this instrument, this day of _____, 2012.

Surety

By _____

By _____

Address _____

Address _____

APPROVED AS TO FORM:

City Attorney

NOTE: Attach Power of Attorney

PAYMENT BOND

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

KNOW ALL MEN BY THESE PRESENTS: That _____
_____ of the City of _____,
County of _____, and State of _____, as
Principal, and _____,
as Surety, are held and firmly bound unto the City of Midland, Texas, a home rule municipal
corporation of Midland County, Texas, as Oblige, in the amount of _____
_____ DOLLARS (\$_____), for the payment whereof the said
Principal and Surety Bind themselves, their heirs, administrators, executors, successors and
assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Oblige, dated the
_____ day of _____, 2012, to _____

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

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

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

Surety, for value received, stipulates and agrees that no change, extension of time, alteration or
addition to the terms of the contract, or to the work performed thereunder, or the plans,

PAYMENT BOND

specifications or drawings accompanying the same, or any assignment of the contract as may be provided for in the instructions to bidders, shall in any way affect its obligation on this Bond, and it does waive notice of any such change, extension of time, alteration or addition to the terms of the contract, assignment thereof, or to the work performed thereunder.

IN WITNESS WHEREOF the said Principal and Surety have signed and sealed this instrument, this ____ day of _____, 2012.

Principal

Surety

By _____

By _____

Address: _____

Address: _____

APPROVED AS TO FORM:

City Attorney

NOTE: Attach Power of Attorney

PAYMENT BOND

PERFORMANCE BOND

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

KNOW ALL MEN BY THESE PRESENTS: That _____

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

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

WHEREAS, the Principal has entered into a certain written contract with the Oblige, dated the ____ day of _____ 2012, to _____
_____ specifically including in the scope of this work and bond, the additional maintenance guaranty provisions set forth in the contract conditions, which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein, as well as the Principal's primary obligation to perform according to plans and specifications.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall faithfully perform the work in accordance with the specifications, instructions to bidders, general and special conditions and other contract documents, including any addendums thereto, then this obligation shall be void; otherwise to remain in full force and effect.

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

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

PERFORMANCE BOND

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

IN WITNESS WHEREOF the said Principal and Surety have signed and sealed this instrument, this ____ day of _____, 2012.

Principal

Surety

By _____

By _____

Address: _____

Address: _____

APPROVED AS TO FORM:

City Attorney

NOTE: Attach Power of Attorney

PERFORMANCE BOND



City Council Agenda

Approved for Agenda:
thudson
City Manager's Office

MEETING DATE: 6/26/2012

TO: City Council / City Manager

FROM: Marv Esterly, Director of Airports

SUBJECT: Consider a resolution authorizing the advertisement of a Request for Proposals (RFP) for Terminal News and Gift Concessions at the Midland International Airport, City of Midland, Midland County, Texas.

Purpose:

Consider a resolution authorizing the advertisement of a Request for Proposals (RFP) for Terminal News and Gift Concessions at the Midland International Airport, City of Midland, Midland County, Texas.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Discussion:

The City of Midland executed a 10-year agreement in 1997 with The Paradies Shop/Atlanta, Georgia. In 2002, Paradies exercised their one-time five-year renewal option to extend the expiration date to September 30, 2012. It is now necessary for us to seek new proposals for this service at Midland International Airport.

A Request for Proposal (RFP) has been drafted, and with Council's approval, the Department of Airports will initiate the advertisement for proposal.

RESOLUTION NO.

**RESOLUTION AUTHORIZING ISSUANCE OF A
REQUEST FOR PROPOSALS FOR TERMINAL GIFT
AND NEWS CONCESSIONS AT THE MIDLAND
INTERNATIONAL AIRPORT**

WHEREAS, the Terminal Gift and News Concessions Agreement at the Midland International Airport is scheduled to expire on September 30, 2012; and

WHEREAS, a request for proposals has been prepared for Terminal Gift and News Concessionaires at the Midland International Airport; and

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

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

THAT the City Manager or his designee is hereby authorized to issue said request for proposals pursuant to the statutes of the State of Texas for accomplishing the work set forth therein. Said Request for Proposals shall be placed on file in the City Secretary's office referenced by the number and date of this resolution.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

City of Midland, Texas
MIDLAND INTERNATIONAL AIRPORT
ADVERTISEMENT FOR PROPOSALS
NOTICE INVITING PROPOSALS

Sealed bids addressed to the Honorable Mayor and City Council of Midland, Texas, will be received at the office of the City Secretary, City Hall, Midland, Texas, until 2:00 p.m., August 15, 2012.

The City of Midland ("City") is seeking requests for proposals for the operation and management of the gift and news concession at Midland International Airport.

The term of the agreement will commence on October 1, 2012.

A pre-proposal conference has been scheduled for 2:00 P.M. on July 25th, 2012, in the Airport Media Room located on the third floor of the Terminal Building at Midland International Airport. Interested parties are encouraged to attend this pre-proposal meeting.

All bids shall be enclosed in sealed envelopes addressed to:

Honorable Mayor and City Council of Midland, Texas
c/o Office of the City Secretary
City Hall - Room 340
300 N. Lorraine
P.O. Box 1152
Midland, Texas 79702

and clearly marked:

PROPOSAL FOR THE GIFT AND NEWS CONCESSION
AT MIDLAND INTERNATIONAL AIRPORT

Each bid must conform to the requirements contained in the "Instructions to Proposers" and must include a complete set of all required documents and forms.

All questions and comments concerning these opportunities and the Request for Proposal document should be directed **in writing** to Justine Ruff, Deputy Director of Airports at Midland International Airport, PO Box 60305, Midland, Texas 79711. Any questions arising during the advertising period as to the meaning or intent will be answered by an addendum which will be sent to all who have been furnished plans and contract documents. All requests for clarifications to specifications and plans shall be received at least five (5) calendar days prior to the date for receipt of bids.

The receipt of each addendum shall be acknowledged by the Proposer in the space provided and each addendum shall be enclosed with the Proposal when it is submitted. All addenda shall become a part of the contract documents.

Information for proposers, proposal forms, specifications and plans are on file in the office of the Director of Airports, Midland International Airport, Midland, Texas at 9506 LaForce Office Center, Airport Administration (3rd Floor), Midland, Texas 79706, phone 432.560.2200.

Complete sets of documents may be obtained from Midland International Airport, upon request, accompanied by a non-refundable deposit of \$25.00.

The action to award Agreement is subject to approval by the Midland City Council. The submission of a proposal by any Proposer does not in any way commit the City of Midland to enter into an agreement with that Proposer, or any other Proposer.

DATED this _____ day of June, 2012.

CITY OF MIDLAND, TEXAS

Amy Turner
City Secretary



Request for Proposals

Contract Documents

CITY OF MIDLAND, TEXAS

MIDLAND INTERNATIONAL AIRPORT

GIFTS & NEWS CONCESSION AGREEMENT

JUNE 2012

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SECTION I

BACKGROUND AND PURPOSE FOR THE REQUEST FOR PROPOSALS

It is the goal of the Midland International Airport, Department of Airports to develop, provide and maintain concession facilities and services at the Airport that are of first-class quality and enhance the image, quality and service at the terminal building. It is also the Department's objective to make available high quality products, efficient service and reasonable prices.

SECTION II

**INSTRUCTIONS FOR SUBMISSION OF PROPOSAL FOR THE GIFT
AND NEWS CONCESSION AT THE MIDLAND INTERNATIONAL
AIRPORT**

A. Introduction

The Midland International Airport (“Airport”) is a primary commercial service airport owned and operated by the City of Midland. The Midland City government is directed by a seven-member city council elected for three-year terms, and a city manager. The mayor is the Council’s presiding officer. An Airport Planning and Development Board, composed of ten (10) members appointed by City Council, serves as an advisory board to monitor the development and operation of the City’s airport system.

The City is inviting concessionaire proposals for the financing, designing, construction, operating, and managing certain gift and news concessions at the Midland International Airport from interested parties that meet the minimum qualifications for operators set forth in this request for proposals (RFP). Additional information regarding the City and Airport can be found at www.flymaf.com.

The Airport is situated on approximately 1,600 acres of land and is located within the City of Midland, Midland County, Texas. The Airport’s four runways range in length from 4,245 feet to 9,501 feet.

The terminal building consists of approximately 155,000 square feet of enclosed space and was built in 1999. The concourse has multiple aircraft parking positions with five (5) passenger loading bridges and two (2) ground level loading positions. The food and beverage concession, as well as the gift/news concession, are located post-security on the concourse level. The pre-security/landside portion of the terminal building consists of the Departure Area (ticketing) and the Arrival Area (baggage claim). The Departure Area consists of airline offices, as well as passenger ticketing and baggage facilities. The Arrival Area consists of passenger baggage claim facilities, rental car agency service desks, hotel courtesy phone bank and access to ground transportation.

B. Airlines Serving the Airport

As of February 2012 following scheduled airlines serve the Airport, with non-stop service to DFW, Dallas Love field, Houston Intercontinental, Houston Hobby, Albuquerque, Las Vegas and Denver:

Southwest

American Eagle

United

C. Statistical Information

Historical enplanement activity and gift and news concession gross revenue may be found in Appendix 1 and 2 of this RFP.

D. Concession Operation History

The current gift and news concession is operated and managed by Paradies Shops Inc. under a gift and news concession agreement with the City, which began on August 26, 1997 and will expire on September 30, 2012. The current concession has a gift shop located on the concourse level post-security.

SECTION III

GENERAL CONDITIONS

A. General Description

It is the intent of the City to award one exclusive concessionaire lease and concession agreement to an experienced firm for the privilege of providing gift and news services within the Airport Terminal Building. The Midland International Airport is a source of pride for the community and is designed to enhance the image of the City and to provide an enjoyable experience to passengers, employees and visitors. It is the intention of the City to award the concession contract to those qualified Proposers whose proposals most closely meet the objectives of the City relative to the Airport.

More specifically, the successful proposer will be expected to meet or exceed the following goals and objectives of the City throughout the term of the lease and concession agreement to be awarded:

- (1) Offer a full range of traveler necessity and convenience items in addition to specialty and regional gift and souvenir items. Proposers will be required to provide newspapers, magazines, books, candy/snacks, and various drug and sundry items, which are in high demand by travelers. Proposers will be encouraged to design a facility that implies multiple retail concepts. Proposers are also encouraged to offer specialty retail merchandise and specialty gift items reflective of Texas and the local region. Proposers should note that the sale of adult-oriented materials is prohibited with the exception of the top two best selling magazine titles,

providing the magazines are wrapped so that only the titles are exposed to view and are appropriately displayed. The sale of the two best selling adult-oriented magazines is subject to the continuing approval of the Director of Airports;

- (2) Maximize the use of terminal space and ensure that the operating hours are targeted to passenger traffic schedules;
- (3) Provide a retail shop design that is attractive and meets the design criteria of the City;
- (4) Enhance concession revenue to the City.

B. Informational Exhibits

The Exhibits are furnished for informational purposes only and should not be construed as a guarantee of business to be generated in the future. Data provided to prospective Proposers shall in no way relieve a proposer from the responsibility of determining for itself the business potential of the proposed gift and news concession program.

Appendix 1 provides a summary of total enplanements at the Airport for the calendar years 2001 through 2011. Appendix 2 summarizes gross receipts generated by the existing retail concession program at the Airport by product category by year from 2006 through 2011. Appendix 3 shows the terminal building layout of the existing retail location. Appendix 4 identifies required and permitted items for sale and identifies Category I, II, and III items.

C. Current Concession Program

The current gift and news concession is operated by Paradies Shops Inc. under a gift and news concession agreement with the City that began on October 1, 1997, and expires on September 30, 2012. The current concession program at the Airport includes a retail shop (Texas Marketplace). The current concession operates in the concourse post-security. The concession storage area is located on the lower level and consists of approximately 726 sq. ft.

D. Concession Program Opportunity

This RFP offers the opportunity to finance, design, construct, operate, and manage the gift and news concession at the Midland International Airport. One gift and news concession agreement may be awarded. The concession unit to be leased are shown in Appendix 3. The City reserves the right to modify the spaces allocated at its sole discretion. The City reserves the right to modify, amend, or withdraw RFP documents at any time prior to the date and time specified for receipt of proposals.

E. Minimum Qualification Criteria

Bidders will be required to demonstrate that they possess the following minimum qualifications in order for bids to be accepted:

1. In at least three of the last five years, the Proposer must have owned (a minimum of 25% interest) and operated a similar or comparable business grossing not less than \$750,000 per year for each of the three years.

2. The Proposer must provide satisfactory evidence that the Proposer is able to finance the proposed investment. In the event that the Proposer intends to finance the investment utilizing a lending institution, a commitment letter must be included. If the Proposer intends to utilize its own resources or the resources of a third party to provide the investment, financial information must be submitted indicating that the Proposer and/or the third party has access to the required capital and has committed the capital to the project.
3. The Proposer must also provide satisfactory evidence that it is able to finance start-up costs of the Concession. Proposers will be required to provide anticipated working capital needs and to provide satisfactory evidence that these needs can be met.
4. It is mandatory that the company, partnership, joint venture, corporation, or the officers or principals thereof, submitting a proposal, either as presently constituted or existing as a result of some business reorganization or executive affiliation, have the applicable minimum qualifications. If such is found not to be the case, any proposal submitted by any such company, partnership, joint venture or corporation may be rejected.

F. ACDBE Participation

The requirements of 49 CFR Part 23, regulations of the US Department of Transportation, applies to this concession. It is the policy of the Midland International Airport to practice nondiscrimination based on race, color, sex, or

national origin in the award of performance of this contract. All firms qualifying under this solicitation are encouraged to submit proposals. Award of this concession will be conditioned upon satisfying the requirements of this proposal specification. These requirements apply to all concessions firms and suppliers, including those who qualify as ACDBE. An ACDBE concession specific goal of .31 percent of annual gross receipts (value of leases and/or purchases of goods and services) has been established for this concession. The concession firm shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 to meet the concession specific goal for ACDBE participation in the performance of this concession.

ACDBE participation may be in the form of a sublease, joint venture, partnership, or other legal arrangement meeting the eligibility standards in 49 CFR Part 23, Subpart C. In the event that the Concessionaire qualifies as an ACDBE, the goal shall be deemed to have been met. ACDBE firms that are not certified as such by the Proposal due date must have submitted a certification application before the proposal due date and be certified by the State of Texas by the date of Lease execution. The foregoing requirements with respect to ACDBE participation are not intended to force the Proposer to change its business structure.

Proposers shall submit, in the format required by the City, and ACDBE Utilization form (ATTACHMENT J) identifying the amount of ACDBE

participation that each proposer expects to obtain for the first year of the lease and concession agreement.

In addition, each proposer is required to submit a signed ACDBE Letter of Intent (ATTACHMENT K) from each ACDBE firm or supplier that will participate in the concession. The ACDBE firm or supplier will be required to submit the following information: (1) The names and addresses of ACDBE firms that suppliers that will participate in the concession; (2) A description of the work that each ACDBE will perform; (3) The dollar amount of the participation of each ACDBE firm participating; (4) Written and signed documentation of commitment to use a ACDBE whose participation it submits to meet a contract goal; (5) Written and signed confirmation from the ACDBE that it is participating in the concession as provided in the prime concessionaire's commitment; and (6) If the contract goal is not met, evidence of good faith efforts. Good faith efforts to achieve ACDBE participation that by their scope, intensity and appropriateness to the objective can reasonable be expected to accomplish the objective of ACDBE participation.

For additional information on currently certified ACDBE's and on obtaining ACDBE certification, please see www.flymaf.com or contact the Airport's DBE Liaison Officer at 432-560-2200 extension 3006.

G. Capital Investment and Development

The existing concession locations will be turned over to the successful proposer in the condition left by the outgoing tenant.

The successful proposer is responsible, at their sole expense, for the plan, design, and renovations of the existing concession locations subject to approval by the City.

The successful proposer shall:

- (1) Invest the amount necessary to accommodate the proposed gift and news service. No minimum investment is specified in this RFP.
- (2) Be responsible for all costs and expenses necessary to maintain the concession locations in an attractive and inviting condition.

Prior to construction, the successful proposer must submit a transition plan to conduct interim operations during construction of renovations at the existing concession locations as applicable and as described herein. In addition, the successful proposer must comply with all plan submittal requirements and obtain City approval of building designs and finishes for all tenant improvements. The successful proposer shall comply with all applicable accessibility requirements in the American with Disabilities Act and in all other Federal, State, and Local Government laws and regulations.

At the time of any termination of the lease and concession agreement either to term or termination by the City because of failure of the successful proposer to satisfy the terms or conditions of the lease and concession agreement, all improvements become property of the City without financial obligation to the

successful proposer. Should the lease and concession agreement be terminated early due to default by the City, all damages shall be limited to the remaining value of the fixed capital improvements based on the straight-line depreciation calculation over the term of the Lease, with a zero salvage value at the end of the lease and the concession term. Depreciated costs shall include only fixed capital improvements that cannot be removed without demolition; and design and engineering costs limited to no more than 15% of the depreciated cost of the fixed improvements. The cost of inventory, small wares, soft costs, office equipment, costs of doing business, and lost profits shall not be included in the calculation of fixed capital investments and are not recoverable upon expiration of the lease and concession agreement or early termination thereof due to default.

H. Interim Concessions Program

Interim gift and news operations are intended to meet customer demand during any renovation of current concession spaces that interrupts service in the areas described in this RFP. Until the renovations are complete, the successful proposer will be required to sustain interim concession operations. The interim concession program will be operated from temporary locations agreed upon by the successful proposer and the City. Proposers must include concept renderings and floor plans for all proposed temporary facilities.

I. Security

The Airport requires all tenants to help enforce its security regulations. The successful proposers shall comply with all Airport security regulations as

prescribed by 49 CFR Part 1542 and agree to employ such measures as are necessary to prevent or deter the unauthorized access of persons or vehicles into the secure area of the Airport. The successful proposers shall comply with Transportation Security Regulations Part 1542 (Airport Security) and Airport security policies as presently outlined in the Airport Security Plan; said plan may be amended from time to time. The Transportation Security Administration (TSA) has the regulatory power to assess fines for breaches of Airport Security. Accordingly, if the successful proposer is found culpable for security breaches, fines assessed to the Airport will be collected from the successful proposer.

The successful proposer is directly responsible to the Airport for authorizing its employees into the secured areas. The successful proposer shall be held accountable for photo-ID badges and controlled keys that are issued to its employees. The successful proposer shall collect all Airport photo-ID badges and controlled keys that are issued to its employees at the conclusion of their employment and return them to the Airport Operations Control Center. If a badge and/or key are not returned, the successful proposer will be invoiced for its cost and any associated fines.

Employees that require unescorted access to restricted areas must possess an active Airport Identification Badge. Prior to obtaining any kind of ID Media at the Midland International Airport, a Security Threat Assessment (STA) must be successfully approved by the Transportation Security Administration (TSA). Instructions for obtaining and a list of the fees associated with an Airport ID Badge at Midland International Airport are available at www.flymaf.com.

J. Term of Agreements

1. Initial Term: The Agreement term will commence October 1, 2012, and shall be a minimum of seven (7) years.
2. Options to Extend Term: Options may be included in the proposals, and will be executed at the mutual consent of the City and the concessionaire. Options to extend the proposed term at the sole discretion of the concessionaire will not be considered.
3. Monthly Rent: Commencing on the inception of the Agreement term, the successful proposer shall pay the established percentage rent. The concessionaire shall pay a monthly rent that is the greater of one twelfth (1/12) of the Minimum Annual Guarantee or the established Percentage Rent.
4. Percentage Rent: Proposers shall propose Percentage Rents as a percentage of gross receipts by service category, as necessary. For this opportunity, Proposers should offer a minimum percentage rent no lower than the following rates:

Category I (Appendix 4) – 10%

Category II and III (Appendix 4) – 15%

Proposers shall be prepared, upon request during the evaluation process, to submit supporting information from an existing facility verifying that the proposed Percentage Rent can be supported while maintaining reasonable profitability and acceptable service and quality levels. Percentage rentals will not be renegotiated during the term of the Agreement. Proposed percentage rents

shall be completed on Attachment I – proposed Minimum Annual Guarantee (MAG) and Percentage Rents. Percentage rent will be due no later than the 20th of the following month.

5. Minimum Annual Guarantee: The Minimum Annual Guarantee for the first Lease Year shall be the greater of the amounts proposed on Attachment I – Proposed Minimum Annual Guarantee and Percentage Rents. The lowest acceptable Minimum Annual Guarantee for Year 1 of the agreement shall be \$129,000.

The Minimum Annual Guarantee will be adjusted annually as follows:

- A. Effective on the first anniversary date of the Lease Year the Minimum Annual Guarantee for the second year will be the greater of eight-five percent (85%) of the actual rent paid to the City during the first Lease Year, or the Minimum Annual Guarantee for the first year of Lease Year, as established in the lease and concession agreement.
- B. Effective on the second anniversary date of the Lease Year, the Minimum Annual Guarantee will be the greater of adjusted to eighty five percent (85%) of the actual rent paid to the City for the second Lease Year, or the Minimum Annual Guarantee for the

second Lease Year, as established in the lease and concession agreement.

C. The annual adjustment to the Minimum Annual Guarantee will continue using the above format through the final year of the lease and concession agreement and extension term if applicable.

6. Pricing Policy: The successful proposer shall sell all pre-marked items at the pre-marked price. All newsstand items listed in Appendix 4 offered for sale by Concessionaire shall be priced reasonably in comparison to non-discount, off-airport facilities serving similar products to the general public in the Midland area. What constitutes “non-discount facilities” and “comparability of prices” shall be determined solely by City but generally in accordance with the following guidelines: Non-discount facilities shall generally mean retail convenience establishments serving the public and located within the City of Midland. Prices no more than ten percent (10%) over the average of a minimum of three (3) like facilities for the same item shall be deemed to be reasonable.
7. Utilities: The successful proposer shall pay for all utilities consumed at or delivered to the assigned premises, including but not limited to electrical, gas, water, and sewage consumption.

8. Insurance: The successful proposer shall procure and maintain at proposer/Concessionaire's own cost and expense for the duration of the agreement the following insurance against claims for injuries to person or damages to property which may arise from or in connection with the performance of the work or services hereunder by the Concessionaire, its agents, representatives, employees, or subcontractors.

A. Comprehensive general liability insurance in an amount of at least Five Million Dollars (\$5,000,000) combined single limit for bodily injury and property damage.

B. Legal liability coverage for property in its care of at least One Million Dollars (\$1,000,000).

C. Workers Compensation and Employers Liability insurance in the amounts and forms required by the State of Texas.

K. Competition

The award under this RFP will be for the exclusive privilege to finance, design, construct, operate, and manage the gift and news concession within the Airport Terminal Building.

L. Management, Operations, and Marketing Plan

Each proposer will be required to submit a complete management, operations, and marketing plan. The overall program emphasis should be placed on

identifying how the proposers will improve the gift and news concession operation at the Airport.

M. Confidentiality

Details of the proposals will not be discussed by the City with other proposers during the selection process. However, proposers acknowledge that all proposals and information submitted therein will be considered public record and may become subject to public inspection following award of the lease and concession agreement. A Proposer must clearly designate any information submitted with a Proposal that it claims is not subject to disclosure as a public record. Proposer should provide justification of what constitutes proprietary information is not binding on the City. In any event, the City shall have no liability for inadvertent or mandated disclosure of information submitted with a Proposal.

N. RFP Schedule

The current RFP schedule is shown below:

Task	Prospective Date
Proposal Documents Available	June 29, 2012
Pre-Proposal Meeting (Airport Media Room)	July 25, 2012
Proposals Due (City Hall)	August 15, 2012
Proposer Interviews, if necessary	August 21, 2012
Award	September 11, 2012

The City reserves the right to extend or change any of the dates shown above at its sole discretion.

O. Commencement of Operations

The successful proposer shall be operational and open for business on October 1, 2012. Operators shall undertake and assume operations during hours to cause as little disruption and inconvenience as possible to patrons of the Airport.

P. Existing Facilities, Operations and Products

The following are the existing concessions operations. The successful proposer shall propose the concept, menus (if applicable), product lines, and hours of operations for each facility.

Facility	SF	Daily Hours	Location	Existing Concept
Giftshop	3,021	One hour before first departure until last departure	Upper-level post security	Texas Marketplace Concept

Q. Support Space

Facility	SF	Location
Storage Space	726	Lower Level Post-Security

SECTION IV

PROPOSAL REQUIREMENTS

A. Submission

Proposals must be received no later than 2:00 p.m. on August 15, 2012 at the following address:

Office of the City Secretary
City Hall – Room 340
300 N. Loraine
PO Box 1152
Midland, TX 79702

Proposals must be submitted in an envelope that is completely sealed, bears the name and complete mailing address of the proposer, and be clearly marked “Proposal for Gift and News Concessions at Midland International Airport.” Proposals received after the deadline may be returned unopened.

Submitted proposals may not be retrieved or withdrawn until after the public opening. Proposals must be submitted on the official Proposal form, which is included with these instructions. No additions, alterations, or conditions other than those requested in the form will be permitted. Qualifications of any part of the proposal may void the proposal. There shall be no conflict between the proposal and the evidence of performance ability or other documents required to be included with the proposal. Verbal, telephonic, or electronic proposals or modifications will not be considered.

More than one proposal submitted by a proposer under the same or different names will not be considered. Reasonable grounds for believing that the Proposer is submitting more than one may cause all proposals to be rejected if there is reason for

believing that collusion exists among proposers and not participant in such collusion will be considered in future proposals for operations of the concession.

In order to expedite the evaluation of proposals, each proposer must organize its proposal into the following actions. Proposals that do not follow the specified format outlined below may be deemed unresponsive and disqualified from the process. In addition, failure on the part of the proposer to provide the required documentation may be cause for rejection of the proposal. In the event of any conflict between any of the proposal documents, resolution thereof shall be in the City's sole discretion.

1. COVER/TRANSMITTAL LETTER
2. BUSINESS INFORMATION QUESTIONNAIRE AND ATTACHMENTS FOR PROPOSER AND ALL JOINT VENTURER PARTNERS **(ATTACHMENT A)**
3. BUSINESS AND FINANCIAL REFERENCES FOR PROPOSERS AND ALL JOINT VENTURE PARTNERS **(ATTACHMENT B)**
4. EXPERIENCE AND QUALIFICATIONS STATEMENT FOR PROPOSERS AND ALL JOINT VENTURE PARTNERS **(ATTACHMENT C)**
5. TEMPORARY FACILITIES **(ATTACHMENT D)**
6. CONCEPT DEVELOPMENT **(ATTACHMENT E)**
7. FACILITIES DESIGN AND CAPITAL INVESTMENT **(ATTACHMENT F)**
8. FINANCIAL PROJECTIONS **(ATTACHMENT G)**

**9. MANAGEMENT, OPERATIONS, & MARKETING PLAN
(ATTACHEMENT H)**

**10. PROPOSED MINIMUM ANNUAL GUARANTEE (MAG) AND
PERCENTAGE RENT (ATTACHMENT I)**

**11. AIRPORT CONCESSION DISADVANTAGE BUSINESS
ENTERPRISE (ACDBE) PROGRAM PARTICIPATION FORMS
(ATTACHMENT J and ATTACHMENT K)**

B. Pre-Proposal Meeting

A pre-proposal meeting will be held in the Media room on the third floor of the Midland International Airport Terminal Building, 9506 LaForce Blvd., Midland, TX 79706 on Wednesday, July 11, 2012 at 2:00 p.m. The purpose of this meeting is to provide an opportunity for prospective proposers to review the RFP, ask questions, and view the existing facilities. It is the Proposer's responsibility to attend the pre-proposal meeting, though the meeting is not mandatory. The City will not be responsible for providing information discussed at the pre-proposal meeting to proposers who do not attend the pre-proposal meeting.

C. Submission of Questions/City Contact:

All inquiries should be directed to:

Justine Ruff, Deputy Director of Airports
Midland International Airport
PO BOX 60305
Midland, TX 79711-0305
Telephone: 432-560-2200 ext. 3010
E-Mail: jruff@midlandtexas.gov

Inquires submitted in writing should be clearly marked "Inquiry Gift and News Concession" and reference paragraph number to which the questions pertain. If

questions concerning the Request for Proposal, either submitted in writing prior to or verbally at the pre-proposal meeting, are deemed to indicate a need for clarification of the documents, it will be done in the form of an addendum to the Request for Proposals. Any clarification or interpretation of the RFP will be made in writing, and signed by the Deputy Director of Airports. Any change, clarification, or interpretations of the RFP shall not be effective unless it is made by written addendum. The City will not be responsible for any oral instructions or interpretations given by or to anyone whomsoever.

A copy of each addendum will be mailed, delivered, or e-mailed to the designated representative for each proposer receiving RFP documents. Any addendum so issued is to be considered a part of this RFP document. Should a proposer find a discrepancy in, or omission from, the general terms and conditions included in the request for proposal documents or instructions to proposals or should there be any doubt as to their meaning, proposer shall notify the Deputy Director of Airports in writing not later than July 31, 2012. Instructions and/or clarifications will be provided, in writing, to all prospective proposers of record.

D. Proposal Preparation Costs

Issuance of this RFP does not commit the City in any way, to pay any costs incurred in the preparations and submission of a proposal. Nor does the issuance of this proposal obligate the City to enter into an agreement for any services or equipment. All costs related to the preparation and submission of a proposal shall be paid by the proposer.

E. Bid Bond (or Deposit), Faithful Performance Bond and Fidelity Bond

1. Bid Bond or Deposit

Each bidder is required to submit with its bid a check certified by a responsible bank in the City of Midland or a cashier's check issued by a responsible bank, payable to the City of Midland, Department of Airports, for an amount equal to 10% of its proposed first full year minimum annual fee, or a bid bond in a form acceptable to the City for a like amount and so payable, as a guarantee that the bidder will enter into the Terminal Concession Agreement if the same is awarded to it. No bid will be considered unless accompanied by such certified or cashier's check or bid bond.

2. It is likely that such guarantees will be held by the City for a period of approximately 90 days, during which the City will review all bids. Such guarantees will be returned to all bidders as soon as possible if all bids for the same Concession are rejected, or as soon as possible after the successful bidders for the same Concession have been selected and approved by the Midland City Council, and after said successful bidder provides an acceptable Faithful Performance and Fidelity Bond, described below, or other security deposit.

3. If the successful bidder fails or refuses to perform as described above, the City may award the Terminal Concession Agreement to the next best responsible and qualified bidder as determined by the City. This bidder, subject to forfeiture of its bid bond or certified or cashier's check for non-performance, shall thereupon deliver to the City the required Faithful

Performance and Fidelity Bond or other security deposits. Each non-selected bidder may be selected in such manner until a bidder complies or until all bids are rejected.

4. Bidders are hereby advised that only a Bond, in a form acceptable to the City, guaranteeing to the City the full sum thereof, regardless of the City's actual damages, should the bidder fail to enter into the Terminal Concession Agreement and furnish the required Performance Bond, will be acceptable. Submission of an incorrect Bond may cause the Bid to be non-responsive and may result in its rejection.
5. Letters of Credit are not acceptable to satisfy Bid Bond requirements.
6. Should the successful bidder fail or refuse to enter into the Terminal Concession Agreement or to file the required Faithful Performance and Fidelity Bond or other security deposit with the City after award to such bidder of the Agreement, the entire penal sum of the bid bond submitted by said bidder shall be payable to the City on demand, or the certified or cashier's check so submitted and the proceeds thereof shall become the property of the City, not as a penalty, but as liquidated damages. Such payment shall not preclude recovery by City of any amount over and above said sum to which City sustains damage by reason of such failure or refusal.
7. Faithful Performance and Fidelity Bonds
Within thirty (30) days after award of this Terminal Concession Agreement, each successful bidder shall furnish to the City, at bidder's sole cost and expense, Faithful Performance and Fidelity Bonds, in a

form acceptable to the City, or other security deposit acceptable to the City, as specified in the Terminal Concession Agreement. **A bidder may not submit a Letter of Credit to satisfy the Performance Bond requirements.**

8. If, at any time during the term of the Terminal Concession Agreement, a surety on a Bond shall, in the opinion of the City, become unacceptable, the City shall have the right to require an additional and sufficient surety which the bidder shall furnish to the satisfaction of the City within ten (10) days after written notice to do so.

F. Proposer's Qualification

Each proposal must also be accompanied by the Proposer's references, background, experience, and financial references as described in Section IV Proposal Requirements herein. Proposer's integrity, reputation, experience, and financial responsibility shall be important factors in awarding of any contract under this specification and the City reserves the right to be the sole judge of this determination and to accept or reject any or all proposals. The City will be the sole judge as to the best qualified, responsible proposer to serve the best interests of the Airport, and may waive any informalities or technical errors that, in their judgment, will best serve these interests.

SECTION V

AWARD OF CONTRACT

A. Opening of Proposals

All proposals will be opened and publicly read at 2:00 p.m. on August 15, 2012 at the following address:

Office of the City Secretary
City Hall – Room 340
300 N. Loraine
PO Box 1152
Midland, TX 79702

The proposals will be acted upon at a time and date to set by the City. The City reserves the right to reject any and all proposals and the right to waive any irregularity or technical deficiencies in any proposal.

B. Evaluation of Proposals

The City will evaluate the proposals received and award the lease and concession agreement to the proposer making the best proposal as determined by the discretion of the City. Consideration will be given to the following elements:

1. Financial return to the City, consideration will be given to the following three elements:
 - The proposed Minimum Annual Guarantee (MAG) as proposed by each proposer. The minimum acceptable MAG is \$129,000. There is no maximum acceptable MAG. MAGs will be evaluated with respect to the extent they support projected sales and percentage rents.
 - Percentage rents proposed by each proposer.

- The reasonableness of each proposer's pro forma gross revenue and expense statements that are required in the format described in Section IV Proposals Requirements.
2. Proposed concession plan, the following elements will be evaluated:
- The proposed concession plan layout identifying the category (i.e., gift and news), size, and concept for the concession site.
3. Capital Investment Improvements, consideration will be given to the following three elements:
- The reasonableness and level of capital investment proposed. The dollar value of the overall proposed investment must be in the format described in Attachment F, Required Proposal Documents, and must meet the minimum acceptable threshold described previously.
 - The quality and creativity of the concession plan design concept and theme. Each proposer must submit color renderings, material boards, and a detailed concession layout plan identifying each site and the proposed concepts for each.
 - The proposed detailed construction schedule identifying the estimated construction period for each renovated site and the projected Date of Beneficial Occupancy for each renovated site.

4. Experience of Proposer, consideration will be given to the extensiveness and quality of the proposer's experience, in operating and managing a gift and news concession operation similar in size to the Midland International Airport.
 - Management, Operations, and Marketing Plans submitted by each proposer will be evaluated.
5. ACDBE Participation, consideration will be given to the viability and level of good faith efforts in attempting to meet the ACDBE Goal.
6. Financial Capability will be considered for each proposer by reviewing each proposer's submitted financial statements and banking references, plus the proposed financing plan to fund the capital improvements at the Airport

The City will make the final judgment and determination as to which proposer has offered the best proposal and will employ such analysis techniques, as it deems necessary to make such judgment. The City is not obligated to accept the best economic proposal.

The City may request the submission of additional information to assist in the evaluation of a proposal and the proposer will be expected to cooperate fully with such a request. In addition to the references submitted in Attachment B, the City may obtain information on past performance of any previous or existing contracts. The City may conduct interviews of the proposers either by phone or in person.

C. Disqualification of Proposals

Although not intended to be an exhaustive list of causes for disqualification, any one or more of the following, among others, may be considered sufficient for the disqualification of a proposer and the rejection of the proposal:

1. Evidence of collusion among proposers.
2. Incomplete submittal or Proposal Submittal as outlines in Section IV.
3. Lack of business skills or financial resources necessary to operate a gift and news concession successfully, as determined in the City's sole discretion through review of financial statements, reference checks, or review of experience statement.
4. Proposers who are in arrears or in default, as surety or otherwise, upon any obligation to City, or has failed to faithfully perform any previous agreement with the City, in City's sole determination.
5. Other causes as City deems appropriate in its sole and absolute discretion.

D. General Airport Information

1. Representation and Warranties

The proposal and other requested information must be completed, in its entirety, to the best of each Proposer's ability and must represent and warrant that all information contained therein is true and correct to the best of each Proposer's knowledge.

2. Conflict of Interest

Successful proposers' employees may not be involved with any other Airport related business during the term of the lease and concession agreement, as an employee, owner, partner, consultant, etc. in a manner that could give rise to a conflict of interest. All determinations regarding potential conflicts of interest under the lease and concession agreement for any affected employee of the successful proposers shall be resolved by the Airport Director, who's decision shall be final.

3. Proposer's Responsibilities

Any person, firm, or corporation desiring to submit a proposal shall examine the terms of this RFP as outlined in the proposal documents and shall independently judge all the circumstances and conditions affecting the proposal. Failure on the part of any proposer to make such examination or to investigate thoroughly the conditions of the proposal shall not be grounds for a declaration that the proposer did not understand the proposal package. The City is not responsible for any Proposer's errors or omissions.

4. City's Reservation of Rights

The City reserves the right to: (i) reject any or all proposals and reissue the RFP; or (ii) waive any informality in any proposal or proposing procedure; or (iii) take such other course of action as the City deems appropriate at the City's sole and absolute discretion.

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	JAN 2001		FEB 2001		MAR 2001		APR 2001		MAY 2001		JUN 2001		JUL 2001		AUG 2001		SEP 2001		OCT 2001		NOV 2001		DEC 2001		TOTAL 2001	
AIRLINE:	ENPL.	%CHG. 2000	ENPL.	%CHG. 2000	ENPL.	%CHG. 2000	ENPL.	%CHG. 2000	ENPL.	%CHG. 2000	ENPL.	%CHG. 2000	ENPL.	%CHG. 2000	ENPL.	%CHG. 2000	ENPL.	%CHG. 2000	ENPL.	%CHG. 2000	ENPL.	%CHG. 2000	ENPL.	%CHG. 2000	ENPL.	%CHG. 2000
SOUTHWEST	23,235	3.09	22,807	-10.52	28,812	-2.26	26,403	-0.59	30,514	1.61	30,858	-1.66	31,707	7.35	28,993	10.08	19,018	-27.29	25,351	-13.33	22,289	-18.12	23,194	-13.42	313,181	-5.32
AMER. EAGLE	5,239	2.32	4,230	-17.11	5,431	-5.37	5,426	-4.10	6,046	-15.13	6,503	-19.64	6,515	-12.33	5,640	-14.00	3,454	-43.92	4,796	-29.18	5,562	-8.71	5,289	-6.09	64,131	-15.04
CONTINENTAL	4,647	13.07	4,376	6.34	5,661	13.65	5,772	33.06	6,678	41.15	6,147	23.63	5,959	19.78	5,817	12.56	3,355	-25.11	4,741	-12.79	4,728	-2.96	4,821	-4.99	62,702	9.52
A. WEST EXP.	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A
TOTAL	33,121	0.34	31,413	-12.41	39,904	-5.14	37,601	-1.37	43,238	1.12	43,508	-2.11	44,181	5.34	40,450	6.27	25,827	-29.81	34,888	-15.85	32,579	-14.68	33,304	-11.18	440,014	-6.42

	JAN 2002		FEB 2002		MAR 2002		APR 2002		MAY 2002		JUN 2002		JUL 2002		AUG 2002		SEP 2002		OCT 2002		NOV 2002		DEC 2002		TOTAL 2002	
AIRLINE:	ENPL.	%CHG. 2001	ENPL.	%CHG. 2001	ENPL.	%CHG. 2001	ENPL.	%CHG. 2001	ENPL.	%CHG. 2001	ENPL.	%CHG. 2001	ENPL.	%CHG. 2001	ENPL.	%CHG. 2001	ENPL.	%CHG. 2001	ENPL.	%CHG. 2001	ENPL.	%CHG. 2001	ENPL.	%CHG. 2001	ENPL.	%CHG. 2001
DELTA CONN.											912	N/A	1,801	N/A	1,346	N/A	1,080	N/A	1,654	N/A	1,470	N/A	2,035	N/A	10,308	N/A
SOUTHWEST	19,027	-18.11	18,955	-16.89	24,233	-15.89	23,206	-12.11	27,500	-9.88	25,479	-17.43	24,781	-21.84	23,312	-19.59	20,475	7.66	25,754	1.59	21,872	-1.87	24,686	6.43	279,280	-10.82
AMER. EAGLE	4,451	-15.04	4,231	0.02	4,883	-10.09	4,867	-10.30	5,841	-3.39	5,854	-9.98	5,618	-13.77	5,115	-9.31	4,278	23.86	5,042	5.13	4,279	-23.07	4,550	-13.97	59,009	-7.99
CONTINENTAL	4,226	-9.06	4,037	-7.75	4,691	-17.13	5,008	-13.24	5,626	-15.75	5,193	-15.52	5,462	-8.34	5,086	-12.57	4,332	29.12	4,917	3.71	4,415	-6.62	4,816	-0.10	57,809	-7.80
TOTAL	27,704	-16.36	27,223	-13.34	33,807	-15.28	33,081	-12.02	38,967	-9.88	37,438	-13.95	37,662	-14.76	34,859	-13.82	30,165	16.80	37,377	7.13	32,036	-1.67	36,087	8.36	406,406	-7.64

	JAN 2003		FEB 2003		MAR 2003		APR 2003		MAY 2003		JUN 2003		JUL 2003		AUG 2003		SEP 2003		OCT 2003		NOV 2003		DEC 2003		TOTAL 2003	
AIRLINE:	ENPL.	%CHG. 2002	ENPL.	%CHG. 2002	ENPL.	%CHG. 2002	ENPL.	%CHG. 2002	ENPL.	%CHG. 2002	ENPL.	%CHG. 2002	ENPL.	%CHG. 2002	ENPL.	%CHG. 2002	ENPL.	%CHG. 2002	ENPL.	%CHG. 2002	ENPL.	%CHG. 2002	ENPL.	%CHG. 2002	ENPL.	%CHG. 2002
DELTA CONN.	1329	N/A	1092	N/A	1497	N/A	136	N/A	0	N/A														4,054	-60.67	
SOUTHWEST	20,996	10.35	19,238	1.49	23,132	-4.54	21,973	-5.31	24,633	-10.43	26,261	3.07	26,265	5.99	23,969	2.82	22,880	11.75	25,180	-2.23	22,935	4.86	24,459	-0.92	281,921	0.95
AMER. EAGLE	3,475	-21.93	3,146	-25.64	3,913	-19.86	4,183	-14.05	4,490	-23.13	4,439	-24.17	4,554	-18.94	4,269	-16.54	4,096	-4.25	4,391	-12.91	3,895	-8.97	4,829	6.13	49,680	-15.81
CONTINENTAL	3,855	-8.78	3,542	-12.26	4,167	-11.17	4,813	-3.89	5,494	-2.35	5,495	5.82	5,961	9.14	5,133	0.92	4,820	11.27	5,136	4.45	4,965	12.46	5,433	12.81	58,814	1.74
TOTAL	29,655	7.04	27,018	-0.75	32,709	-3.25	31,105	-5.97	34,617	-11.16	36,195	-3.32	36,780	-2.34	33,371	-4.27	31,796	5.41	34,707	-7.14	31,795	-0.75	34,721	-3.79	394,469	-2.94

	JAN 2004		FEB 2004		MAR 2004		APR 2004		MAY 2004		JUN 2004		JUL 2004		AUG 2004		SEP 2004		OCT 2004		NOV 2004		DEC 2004		TOTAL 2004	
AIRLINE:	ENPL.	%CHG. 2003	ENPL.	%CHG. 2003	ENPL.	%CHG. 2003	ENPL.	%CHG. 2003	ENPL.	%CHG. 2003	ENPL.	%CHG. 2003	ENPL.	%CHG. 2003	ENPL.	%CHG. 2003	ENPL.	%CHG. 2003	ENPL.	%CHG. 2003	ENPL.	%CHG. 2003	ENPL.	%CHG. 2003	ENPL.	%CHG. 2003
DELTA CONN.	0	N/A	0	N/A																			0	N/A		
SOUTHWEST	19,095	-9.05	21,283	10.63	27,304	18.04	24,652	12.19	25,941	5.31	26,053	-0.79	26,620	1.35	24,061	0.38	23,253	1.63	27,375	8.72	24,774	8.02	26,470	8.22	296,881	5.31
AMER. EAGLE	4,076	17.29	3,429	9.00	4,463	14.06	4,589	9.71	5,038	12.20	4,654	4.84	4,695	3.10	4,217	-1.22	4,484	9.47	5,467	24.50	4,787	22.90	5,130	6.23	55,029	10.77
CONTINENTAL	4,292	11.34	4,209	18.83	5,037	20.88	5,017	4.24	5,506	0.22	5,830	6.10	6,080	2.00	5,484	6.84	5,008	3.90	5,502	7.13	5,150	3.73	5,497	1.18	62,612	6.46
TOTAL	27,463	-7.39	28,921	7.04	36,804	12.52	34,258	10.14	36,485	5.40	36,537	0.94	37,395	1.67	33,762	1.17	32,745	2.98	38,344	10.48	34,711	9.17	37,097	6.84	414,522	5.08

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AIRLINE:	JAN 2005		FEB 2005		MAR 2005		APR 2005		MAY 2005		JUN 2005		JUL 2005		AUG 2005		SEP 2005		OCT 2005		NOV 2005		DEC 2005		TOTAL 2005	
	%CHG. 2004		%CHG. 2004		%CHG. 2004		%CHG. 2004		%CHG. 2004		%CHG. 2004		%CHG. 2004		%CHG. 2004		%CHG. 2004		%CHG. 2004		%CHG. 2004		%CHG. 2004		%CHG. 2004	
	ENPL.		ENPL.		ENPL.		ENPL.		ENPL.		ENPL.		ENPL.		ENPL.		ENPL.		ENPL.		ENPL.		ENPL.		ENPL.	
SOUTHWEST	21,673	13.50	21,424	0.66	27,921	2.26	25,343	2.80	28,397	9.47	27,855	6.92	28,984	8.88	25,929	7.76	24,694	6.20	27,984	2.22	26,493	6.94	26,565	0.36	313,262	5.52
AMER. EAGLE	4,757	16.71	4,326	26.16	5,358	20.05	5,182	12.92	6,024	19.57	6,385	37.19	6,262	33.38	5,528	31.09	5,729	27.77	6,193	13.28	6,027	25.90	6,058	18.09	67,829	23.26
CONTINENTAL	4,872	13.51	4,498	6.87	5,615	11.48	5,280	5.24	6,080	10.42	6,226	6.79	5,987	-1.53	5,522	0.69	4,720	-5.75	5,765	4.78	5,545	7.67	5,736	4.35	65,846	5.17
TOTAL	31,302	13.98	30,248	4.59	38,894	5.68	35,805	4.52	40,501	11.01	40,466	10.75	41,233	10.26	36,979	9.53	35,143	7.32	39,942	4.17	38,065	9.66	38,359	3.40	446,937	7.82

AIRLINE:	JAN 2006		FEB 2006		MAR 2006		APR 2006		MAY 2006		JUN 2006		JUL 2006		AUG 2006		SEP 2006		OCT 2006		NOV 2006		DEC 2006		TOTAL 2006	
	%CHG. 2005		%CHG. 2005		%CHG. 2005		%CHG. 2005		%CHG. 2005		%CHG. 2005		%CHG. 2005		%CHG. 2005		%CHG. 2005		%CHG. 2005		%CHG. 2005		%CHG. 2005		%CHG. 2005	
	ENPL.		ENPL.		ENPL.		ENPL.		ENPL.		ENPL.		ENPL.		ENPL.		ENPL.		ENPL.		ENPL.		ENPL.		ENPL.	
SOUTHWEST	22,558	4.08	23,429	9.36	27,923	0.01	25,525	0.72	29,330	3.29	30,421	9.21	28,858	-0.43	27,045	4.30	25,124	1.74	28,468	1.73	27,915	5.37	27,152	2.21	323,748	3.35
AMER. EAGLE	5,331	12.07	4,929	13.94	5,952	11.09	5,511	6.35	6,597	9.51	6,679	4.60	6,599	5.38	5,952	7.67	5,649	-1.40	6,557	5.88	6,424	6.59	6,995	15.47	73,175	7.88
CONTINENTAL	4,988	2.38	4,832	7.43	6,444	14.76	6,027	14.15	7,061	16.13	7,090	13.88	7,174	19.83	6,947	25.81	6,078	28.77	7,031	21.96	6,703	20.88	6,553	14.24	76,928	16.83
TOTAL	32,877	5.03	33,190	9.73	40,319	3.66	37,063	3.51	42,988	6.14	44,190	9.20	42,631	3.39	39,944	8.02	36,851	4.86	42,056	5.29	41,042	7.82	40,700	6.10	473,851	6.02

AIRLINE:	JAN 2007		FEB 2007		MAR 2007		APR 2007		MAY 2007		JUN 2007		JUL 2007		AUG 2007		SEP 2007		OCT 2007		NOV 2007		DEC 2007		TOTAL 2007	
	%CHG. 2006		%CHG. 2006		%CHG. 2006		%CHG. 2006		%CHG. 2006		%CHG. 2006		%CHG. 2006		%CHG. 2006		%CHG. 2006		%CHG. 2006		%CHG. 2006		%CHG. 2006		%CHG. 2006	
	ENPL.		ENPL.		ENPL.		ENPL.		ENPL.		ENPL.		ENPL.		ENPL.		ENPL.		ENPL.		ENPL.		ENPL.		ENPL.	
SOUTHWEST	21,575	-4.36	23,084	-1.47	28,864	3.37	26,842	5.16	30,692	4.64	32,048	5.35	31,120	7.84	29,578	9.37	26,133	4.02	29,353	3.11	27,962	0.17	27,487	1.23	334,738	3.39
AMER. EAGLE	5,460	2.42	5,241	6.33	6,256	5.11	6,253	13.46	6,974	5.71	6,848	2.53	7,161	8.52	7,136	19.89	6,579	16.46	7,185	9.58	7,664	19.30	6,740	-3.65	79,497	8.64
CONTINENTAL	5,372	7.70	5,641	16.74	6,419	-0.39	6,173	2.42	7,312	3.55	7,299	2.95	6,736	-6.11	6,799	-2.13	5,976	-1.68	6,935	-1.37	6,285	-6.24	6,139	-6.32	77,086	0.21
TOTAL	32,407	-1.43	33,966	2.34	41,539	3.03	39,268	5.95	44,978	4.63	46,195	4.54	45,017	5.60	43,513	8.94	38,688	4.98	43,473	3.37	41,911	2.12	40,366	-0.82	491,321	3.69

	JAN 2008		FEB 2008		MAR 2008		APR 2008		MAY 2008		JUN 2008		JUL 2008		AUG 2008		SEP 2008		OCT 2008		NOV 2008		DEC 2008		TOTAL 2008	
AIRLINE:	ENPL.	%CHG. 2007	ENPL.	%CHG. 2007	ENPL.	%CHG. 2007	ENPL.	%CHG. 2007	ENPL.	%CHG. 2007	ENPL.	%CHG. 2007	ENPL.	%CHG. 2007	ENPL.	%CHG. 2007	ENPL.	%CHG. 2007	ENPL.	%CHG. 2007	ENPL.	%CHG. 2007	ENPL.	%CHG. 2007	ENPL.	%CHG. 2007
SOUTHWEST	23,780	10.22	25,160	8.99	29,006	0.49	27,572	2.72	30,261	-1.40	31,239	-2.52	29,874	-4.00	28,310	-4.29	22,864	-12.51	27,912	-4.91	23,261	-16.81	25,353	-7.76	324,592	-3.03
AMER. EAGLE	6,400	17.22	6,372	21.58	6,920	10.61	6,728	7.60	7,530	7.97	8,446	23.34	7,695	7.46	7,239	1.44	6,440	-2.11	6,736	-6.25	6,287	-17.97	6,416	-4.81	83,209	4.67
CONTINENTAL	5,561	3.52	5,842	3.56	6,169	-3.89	6,624	7.31	7,159	-2.09	6,860	-6.01	7,931	17.74	7,264	6.84	5,610	-6.12	7,246	4.48	6,407	1.94	6,688	8.94	79,361	2.95
NEW MEXICO AIRL.	6	N/A	25	N/A	95	N/A	25	N/A	52	N/A	38	N/A												241	N/A	
TOTAL	35,747	10.31	37,399	10.11	42,190	1.57	40,949	4.28	45,002	0.05	46,583	0.84	45,500	1.07	42,813	-1.61	34,914	-9.75	41,894	-3.63	35,955	-14.21	38,457	-4.73	487,403	-0.80

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	ENPL.	%CHG. 2008	ENPL.	%CHG. 2008	ENPL.	%CHG. 2008	ENPL.	%CHG. 2008	ENPL.	%CHG. 2008	ENPL.	%CHG. 2008	ENPL.	%CHG. 2008	ENPL.	%CHG. 2008	ENPL.	%CHG. 2008	ENPL.	%CHG. 2008	ENPL.	%CHG. 2008	ENPL.	%CHG. 2008	ENPL.	%CHG. 2008
SOUTHWEST	20,272	-14.75	20,472	-18.63	23,850	-17.78	22,862	-17.08	23,812	-21.31	24,795	-20.63	24,611	-17.62	21,984	-22.35	21,195	-7.30	22,994	-17.62	20,781	-10.66	21,529	-15.08	269,157	-17.08
AMER. EAGLE	4,910	-23.28	4,590	-27.97	5,979	-13.60	5,952	-11.53	7,259	-3.60	7,749	-8.25	8,050	4.61	6,904	-4.63	6,051	-6.04	6,332	-6.00	6,250	-0.59	6,314	-1.59	76,340	-8.26
CONTINENTAL	5,502	-1.06	5,369	-8.10	6,495	5.28	5,919	-10.64	6,105	-14.72	7,074	3.12	7,071	-10.84	6,346	-12.64	5,894	5.06	6,192	-14.55	6,063	-5.37	6,138	-8.22	74,168	-6.54
SKYWEST																							1,180	N/A	1,180	N/A
TOTAL	30,684	-14.16	30,431	-18.63	36,324	-13.90	34,733	-15.18	37,176	-17.39	39,618	-14.95	39,732	-12.68	35,234	-17.70	33,140	-5.08	35,518	-15.22	33,094	-7.96	35,161	-8.57	420,845	-13.66

AIRLINE:	JAN 2010		FEB 2010		MAR 2010		APR 2010		MAY 2010		JUN 2010		JUL 2010		AUG 2010		SEP 2010		OCT 2010		NOV 2010		DEC 2010		TOTAL 2010	
	ENPL.	%CHG. 2009	ENPL.	%CHG. 2009	ENPL.	%CHG. 2009	ENPL.	%CHG. 2009	ENPL.	%CHG. 2009	ENPL.	%CHG. 2009	ENPL.	%CHG. 2009	ENPL.	%CHG. 2009	ENPL.	%CHG. 2009	ENPL.	%CHG. 2009	ENPL.	%CHG. 2009	ENPL.	%CHG. 2009	ENPL.	%CHG. 2009
SOUTHWEST	18,241	-10.02	17,825	-12.93	21,778	-8.69	21,026	-8.03	22,135	-7.04	24,793	-0.01	25,414	3.26	22,957	4.43	22,592	6.59	25,676	11.66	22,456	8.06	24,302	12.88	269,195	0.01
AMER. EAGLE	4,714	-3.99	3,750	-18.30	5,513	-7.79	5,768	-3.09	6,168	-15.03	6,691	-13.65	6,256	-22.29	6,010	-12.95	6,525	7.83	6,999	10.53	6,849	9.58	6,786	7.48	72,029	-5.65
CONTINENTAL	5,034	-8.51	5,268	-1.88	5,986	-7.84	6,193	4.63	6,373	4.39	7,317	3.44	7,418	4.91	6,621	4.33	6,504	10.35	6,798	9.79	6,378	5.20	6,840	11.44	76,730	3.45
SKYWEST	1,775	n/a	1,668	n/a	1,896	n/a	1,850	n/a	2,009	n/a	2,178	n/a	2,416	n/a	2,049		2,164		2,128		2,119		2,337	N/A	24,589	N/A
TOTAL	29,764	-3.00	28,511	-6.31	35,173	-3.17	34,837	0.30	36,685	-1.32	40,979	3.44	41,504	4.46	37,637	6.82	37,785	14.02	41,601	17.13	37,802	14.23	40,265	14.52	442,543	5.16

AIRLINE:	JAN 2011		FEB 2011		MAR 2011		APR 2011		MAY 2011		JUN 2011		JUL 2011		AUG 2011		SEP 2011		OCT 2011		NOV 2011		DEC 2011		TOTAL 2011	
	ENPL.	%CHG. 2010	ENPL.	%CHG. 2010	ENPL.	%CHG. 2010	ENPL.	%CHG. 2010	ENPL.	%CHG. 2010	ENPL.	%CHG. 2010	ENPL.	%CHG. 2010	ENPL.	%CHG. 2010	ENPL.	%CHG. 2010	ENPL.	%CHG. 2010	ENPL.	%CHG. 2010	ENPL.	%CHG. 2010	ENPL.	%CHG. 2010
SOUTHWEST	20,104	10.21	19,087	7.08	24,769	13.73	22,871	8.77	24,696	11.57	27,143	9.48	26,643	4.84	24,373	6.17	23,654	4.70	24,397	-4.98	24,460	8.92	25,785	6.10	287,982	6.98
AMER. EAGLE	5,025	6.60	4,298	14.61	5,893	6.89	5,837	1.20	6,083	-1.38	6,618	-1.09	6,428	2.75	6,307	4.94	6,411	-1.75	6,542	-6.53	6,095	-11.01	5,912	-12.88	71,449	-0.81
CONTINENTAL	5,635	11.94	6,840	29.84	5,012	-16.27	4,803	-22.44	4,255	-33.23	6,513	-10.99	6,032	-18.68	5,331	-19.48	7,199	10.89	7,282	7.12	7,322	14.80	7,628	11.52	73,852	-3.75
SKYWEST	2,023	13.97	2,135	28.00	3,901	105.75	3,606	94.92	4,465	122.25	2,689	23.46	2,801	15.94	2,471	20.60	2,255	4.21	2,282	7.24	2,219	4.72	2,223	-4.88	33,070	34.49
TOTAL	32,787	10.16	32,360	13.50	39,575	12.52	37,117	6.54	39,499	7.67	42,963	4.84	41,904	0.96	38,482	2.25	39,519	4.59	40,503	-2.64	40,096	6.07	41,548	3.19	466,353	5.38

AIRLINE:	JAN 2012		FEB 2012		MAR 2012		APR 2012		MAY 2012		JUN 2012		JUL 2012		AUG 2012		SEP 2012		OCT 2012		NOV 2012		DEC 2012		TOTAL 2012	
	ENPL.	%CHG. 2011	ENPL.	%CHG. 2011	ENPL.	%CHG. 2011	ENPL.	%CHG. 2011	ENPL.	%CHG. 2011	ENPL.	%CHG. 2011	ENPL.	%CHG. 2011	ENPL.	%CHG. 2011	ENPL.	%CHG. 2011	ENPL.	%CHG. 2011	ENPL.	%CHG. 2011	ENPL.	%CHG. 2011	ENPL.	%CHG. 2011
SOUTHWEST	20,493	1.93	23,122	21.14	26,024	5.07	N/A		N/A		N/A		N/A		N/A		N/A		N/A		N/A		N/A		69,639	-75.82
AMER. EAGLE	5,473	8.92	5,325	23.89	5,910	0.29	N/A		N/A		N/A		N/A		N/A		N/A		N/A		N/A		N/A		16,708	-76.62
CONTINENTAL	5,670	0.62	6,095	-10.89	4,144	-17.32	N/A		N/A		N/A		N/A		N/A		N/A		N/A		N/A		N/A		15,909	-78.46
SKYWEST	1,969	-2.67	1,951	-8.62	4,638	18.89	N/A		N/A		N/A		N/A		N/A		N/A		N/A		N/A		N/A		8,558	-74.12
TOTAL	33,605	2.49	36,493	12.77	40,716	2.88	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	110,814	-76.24

APPENDIX 2 GROSS RECEIPTS

	2006	2007	2008	2009	2010	2011
Total Gross Receipts	\$939,798	\$1,052,393	\$1,092,248	\$981,349	\$1,100,796	\$1,196,686
Total Enplaned Passengers	473,851	491,321	487,403	420,845	442,543	466,353
Receipts per Enplaned Passengers	\$1.98	\$2.14	\$2.24	\$2.33	\$2.49	\$2.57
Total Concession Payments to the Airport	\$119,305	\$131,882	\$136,852	\$122,382	\$136,655	\$148,217

TOTAL GROSS RECEIPTS BY MERCHANDISE CATEGORY

Receipts by Category	2006	2007	2008	2009	2010	2011
Category 1	\$433,294	\$519,523	\$539,696	\$496,402	\$569,282	\$625,710
Category 2	\$506,504	\$532,870	\$552,551	\$484,947	\$531,514	\$570,975
Total Gross Receipts	\$939,798	\$1,052,393	\$1,092,248	\$981,349	\$1,100,796	\$1,196,686

APPENDIX 2 – GROSS RECEIPTS

	January 2006	February 2006	March 2006	April 2006	May 2006	June 2006	July 2006	August 2006	September 2006	October 2006	November 2006	December 2006	YTD TOTAL
Category 1													
Gross	\$26,367.83	\$28,437.09	\$35,484.11	\$34,365.60	\$35,723.15	\$37,892.59	\$36,995.68	\$40,078.45	\$36,037.95	\$40,865.58	\$38,604.60	\$42,441.40	\$433,294.03
10% Fee	\$2,636.78	\$2,843.71	\$3,548.41	\$3,436.56	\$3,572.32	\$3,789.26	\$3,699.57	\$4,007.85	\$3,603.80	\$4,086.56	\$3,860.46	\$4,244.14	\$43,329.40
Category 2													
Gross	\$34,992.33	\$35,925.26	\$41,117.99	\$42,298.55	\$44,404.94	\$43,053.26	\$41,870.11	\$47,065.74	\$38,527.53	\$49,313.09	\$41,800.96	\$46,135.03	\$506,504.79
15% Fee	\$5,248.85	\$5,388.79	\$6,167.70	\$6,344.78	\$6,660.74	\$6,457.99	\$6,280.52	\$7,059.86	\$5,779.13	\$7,396.96	\$6,270.14	\$6,920.25	\$75,975.72
Monthly Total	\$61,360.16	\$64,362.35	\$76,602.10	\$76,664.15	\$80,128.09	\$80,945.85	\$78,865.79	\$87,144.19	\$74,565.48	\$90,178.67	\$80,405.56	\$88,576.43	\$939,798.82
Monthly Revenue	\$7,885.63	\$8,232.50	\$9,716.11	\$9,781.34	\$10,233.06	\$10,247.25	\$9,980.08	\$11,067.71	\$9,382.92	\$11,483.52	\$10,130.60	\$11,164.39	\$119,305.12
Monthly Min.	\$9,552.86	\$9,552.86	\$9,552.86	\$9,552.86	\$9,552.86	\$9,552.86	\$9,552.86	\$9,552.86	\$9,552.86	\$9,552.86	\$9,552.86	\$9,552.86	\$114,634.32
Monthly Add'l	(\$1,667.23)	(\$1,320.36)	\$163.25	\$228.48	\$680.20	\$694.39	\$427.22	\$1,514.85	(\$169.94)	\$1,930.66	\$577.74	\$1,611.53	\$4,670.80
	January 2007	February 2007	March 2007	April 2007	May 2007	June 2007	July 2007	August 2007	September 2007	October 2007	November 2007	December 2007	YTD TOTAL
Category 1													
Gross	\$32,028.32	\$34,241.73	\$42,134.31	\$41,875.16	\$48,652.27	\$52,319.51	\$51,275.06	\$45,168.37	\$38,304.66	\$43,258.10	\$45,421.95	\$44,844.32	\$519,523.76
10% Fee	\$3,202.83	\$3,424.17	\$4,213.43	\$4,187.52	\$4,865.23	\$5,231.95	\$5,127.51	\$4,516.84	\$3,830.47	\$4,325.81	\$4,542.20	\$4,484.43	\$51,952.38
Category 2													
Gross	\$30,042.09	\$38,908.23	\$42,801.73	\$41,321.21	\$52,245.08	\$46,335.56	\$48,419.22	\$44,523.25	\$42,103.36	\$50,570.38	\$47,406.39	\$48,193.65	\$532,870.15
15% Fee	\$4,506.31	\$5,836.23	\$6,420.26	\$6,198.18	\$7,836.76	\$6,950.33	\$7,262.88	\$6,678.49	\$6,315.50	\$7,585.56	\$7,110.96	\$7,229.05	\$79,930.52
Monthly Total	\$62,070.41	\$73,149.96	\$84,936.04	\$83,196.37	\$100,897.35	\$98,655.07	\$99,694.28	\$89,691.62	\$80,408.02	\$93,828.48	\$92,828.34	\$93,037.97	\$1,052,393.91
Monthly Revenue	\$7,709.15	\$9,260.41	\$10,633.69	\$10,385.70	\$12,701.99	\$12,182.29	\$12,390.39	\$11,195.32	\$10,145.97	\$11,911.37	\$11,653.15	\$11,713.48	\$131,882.90
Monthly Min.	\$9,552.86	\$9,552.86	\$9,552.86	\$9,552.86	\$9,552.86	\$9,552.86	\$9,552.86	\$9,552.86	\$9,552.86	\$9,552.86	\$9,552.86	\$9,552.86	\$114,634.32
Monthly Add'l	(\$1,843.71)	(\$292.45)	\$1,080.83	\$832.84	\$3,149.13	\$2,629.43	\$2,837.53	\$1,642.46	\$593.11	\$2,358.51	\$2,100.29	\$2,160.62	\$17,248.58

APPENDIX 2 – GROSS RECEIPTS

MIDLAND INTERNATIONAL AIRPORT PARADISE REVENUE REPORT													
	January 2011	February 2011	March 2011	April 2011	May 2011	June 2011	July 2011	August 2011	September 2011	October 2011	November 2011	December 2011	YTD TOTAL
Category 1													
Gross	\$40,177.68	\$42,003.38	\$52,422.39	\$50,360.26	\$56,701.69	\$57,046.22	\$55,936.48	\$55,183.76	\$55,135.79	\$52,182.30	\$51,144.99	\$57,415.62	\$625,710.56
10% Fee	\$4,017.77	\$4,200.34	\$5,242.24	\$5,036.03	\$5,670.17	\$5,704.62	\$5,593.65	\$5,518.38	\$5,513.58	\$5,218.23	\$5,114.50	\$5,741.56	\$62,571.06
Category 2													
Gross	\$35,681.12	\$35,489.23	\$47,101.55	\$51,146.79	\$55,259.07	\$47,097.62	\$49,652.41	\$55,170.34	\$48,172.01	\$47,891.30	\$46,128.15	\$52,186.24	\$570,975.83
15% Fee	\$5,352.17	\$5,323.38	\$7,065.23	\$7,672.02	\$8,288.86	\$7,064.64	\$7,447.86	\$8,275.55	\$7,225.80	\$7,183.70	\$6,919.22	\$7,827.94	\$85,646.37
Monthly Total	\$75,858.80	\$77,492.61	\$99,523.94	\$101,507.05	\$111,960.76	\$104,143.84	\$105,588.89	\$110,354.10	\$103,307.80	\$100,073.60	\$97,273.14	\$109,601.86	\$1,196,686.39
Monthly Revenue	\$9,369.94	\$9,523.72	\$12,307.47	\$12,708.04	\$13,959.03	\$12,769.27	\$13,041.51	\$13,793.93	\$12,739.38	\$12,401.93	\$12,033.72	\$13,569.50	\$148,217.43
Monthly Min.	\$9,552.86	\$9,552.86	\$10,744.21	\$10,744.21	\$10,744.21	\$10,744.21	\$10,744.21	\$10,744.21	\$10,744.21	\$10,744.21	\$10,744.21	\$10,744.21	\$126,547.82
Monthly Addtl	(\$182.92)	(\$29.14)	\$1,563.26	\$1,963.83	\$3,214.82	\$2,025.06	\$2,297.30	\$3,049.72	\$1,995.17	\$1,657.72	\$1,289.51	\$2,825.29	\$21,669.61
	January 2012	February 2012	March 2012	April 2012	May 2012	June 2012	July 2012	August 2012	September 2012	October 2012	November 2012	December 2012	YTD TOTAL
Category 1													
Gross	\$43,219.33	\$52,372.95	\$59,876.02	\$53,496.16	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$208,964.46
10% Fee	\$4,321.93	\$5,237.30	\$5,987.60	\$5,349.62	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$20,896.45
Category 2													
Gross	\$36,999.58	\$38,650.96	\$43,417.94	\$43,692.95	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$162,761.43
15% Fee	\$5,549.94	\$5,797.64	\$6,512.69	\$6,553.94	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$24,414.21
Monthly Total	\$80,218.91	\$91,023.91	\$103,293.96	\$97,189.11	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$371,725.89
Monthly Revenue	\$9,871.87	\$11,034.94	\$12,500.29	\$11,903.56	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$45,310.66
Monthly Min.	\$10,744.21	\$10,744.21	\$10,744.21	\$10,744.21	\$10,744.21	\$10,744.21	\$10,744.21	\$10,744.21	\$10,744.21	\$10,744.21	\$10,744.21	\$10,744.21	\$128,930.52
Monthly Addtl	(\$872.34)	\$290.73	\$1,756.08	\$1,159.35	(\$10,744.21)	(\$10,744.21)	(\$10,744.21)	(\$10,744.21)	(\$10,744.21)	(\$10,744.21)	(\$10,744.21)	(\$10,744.21)	(\$83,619.86)

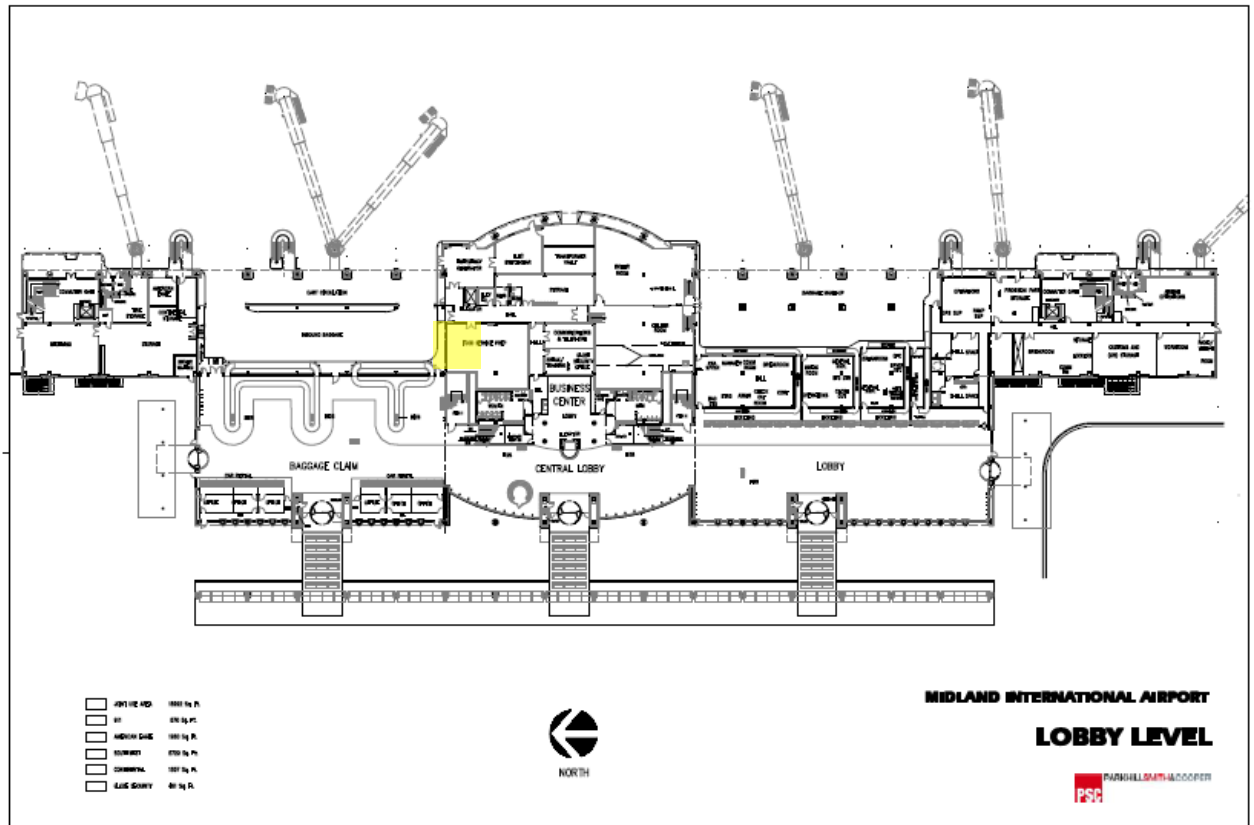
APPENDIX 2 – GROSS RECEIPTS

MIDLAND INTERNATIONAL AIRPORT PARADISE REVENUE REPORT													
	January 2008	February 2008	March 2008	April 2008	May 2008	June 2008	July 2008	August 2008	September 2008	October 2008	November 2008	December 2008	YTD TOTAL
Category 1													
Gross	\$37,739.51	\$41,868.31	\$48,571.66	\$45,159.33	\$50,004.71	\$49,100.28	\$48,666.81	\$47,118.76	\$37,845.55	\$44,426.40	\$41,521.47	\$47,673.63	\$539,696.42
10% Fee	\$3,773.95	\$4,186.83	\$4,857.17	\$4,515.93	\$5,000.47	\$4,910.03	\$4,866.68	\$4,711.88	\$3,784.56	\$4,442.64	\$4,152.15	\$4,767.36	\$53,969.64
Category 2													
Gross	\$36,155.67	\$42,524.34	\$47,622.10	\$48,202.69	\$52,969.12	\$53,285.17	\$50,688.73	\$51,180.61	\$43,336.74	\$45,663.43	\$35,514.37	\$45,408.78	\$552,551.75
15% Fee	\$5,423.35	\$6,378.65	\$7,143.32	\$7,230.40	\$7,945.37	\$7,992.78	\$7,603.31	\$7,677.09	\$6,500.51	\$6,849.51	\$5,327.16	\$6,811.32	\$82,882.76
Monthly Total	\$73,895.18	\$84,392.65	\$96,193.76	\$93,362.02	\$102,973.83	\$102,385.45	\$99,355.54	\$98,299.37	\$81,182.29	\$90,089.83	\$77,035.84	\$93,082.41	\$1,092,248.17
Monthly Revenue	\$9,197.30	\$10,565.48	\$12,000.48	\$11,746.34	\$12,945.84	\$12,902.80	\$12,469.99	\$12,388.97	\$10,285.07	\$11,292.15	\$9,479.30	\$11,578.68	\$136,852.40
Monthly Min.	\$9,552.86	\$9,552.86	\$9,552.86	\$9,552.86	\$9,552.86	\$9,552.86	\$9,552.86	\$9,552.86	\$9,552.86	\$9,552.86	\$9,552.86	\$9,552.86	\$114,634.32
Monthly Addtl	(\$355.56)	\$1,012.62	\$2,447.62	\$2,193.48	\$3,392.98	\$3,349.94	\$2,917.13	\$2,836.11	\$732.21	\$1,739.29	(\$73.56)	\$2,025.82	\$22,218.08
	January 2009	February 2009	March 2009	April 2009	May 2009	June 2009	July 2009	August 2009	September 2009	October 2009	November 2009	December 2009	YTD TOTAL
Category 1													
Gross	\$33,678.21	\$33,643.57	\$43,246.77	\$41,280.80	\$42,772.53	\$43,353.66	\$46,968.25	\$40,933.59	\$39,341.84	\$44,300.28	\$40,267.87	\$46,614.70	\$496,402.07
10% Fee	\$3,367.82	\$3,364.36	\$4,324.68	\$4,128.08	\$4,277.25	\$4,335.37	\$4,696.83	\$4,093.36	\$3,934.18	\$4,430.03	\$4,026.79	\$4,661.47	\$49,640.21
Category 2													
Gross	\$31,733.80	\$36,749.35	\$41,610.21	\$43,846.54	\$45,062.88	\$40,158.43	\$42,079.49	\$38,387.07	\$40,026.95	\$46,458.10	\$35,996.87	\$42,837.86	\$484,947.55
15% Fee	\$4,760.07	\$5,512.40	\$6,241.53	\$6,576.98	\$6,759.43	\$6,023.76	\$6,311.92	\$5,758.06	\$6,004.04	\$6,968.72	\$5,399.53	\$6,425.68	\$72,742.13
Monthly Total	\$65,412.01	\$70,392.92	\$84,856.98	\$85,127.34	\$87,835.41	\$83,512.09	\$89,047.74	\$79,320.66	\$79,368.79	\$90,758.38	\$76,264.74	\$89,452.56	\$981,349.62
Monthly Revenue	\$8,127.89	\$8,876.76	\$10,566.21	\$10,705.06	\$11,036.69	\$10,359.13	\$11,008.75	\$9,851.42	\$9,938.23	\$11,398.74	\$9,426.32	\$11,087.15	\$122,382.34
Monthly Min.	\$9,552.86	\$9,552.86	\$9,552.86	\$9,552.86	\$9,552.86	\$9,552.86	\$9,552.86	\$9,552.86	\$9,552.86	\$9,552.86	\$9,552.86	\$9,552.86	\$114,634.32
Monthly Addtl	(\$1,424.97)	(\$676.10)	\$1,013.35	\$1,152.20	\$1,483.83	\$806.27	\$1,455.89	\$298.56	\$385.37	\$1,845.88	(\$126.54)	\$1,534.29	\$7,748.02
	January 2010	February 2010	March 2010	April 2010	May 2010	June 2010	July 2010	August 2010	September 2010	October 2010	November 2010	December 2010	YTD TOTAL
Category 1													
Gross	\$37,492.48	\$36,919.01	\$44,430.98	\$42,553.97	\$49,591.79	\$53,845.96	\$53,656.45	\$48,004.58	\$48,421.04	\$53,883.59	\$50,719.91	\$49,762.31	\$569,282.07
10% Fee	\$3,749.25	\$3,691.90	\$4,443.10	\$4,255.40	\$4,959.18	\$5,384.60	\$5,365.65	\$4,800.46	\$4,842.10	\$5,388.36	\$5,071.99	\$4,976.23	\$56,928.21
Category 2													
Gross	\$32,646.95	\$32,799.71	\$39,384.02	\$41,459.99	\$49,250.65	\$46,592.83	\$48,869.16	\$45,993.79	\$46,549.65	\$51,621.91	\$43,537.68	\$52,808.29	\$531,514.63
15% Fee	\$4,897.04	\$4,919.96	\$5,907.60	\$6,219.00	\$7,387.60	\$6,988.92	\$7,330.37	\$6,899.07	\$6,982.45	\$7,743.29	\$6,530.65	\$7,921.24	\$79,727.19
Monthly Total	\$70,139.43	\$69,718.72	\$83,815.00	\$84,013.96	\$98,842.44	\$100,438.79	\$102,525.61	\$93,998.37	\$94,970.69	\$105,505.50	\$94,257.59	\$102,570.60	\$1,100,796.70
Monthly Revenue	\$8,646.29	\$8,611.86	\$10,350.70	\$10,474.40	\$12,346.78	\$12,373.52	\$12,696.02	\$11,699.53	\$11,824.55	\$13,131.65	\$11,602.64	\$12,897.47	\$136,655.40
Monthly Min.	\$9,552.86	\$9,552.86	\$9,552.86	\$9,552.86	\$9,552.86	\$9,552.86	\$9,552.86	\$9,552.86	\$9,552.86	\$9,552.86	\$9,552.86	\$9,552.86	\$114,634.32
Monthly Addtl	(\$906.57)	(\$941.00)	\$797.84	\$921.54	\$2,793.92	\$2,820.66	\$3,143.16	\$2,146.67	\$2,271.69	\$3,578.79	\$2,049.78	\$3,344.61	\$22,021.08

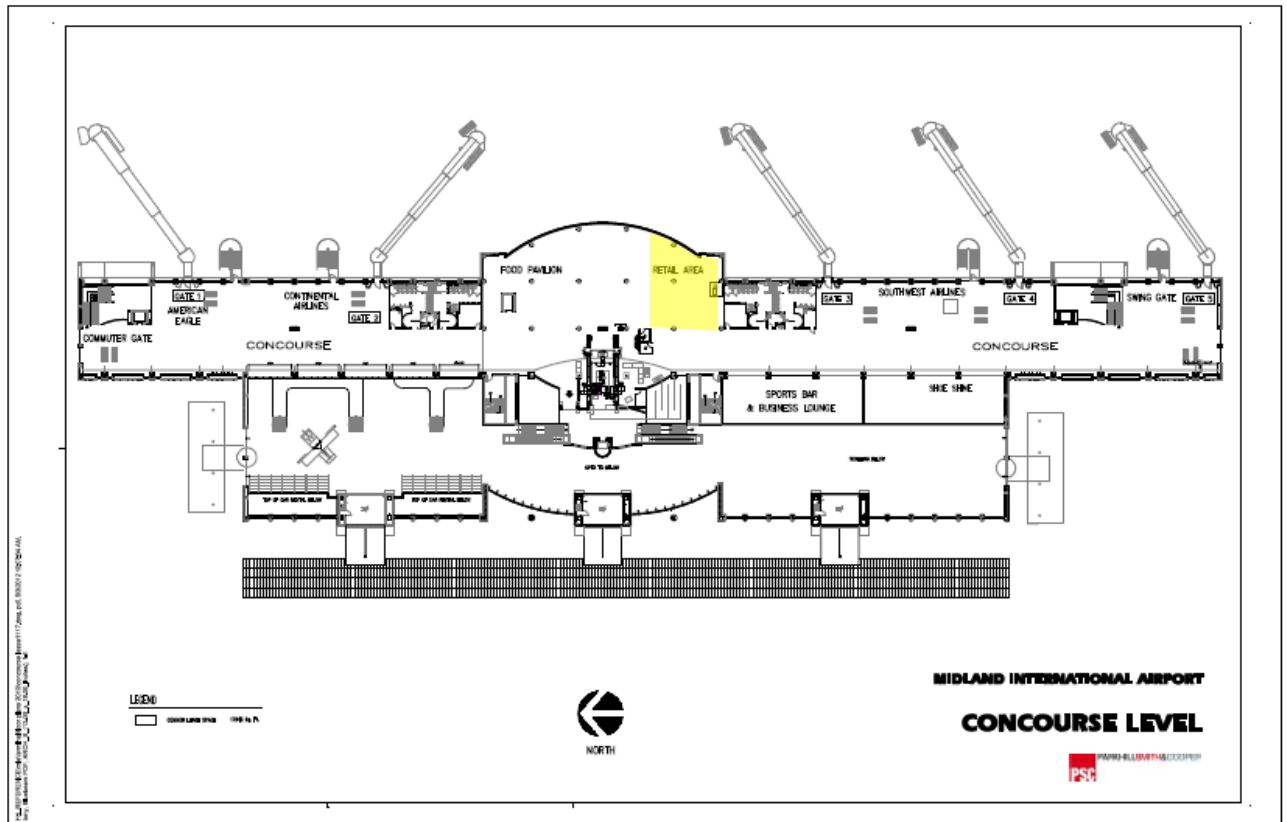
APPENDIX 3

TERMINAL LOBBY LEVEL

GIFT/NEWS STORAGE AREA



APPENDIX 3
TERMINAL CONCOURSE LEVEL
GIFT/NEWS RETAIL AREA



APPENDIX 4

REQUIRED AND PERMITTED

Category I. Required Items

At a minimum, Concessionaire must offer the following news/traveler convenience items for sale to the public during the term of the Concession Agreement:

Newspapers

Magazines

Paperback Books

Non-Prescription Medications

Traveler Necessity Items as approved by the City

Traveler Convenience Items as approved by the City

Pre-Packaged Candy, Candy Bars and Snacks as approved by the City

Category II. Required Items

At a minimum, Concessionaire must offer the following gift items for sale to the public during the term of the Concession Agreement:

An assortment of souvenir and non-souvenir gift items as approved by the City

Category III. Permitted Items

Concessionaire may also offer the following items for sale to the public during the term of the Concession Agreement:

Men's, Women's and Children's Apparel and Accessory Items

Children's Toys, Puzzles and Games

Leather Goods

Jewelry

Luggage

Electric Appliances

ATTACHMENT A

BUSINESS INFORMATION QUESTIONNAIRE

All information requested in this Questionnaire **MUST** be furnished by the Bidder and **MUST** be submitted with the bid. Statements must be complete, accurate and in the form requested. Omission, inaccuracy or misstatement **may** be cause for rejection of the bid. Additional sheets may be attached hereto as necessary.

SECTION I - GENERAL INFORMATION

1. Bidder is submitting this Qualifications Questionnaire for the following Concession:

2. Name of applicant exactly as it would appear on the Terminal Concession Agreement if selected: _____

3. Address of applicant for purposes of notice or other communication relative to the bid:

Telephone Number of Applicant: _____

Fax Number of Applicant: _____

Contact Person: _____

5. Applicant intends to operate the proposed business as: (check one)

() Sole Proprietor

() Partnership

() Corporation

() Joint Venture

() Other (explain below)

6. Complete **one** of the four sections below: either A, B, C, or D, depending upon the organization of the applicant firm:

A. **SOLE PROPRIETORSHIP STATEMENT**

If a Sole Proprietorship, furnish the following:

1. Name in Full: _____

2. Residence Address: _____

3. Business Address: _____

B. **PARTNERSHIP STATEMENT**

If a Partnership, furnish the following:

1. Date of Organization: _____
2. Type of Partnership: (check one)
☐ General Partnership
☐ Limited Partnership
3. Has the Statement of Partnership been recorded?
☐ Yes ☐ No
If yes: Date: _____
 Book: _____
 Page: _____
 County: _____
4. Attach and mark as "Exhibit P-1" a complete copy of the Statement of Partnership and the Partnership Agreement.
5. For each partner, attach and mark as "Exhibit P-2" the following information:
 - a. Name
 - b. Residence Address
 - c. Percentage of ownership
 - d. Indicate if the partner is a general or a limited partner

C. **CORPORATION STATEMENT**

If a Corporation, furnish the following:

1. Date of Incorporation: _____

2. State Incorporated: _____

3. Is the corporation authorized to do business in Texas?

() Yes () No

4. The corporation is: () Public

() Private

5. If publicly held, how and where is the stock traded?

6. List the following:

	<u>Authorized</u>	<u>Issued</u>	<u>Outstanding</u>
a. Number of voting shares:	_____	_____	_____
b. Number of nonvoting shares:	_____	_____	_____
c. Number of shareholders:	_____	_____	_____
	<u>Par</u>	<u>Book</u>	<u>Market</u>
d. Value per share			
of common stock	_____	_____	_____

7. For the President, Secretary, Treasurer, each director, and principal shareholder (any shareholder owning more than 10% of any class of stock), attach and mark as "Exhibit C-1" the following information:
- a. Name
 - b. Title
 - c. Residence Address
 - d. Number of voting shares
 - e. Number of non-voting shares

D. **JOINT VENTURE STATEMENT**

If a Joint Venture, furnish the following:

1. Date of Organization:
2. Has the Venture done business before?
() Yes () No

If yes, attach and mark as "Exhibit JV-1" a description of the nature of the joint venture's prior business

3. Attach and mark as "Exhibit JV-2" a complete copy of the Joint Venture Agreement.
5. For each joint venture partner, attach and mark as "Exhibit JV-3" the following information:
 - a. Name
 - b. Residence Address
 - c. Percentage of ownership

(Principal/Owner/Authorized Officer)

ATTACHMENT B

BUSINESS AND FINANCIAL REFERENCES

FINANCIAL CAPABILITY

The Proposer must demonstrate its ability to successfully operate a food and beverage concession at an airport as outlined.

1. **Financial Statements**

The Proposer shall submit audited comparative financial statements for the last two (2) fiscal year periods prepared in accordance with generally accepted accounting principles by appropriately qualified professionals. If audited statements are not available, statements subjected to a review by an independent Certified Public Accountant are preferred, with compiled financial statements also being acceptable. If a Proposer submits financial statements for a parent company and is thereafter awarded the lease and concessions agreement, the parent company shall be required to also execute the lease and concession agreement such that it is bound jointly with the Proposer/subsidiary to the obligations of the lease and concession agreement. A parent company shall submit an acknowledgement of this obligation in the Proposal by action taken by the parent company authorizing the obligations of the lease and concession agreement.

(Attach Information)

2. **Bankruptcy Information:**

Have you or any entity in which you have had ownership interest ever been declared bankrupt? ____ Yes ____ No If yes, attach statement setting forth date, court location, docket number, amount of liabilities and assets, type, and resolution or current status.

3. Credit References:

Provide names, addresses, titles, phone numbers, type of business, and letter of reference from at least three (3) organizations, including one (1) banking reference, your company has conducted significant financial transactions with in the most recent three (3) years. If firms are used, give the name of the department and/or person who may be contacted.

PROPOSERS ARE TO ATTACH A LETTER OF REFERENCE FROM EACH OF THE BELOW LISTED FIRMS

Credit Reference #1

Name: _____

Title: _____

Firm: _____

Address: _____

Telephone: _____

Nature and magnitude of purchase, sale, loan, business association, etc.:

Credit Reference #2

Name: _____

Title: _____

Firm: _____

Address: _____

Telephone: _____

Nature and magnitude of purchase, sale, loan, business association, etc.:

Credit Reference #3

Name: _____

Title: _____

Firm: _____

Address: _____

Telephone: _____

Nature and magnitude of purchase, sale, loan, business association, etc.:

**THE CITY RESERVES THE RIGHT TO REQUEST ADDITIONAL FINANCIAL
INFORMATION FROM ANY PROPOSER**

The foregoing information has been submitted to the City of Midland, Department of Airports for the purpose of proposing for the Food and Beverage Concession at Midland International Airport. The undersigned hereby attests to the truth and accuracy of all statements, answers and representations made in this Questionnaire, including all supplementary statements attached hereto. The undersigned hereby authorizes The City of Midland, or its agents, to contact any appropriate third parties to verify the accuracy of the information provided herein. The undersigned affirms that he/she is a duly authorized representative of the proposing entity.

Date: _____

(Name of Proponent)

By: _____

ATTACHMENT C

EXPERIENCE AND QUALIFICATIONS STATEMENT

INSTRUCTIONS

1. Please detail previous business experience in providing the services as specified. Attach a statement detailing the experience. Include a brief history of the company or companies. Note any changes in company name(s) and ownership structure(s) and any other names under which the company or companies has been doing business. Describe current operations as they exist today. The Proposer may include any additional information it deems necessary to demonstrate experience in this type of services.
2. Provide a minimum of three (3) not to exceed five (5) descriptions of the proposer's operations at airports (other businesses can be substituted if you have not done business with three (3) airports) most relevant to those being proposed. For these relevant operations, list the square footage occupied, gross receipts for the last three (3) years, minimum annual guarantee obligations, percentage rent obligations, actual rent paid, term of lease, capital investment including initial build out and refurbishments, if applicable, and photographs of facilities if available. Also provide the names, addresses and telephone numbers of the landlords or property managers for each of these operations.
3. Have any Agreements or License Agreements held by the Proposer ever been cancelled or terminated during the past five (5) years? _____ Yes _____ No
If yes, attach statement setting forth details such as the name, location and date of termination, an explanation of the reason(s) for termination, and a contact name and telephone number for the landlord.

4. List any judgments or lawsuits currently pending against the Proposer or any lawsuit filed against or judgment offered against Proposer within the last ten (10) years. Also list any lawsuits filed by Proposer in the last ten (10) years.
5. List any affiliate of Proposer engaged in similar business activities and any corporation with a direct or controlling interest in the Proposer, and any subsidiary corporation in which the Proposer has a controlling interest and any affiliates thereof.

ATTACHMENT D
TEMPORARY FACILITIES

INSTRUCTIONS

1. Proposers shall submit concepts renderings and floor plans for all proposed temporary facilities for use prior to the beneficial occupancy of the concession locations that will be renovated. In lieu of sketches, Proposers may submit photographs of similar temporary facilities.
2. Proposers also must submit information regarding color schemes, signage, and graphics of the temporary facilities, and a plan indicating the manner in which the temporary facilities are to be moved, serviced and stocked.

ATTACHMENT E
CONCEPT DEVELOPMENT

INSTRUCTIONS

1. Proposers shall submit the following information in sufficient detail to clearly define the proposed concepts for the gift and news concession location: (a) specific concept descriptions and how they would be incorporated into the Airport program; (b) proposed retail shop name; (c) list of proposed merchandise items, including size and price for each item; and (d) a description of the proposed pricing policy, including how initial prices were determined.
2. Proposers shall submit the following information in sufficient detail to clearly define the proposed concepts for each retail location; (a) specific concept descriptions and how they would be incorporated into the Airport program; (b) proposed names; and (c) a description of any unique attributes of the proposed concepts.

ATTACHMENT F

FACILITIES DESIGN AND CAPITAL INVESTMENT

INSTRUCTIONS

1. Proposers shall submit preliminary plans for each permanent concession location made available under the lease and concession agreement, providing information that details the design and quality of the materials proposed.
2. Proposers shall submit preliminary renderings of the proposed concepts that are a representative illustration of the designs and shows the exterior and interior concepts, color schemes, and graphics. If an existing facility concept will be duplicated, the Proposer may substitute pictures or photographs of an existing facility for the renderings.
3. Proposers shall submit a floor plan of each food and beverage unit indicating locations for counters, queuing, kitchens and seating.
4. Renderings or photographs and floor plans may not exceed 11" x 17" and must be bound within the Proposal.
5. Proposers shall submit a financial plan and indicate the sources of funding to be used for tenant improvements and working capital, including the following; (a) estimated costs for the initial renovations, mid-term refurbishment improvements, and future build-out improvements delineating expenses for leasehold improvements, furniture, fixtures, equipment, and design, engineering, and construction management costs. Architectural design and engineering costs must not exceed 15% of the total capital investment cost. The cost of inventory, start-up costs, uniforms, and any other costs not directly related to the renovation of leasehold improvements shall not be included in the cost estimate; (b) estimated working capital; and (c) sources of funding.

ATTACHMENT G
FINANCIAL PROJECTIONS

INSTRUCTIONS

1. Proposers shall submit a financial pro forma indicating the following items as applicable for each year of the initial lease and concession agreement term, and extension term; (1) anticipated gross receipts for gift and news categories; (2) expenses including advertising and promotions by line item; (3) general and administrative costs; (4) debt service.
2. Proposers shall include data and information indicating the expected rent to be paid to the City for each year of the initial lease and concession agreement term and demonstrating that the Percentage Rent, as proposed, can be supported by the projected revenue stream.

ATTACHMENT H

MANAGEMENT, OPERATIONS, AND MARKETING PLAN

INSTRUCTIONS

1. Proposers shall attach a description of the management structure to be used in the proposed operation. Include a resume or job description for the on-site manager(s) proposed to be assigned to each concession operation at the Airport. If an individual has not been selected, then provide the general qualification and level of experience you would require. Illustrate the reporting relationships between corporate and on-site management and between all on-site staff.
2. List staffing and management schedule for each unit to cover the estimated hours of operation, including the number of employees by staff level.
3. List employee training practices, including a summary of customer service training program. Provide a description of any employee incentive programs that will monitor, measure, promote, and reward sales and customer service.
4. Attach a description of the revenue control system to be utilized at the Airport, including a description of the audit trail. Such system shall, at a minimum, permit a monthly summary, by location, by sale category.
5. Submit an operation and maintenance plan for your proposed daily and ongoing operations, such as facilities maintenance, deliveries, trash removal, inventory stocking and storage, pest control, janitorial services, grease trap cleaning and grease waste containment systems. Include a plan to monitor the facilities for cleanliness and maintenance.
6. Provide information outlining the marketing and promotional plans for the proposed gift and news concession. Information to include a description of the analysis conducted to determine the concepts, brands, and product lines incorporated in this Proposal. Describe how you will monitor customer

satisfaction with said concepts, brands, menus and product lines. Describe on-airport promotions likely to be used at the Airport if awarded the lease and concession agreement.

ATTACHMENT I

PROPOSED MINIMUM ANNUAL GUARANTEE AND PERCENTAGE RENTS

During the term of the Lease and Concession Agreement, for the non-exclusive right and privilege of operating and managing the gift and news concession at the Midland International Airport, the undersigned Proposer hereby proposes to pay monthly to the City the greater of items 1 or 2 below:

1. List in the space provided below, the Minimum Annual Guarantee (MAG) you propose to pay the City during the first full year of the lease and concession agreement term. Minimum Annual Guarantee for Year 1 of the agreement shall be \$129,000.

Proposed MAG (in dollars per year) \$ _____

2. Proposers shall pay Percentage Rents as a percent of gross receipts by service category.

CATEGORY	MINIMUM PERCENTAGE RENT	PROPOSED PRECENTAGE RENT
Category I (Appendix 4)	10%	
Categories II & III (Appendix 4)	15%	

If awarded the concession, this proposed MAG and Percentage Rent structure will be incorporated in the lease and concession agreement as follows:

For the first full year of the Term after the date of beneficial occupancy (DBO), on a monthly basis, rent will equal the greater of one-twelfth of the MAG or the sum of Percentage Rents for each category. (Percentage Rent for a product category equals gross receipts for the category multiplied by the Percentage Rent Rate for the category).

For subsequent years of the lease and concession agreement term, the proposed MAG shall equal the greater of the previous year MAG or eighty-five (85%) of the previous year's payable Percentage Rent.

No erasure, alteration, or additions may be made to the Proposed Form as such might invalidate the proposal.

PROPOSALS MUST BE SIGNED IN THE APPROPRIATE SPACE BELOW.

If you are an INDIVIDUAL, sign here:

(Name)

(Doing Business As)

If you are a PARTNERSHIP, at least two (2) partners must sign here:

(Partnership Name)

By: _____

By: _____

If proposer is a CORPORATION, the UNDERSIGNED, by execution of this proposal, certifies the he/she(they) is(are) respectively:

_____ and
(Title)

_____ of the Corporation
(Title)

named below; that he/she(they) sign(s) the proposal on behalf of the Corporation; and that he/she(they) is(are) authorized to execute same on behalf of the Corporation.

(Corporate Name)

By: _____

(Title)

By: _____

(Title)

DATED: _____

ATTACHMENT J

Forms 1 & 2 for Demonstration of Good Faith Efforts

[Forms 1 and 2 should be provided as part of the solicitation documents.]

FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner (please check the appropriate space):

_____ The bidder/offeror is committed to a minimum of _____ % DBE utilization on this contract.

_____ The bidder/offeror (if unable to meet the DBE goal of _____ %) is committed to a minimum of _____ % DBE utilization on this contract and submits documentation demonstrating good faith efforts.

Name of bidder/offeror's firm: _____

State Registration No. _____

By _____
(Signature)

Title

ATTACHMENT K

FORM 2: LETTER OF INTENT

Name of bidder/offeror's firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Name of DBE firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____

Description of work to be performed by DBE firm:

The bidder/offeror is committed to utilizing the above-named DBE firm for the work described above. The estimated dollar value of this work is \$ _____.

Affirmation

The above-named DBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By _____

(Signature) (Title)

If the bidder/offeror does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void.

(Submit this page for each DBE subcontractor.)

CONCESSION AGREEMENT
GIFT AND NEWS OPERATIONS
MIDLAND INTERNATIONAL AIRPORT
MIDLAND, TEXAS

THIS CONCESSION AGREEMENT, made and entered into this _____ day of _____, 2012, by and between the CITY OF MIDLAND, TEXAS, a municipal corporation organized and existing under and by virtue of the laws of the State of Texas (hereinafter referred to as "City") and _____, dba _____ a corporation organized and existing under the laws of the State of _____, (hereinafter called "Concessionaire"), having its principal offices at _____.

WITNESSETH THAT:

WHEREAS, City currently owns and operates an airport known as the Midland International Airport (hereinafter called the "Airport"), located in Midland, Midland County, Texas; and

WHEREAS, City deems it advantageous to itself and to its operation of the Airport to lease unto Concessionaire certain premises and to grant unto Concessionaire certain rights, privileges, and uses therein, as necessary to provide gift and news service within the Terminal Building at the Airport;

NOW, THEREFORE, for and in consideration of payment of the fees and charges hereinafter provided, and of the covenants and conditions hereinafter contained to be kept and performed, DO HEREBY AGREE AS FOLLOWS:

ARTICLE I
TERM OF AGREEMENT

Section 1.1. **Term.** Subject to earlier termination and cancellation as hereinafter provided, the term of this Agreement shall be for a period of _____ (__) years, commencing on _____ and ending on _____.

Section 1.2. **Option Period.** City, at its sole discretion, may elect to extend the term of this Agreement, under the same terms and conditions, for one five year period upon written notice to Concessionaire. Said notice shall occur no later than 90 days prior to the expiration of the then current term of the Agreement. Concessionaire may accept or decline the extension within 30 days of the offer to extend. Failure of the Concessionaire to respond to the offer within 30 days shall be considered a declination of the offer.

ARTICLE II
PREMISES

Section 2.1. **Premises.** Concessionaire shall operate the Concession granted within the premises indicated on applicable pages of Exhibit "I" and "II" attached hereto and forming a part hereof. The Premises include areas designated for storage and support as indicated in Exhibit "I" and "II".

Section 2.2. **Square Footage.** The square footage figures appearing throughout Exhibits "I" and "II" are approximately only and are subject to on-site measurements to be performed by the proposers, at their option. City hereby leases to Concessionaire certain space in the Terminal Building hereinafter described together with certain attendant rights and privileges specifically set forth.

ARTICLE III
CONCESSION RIGHTS AND PRIVILEGES

Section 3.1. **Rights Granted.** Concessionaire shall have the right to sell to the public those news and gift items submitted in its proposal dated _____, and such other gift and news items as may be approved herein.

Section 3.2. **Right to Operate.** City hereby grants to Concessionaire the exclusive right and obligation to occupy, equip, furnish, operate and maintain retail merchandise sales facilities in those portions of existing buildings at Airport shown on Exhibits "I" and "II" attached hereto, and made a part hereof. The rights granted shall be carried on solely and exclusively within the limits and confines of said areas; subject, however, to the expansion, reduction or relocation of any such area specified in Article X hereof and its sections.

Section 3.3. **General Obligation to Operate.** At the location indicated herein, Concessionaire shall provide retail merchandise sales service for passengers, every day of the term hereof, without exception. Concessionaire shall take all reasonable measures, in every proper manner, to develop, maintain and increase the business conducted by it under this Agreement. Concessionaire shall actively operate each retail merchandise facility so as to best serve public needs.

Section 3.4. **Quiet-Enjoyment.** Concessionaire, upon payment of fees and charges as described in Article V hereof, and its sections, and upon observing and keeping the conditions and covenants of this Agreement on its part to be observed and kept, shall lawfully and quietly hold, use and enjoy the concession premises during the term of this Agreement.

Section 3.5. **Ingress and Egress.** Concessionaire shall have the full and free right of ingress to and egress from the Leased Premises. City agrees to use its best efforts to keep the routes of ingress and egress to the Leased Premises free from obstruction including the

removal of snow, ice, vegetation, stones, and other foreign matter. City has the right to alter or change the routes of ingress and egress upon giving reasonable notice to Concessionaire and upon providing other reasonably adequate means of ingress and egress.

Section 3.6. **Parking Facilities**. Concessionaire shall have the right to utilize vehicular parking facilities for Concessionaire's employees in a manner and of a type similar or equal to that provided for employees in areas designated by the Director of Airports.

Section 3.7. **Exclusivity**. The concession rights herein granted to the Concessionaire shall be exclusive within the Terminal Building.

Section 3.8. **No other uses**. Concessionaire shall not use nor permit the concession premises to be used for any purpose other than as herinabove set forth except with the prior written consent of City, nor for any use in violation of any applicable present or future law, ordinance, rule or regulation of any governmental authority, agency, department or officer thereof.

Section 3.9. **Dispute with other Tenants**. In the event of a dispute between Concessionaire and any other Airport tenant as to the services to be offered or products to be sold, Concessionaire shall meet and confer with the Director of Airports and, if any parties to said dispute continue to disagree with the recommendation of the Director of Airports, City shall determine the services to be offered or products to be sold by each, and Concessionaire shall be bound by said determination.

ARTICLE IV
FEES AND TYPE OF PAYMENT

Section 4.1. **Monthly Rental Payments.** As the monthly rent during the term of this Agreement, Concessionaire shall pay the percentage fee applicable to each category of gross receipts as defined herein.

Section 4.1.1. **Percentage Fee.** The Percentage Fee shall be the sum of (1) _____ (____%) of the gross revenues earned from the sale of Category I required items, as defined in Exhibit A, and (2) _____ (____%) of the gross revenues earned from the sale of Category II required items and Category III permitted items, as defined in Exhibit A of Proposal.

Section 4.1.2. **Minimum Annual Fee.** The minimum annual fee for the first full year of the term is \$_____. For the following four years after the first full year of the term, the minimum annual guarantee shall be the greater of \$_____ or eighty-five percent (85%) of the previous year's actual rent payments. For the sixth year of the original term of the agreement, the minimum annual guaranteed rental shall be the greater of eighty-five percent (85%) of the previous year's actual rent payments or \$_____ as adjusted pursuant to section 4.1.5 of this Agreement.

Section 4.1.3. **No Abatement.** City and/or Federal government shall retain the right to restrict access to areas "airside" of security checkpoints to ticketed passengers and Airport/airline personnel. City shall retain the right to restrict access for purposes of construction of City-approved improvements. During such actions, Concessionaire shall not be entitled to any fee abatement or percentage adjustment.

Section 4.1.4. **Annual Adjustment.** At the end of each twelve (12) month period during the term hereof, City shall prepare and submit to Concessionaire a statement

showing the total percentage charge for the said twelve months. If the sums paid by Concessionaire during said 12 month period exceed the annual minimum fee as well as the annual percentage charge, whichever is greater, such over-payment shall be credited to the fees and charges next thereafter due from Concessionaire. If Concessionaire's aggregate payments are less than the total due, Concessionaire shall, within ten (10) calendar days, pay City the difference.

Section 4.1.5. **Consumer Price Index Adjustment.** It is agreed and understood that pursuant to Article III, Section 1(a) of the City's Charter, provision must be made herein for an adjustment of rentals at least once every five (5) years. Therefore, as of _____, it is further agreed and understood that the Minimum Annual Guaranteed rental shall be \$ _____. Thereafter, as of _____. The Minimum Annual Guaranteed rent shall be increased only in the same proportion or percentage by which the cost of living has been increased as reflected by the "Consumer Price Index for All Items", as maintained by the United States government's Department of Labor, Bureau of Labor Statistics for the Dallas/Fort Worth SMA; such increase being measured by comparison with such cost-of-living indices at the end of the immediately preceding five-year period of this lease, as compared with the indices at the commencement of the immediately preceding five-year period of this lease.

Section 4.2. **Utilities.** Utilities, including electricity, gas and water, shall be separately metered at Concessionaire's expense, and shall be invoiced directly to Concessionaire.

Section 4.3. **Refuse Removal.** Concessionaire shall comply with the provisions of Section 5.9 herein with regard to the disposition of trash and garbage. City shall maintain garbage or refuse disposal areas for use by concessionaires. Reasonable use of the city maintained refuse disposal areas shall be without charge, however the City reserves the right to impose a fee for use of refuse disposal areas if, in the sole determination of the City, Concessionaire use of disposal areas cause an unreasonable increase in City costs.

Section 4.4. **Other Fees and Charges.** If City has paid any sum or sums or has incurred any obligations or expense which Concessionaire had agreed to pay or reimburse City for, or if city is required or elects to pay sum(s) or ensure obligation(s) or expense(s) by reason of the failure, neglect or refusal of Concessionaire to perform or fulfill any of the conditions, covenants or agreements contained in the Agreement, or as a result of an act or omission of Concessionaire contrary to said conditions, covenants and agreements, Concessionaire shall pay the sum(s) so paid or the expenses(s) so incurred, including all interest, costs, damages and penalties, and the same may be added to any installment of the fees and charges thereafter due hereunder, and each and every part of the same shall be and become additional fees and charges, recoverable by City in the same manner and with like remedies as if it were originally a part of the basic fees and charges.

Section 4.5. **Method of Payment.** The procedure for the payment of the fees and charges shall be as follows:

Section 4.5.1. **Payment Location.** All fees and charges payable hereunder shall be paid to Director of Airports, Midland International Airport, P. O. Box 60305, Midland, Texas 79711, unless and until City designates some other party to receive or place for the payment of said fees and charges.

Section 4.5.2. **Monthly Rental Payments.** The rental fees and charges to be paid by Concessionaire to City hereunder shall be payable in monthly installments throughout the term of this Agreement. Within ten (10) calendar days after the end of each calendar month, Concessionaire shall pay City, as the fees and charges for such calendar month, one-twelfth (1/12) of the guaranteed minimum annual fee or the percentage charge, whichever sum is greater.

Section 4.5.3. **Monthly Rental Report.** Concessionaire shall submit a monthly accounting of the gross receipts received at each location operated by Concessionaire under this Concession Agreement. Each facility shall be reported as a separate location. Each monthly accounting shall be in such manner and detail and upon such forms as are prescribed by City. Each monthly report shall be due on the same date and at the same address as the payment for that month is due.

Section 4.6. **Late Payment.** Any payment not received by the due date shall accrue interest payable at the rate of 1.5% per month from the due date until paid in full.

Section 4.7. **Pro Rata Payment.** If the commencement or termination of this Agreement falls upon any date other than the first or last day of any calendar month, the applicable fees and charges for said month shall be in the same proportion that the number of days the Agreement is in effect for that month bears to the total number of days in that month. Should this Agreement terminate or be terminated at any time other than at the end of the agreement year, the minimum fees for the agreement year in which such termination occurs shall be in the same proportion that the number of days the Agreement is in effect for that year bears to the total number of days in the year.

Section 4.8. **Audit Reports.** Concessionaire agrees to keep true and accurate accounts, records, books and data which will show in a standard acceptable form the income, including taxes, surcharges, and gross receipts as herein defined, as separate line items of said business operated at the upon the Leased Premises of the Airport, which books and records shall be open for inspection by authorized representatives of City at all reasonable times during normal business hours. City reserves the right, either directly, or through an agent, to make necessary detailed audits as required at any time during the agreement period and for twelve (12) months after the termination of the agreement. In addition, Concessionaire agrees to furnish to City annually a certified copy of an audit thereon by Concessionaire's certified public accountant. Such audit shall be in a form acceptable to the auditors of City and shall be due to

City at the office of the Director of Airports no later than ninety (90) days after the end of each agreement year.

Section 4.9. **Gross Receipts Defined.** “Gross Receipts” shall include all receipts, whether by coin or currency, on account, by check or credit card, collected or uncollected, whether conducted on or off airport, derived by Concessionaire as a result of its operation of the concession rights herein granted, without any exclusion whatever, except those expressly permitted under Sections 4.9.1 through 4.9.9. Gross receipts shall include the sales revenues received or billed by Concessionaire from the sale of retail merchandise products, including newspapers, magazines, books, candy, gum, mints, packaged snacks, stationary, drugs and sundries, traveler necessity and convenience items, souvenirs, gifts, and other related products. Goods, work or services furnished by any person or firm in lieu of payment in exchange for value received shall be deemed to be Cash Sales. Gross Receipts shall exclude revenues from the following:

Section 4.9.1. **Taxes.** Retail sales taxes, excise taxes or related direct taxes on the consumer which are collected by Concessionaire on such sales provided all such taxes are properly accounted for and recorded;

Section 4.9.2. **Sales of Scrap, Equipment or Uniforms.** Receipts from the sale of waste or scrap materials resulting from the operation of Concessionaire’s business on Airport; receipts from the sale of or the trade-in value of furniture, fixtures or equipment used on the concession premises, and owned by Concessionaire; receipts from the sale at cost of uniforms/clothing to Concessionaire’s employees where such uniforms/clothing are required to be worn by said employees;

Section 4.9.3. **Exchanges and Refunds from Suppliers.** The value of any merchandise, supplies or equipment exchanged or transferred from or to other business locations of Concessionaire, where such exchanges or transfers are not made for the

purpose of avoiding a sale by Concessionaire which would otherwise be made from or at the concession premises; receipts in the form of refunds from or the value of merchandise, supplies or equipment returned to shippers, suppliers or manufacturers;

Section 4.9.4. **Refunded Receipts.** Receipts with respect to any sale where the subject of such sale, or some part thereof, is thereafter returned by the purchaser to and accepted by Concessionaire, to the extent of any refund actually granted or adjustment actually made, either in the form of cash or credit;

Section 4.9.5. **Employee Discounts.** The amount of a 10% discount on all retail merchandise items which Concessionaire may give to those employees of Airport tenants of City and Airport employees of City who have been issued Airport Security Identification badges by City;

Section 4.9.6. **Supplier Discounts.** The amount of any cash or quantity discounts received from sellers, suppliers or manufacturers;

Section 4.9.7. **Tips.** The amount of any gratuity paid or given by patrons or customers to employees of Concessionaire;

Section 4.9.8. **Reimbursements.** Receipts in the form of reimbursements from Concessionaire's subcontractor(s) for any taxes, loan payments and/or license fees paid by Concessionaire for or on behalf of such subcontractor; and

Section 4.9.9. **Other Contracts.** Receipts from sales in non-public areas for services performed for one or more of City's other Airport tenants under separate contracts, such as sales to an airline's employees in an employee lunchroom, and to V.I.P. passengers in private airline lounges.

ARTICLE V
OPERATING STANDARDS

Section 5.0. This Section and its sub-Sections address Concessionaire's operational obligations.

Section 5.1. **Concession Personnel.** Concessionaire shall, at its cost, furnish prompt, courteous and efficient service and shall ensure polite and inoffensive conduct and demeanor on the part of its representatives, agents and employees, collectively referred to herein as "personnel". Concessionaire shall employ or permit the employment of only such personnel as will assure a high standard of service to the public. All such personnel, while on or about the concession premises, shall be clean, neat in appearance and courteous at all times and shall be appropriately attired, with badges or other suitable means of identification, in such instances as are appropriate. No personnel, while on or about the concession premises, shall use improper language, act in loud, boisterous or otherwise improper way or be permitted to solicit business in an inappropriate manner.

Section 5.2. **Manager.** Concessionaire shall select and appoint, subject to approval by the Director of Airports, a Manager of Concessionaire's operations at the Airport. Such person must be an outstanding, highly qualified and experienced manager or supervisor of comparable Gift and News operations, vested with full power and authority to accept service of all notices provided for herein and regarding operation of the concession business herein authorized, including the quality and prices of goods and beverages and the appearance, conduct and demeanor of Concessionaire's agents, servants and employees. Said Manager shall be assigned to a duty station or office at the Airport, where he or she shall ordinarily be available during regular business hours and where, at all times during his or other absences, a responsible subordinate shall be in charge and available.

Section 5.3. **Hours of Operation.** In each location and on each day, Concessionaire shall operate during those hours as are necessary to adequately serve the public demand, as said demand may be determined and re-determined by the Director of Airports. Concessionaire may advise the Director of Airports regarding optimum hours of operation at each location.

Section 5.3.1. **Minimum Hours of Operation.** Concessionaire shall be obligated to operate the facilities for the hours which are defined in this Section 5.3.1. until such time as the Director of Airports requests that hours be extended or authorizes hours to be contracted. The initial minimum hours each day shall be as follows:

Opening: One hour prior to the first departure

Closing: One hour following the last departure

Section 5.3.2. **Curtailment of Hours Beyond Control.** Concessionaire shall be excused from its obligations as set forth in Sections 5.3 through 5.3.1 in the event that its operations are closed or curtailed, in whole or in part, by reason of a strike, lockout or a cause beyond its control.

Section 5.3.3. **Director of Airports May Alter Hours.** The Director of Airports may, on 24 hours notice to Concessionaire require earlier opening times or later closing times for any location. Concessionaire shall comply with said hours. The Director of Airports may, from time to time, authorize a later opening or earlier closing time for any location, provided it first finds that Concessionaire has submitted adequate justification therefore.

Section 5.4 **Merchandise Service and Assortment Plan.** Concessionaire's management plan, merchandise plan, and prices shall be as Concessionaire has proposed for each facility and City has approved. During the term, Concessionaire shall make no changes to the management plan, merchandise plan or prices of those items

which are required to be sold under the terms of this Agreement without first obtaining the prior written approval of the Director of Airports. The Director of Airports shall require the same information, and apply the same criteria to each proposed change as is described in this Section 5.4 and its Subsections.

Section 5.4.1. **Amendments May Be Required.** The Director of Airports may reevaluate the selection of items during the term. The Director of Airport's determination that the assortment offered is inadequate (in general or at any particular location), or that any price is excessive, or that the quality or quantity of any item is deficient, shall be conclusive. Concessionaire may meet and confer with the Director of Airports regarding such matters.

Section 5.4.2. **Quality of retail items.** All retail items offered for sale by Concessionaire shall be of high quality, and comparable to first class news and gift facilities of a similar type in other comparable airports in the United States. Adult-oriented materials, with the exception of the top two best-selling magazine titles, which may be sold subject to the approval of the Director of Airports and providing that they are appropriately wrapped and displayed, are prohibited.

Section 5.4.3. **Prices.** All retail items with a pre-marked price shall be sold at that price. All newsstand items listed in Exhibit "A" offered for sale by Concessionaire shall be priced reasonably in comparison to non-discount, off-airport facilities serving similar products to the general public in the Midland area. What constitutes "non-discount facilities" and comparability of prices: shall be determined solely by City but generally in accordance with the following guidelines: Non-discount facilities shall generally mean retail convenience establishments serving the public and located within the City of Midland. Prices no more than ten percent (10%) over the average of a minimum of three (3) like facilities for the same item shall be deemed to be reasonable.

Section 5.5. **Cash and Record Handling Requirements.** Concessionaire shall prepare a description of its cash handling and sales recording systems and equipment which shall be submitted to the Director of Airports for approval. When approved by the Director of Airports, such systems and equipment, including any revisions thereto approved by the Director of airports, shall be utilized by Concessionaire in its operations at Airport.

Section 5.5.1. **Cash Registers.** Concessionaire shall accurately record each sale on a point of sale register acceptable to the Director of Airports. Such register shall be non-resetable and sufficient to supply an accurate record of all sales on tape or otherwise as directed by the Director of Airports. Such register shall have a counter visible to the purchaser.

Section 5.6. **Credit Cards.** Customers shall be permitted to utilize at a minimum the following credit cards in payment for good and beverage sales over ten dollars (\$10.00): Visa, MasterCard and American Express.

Section 5.7. **Prohibited Acts.** Concessionaire shall not do or permit to be done anything specified in Sections 5.7.1 through 5.7.7. Specifically, it shall not:

Section 5.7.1. **Interfere with Access.** Do anything which may interfere with free access and passage in the concession premises or the areas adjacent thereto, or in the elevators, escalators, streets or sidewalks of the Airports, or hinder police, fire fighting or other emergency personnel in the discharge of their duties, or hinder access to utility, heating, ventilating or air-conditioning systems, or portions thereof, on or adjoining the concession premises.

Section 5.7.2. **Interfere with Systems.** Do anything which may interfere with the effectiveness of utility, heating, ventilating or air-conditioning systems or portions thereof on or adjoining the concession premises (including lines, pipes, wires, conduits

and equipment connected with or appurtenant thereto) or interfere with the effectiveness of elevators or escalators in or adjoining the concession premises, or overload any floor in the concession premises;

Section 5.7.3. **Permit Smoking where Prohibited**. Do anything contrary to City's policy, or City's ordinance, prohibiting smoking. At the present time, said policy prohibits smoking in the Terminal Building.

Section 5.7.4. **Install Unauthorized Locks**. Place any additional lock of any kind upon any window or interior or exterior door in the concession premises, or make any change in any existing door or window lock or the mechanism thereof, unless a key therefore is maintained on the concession premises, nor refuse, upon the expiration or sooner termination of this Agreement, to surrender to the Director of Airports any and all keys to the interior or exterior doors on the concession premises, whether said keys were furnished to or otherwise procured by Concessionaire, and in the event of the loss of any keys furnished by the Director of Airports, Concessionaire shall pay City, on demand, the cost for replacement thereof, and the cost of re-keying City's locks;

Section 5.7.5. **Increase Liability**. Do any act of thing upon the concession premises which will invalidate, suspend or increase the rate of any fire insurance policy required under this Agreement, or carrier by City, covering the concession premises, or the buildings in which the same are located or which, in the opinion of the Director of Airports, may constitute a hazardous condition that will increase the risks normally attendant upon the operations contemplated under this Agreement. If, by reason of any failure on the part of Concessionaire after receipt of notice in writing from City to comply with the provisions of this paragraph, any fire insurance rate on the concession premises, or any part thereof, or on the buildings in which the same are located, shall at any time be higher than it normally would be, then Concessionaire shall pay City, on demand, that part of all fire insurance premiums paid by City which have been charged

because of such violation of failure of Concessionaire; provided, however, that nothing contained herein shall preclude Concessionaire from bringing, keeping or using on or about the concession premises such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its business, or from carrying on said business in all respects as is customary;

Section 5.7.6. **Permit Loitering or Lodging.** Permit undue loitering on or about the concession premises or use the concession premises, or any part thereof, for lodging or sleeping purposes; or

Section 5.7.7. **Permit Unlawful Use.** Use or allow the concession premises to be used for any improper, immoral, unlawful or objectionable purposes.

Section 5.8 **Signs, Advertising & Displays.** Concessionaire shall not erect, construct or place any sign, advertisement or display upon any portion of the premises without first obtaining the prior written approval of City. Concessionaire shall not erect, construct or place any sign, advertisement or display outside the premises.

Section 5.8.1. **Removal of Signs.** Upon the termination, cancellation or expiration of this Agreement, Concessionaire shall remove, obliterate or paint out, any and all of its signs, advertising and displays as the Director of Airports may direct. If Concessionaire fails to do so, City may cause said work to be done at the expense of Concessionaire.

Section 5.9. **Removal of Garbage and Refuse.** Concessionaire shall strictly comply with all Airport and other rules and regulations regarding the disposition of trash and garbage, shall regularly remove from all concession premises to the garbage or refuse disposal area all rubbish, refuse and garbage and shall remove the accumulation of all such material in said garbage or refuse disposal area at frequent intervals. Accumulation of trash, boxes, cartons,

barrels or other similar items shall not be permitted in any public area at Airport.

Concessionaire shall not remove trash or garbage through public or common areas (including concourses and sidewalks).

Section 5.10. **Taxes.** Concessionaire shall pay all taxes of whatever character that may be levied or charged upon the rights of Concessionaire to use the concession premises, or upon Concessionaire's improvements, fixtures, equipment or other property thereon or upon Concessionaire's operations hereunder.

Section 5.11. **Licenses and Permits.** Concessionaire shall obtain and pay for all licenses and permits necessary or required by law for the conduct of said operations.

ARTICLE VI
OBLIGATIONS OF CITY

Section 6.0 **Obligations of City.** During the term of this Agreement, City agrees and covenants to meet the following obligations and provide the following services:

Section 6.1. **Maintenance of Public Areas.** City shall maintain the public areas of the Terminal Building in good order and safe condition, and shall maintain approaches to the Terminal Building and the public ways adjacent thereto in a safe and usable condition at all times, subject to reasonable interruptions due to inclement weather;

Section 6.2. **Maintenance of Electric Service.** City shall, at its sole expense, furnish and maintain to the Leased Premises electric power lines and service needed by Concessionaire in the conduct of its business;

Section 6.3. **Employee Parking.** City shall provide automobile parking space for employees of Concessionaire in such manner similar to or equal that provided for employees of other Airport agencies; and

Section 6.4. **City Shall Cooperate.** City shall cooperate with Concessionaire as reasonably necessary to facilitate concessionaire's activities in providing gift and news service.

ARTICLE VII
DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

Section 7.0. **Disadvantaged Business Enterprise Program.** It is the policy of City of Midland that Disadvantaged Business Enterprises (DBEs) shall have the maximum opportunity to share in the benefits from airport concession leasing through substantial and meaningful participation.

Section 7.1. **Replacement/Substitutions of DBEs.** The Concessionaire is required to have a valid arrangement with the DBE(s) designated to fulfill the contract goal. The Concessionaire will be allowed to subtitle the originally designated DBE(s) only if it is demonstrated to City that the DBE(s) is unwilling or unable to perform. The Concessionaires ability to negotiate a more advantageous contract with another DBE firm will not be considered a valid basis for substitution. If a DBE is unwilling or unable to perform, the Concessionaire shall inform City in writing and include documentation to justify the substitution, including a statement from the DBE to be replaced acknowledging the substitution. The Concessionaire will identify a replacement DBE or document good faith efforts to replace the DBE with another DBE. If the Concessionaire or a non-DBE firm performs the work originally committed to a DBE, the Concessionaire shall submit a revised DBE plan to the Director of Airports detailing how the DBE goal will be met or will supply documentation detailing good faith efforts which have been made to meet the goal.

Section 7.2. **DBE Reports.** Concessionaire shall submit, in the format required by the Director of Airports, a monthly report of DBE utilization. Said report shall be submitted with the monthly report of gross receipts as required in Section 4.5 herein.

ARTICLE VIII
IMPROVEMENTS

Section 8.0. **Improvement Proposal.** Concessionaire shall design and improve the facilities as proposed by Concessionaire and accepted and approved by City.

Section 8.1. **Condition of Premises.** City shall deliver the concession areas specified herein to the Concessionaire, in the condition left by the prior tenant. Utilities will be delivered to the premises. The Concessionaire shall accept such premises “as is”.

Section 8.2. **Improvements Required of Concessionaire.** Concessionaire shall provide all improvements which are necessary to operate said concession to the satisfaction of City, including all improvements proposed to be provided in its proposal to City and accepted by City.

Section 8.3 **Improvements Financial Obligation.** The successful proposer is responsible, at their sole expense, for the plan, design and renovations of the existing concession locations subject to the approval by the City. The successful proposer shall invest the amount necessary to accommodate the proposed food service. No minimum investment is specified.

Section 8.4. **Mid-Term Refurbishment.** After the commencement of the fifth year, and before the end of the sixth year of the term hereof, Concessionaire shall refurbish the facilities. Said refurbishing shall include, but shall not be limited to, all refinishing, repair, replacement, redecorating and painting necessary to keep said areas in first-class condition. Concessionaire shall not expend less than \$110,000.00 for the required mid-term refurbishment. Concessionaire shall pay to City an amount equal to the shortfall, if any, between said refurbishment amount and its actual investment as of the last day of the sixth year hereof. Said payment shall be made on or before the thirtieth day of the seventh year hereof. The amount spent for mid-term refurbishment shall be exclusive of any amount spent

for normal repair and maintenance as determined in the sole discretion of the Director of Airports.

Section 8.5. **No Liens.** All construction work done, equipment supplied and installed and interior design and decor furnished by Concessionaire pursuant to this Section shall be at its sole cost and expense, free and clear of liens for labor and material and Concessionaire shall hold City harmless from any liability in respect thereto.

Section 8.6. **Construction Bond.** Prior to the commencement of construction by Concessionaire, Concessionaire shall furnish, at its sole cost and expense, both Performance and Payment Bonds in the principal sum of the amount proposed by Concessionaire in Section 8.3 herein, or the security deposit for said amount acceptable to the Director of Airports, to guarantee compliance with this Section. This Bond shall be in a form acceptable to City and be issued by a surety company authorized and licensed to transact business in the State of Texas and be for the full amount stated above with City of Midland as obligee conditioned upon full, faithful and satisfactory performance by Concessionaire of its obligations to construct and install the aforementioned facilities and improvements. The above-stated principal amount of said Bond or other security deposit, however, may be reduced during the term hereof as Concessionaire completes the improvements contemplated thereby.

Section 8.7. **City Approval of Improvements.** Prior to any work being done, Concessionaire shall obtain City's written approval of all plans, and shall obtain all other Permits and approvals required by law.

Section 8.8. **Overall Construction Program.** Prior to the construction and installation of improvements including furniture, furnishings, and equipment, Concessionaire shall first prepare a transition plan including a time schedule for same, which shall be subject to approval of City. Such schedule shall include as a minimum the following milestones: (1) Conceptual Design; (2) Design Development; (3) Construction Documents; (4) Plan Check and Permit; (5)

Bid; (6) Construction; and (7) Plan to conduct interim operations during construction of renovations at the existing concession locations.

Section 8.9. **Utilities – Installation.** Concessionaire shall provide distribution of utilities with the premises.

Section 8.10. **Plans and Specifications.** Concessionaire shall, at its own cost and expense, employ competent architects, engineers and interior designers who will prepare architectural, interior and engineering designs, including detailed plans, specifications, and cost estimates of all concession improvements, decor and equipment to be installed in the concession areas. Concessionaire shall at its' own cost and expense and prior to the start of construction, obtain all necessary permits. Concessionaire shall submit three (3) sets of plans, specifications and/or cost estimates for review and approval by City at each milestone, including the Overall Program, Conceptual Design, Design Development, and Construction Documents phases of the project.

Section 8.12. **Adherence to Plans and Specifications.** Upon approval by City of the detailed plans, specifications, equipment, cost estimates and the interior design and decor of the concession improvements, Concessionaire shall forthwith cause said work to be commenced and completed with reasonable dispatch. No substantial change, addition or alteration shall be made in the scope of the work so approved without first obtaining City's writing. No structural or other improvements, decor or equipment, other than as contemplated herein shall be made in or upon the concession areas without the written consent of City being first had and obtained, and any conditions relating thereto then stated by City shall become conditions hereof as if they had been originally stated herein.

Section 8.13. **Future Work.** After completion of the structural or other improvements and installation of equipment and interior design and decor, as above provided, Concessionaire shall not make any structural alterations to the ceilings, walls or floors of any permanent

improvements which it constructs or installs in the concession areas without first obtaining City's written consent; provided, however, that Concessionaire may make nonstructural alterations which the exigencies of the operation of its concession demand in order to promote efficiency in the operation thereof.

Section 8.14. **Building Codes**. All structural or other improvements, equipment and interior design and décor constructed or installed by Concessionaire in the concession areas, including the plans and specifications therefore, shall in all respects conform to and comply with the applicable statutes, ordinances, building codes, rules and regulations of City and such other authorities as may have jurisdiction over the concession areas or Concessionaire's operations therein. The approval by City provided above shall not constitute a representation or warranty as to such conformity or compliance, but responsibility therefore shall at all times remain in Concessionaire.

Section 8.15. **Other Permits**. Concessionaire, at its sole cost and expense, shall also procure all building, fire, safety and other permits necessary for the construction of the structural and other improvements, installation of the equipment and the interior design and décor.

Section 8.16. **Worker's Comp**. Prior to commencement of any such construction, Concessionaire shall first submit to City a certificate of insurance evidencing the fact that Concessionaire maintains workers' compensation and employers liability coverage in the amounts and form required by the Worker's Compensation Act and insurance laws of the State of Texas. Such certificate shall contain the applicable policy number and the inclusive date for same, shall bear an original signature of an authorized representative of the insurance carrier and shall also provide thereon that the insurance shall not be subject to cancellation except after notice by registered mail to City at least thirty (30) days prior to the date of cancellation.

Section 8.17. **Sub-Contractors Insurance**. Concessionaire shall require by any contract that it awards in connection with the structural or other improvements, the installation of any and all equipment and the interior designing and décor, that the contractor doing, performing or furnishing the same shall comply with all applicable statutes, ordinances, codes, rules and regulations, submit to City evidence of required insurance coverage and comply with all applicable provisions of the Civil Code of the State of Texas.

Section 8.18. **As-Builts**. Upon completion of the concession improvements, Concessionaire shall, within a reasonable time thereafter, furnish City, at no charge: (1) a certificate certifying that the improvements have been constructed in accordance with the approved plans and specifications and in strict compliance with all laws, rules, ordinance and governmental rules, regulations and orders; (2) two complete, reproducible sets of as-built drawings covering the structural and other improvements installed by Concessionaire in the concession areas plus the location and details of installation of all equipment, utility lines, heating, ventilating, air-condition ducts and related matters. Concessionaire shall keep said drawings current by updating the same in order to reflect thereon any changes or modifications which may be made in or to the premises; and (3) as installation of the foregoing structural and equipment items, including counters, partitions and furnishing and the interior design and décor is completed, duplicated receipted invoices on all materials and labor costs incurred in their installation which Concessionaire enters on its records as representing its capital expenditures in the concession areas.

Section 8.19. **Ownership of Improvements**. Concessionaire shall have the rights to the ownership of the improvements, installed as part of this agreement, subject to the conditions provided in Section 8.21 through 8.23.

Section 8.20. **Installation Costs**. All of the foregoing improvements, décor and equipment shall be furnished, supplied, installed and constructed by Concessionaire at its sole cost and expense.

Section 8.21. **Ownership During Term.** Federal investment tax credit applicable to concession improvements shall belong to Concessionaire.

Section 8.22. **Ownership Upon Termination.** Title to all leasehold improvements and furniture, fixtures and equipment which cannot be removed without causing structural damage shall vest in City upon termination of the contract. If the Concessionaire's occupancy of a given facility is terminated pursuant to Section 10.1 herein, City will reimburse Concessionaire for the unamortized Net Book Value of its existing structural improvements (and improvements which cannot be removed without doing structural damage) based upon a 10-year straight-line depreciation, with no residual value, provided the Concessionaire has reported each improvement, its costs, and the date upon which its depreciation began, and also provided that architectural and design costs do not exceed 10% of the cost of the improvements and all said costs are properly supported and made available for audit. All said costs must be direct costs paid by Concessionaire to independent contractors and suppliers for work actually performed on said premises, materials furnished or professional services rendered. Costs associated with Concessionaire's employees shall not be included in the calculation of these costs. To become reimbursable the Concessionaire shall at its expense provide City with "as-built" drawings and paid invoices, showing material and labor costs involved in the construction of the approved structural improvement within 90 days of the date that the improvement was put into service. The straight line depreciation shall begin on the first day of the month in which the improvement was placed in service. City may require Concessionaire to remove any or all of its removable improvements. Title to all improvements for which Concessionaire is reimbursed or which have been depreciated shall thereupon vest in City.

ARTICLE IX
MAINTENANCE AND REPAIR

Section 9.0. **Maintenance and Repair.** Concessionaire shall, at all times and at its expense, keep and maintain the concession premises, including all structural and other improvements installed on the premises together with all of its fixtures, plate and mirror glass, equipment and personal property therein, in good repair and in a clean and orderly condition and appearance and shall keep the areas immediately adjacent to the exits and entrances to the concession premises clean and orderly and free of obstructions.

Section 9.1. **Maintenance Program.** Concessionaire shall maintain and repair all interior areas and surfaces of the premises, including sweeping, washing, servicing, repairing, replacing, cleaning and interior painting that may be required to properly maintain the premises in a safe, clean, wholesome, sanitary, orderly and attractive condition. Concessionaire shall establish an adequate preventive maintenance program and the provisions of same shall be subject to periodic review by City. Said program shall include, without limitation, the cleaning and repair of all floors, interior walls, ceilings, lighting, décor and equipment. Regardless of Concessionaire's compliance with its preventive maintenance program, Concessionaire shall clean such surfaces and equipment immediately upon being instructed to do so by City or by other governmental agencies having such authority.

Section 9.2. **City May Repair.** In the event Concessionaire fails to accomplish such nonstructural repairs, replacements, rebuilding, redecorating or painting required hereunder within a period of ten (10) days after written notice from City so to do, or fails to diligently repair, replace, rebuild, redecorate or paint all the premises required to be repaired, replaced, rebuilt, redecorated or painted by Concessionaire pursuant to said schedule, City may, at its option, and in addition to all other remedies which may be available to it, repair, replace, rebuild, redecorate or paint any such premises included in said notice, the cost thereof, plus

fifteen percent (15%) for administrative overhead, to be paid by Concessionaire to City on demand.

Section 9.4. **Right to Enter Premises.** City shall have the right to enter upon the concession premises at all reasonable times to make such repairs, alterations and replacements as may, in the opinion of the Director of Airports, be deemed necessary or advisable and, from time to time, to construct or install over, in, under or through the concession premises new lines, pipes, mains, wires, conduits and equipment; provided, however, that such repair, alteration, replacement or construction shall not unreasonable interfere with the use of the concession premises by Concessionaire and provided rather, that nothing herein shall be so construed as relieving Concessionaire of any obligation imposed upon it herein to maintain the concession areas and the improvement and utility facilities therein. City shall have the right to enter the premises at any time to maintain or repair emergency systems when loss of life or damage to property may result.

Section 9.5. **Pest Control.** Concessionaire shall be solely responsible for a pest free environment within its leasehold area by maintaining its own pest control services, in accordance with the most modern and effective control procedures. All materials used in pest control shall conform to Federal, State and local laws and ordinances. All control substances utilized shall be used with all precautions to obviate the possibility of accidents to humans, domestic animals and pets. Pests referenced above include, but are not limited to, cockroaches, ants, rodents, silverfish, earwigs, spiders, weevils and crickets. Whenever City deems that pest control services must be provided to a building or area that includes premises under this Agreement, Concessionaire shall pay for the costs of services provided for its premises under this Agreement.

ARTICLE X
EXPANSION, REDUCTION, RELOCATION

Section 10.0. **Reduction of Premises.** City may, by appropriate Resolution fully setting forth the reasons therefore, require Concessionaire to surrender any portion of the concession premises at any time. City will use its best efforts to provide substitute space of equal size, with equal frontage in an area accessible to the public.

Section 10.1. **Relocation of Premises.** City may, by appropriate Resolution, require Concessionaire to relocate a given operation to a new location.

Section 10.2. **Finding is Required.** Sections 10.0 and 10.1 shall only be implemented upon a finding by City that such enlargement/relocation is necessary to its operation of the airport or to meet the demands of the public.

Section 10.3. **Buy-Out.** In the event that Concessionaire is required to surrender in whole or relocate any of its operating premises, City will reimburse Concessionaire for the unamortized Net Book Value of its existing structural improvements (and improvements which cannot be removed without doing structural damage) for that facility based upon a 10-year straight-line depreciation, with no residual value, provided the Concessionaire has obtained all necessary approvals for their construction, and also provided the Concessionaire has reported each improvement, its costs, and the date upon which its depreciation began, and also provided that architectural and design costs do not exceed 10% of the cost of the improvements and all of said costs are properly supported and made available for audit. All said costs must be direct costs paid by Concessionaire to independent contractors and suppliers for work actually performed on said premises, materials furnished or professional services rendered. Costs associated with Concessionaire's employees shall not be included in the calculation of these costs. To become reimbursable the Concessionaire shall at its expense provide City with "as-built" drawings and paid invoices, showing material and labor costs

involved in the construction of the approved structural improvement within 90 days of the date that the improvement was put into service. The straight line depreciation shall begin on the first day of the month in which the improvement was placed in service. The Director of Airports may require Concessionaire to remove any or all of its removable improvements. City may, at its sole discretion, enter into good faith negotiations with Concessionaire relating to the impact of the change in Premises upon Concessionaires financial investment as well as Concessionaires Minimum Annual Fee.

ARTICLE XI

TERMINATION/CANCELLATION

Section 11.1. **Cancellation or Termination by City.** City shall have the right to cancel or terminate this Agreement in its entirety and all rights ensuing therefrom upon giving a thirty (30) day written notice to Concessionaire and allowing Concessionaire a thirty (30) day period to cure any one or more of the events appearing in provisions 11.1.1 through 11.1.15 occur:

Section 11.1.1. **Delinquent Payments/Reports.** Concessionaire fails to pay the fees and charges or to make any other payments required hereunder or fails to file gross receipts reports or other financial reports when due to City within ten (10) days after receipt of written notice from City of delinquency therefore;

Section 11.1.2. **Recurring Disputes.** Concessionaire disputes deficiency assessments repeatedly or is assessed liquidated damages of more than \$5,000 annually;

Section 11.1.3. **Incomplete Records.** Concessionaire fails to maintain adequate records and accounts reflecting its business and gross receipts;

Section 11.1.4. **Revocation of Licenses.** An act occurs which results in the suspension or revocation of the rights, powers, licenses, permits and authorities necessary for the conduct and operation of the business authorized herein for a period of more than thirty (30) days;

Section 11.1.5. **Transfer of Interest.** The interest of Concessionaire under this agreement is transferred, passes to or devolves upon, by operation of law or otherwise, any other person, firm or corporation without the written consent of Board;

Section 11.1.6. **Consolidation or Dissolution.** Concessionaire becomes, without the prior written approval of City, a successor or merged corporation in a merger, a constituent corporation in a consolidation or a corporation in dissolution;

Section 11.1.7. **Failure to Perform.** Concessionaire fails to keep, perform and observe each and every promise, covenant and condition set forth in this Agreement on its part to be kept, performed or observed after receipt of written notice of default from City, except where fulfillment of Concessionaire's obligation requires activity over a period of time and Concessionaire has commenced to perform whatever may be required within ten (10) days after receipt of such notice and continues such performance without interruption except for causes beyond its control;

Section 11.1.8. **Attachment.** An attachment or execution is levied, or a receiver is appointed or of any other process of any court of competent jurisdiction is executed which is not vacated, dismissed or set aside within a period of ninety (90) days and which does, or as a direct consequence of such process will, interfere with Concessionaire's use of the concession premises or with its operations under this Agreement.

Section 11.1.9. **Insolvency**. Concessionaire comes insolvent, or takes the benefit of any present or future insolvency statute, or makes a general assignment for the benefit of creditors, or files a voluntary petition in bankruptcy, or a petition or answer seeking an arrangement for its reorganization, or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States, or of any state law, or consents to the appointment of a receiver, trustee or liquidator of all or substantially all of its property or its property located within the concession areas;

Section 11.1.10. **Bankruptcy**. By order or decree of court, Concessionaire is adjudged bankrupt, or an order is made approving a petition filed by any of the creditors or stockholders of Concessionaire seeking its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws, or under any law or statute of the United States, or any state thereof;

Section 11.1.11. **Petition for Bankruptcy**. A petition under any part of the federal bankruptcy laws, or an action under any present or future solvency laws or statute is filed against concessionaire and is not dismissed within one hundred twenty (120) days;

Section 11.1.12. **Control by Receiver**. By or pursuant to, or under authority of, any legislative act, resolution or rule, order or decree of any court, governmental board, agency or officer having jurisdiction, a receiver, trustee or liquidator takes possession or control of all or substantially all of the property of concessionaire, and such possession or control continues in effect for a period of one hundred twenty (120) days;

Section 11.1.13. **Adverse Operation**. Service ceases or deteriorates for any period which, in the opinion of city materially and adversely affects the operation of service required to be performed by Concessionaire under this Agreement;

Section 11.1.14. **Lien.** Any lien is filed against the concession premises because of any act or omission of Concessionaire and such lien is not removed, enjoyed or a bond for satisfaction of such lien is not posted within sixty (60) days; or

Section 11.1.15. **Abandonment.** Concessionaire voluntarily abandons, deserts, vacated or discontinues its operation of the business herein authorized.

Section 11.2. **City's Rights of Reentry.** City shall, as an additional remedy, upon the giving of written notice of cancellation or termination as above provided in Section 11.1 and its subsections, have the right to reenter the premises and every part thereof on the effective date of cancellation or termination without further notice of any kind, remove any and all persons therefrom and regain and resume possession either with or without the institution of summary or legal proceedings otherwise. Such reentry, however, shall not in any manner affect, alter or diminish any of the obligations of Concessionaire under this Agreement.

Section 11.2. **Surrender of Possession.** Concessionaire covenants and agrees to yield and deliver possession of the concession premises to City on the date of the termination, cancellation or expiration of this Agreement promptly, peaceably, quietly and in as good order and condition as the same now are or may be hereafter improved by Concessionaire of city, reasonable use and wear and tear thereof excepted.

Section 11.4. **Right to Remove Equipment.** Subject to the provisions of Article VIII and its subsections herein, Concessionaire shall have the right to remove its equipment, supplies, furnishings, inventories, removable fixtures and other trade fixtures and personal property from the concession premises. If Concessionaire fails to remove said property, said property shall be considered abandoned and City may dispose of same as it sees fit.

Section 11.5. **Acceptance is Not a Waiver.** No acceptance by City of the fees and charges for other payments specified herein, in whole or in part, and for any period or periods, after a default of any of the terms, covenants and conditions to be performed, kept or observed by Concessionaire, other than the default in the payment thereof, shall be deemed a waiver of any right on the part of City to cancel or terminate this Agreement on account of such default.

Section 11.6. **Waiver is Not Continuous.** No waiver by City at any time of any default on the part of Concessionaire in the performance of any of the terms, covenants or conditions hereof to be performed, kept or observed by Concessionaire shall be or be construed to be a waiver at any time thereafter by City of any other or subsequent default in performance of any of said terms, covenants or conditions, and no notice by City shall be required to restore or revive time as of the essence hereof after waiver by City of default in one or more instances.

Section 11.7. **Survival of Concessionaire's Obligations.** In the event this Agreement is terminated or canceled by City, or in the event City reenters, regains or resumes possession of the concession premises, all of the obligations of Concessionaire hereunder shall survive and shall remain in full force and effect for the full term of this Agreement.

Section 11.8. **Exercising City's Right of Cancellation.** City may exercise such rights of termination and cancellation as provided herein by written notice to Concessionaire after passage of the applicable time period provided herein and this Agreement shall terminate as of the date of receipt of said notice by Concessionaire. Any fees due hereunder shall be payable only to said date of termination and cancellation and thereafter all of Concessionaire's rights and privileges and City's obligations shall cease and all improvements made by Concessionaire upon the Leased Premises shall remain in or upon the Leased Premises and shall become the property of City. It is agreed that failure of City to declare this Agreement terminated or canceled upon the default of Concessionaire for any of the reasons set forth herein shall not operate to bar or stop City from declaring this Agreement terminated or canceled by reason of any subsequent violation of the terms of this Agreement.

Section 11.9. **Cancellation or Termination by Concessionaire**. This Agreement may be canceled or terminated by Concessionaire by giving a thirty (30) day written notice to City upon the happening of one or more of the occurrences specified in Sections 11.9.1 through 11.9.5.

Section 11.9.1. **Permanent Abandonment**. The permanent abandonment of Airport's passenger terminals for use by airlines or the permanent removal of all certificated passenger airline service from Airport;

Section 11.9.2. **Material Restriction of Operation**. The lawful assumption by the United States government, or any authorized agency thereof, of the operation, control or use of Airport, or any substantial part thereof, in such manner as to materially restrict Concessionaire from operating thereon for a period of at least ninety (90) consecutive days;

Section 11.9.3. **Major Destruction of Premises**. The complete destruction of one third or more of the concession premises from a cause other than the negligence or omission-to-act of Concessionaire, its subcontractors, agents, or employees, and the subsequent failure of City to repair or reconstruct said premises within twelve (12) months after such destruction;

Section 11.9.4. **Federally-Required Amendments**. Any exercise of authority as provided in Section 15.25 hereof which shall so interfere with Concessionaire's use and enjoyment of the concession premises as to constitute a termination, in whole or in part, of this Agreement by operation of law in accordance with the laws of the United States; or

Section 11.9.5. **Default by City**. The default by city in the performance of any covenant or agreement herein required to be performed by City and the failure of

City to remedy such default for a period of sixty (60) days after receipt from Concessionaire of written notice to do so.

Section 11.10. **Exercising Concessionaire's Right of Cancellation.** Concessionaire may exercise such rights of cancellation and termination by written notice to City at any time after the passage of the applicable period provided herein and the fees due under this Agreement shall be payable only to the date of said termination or cancellation and thereafter all of Concessionaire's rights and privileges and City's obligations shall cease, and all improvements made by Concessionaire upon the Leased Premises shall remain in or upon the Leased Premises and shall become the property of City. It is agreed that the failure of Concessionaire to declare this Agreement terminated or canceled upon the default of City for any of the reasons set forth herein shall not operate to bar or stop Concessionaire from declaring this Agreement terminated or canceled by reason of any subsequent violation of the terms of this Agreement by City.

Section 11.11. **Removal of Improvements.** Concessionaire shall have the rights to the removal of the improvements, installed as part of this Agreement, subject to the conditions provided in Section 11.11.1 through 11.11.2.

Section 11.11.1 **Damaged Improvements.** In the event that the structural or other improvements or furnishings and supplies constructed or installed by Concessionaire in any or on all of the various concession premises are damaged or destroyed, in whole or in part, from any cause whatsoever, Concessionaire shall forthwith proceed with the removal of the debris and damaged or destroyed structural or other improvements, equipment, furnishings and supplies and thereafter shall proceed with all dispatch with the reconstruction work necessary to restore the damaged or destroyed concession premises to the condition they were in prior to the occurrence of such damage or destruction and all costs and expense incurred in connection therewith shall be paid by Concessionaire.

Section 11.11.2. **City May Renovate.** If, during the last month of this Agreement, Concessionaire has removed all or substantially all of its property from the concession premises, City may enter said premises and alter, renovate and redecorate the same.

ARTICLE XII

DAMAGE OR DESTRUCTION OF PREMISES

Section 12.1. **Damage or Destruction to Premises.** In the event of Damage or Destruction to Premises, Sections 12.1.1 through 12.1.4 shall apply.

Section 12.1.1. **Partial Damage.** If all or a portion of the concession premises are partially damaged by fire, explosion, the elements, public enemy or other casualty, but not rendered uninhabitable, the same will be repaired with due diligence by City at its own cost and expense, subject to the limitations as hereinafter provided, however, that if said damage is caused by the negligence or omission to act of Concessionaire, its subcontractors, agents or employees, Concessionaire shall be responsible for reimbursing City for the cost and expenses incurred in such repair.

Section 12.1.2. **Extensive Damage.** If the damages are so extensive as to render the concession premises or a portion thereon uninhabitable, but are capable of being repaired within thirty (30) days, the same shall be repaired with due diligence by City at its own cost and expense, subject to the limitations as hereinafter provided, and an appropriate portion of the fees and charges payable herein shall abate from the time of the damage until such time as the premises are fully restored and certified by City as again ready for use; provided, however, that if said damage is caused by the negligence or omission to act of Concessionaire, its subcontractors, agents or employees, said fees and charges will not abate and Concessionaire shall be responsible for reimbursing City for the cost and expenses incurred in such repair.

Section 12.1.3. **Complete Destruction.** In the event all or a substantial portion of the concession premises are completely destroyed by fire, explosion, the elements, public enemy or other casualty, or are so damaged that they are uninhabitable and cannot be replaced except after more than thirty (30) days, City shall not be obligated to repair, replace or reconstruct said premises, and a proportionate portion of the fees and charges payable hereunder shall abate as of the time of such damage or destruction and shall henceforth cease until such time as the said premises are fully restored. If within twelve (12) months after the time of such damage or destruction said premises have not been repaired or reconstructed, Concessionaire may cancel this Agreement in its entirety as of the date of such damage or destruction.

Section 12.1.4. **Destruction due to Negligence.** Notwithstanding the foregoing, if the said premises, or a substantial portion thereof, are completely destroyed as a result of the negligence or omission to act of Concessionaire, its subcontractors, agents or employees, said fees and charges shall not abate and City may, in its discretion, require Concessionaire to repair and reconstruct said premises within twelve (12) months of such destruction and may pay the cost therefore, or City may repair and reconstruct the same within twelve (12) months of such destruction and Concessionaire shall be responsible for reimbursing City for the cost and expenses incurred in such repair.

Section 12.2. **Limits of City's Obligations.** In the application of the foregoing provisions, City's obligations shall be limited to repair or reconstruction of the concession premises to the same extent and of equal quality as obtained by Concessionaire at the commencement of its operations hereunder. Redecoration and replacement of furniture, equipment and supplies shall be the responsibility of Concessionaire and any such redecoration and refurnishing/ reequipping shall be equivalent in quality to that originally installed.

ARTICLE XIII
INSURANCE AND INDEMNIFICATION

Section 13.0. Liability. Concessionaire shall comply with the Indemnity, Faithful Performance Bond & Insurance provisions which follow.

Section 13.1. **Indemnity.** **CONCESSIONAIRE WILL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF CONCESSIONAIRE,** its agents or employees, or any subcontractor, arising out of, or resulting from, Concessionaire's use of, or activities on, the Agreement Premises, and Concessionaire will be required to pay any judgment with costs which may be obtained against City or any of its officers, agents or employees, including reasonable attorney's fees.

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

OBTAINED AGAINST CITY OR ANY OF CITY’S OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY’S FEES.

Section 13.2. **Performance and Payment Bonds.** Within thirty (30) days after award of this Agreement, Concessionaire shall furnish to City, at Concessionaire’s sole cost and expense, and shall keep in force and effect during the complete term of this Agreement and for thirty (30) days thereafter, Performance and Payment Bonds in the continuing penal sum of not less than one fourth of the minimum annual proposal amount inserted by proposer in Section 4.1.4 herein, guaranteeing full performance by Concessionaire of all of the terms, covenants and conditions herein, including, but not limited to, payment of the compensation specified herein.

Section 13.3. **Bond Requirements.** Said Bond shall be issued by a surety company authorized and licensed to transact business in the State of Texas, be for the amount stated above with City of Midland, as obligee and shall not be subject to cancellation or non-renewal except after the expiration of thirty (30) days written notice by certified mail, return receipt requested, to City of Midland.

Section 13.4. **Insurance.** Concessionaire 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
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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 policy aggregate, including completed operations, and shall be on an occurrence basis.

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

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

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

The parties agree that, prior to the execution of the Agreement, Concessionaire shall provide one or more certificates of insurance showing that the requirements of this article have been met, and specifically containing, without limitations, the following endorsement:

"The City of Midland is included as an additional insured, on a claims occurred basis, on all policies except for Worker's Compensation. The Concessionaire and Insurer hereby waive all

rights of subrogation with respect to claims against the City of Midland, its agents, employees and officers, on all policies of insurance.”

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

Concessionaire 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).

ARTICLE XIV FAA PROVISIONS

Section 14.1. **Non-Discrimination**. During the term of this Agreement, Concessionaire shall comply with the following:

Concessionaire, for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this Agreement, for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, Concessionaire shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR,

Part 21, Non-Discrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

Concessionaire, for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that Concessionaire shall use the premises in compliance with all other requirements imposed by or pursuant to 49 CFR, Part 21, Non-discrimination in Federally Assisted Programs or the Department of Transportation, and as said Regulations may be amended.

Section 14.2. **Civil Rights**. Concessionaire assures that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This Provision obligates Concessionaire or its transferee for the period which Federal Assistance is extended to the airport program, except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases, the Provision obligates the party or any transferee for the longer of the following periods: (1) the period during which the property is used by the sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (2) the period during which the airport sponsor or any transferee retains ownership or possession of the property. In the case of contractors, this Provision binds the contractors from the bid solicitation period through the completion of the contract.

Section 14.3. **Just Services.** Concessionaire agrees to furnish service on a fair, equal and not unjustly discriminatory basis to all users thereof, and to charge fair, reasonable and not unjustly discriminatory prices for each unit of service; PROVIDED, that Concessionaire may make reasonable and non-discriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

Section 14.4. **Subordination to Agreements.** This Agreement is subject and subordinate to the provisions of any agreements heretofore or hereafter made between City and the United States and/or the State of Texas relative to the operation, maintenance, development, or administration of the Airport, the execution of which has been required as a condition precedent to the transfer of Federal rights or property to City for Airport purposes, or to the expenditure of Federal or State of Texas funds for the improvement or development of the Airport, including the expenditure of Federal funds for the development of the Airport in accordance with the provisions of the Federal Aviation Act of 1958, and as said act may be amended from time to time.

ARTICLE XV

GENERAL PROVISIONS

Section 15.0. **Other Provisions.** The appearance of any provision in this section shall not diminish its importance.

Section 15.1. **Assignment.** Concessionaire 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.

Section 15.2. **Agreement Binding Upon Successors.** This Agreement shall be binding upon and shall inure to the benefit of the successors, heirs and assigns of the parties hereto. The term “concessionaire” shall include any assignee of Concessionaire on any assignment permitted and approved by Board.

Section 15.3. **City’s Right of Access and Inspection.** City, by its officers, employees, agents, representatives and contractors, shall have the right at all reasonable times to enter upon the concession premises for the purpose of inspecting the same, for observing the performance by Concessionaire of its obligations under this Agreement or for doing any act or thing which City may be obligated or have the right to do under this Agreement, or otherwise, and no abatement of fees and charges shall be claimed by or allowed to Concessionaire by reason of the exercise of such right. City shall not be obliged to inform Concessionaire that an inspection or observation is planned, or in progress.

Section 15.4. **Attorney’s Fees.** BY EXECUTING THIS AGREEMENT, CONCESSIONAIRE 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 CONCESSIONAIRE SPECIFICALLY AGREES THAT IF THE CONCESSIONAIRE 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 CONCESSIONAIRE AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY’S FEES TO WHICH CONCESSIONAIRE MIGHT OTHERWISE BE ENTITLED.

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

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

Section 15.5. **Third Party Beneficiary**. The City's approval of this contract does not create a third party beneficiary. There is no third party beneficiary to this contract. No person or entity who is not a party to this contract shall have any third party beneficiary or other rights hereunder.

Section 15.6. **Release**. NOTWITHSTANDING ANY OTHER PROVISIONS, CONCESSIONAIRE 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 CONCESSIONAIRE 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.

Section 15.7. **Independent Contractor**. It is expressly understood and agreed that Concessionaire 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 Concessionaire 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 Concessionaire, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and Concessionaire. No person performing any of the work and services described hereunder by Concessionaire 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. Concessionaire 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 Concessionaire's work. Concessionaire shall assume exclusive responsibility for the work. Concessionaire is entirely free to do the work in its own way.

Section 15.8. **Sovereign Immunity.** By executing this contract the City is not waiving its right of sovereign immunity. The City is retaining its immunity from suit. The City is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

Section 15.9. **Notice of Alleged Breach.** As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, Concessionaire or his legal representative, shall give the City Manager, or any other reasonable official of the City, notice in writing (consisting of one original and seven copies of notice attached to a copy of this agreement) of such damages, duly verified, within one hundred and 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 Concessionaire will settle, the physical and mailing addresses of Concessionaire at

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

Section 15.10. **Compliance with Law.** Concessionaire shall comply, at all times during the term of this Agreement, at its own cost and expense with all applicable present and future ordinances and laws of City, county, or state government or of the United States Government, and of any political division or subdivision or agency, authority or commission thereof which may have jurisdiction to pass laws or ordinances with respect to the uses hereunder or the Leased Premises. In addition, Concessionaire shall not allow any illegal activity to be conducted, to be operated, or to occur on any Airport area leased or assigned to Concessionaire.

Section 15.11. **Reservation of Rights.** Any and all rights and privileges not granted to Concessionaire by this Agreement are hereby reserved for and to City.

Section 15.12. **Governing Law**. This Agreement shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this Agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this Agreement or the performance of this Agreement shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this Agreement shall be deemed to have occurred in Midland County, Texas.

Section 15.8. **Nonwaiver of Rights**. No waiver of default by either party of any of the terms, covenants, and conditions hereof to be performed, kept, and observed by the other party shall be construed as, or shall operate as, a waiver of any subsequent default of any of the terms, covenants, or conditions herein contained, to be performed, kept, and observed by the other party.

Section 15.9. **Severability**. If one or more clauses, sections, or provisions of this Agreement, or the application thereof, shall be held to be unlawful, invalid, or unenforceable, the remainder and application hereof of such provision shall not be affected thereby.

Section 15.10. **Paragraph Headings**. The paragraph headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.

Section 15.11. **Conditions and Covenants**. Each covenant herein is a condition, and each condition herein is as well a covenant by the parties bound thereby, unless waived in writing by the parties hereto. The invitation for proposals, instructions to proposers, including Concessionaire's certification form and affirmative action plan, the basic specification, including any addenda thereto, the affidavit of non-collusion and the bonds or other security deposits required under said instructions are a part of this Concession Agreement, and each of the

parties hereto does hereby expressly covenant and agree to carry out and fully perform each and all of the provisions of said documents upon its part to be performed.

Section 15.12. **Disabled Access.** Concessionaire will be solely responsible for fully complying with any and all applicable present and/or future rules, regulations, restrictions, ordinances, statutes, laws and/or orders of any Federal, State and/or local government entity and/or court regarding disabled access to improvements on the leasehold including any services, programs, or activities provided by Concessionaire. Concessionaire will be solely responsible for any and all damages caused by and/or penalties levied as the result of its non-compliance. Further Concessionaire agrees to fully cooperate with City in its efforts to comply with Title II of the Americans with Disability Act of 1990.

Section 15.13. **Force Majeure.** Neither party hereto shall be liable to the other for any failure, delay or interruption in the performance of any of the terms, covenants or conditions of this Agreement due to causes beyond the control of that party including, without limitation, strikes, boycotts, labor disputes, embargoes, shortage of material, acts of God, acts of the public enemy, action superior governmental authority, weather conditions, floods, riots, rebellion, sabotage or any other circumstance for which such party is not responsible or which is not in its power to control.

Section 15.14. **Gender and Plural Usage.** The use of any gender herein shall include all genders and the use of any number shall be construed as the singular or the plural, all as the context may require.

Section 15.15. **Entire Agreement.** This Agreement, together with all exhibits attached hereto, constitutes the entire Agreement between the parties hereto, and all other representations or statements heretofore made, verbal, or written, are merged herein, and this Agreement may be amended only in writing, and executed by duly authorized representatives

of the parties hereto. Concessionaire acknowledges that this Agreement supersedes and cancels any and all previous agreements on this matter between Concessionaire and City.

Section 15.16. **Copartnership Disclaimer**. It is mutually understood that nothing in this Agreement is intended or shall be construed as in any way creating or establishing the relationship of copartners between the parties hereto, or as constituting Concessionaire as an agent or representative of City for any purpose or in any manner whatsoever.

Section 15.17. **Development and Protection of Airport**. City hereby reserves the following rights for the Airport.

Section 15.17.1. **Airport Development**. City reserves the right to further develop or improve the Airport as it sees fit, regardless of the desires or view of Concessionaire, and without interference or hindrance.

Section 15.17.2. **Airspace**. City hereby reserves the use and benefit of the public, the right of aircraft to fly in the airspace overlying the land herein leased, together with the right of said aircraft to cause such noise as may be inherent in the operation of aircraft landing at, taking off from, or in the vicinity of the Airport, and the right to pursue the operations of same. City reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstructions, together with the right to prevent Concessionaire from erecting, or permitting to be erected, any building or other structure on any Leased Premises, which, in the opinion of City, would limit the usefulness of the Airport, or constitute a hazard to aircraft.

Section 15.18. **Amendments**. All amendments to this Agreement shall be in writing and duly executed by all parties.

Section 15.19. **License, Fees, and Taxes.** Concessionaire shall take or obtain all licenses and/or permits as required by Federal, State, or Local law. Concessionaire shall pay any and all lawful taxes and assessments which during the term of this Agreement or any part thereof may become a lien upon or which may be levied by the State, County, City or any other tax levying body, upon any and all of the Leased Premises of this Agreement, and upon any taxable interest of concessionaire acquired in this Agreement, as well as all taxes on taxable property, real or personal, owned by Concessionaire in or about said Leased Premises, but deferment of payment of any tax by Concessionaire shall not constitute a default or breach of this Agreement during the time Concessionaire is contesting in good faith the payment of said tax before any duly constituted authority, and pending the final determination of such contest.

Section 15.20. **Compliance with Federal Aviation Regulations (FAR).** Concessionaire agrees to comply at all times with Federal Aviation Regulations, including Part 107 and Part 139, City's policies, regulations and ordinances, City's Federal Aviation Administration approved Airport Security Program, and any other applicable rules and regulations. Concessionaire further agrees that any fines levied upon City, its officers, employees, agents, and members of City's boards and commissions and employees, agents or officers of city's boards and commissions pursuant to enforcement of Federal Aviation Regulations due to acts or omissions by Concessionaire, Concessionaire's agents, servants, employees, independent contractors, or patrons shall be borne by Concessionaire. Concessionaire further agrees to indemnify and hold harmless City, its officers, employees, agents, and members of City's boards and commissions, and employees, agents, or officers of City's boards and commissions from any and all fines so levied and from any and all claims, demands, liabilities, or expenses of every kind or nature related to such levy or defense to such levy (including, but not limited to, salary of attorneys employed by City) which City or any of its officers, employees, or other persons set out above shall or may at any time sustain or incur by reason of or in consequence of such acts or omissions.

Section 15.21. **War or National Emergency**. During the time of war or national emergency, City shall have the right to lease the landing area or any part thereof to the United States Government for military or naval use, and, if such lease is executed, the provisions of this instrument insofar as they are inconsistent with the provisions of the lease to the Government, shall be suspended.

Section 15.22. **Subordination to Bond Ordinance**. This Agreement shall be subordinate to the provisions of any Airport Bond Resolution enacted by City. In the event of any conflicts between this Agreement and the Bond Resolution, the Bond Resolution shall govern.

Section 15.23. **Americans with Disabilities Act (1990)**. Concessionaire agrees to comply with the Americans with Disabilities Act (1990) and any amendments and regulations thereto with regards to Concessionaire's operations and Leased Premises on the Midland International Airport.

Section 15.24. **Agreement Construction**. Words and phrases herein shall be construed as in the singular or plural number, and a masculine, feminine, or neuter gender, according to the text.

Section 15.25. **Right to Amend**. In the event that the Federal Aviation Administration or its successors requires modifications or changes in this Agreement as a condition precedent to the granting of funds for the improvement of Airport, Concessionaire agrees to consent to such amendments, modifications, revisions, supplements or deletions or any of the terms conditions or requirements of this Agreement as may be reasonably required to obtain such funds; provided, however, that in no event will Concessionaire be required, pursuant to this paragraph, to agree to an increase in the fees and charges provided for herein or to a change in the use, provided it is an authorized use, to which Concessionaire has put the concession premises.

Section 15.26. **Section Headings**. The section headings appearing herein are for the convenience of City and Concessionaire, and shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of this Concession Agreement.

Section 15.27. **Security – General**. Concessionaire shall be responsible for fully complying with any and all applicable present and/or future rules, regulations, restrictions, ordinances, statutes, laws and/or orders of any federal, state and/or local governmental entity regarding airfield security.

Section 15.28. **Security – Transportation Security Administration (TSA)**. Concessionaire shall be responsible for the maintenance and repair of gates and doors, that are located on the leased premises or controlled by Concessionaire. Concessionaire shall comply fully with applicable provisions of Transportation Security Administration Regulations, 49 CFR Part 1542 Airport Security, including the establishment and implementation of procedures acceptable to City to control access from the leased premises to air operation areas in accordance with the Airport Security Program required by Part 1542. Further, Concessionaire shall exercise exclusive security responsibility for the leased premises.

Section 15.29. **Notices**. Notices required herein shall be given by certified mail by depositing the same in the United States mail in the continental United States, postage prepaid. Any such notice so mailed shall be presumed to have been received by the addressee 96 hours after deposit of same in the mail. Either party shall have the right, by giving written notice to the other, to change the address at which its notices are to be received. Until any such change is made, notices shall be delivered as follows:

City:	Director of Airports
	P. O. Box 60305
	9506 LaForce Boulevard
	Midland, Texas 79711

With Copy To: City Manager
 P. O. Box 1152
 300 North Loraine
 Midland, Texas 79702

Concessionaire: _____

 If notice is given in any other manner or at any other place, it will also be given at the place and in the manner specified above.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be legally executed induplicate this _____ day of _____ 20_____.

THE CITY OF MIDLAND, TEXAS

CONCESSIONAIRE

By: _____

Mayor

ATTEST:

Amy Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Marv Esterly, Director of Airports

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

EXHIBIT A

REQUIRED AND PERMITTED

Category I. Required Items

At a minimum, Concessionaire must offer the following news/traveler convenience items for sale to the public during the term of the Concession Agreement:

Newspapers

Magazines

Paperback Books

Non-Prescription Medications

Traveler Necessity Items as approved by the City

Traveler Convenience Items as approved by the City

Pre-Packaged Candy, Candy Bars and Snacks as approved by the City

Category II. Required Items

At a minimum, Concessionaire must offer the following gift items for sale to the public during the term of the Concession Agreement:

An assortment of souvenir and non-souvenir gift items as approved by the City

Category III. Permitted Items

Concessionaire may also offer the following items for sale to the public during the term of the Concession Agreement:

Men's, Women's and Children's Apparel and Accessory Items

Children's Toys, Puzzles and Games

Leather Goods

Jewelry

Luggage

Electric Appliances

EXHIBIT I

TERMINAL LOBBY LEVEL

GIFT/NEWS STORAGE AREA

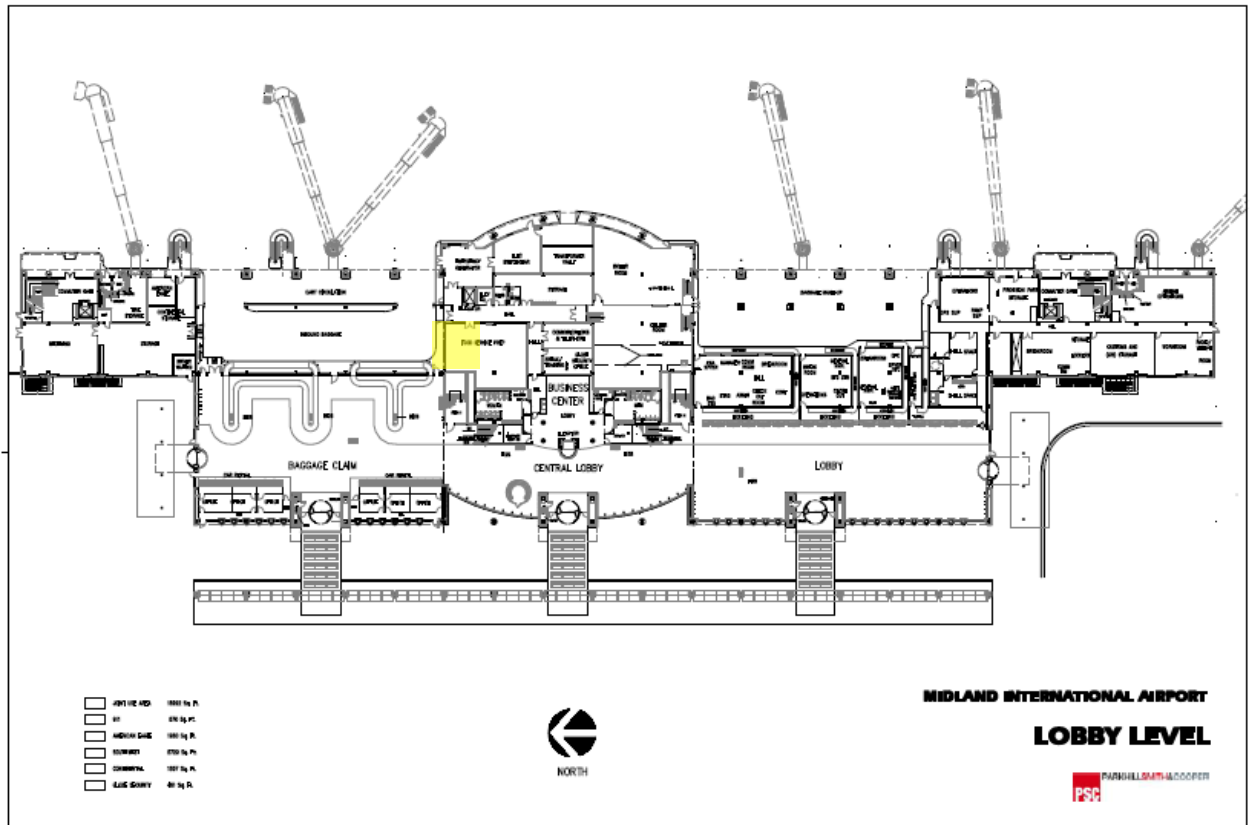
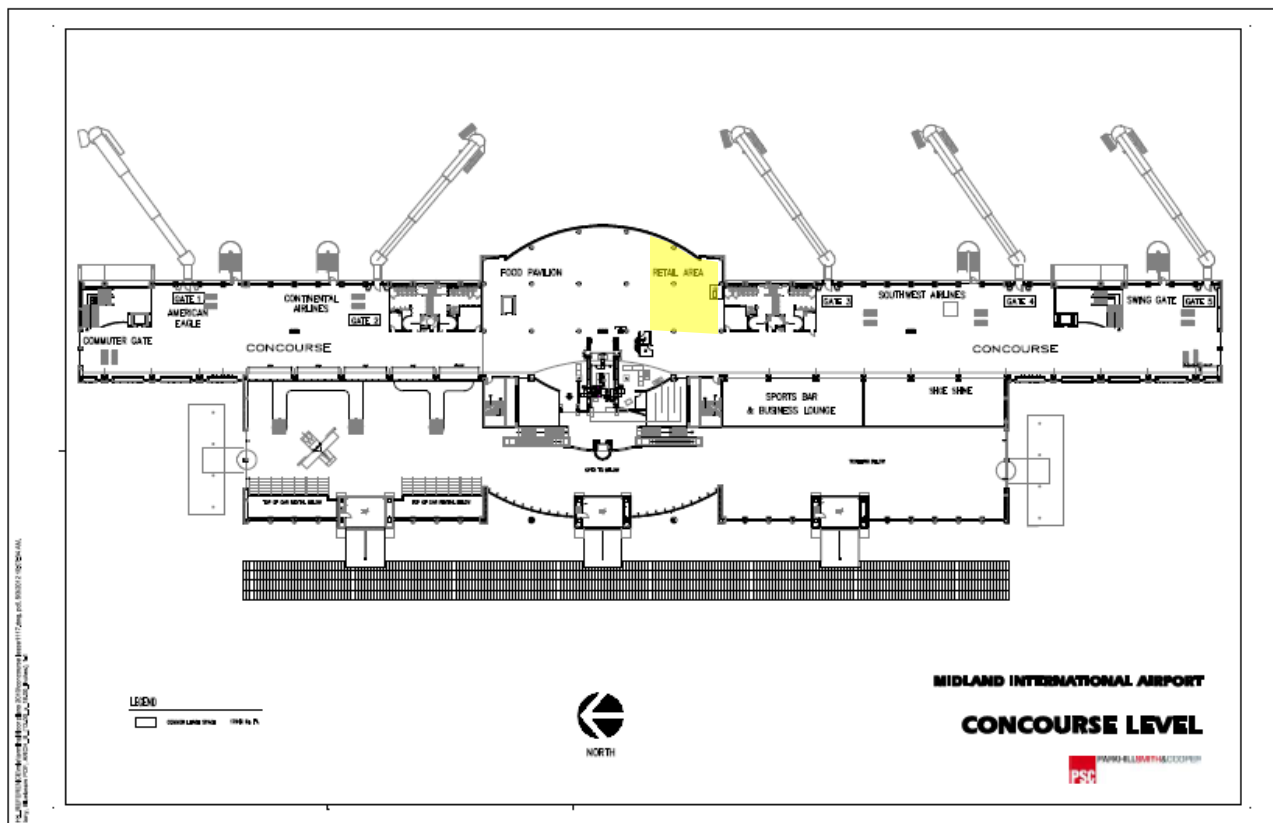


EXHIBIT II

TERMINAL CONCOURSE LEVEL

GIFT/NEWS RETAIL AREA



BID BOND

THE STATE OF TEXAS §

§

COUNTY OF MIDLAND) §

SURETY'S NO. _____

KNOWN ALL MEN BY THESE PRESENTS, THAT _____

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

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

WHEREAS, the Principal has submitted a Bid or Proposal to enter into a certain written contract with the Obligee to _____

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

IT IS EXPRESSLY UNDERSTOOD AND AGREED that if said Principal should withdraw its Bid anytime after such Bid is opened and before official rejection of such Bid or, if successful in

BID BOND

securing the award thereof, said Principal should fail to enter into the Contract and furnish satisfactory Performance Bond and Payment Bond, the Oblige, in either of such events, shall be entitled and is hereby given the right to collect this Bid Bond as liquidated damages.

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

IN WITNESS WHEREOF, the said Principal and Surety do sign and seal this instrument, this day of _____, 2012.

Surety

By _____

By _____

Address _____

Address _____

APPROVED AS TO FORM:

City Attorney

NOTE: Attach Power of Attorney

PAYMENT BOND

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

KNOW ALL MEN BY THESE PRESENTS: That _____
_____ of the City of _____,
County of _____, and State of _____, as
Principal, and _____,
as Surety, are held and firmly bound unto the City of Midland, Texas, a home rule municipal
corporation of Midland County, Texas, as Obligee, in the amount of _____
_____ DOLLARS (\$_____), for the payment whereof the said
Principal and Surety Bind themselves, their heirs, administrators, executors, successors and
assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated the
_____ day of _____, 2012, to _____

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

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

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

Surety, for value received, stipulates and agrees that no change, extension of time, alteration or
addition to the terms of the contract, or to the work performed thereunder, or the plans,

PAYMENT BOND

specifications or drawings accompanying the same, or any assignment of the contract as may be provided for in the instructions to bidders, shall in any way affect its obligation on this Bond, and it does waive notice of any such change, extension of time, alteration or addition to the terms of the contract, assignment thereof, or to the work performed thereunder.

IN WITNESS WHEREOF the said Principal and Surety have signed and sealed this instrument, this ____ day of _____, 2012.

Principal

Surety

By _____

By _____

Address: _____

Address: _____

APPROVED AS TO FORM:

City Attorney

NOTE: Attach Power of Attorney

PAYMENT BOND

PERFORMANCE BOND

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

KNOW ALL MEN BY THESE PRESENTS: That _____

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

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

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated the ____ day of _____ 2012, to _____
_____ specifically including in the scope of this work and bond, the additional maintenance guaranty provisions set forth in the contract conditions, which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein, as well as the Principal's primary obligation to perform according to plans and specifications.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall faithfully perform the work in accordance with the specifications, instructions to bidders, general and special conditions and other contract documents, including any addendums thereto, then this obligation shall be void; otherwise to remain in full force and effect.

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

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

PERFORMANCE BOND

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

IN WITNESS WHEREOF the said Principal and Surety have signed and sealed this instrument, this ____ day of _____, 2012.

Principal

Surety

By _____

By _____

Address: _____

Address: _____

APPROVED AS TO FORM:

City Attorney

NOTE: Attach Power of Attorney

PERFORMANCE BOND



City Council Agenda

Approved for Agenda:
thudson
City Manager's Office

MEETING DATE: 6/26/2012

TO: City Council / City Manager

FROM: Sharlett Chowning, Chief Information Officer

SUBJECT: Consider a resolution regarding allocation of funds to the Wireless System Project

Purpose:

Requesting a resolution to appropriate \$250,000 from the Information Technology Bond Fund (770) Unappropriated Fund Balance (5650) to the Wireless System Project (8987).

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$250,000 from the Information Technology Bond Fund (770) Unappropriated Fund Balance (5650) to the Central Hardware Upgrade Project (8987).

Discussion:

These funds will be used to purchase radios, access units, subscriber units, switches and other equipment to improve the speed and effectiveness of the wireless system used by the City.

RESOLUTION NO.

**RESOLUTION APPROPRIATING \$250,000.00 TO THE
WIRELESS SYSTEM PROJECT**

WHEREAS, the Council finds it to be in the public interest to appropriate funds to the Wireless System Project;

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

THAT the sum of \$250,000.00 is hereby appropriated from the Information Technology Bond Fund (776) Unappropriated Fund Balance (5650) to the Wireless System Project (8987).

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Sharlett Chowning, Chief Information Officer

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:
thudson
City Manager's Office

MEETING DATE: 6/26/2012

TO: City Council / City Manager

FROM: Sharlett Chowning, Chief Information Officer

SUBJECT: Consider a resolution regarding allocation of funds to the Software Upgrade Project

Purpose:

Requesting a resolution to appropriate \$350,000 from the Information Technology Bond Fund (770) Unappropriated Fund Balance (5650) to the Software Upgrade Project (8986).

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$350,000 from the Information Technology Bond Fund (770) Unappropriated Fund Balance (5650) to the Software Upgrade Project (8986).

Discussion:

These funds will be used to purchase upgrades to operating systems, desktop suites and other software necessary when the operating system and hardware are upgraded.

RESOLUTION NO.

**RESOLUTION APPROPRIATING \$350,000.00 TO THE
SOFTWARE UPGRADE PROJECT**

WHEREAS, the Council finds it to be in the public interest to appropriate funds to the Software Upgrade Project;

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

THAT the sum of \$350,000.00 is hereby appropriated from the Information Technology Bond Fund (776) Unappropriated Fund Balance (5650) to the Software Upgrade Project (8986).

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Sharlett Chowning, Chief Information Officer

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:
thudson
City Manager's Office

MEETING DATE: 6/26/2012

TO: City Council / City Manager

FROM: Sharlett Chowning, Chief Information Officer

SUBJECT: Consider a resolution regarding allocation of funds to the Computer and Accessories Upgrade Project

Purpose:

Requesting a resolution to appropriate \$400,000 from the Information Technology Bond Fund (770) Unappropriated Fund Balance (5650) to the Computer and Accessories Upgrade Project (8983).

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$400,000 from the Information Technology Bond Fund (770) Unappropriated Fund Balance (5650) to the Computer and Accessories Upgrade Project (8983).

Discussion:

These funds will be used to purchase equipment such as printers, scanners, mice, and other accessories needed to be compatible with the upgraded operating systems and hardware.

RESOLUTION NO.

**RESOLUTION APPROPRIATING \$400,000.00 TO THE
COMPUTER AND ACCESSORIES UPGRADE
PROJECT**

WHEREAS, the Council finds it to be in the public interest to appropriate funds to the Computer and Accessories Upgrade Project;

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

THAT the sum of \$400,000.00 is hereby appropriated from the Information Technology Bond Fund (776) Unappropriated Fund Balance (5650) to the Computer and Accessories Upgrade Project (8983).

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Sharlett Chowning, Chief Information Officer

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:
thudson
City Manager's Office

MEETING DATE: 6/26/2012

TO: City Council / City Manager

FROM: Sharlett Chowning, Chief Information Officer

SUBJECT: Consider a resolution regarding allocation of funds to the Central Hardware Upgrade Project

Purpose:

Requesting a resolution to appropriate \$258,500 from the Information Technology Bond Fund (770) Unappropriated Fund Balance (5650) to the Central Hardware Upgrade Project (8985).

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$258,500 from the Information Technology Bond Fund (770) Unappropriated Fund Balance (5650) to the Central Hardware Upgrade Project (8985).

Discussion:

These funds will be used to purchase switches, routers, storage, billing printer and other hardware as necessary.

RESOLUTION NO.

**RESOLUTION APPROPRIATING \$258,500.00 TO THE
CENTRAL HARDWARE UPGRADE PROJECT**

WHEREAS, the Council finds it to be in the public interest to appropriate funds to the Central Hardware Upgrade Project;

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

THAT the sum of \$258,500.00 is hereby appropriated from the Information Technology Bond Fund (776) Unappropriated Fund Balance (5650) to the Central Hardware Upgrade Project (8985).

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Sharlett Chowning, Chief Information Officer

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



DATE: June 19, 2012

TO: The Honorable Mayor and City Council Members

FROM: Keith Stretcher, City Attorney

SUBJECT: Rock the Desert

The proposed resolution authorizes the execution of an Agreement with Rock the Desert Ministries, Incorporated. The proposed Agreement allows the City to reimburse Rock the Desert Ministries, Incorporated for certain expenditures in an amount not to exceed \$50,000.00 from the City's Hotel-Motel fund. The proposed resolution contains language that the resolution is not to be construed or interpreted as endorsing the message or activities promoted by Rock the Desert Ministries, Incorporated.

If you have any question or if I may be of any assistance do not hesitate to contact me.

Keith Stretcher

KS/lo

RESOLUTION NO.

RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH ROCK THE DESERT MINISTRIES, INCORPORATED AS AUTHORIZED BY CHAPTER 351 OF THE TEXAS TAX CODE; THE FUNDS ALLOCATED BY THIS RESOLUTION SHALL BE USED TO PROMOTE TOURISM AND THE MOTEL AND HOTEL INDUSTRY; THE ALLOCATED FUNDS ARE EXPENDED IN A MANNER DIRECTLY ENHANCING AND PROMOTING TOURISM AND THE MOTEL AND HOTEL INDUSTRY; THE USE AND ALLOCATION OF THESE FUNDS ARE AUTHORIZED BY CHAPTER 351 OF THE TEXAS TAX CODE; AND THE APPROVAL OF THIS RESOLUTION SHOULD NOT BE CONSTRUED OR INTERPRETED AS ENDORSING THE MESSAGE OR ACTIVITIES PROMOTED BY ROCK THE DESERT MINISTRIES, INCORPORATED; AND ALLOCATING FUNDS

WHEREAS, the City Council finds it to be in the public interest to authorize the execution of an Agreement with Rock the Desert Ministries, Incorporated; and

WHEREAS, this Agreement is authorized by Chapter 351 of the Texas Tax Code; and

WHEREAS, the funds authorized to be spent under this Agreement shall be expended in a manner directly enhancing and promoting tourism and the motel and hotel industry; and

WHEREAS, the Agreement promotes tourism and the motel and hotel industry; and

WHEREAS, this Resolution should not be construed or interpreted as endorsing the message or activities conducted by Rock the Desert Ministries, Incorporated;

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

SECTION ONE. That the recitals stated above are hereby approved and adopted for all purposes.

SECTION TWO. That the City Manager is hereby authorized and directed

on behalf of the City of Midland to execute an Agreement with Rock the Desert Ministries, Incorporated, said Agreement being marked as Exhibit "A", attached hereto and incorporated herein for all purposes.

SECTION THREE. That funds are available in the Fiscal Year 2011-2012 Hotel/Motel Fund (090) Administration (005) Hotel/Motel (0690) Miscellaneous (6990) budget account for the payment of this Agreement. The City Treasurer is hereby authorized and directed to pay Rock the Desert Ministries, Incorporated from funds hereto allocated upon receipt of proper invoice or statement executed by the City Manager.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley
Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

Robert McNaughton, Director of Finance

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

AGREEMENT

STATE OF TEXAS

§
§

COUNTY OF MIDLAND §

THIS AGREEMENT, made and effective this 1st day of July, 2012, between the City of Midland, Texas, a home rule municipal corporation, hereinafter called "City," and Rock the Desert Ministries, Incorporated, a Texas nonprofit corporation, hereinafter called "Rock the Desert".

WITNESSETH:

WHEREAS, the City, recognizing the need for promoting continued tourism in the City of Midland, has budgeted certain funds to be used pursuant to the authority under Chapter 351 of the Texas Tax Code, for the purpose of advertising the municipality and promoting its growth and development; and

WHEREAS, Rock the Desert has plans to enhance and promote tourism in the City of Midland; and

WHEREAS, Rock the Desert and this Agreement shall promote tourism and the hotel industry; and

WHEREAS, there is nothing inherently religious about the services authorized by this Agreement and these services do not have the primary effect of advancing or inhibiting religion; and

WHEREAS, no funds authorized by this Agreement shall be used for religious purposes; and

WHEREAS, the City shall not intrude unduly in the operations of Rock the Desert but will only monitor the use of the funds to ensure compliance with this Agreement; and

WHEREAS, the City allocated these funds on the basis of a neutral, secular nature; and

WHEREAS, no funds authorized by this Agreement shall reach the coffers of Rock the Desert but shall be used to pay for services and supplies; and

WHEREAS, the City Manager must adopt adequate safeguards to ensure that the funds authorized by this Agreement are not put to a religious use; and

WHEREAS, the City's adoption of this Agreement shall not and does not in fact convey a message of endorsement or disapproval thereby aiding one religion, aiding all religions, or favoring one religion over another; and

WHEREAS, the City of Midland does not endorse any message from the event; and

WHEREAS, one of the City's secular purposes is the promotion of commerce and the hotel and motel industry; and

WHEREAS, when a hotel or motel guest is motivated to come to Midland or to extend his or her stay to enjoy activities, the Midland economy benefits and in turn the room tax on the additional hotel and motel nights operate as a continuing endowment to fund future activities and tourism-related facilities; and

WHEREAS, the services and items for which Rock the Desert will be reimbursed are clearly identifiable; and

WHEREAS, the careful procedures outlined in this Agreement provide an adequate safeguard regarding the reimbursement of funds; and

WHEREAS, the Agreement provides ample safeguards against excessive or misdirected reimbursement; and

WHEREAS, the reimbursements described in the Agreement will serve the City's legitimate secular ends without any risk of being used to transmit or teach religious views;

NOW, THEREFORE, in consideration of the covenants and conditions stated herein, and in consideration of the mutual benefits which will accrue to each of the parties hereof, as well as the general citizenry of the City of Midland, Texas, the parties have agreed and do hereby agree as follows:

I.

RECITALS

The recitals stated above are hereby adopted, approved and incorporated into this Agreement for all purposes.

II.

ADVERTISING AND PROMOTION OF THE CITY OF MIDLAND

1. Rock the Desert agrees to promote tourism and the hotel industry in the City of Midland, Texas as authorized by Chapter 351 of the Texas Tax Code.

2. The City agrees to pay to Rock the Desert as compensation for the services rendered under this Agreement a sum not to exceed \$50,000.00. The City Manager is authorized to pay Rock the Desert upon receipt of proper invoice.

Such sum shall be paid based on invoices or statements received from Rock the Desert and approved by the City's Manager.

The City shall only reimburse expenses directly related to paying for Security Personnel, Emergency Medical Personnel, and food and non-alcoholic beverages for these personnel. The City shall also reimburse Rock the Desert for expenses directly related to providing sanitation services such as portable toilets, trash and garbage collection, and cleaning up all litter from the grounds. The City's obligation under this Agreement shall not exceed \$50,000.00. This Agreement has the secular purpose of protecting the health and safety of security personnel and medical emergency personnel, attendees and the general public.

Rock the Desert must maintain a separate account or system of accounts or invoices for the expenses incurred in rendering the reimbursable services. Rock the Desert must submit to the City Manager an application for reimbursement with invoices or reports and documents prescribed by the City's Manager. Applications for reimbursement cannot be approved until the City's Manager audits invoices or other documents submitted by Rock the Desert to substantiate their claims. If Rock the Desert ever receives an amount in excess of its actual cost for reimbursable expenses, the excess must be returned to the City immediately.

III.

INDEMNITY

ROCK THE DESERT WILL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR

SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF ROCK THE DESERT, its agents or employees, or any subcontractor, arising out of, or resulting from Rock the Desert's use of, or activities on, the Agreement Premises, and Rock the Desert will be required to pay any judgment with costs which may be obtained against City or any of its officers, agents or employees, including reasonable attorney's fees.

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

IV.

INDEPENDENT CONTRACTOR

It is expressly understood and agreed that Rock the Desert shall operate hereunder as an independent contractor and not as an officer, agent, servant or employee of the City; that Rock the Desert 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 Rock the Desert, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and Rock the Desert. No person performing any of the work and services described hereunder by Rock the Desert

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. Rock the Desert 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 Rock the Desert's work. Rock the Desert shall assume exclusive responsibility for the work. Rock the Desert is entirely free to do the work in its own way.

V.

REPORTING

By the end of this agreement, Rock the Desert shall submit to the City Manager a reporting of its accomplishments and ongoing projects and programs during this agreement.

VI.

TERM OF AGREEMENT

The term of this agreement is for a period beginning on July 1, 2012, and ending on September 30, 2012.

Rock the Desert agrees that, in the event they desire to extend the term of this agreement beyond its stated date of expiration, they shall submit a written request for extension to the City Manager of the City of Midland at least ten (10) days prior to the current expiration date hereof and that such submission shall include Rock the Desert's anticipated budget, goals and objectives for the extended period as well as the annual report on accomplishments during the current term; provided, however, that the City is under no duty or obligation to grant the requested extension, and that before any such extension becomes effective, it must be in writing as an amendment to this agreement and approved by the City Council of the City of Midland.

VII.

DEFAULT

If Rock the Desert shall fail or neglect to do or perform or observe any of the covenants contained herein on their part to be kept and performed and such failure or neglect shall continue for a period of at least ten (10) days after the City has notified Rock the Desert in writing of Rock the Desert's default hereunder and Rock the Desert has failed to correct such default within said ten (10) days, then City may, at its option, immediately or at any time thereafter without demand or notice, cancel this agreement in its entirety. The waiver by City of any breach of any term, condition, or covenant herein contained shall not be deemed a waiver of any subsequent breach of the same, or any other term, condition, or covenant.

VIII.

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.

IX.

ASSIGNMENT

Rock the Desert 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.

X.

AMENDMENTS

This agreement may be amended by the mutual agreement of the parties hereto in writing to be attached hereto and incorporated into this agreement.

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.

XII.

ATTORNEY'S FEES

BY EXECUTING THIS AGREEMENT, ROCK THE DESERT AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM THEY HAVE 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. ROCK THE DESERT SPECIFICALLY AGREES THAT IF ROCK THE DESERT 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, ROCK THE DESERT AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH ROCK THE DESERT MIGHT OTHERWISE BE ENTITLED.

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

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

XIII.

RELEASE

NOTWITHSTANDING ANY OTHER PROVISION, ROCK THE DESERT HEREBY RELEASES, RELINQUISHES, ACQUITS AND FOREVER DISCHARGES CITY, CITY'S EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES, OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH ROCK THE DESERT 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.

XIV.

THIRD-PARTY BENEFICIARY

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

XV.

RTD'S INSURANCE

Rock the Desert shall procure and carry at its sole cost and expense throughout the life of the Agreement, insurance protection as hereinafter specified. All insurance shall name the City as an additional insured. Such insurance shall be carried with an insurance company licensed to transact business in the State of Texas and shall cover all operations in connection with this Agreement.

Rock the Desert's Public Liability and Property Damage Liability Insurance:

Providing for a limit of not less than One Million Dollars (\$1,000,000.00) for all damages arising out of bodily injuries to or death of one person, and subject to that limit for each person, a total limit of Two Million Dollars (\$2,000,000) for all damages arising out of bodily injuries to or death of two or more persons in any one accident, and regular Property Damage Liability Insurance providing for a limit of not less than One Million Dollars (\$1,000,000) for all damages arising out of injury to or destruction of property in any one accident, and subject to that limit

per accident, a total (or aggregate) limit of Two Million Dollars (\$2,000,000) for all damages arising out of injury to or destruction of property during the policy period. This insurance shall name the City as an additional insured.

Automobile Insurance: Providing for a limit of not less than One Million Dollars (\$1,000,000) for injuries, including accidental death, to any one person and, subject to the same limit for each person a total limit of Two Million Dollars (\$2,000,000) on account of one accident, and automobile property damage insurance in an amount not less than Five Hundred Thousand Dollars (\$500,000). This insurance shall name the City as an additional insured.

Proof of Carriage of Insurance: Rock the Desert shall submit to the City for approval one (1) certificate covering each insurance policy carried and offered as evidence of compliance with the above requirements, signed by an authorized representative of the insurance company, setting forth:

1. Name and address of the insured. Also showing the City as an additional insured.
2. The location of the operations to which the insurance applied.
3. The number of policy and the type or types of insurance in force thereunder on the date borne by such certificate.
4. The expiration date of the policy and the limit or limits of liability thereunder on the date borne by such certificate.
5. A statement that the insurance of the type afforded by the policy applied to all of the operations of whatever character, which are undertaken by the insured during the performance of this contract, provided such operations are required in the performance of the contract.
6. A provision that the policy may be cancelled only by mailing written notice to the named insured at the address shown in this policy stating when, not less than thirty (30) days thereafter, cancellation of such policy shall be effective, with copy to the City of letter of intent.

EXECUTED by the duly authorized officials of the City and Rock the Desert as of the day and year first above written.

CITY OF MIDLAND, TEXAS

By _____

Courtney Sharp, City Manager

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

ROCK THE DESERT MINISTRIES, INC.

By _____

Title

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared
_____ known to me to be the person whose name is

subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of Rock the Desert Ministries, Inc.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 2012.

Notary Public, State of _____



City Council Agenda

Approved for Agenda:
thudson
City Manager's Office

MEETING DATE: 6/26/2012

TO: City Council / City Manager

FROM: Tina Jauz, Community Services Director

SUBJECT: Consider a resolution establishing Project Number 8996 "Hike and Bike Trail Development" for further development of a Hike Bike Trail System; and appropriating \$200,000.

Purpose:

To establish a project for development of a Hike Bike Trail System and appropriate funds.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$200,000 2012 Certificate of Obligation Funds

Appropriation/Allocation/Funds Available Number: 1013

That the sum of \$200,000 is hereby appropriated from the 2012 GPCO Park Improvements Bond Fund (162) Unappropriated Fund Balance (5650) to the Hike and Bike Trail Development Project (8996)

Discussion:

During the June 12th City Council Briefing Session, the Parks Division presented concepts related to the further development of a Hike Bike Trail System in the city. This includes rebranding the current parks and trail system along with further developing and connecting neighborhood trails. With Council approval, a project can be established, approved funds allocated, and implementation of concepts can begin.

RESOLUTION NO.

**RESOLUTION ESTABLISHING PROJECT NUMBER
8996 "HIKE AND BIKE TRAIL DEVELOPMENT" FOR
FURTHER DEVELOPMENT OF A HIKE AND BIKE
TRAIL; AND APPROPRIATING FUNDS IN THE
AMOUNT OF \$200,000.00**

WHEREAS, the Council finds it to be in the public interest to establish Project Number 8996 for further development of a Hike and Bike Trail System, and appropriating funds in the amount of \$200,000.00;

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

SECTION ONE. That Project Number 8996 "Hike and Bike Trail Development" is hereby established.

SECTION TWO. That the sum of \$200,000 is hereby appropriated from the 2012 GPCO Park Improvements Bond Fund (162) Unappropriated Fund Balance (5650) to the Hike and Bike Trail Development Project (8996).

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

MIDLAND
City Attorney's Office
City of Midland
Office Memorandum

DATE: June 18, 2012

TO: The Honorable Mayor and City Council Members

FROM: Keith Stretcher, City Attorney

SUBJECT: Hike and Bike Trails

Prior to 2005, municipalities were constantly being sued and having claims filed against them for accidents and incidents that took place on bicycle trails or paths. These claims and litigation prevented some cities from establishing or expanding their bicycle trails.

In 2005, the City of Midland and other municipalities were able to limit a City's liability by the passage of House Bill No. 616 by the Texas Legislature. This legislation granted municipalities limited immunity and established once and for all the standard of care that a municipality owed to individuals using bicycle trails or paths. The standard of care established by the Texas Legislature was that a City may only be held liable for willful, wanton or grossly negligent acts. Many cities have used this statute to successfully defend lawsuits. For example, an individual sued the City of Dallas when he was thrown from his bicycle after going across a wet area on a bike trail. The accident took place on July 2, 2007. The Court of Appeals ruled in favor of the City of Dallas because the statute had been amended in 2005 by House Bill No. 616 making a City only liable for gross negligence not simple negligence. The Court ruled that there was no evidence of gross negligence.

As a side note, the City of Midland was also successful, by working with other cities, to add the same limited immunity to House Bill No. 616 for municipalities that own or operate Dog Parks. This legislation paved the way for the City to open the Hogan Park Dog Park in 2006.

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

Keith Stretcher

KS/lo



City Council Agenda

Approved for Agenda:
jnichols
City Manager's Office

MEETING DATE: 6/26/2012

TO: City Council / City Manager

FROM: David D. Beard, P.E.

SUBJECT: Consider a resolution to Parkhill, Smith & Cooper's Professional Services Agreement authorizing additional geotechnical services in the amount of \$9,500 for the Sparks Park Target Area.

Purpose:

Consider a resolution amending Parkhill, Smith & Cooper's Professional Services Agreement; authorizing additional Geotechnical Services in an amount not to exceed \$9,500 for the purpose of providing an alternate pavement section for the Sparks Park Target Area.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

The total fee for Professional Services is anticipated to not exceed \$9,500

Funds are available in the 2010 CDBG program for Sparks Park Target Area infrastructure (061-075-7052).

Discussion:

The additional Geotechnical Services include sampling the in-place material, determining suitability to be stabilized, and providing a modified pavement section recommendation.

The intent of the modified pavement section is to reduce the paving cost. The reduction in cost will be realized by stabilizing the existing material instead of removing and replacing the existing material with imported material.

Attached is an opinion of probable costs comparing a modified pavement section to a typical pavement section.

RESOLUTION NO.

**RESOLUTION AUTHORIZING THE EXECUTION OF
AN AMENDMENT TO THE PROFESSIONAL
SERVICES AGREEMENT WITH PARKHILL, SMITH &
COOPER, INC. REGARDING THE DEVELOPMENT
OF THE SPARKS PARK TARGET AREA; AND
AUTHORIZING PAYMENT THEREFOR**

WHEREAS, the City Council, by Resolution No. 2011-027, passed February 8, 2011, authorized the execution of a professional services agreement with Parkhill, Smith & Cooper, Inc. regarding the development of the Sparks Park Target Area; and

WHEREAS, the City Council finds it to be in the public interest to authorize the execution of an amendment to said agreement and to authorize payment therefor;

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

SECTION ONE. That the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, Texas, an amendment to the professional services agreement with Parkhill, Smith & Cooper, Inc. Said amendment is marked as Exhibit "A", attached hereto and incorporated herein for all purposes.

SECTION TWO. That the City Treasurer is hereby authorized and directed to pay Parkhill, Smith & Cooper, Inc. for services performed pursuant to said amendment, in an amount not to exceed \$9,500.00, from funds available in the 2010 CDBG program for Sparks Park Target Area infrastructure, project account 061-075-7052, upon receipt of proper invoice or statement approved by the City Manager.

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

Council members voting "AYE":

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

Robert McNaughton, Director of Finance

APPROVED AS TO CONTENT
AND COMPLETENESS:

David Beard, City Engineer

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

**AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF MIDLAND, TEXAS AND
PARKHILL, SMITH & COOPER, INC.**

THIS AMENDMENT, made and effective June 27, 2012, by and between the City of Midland, Texas ("City"), a home rule municipal corporation, and Parkhill, Smith & Cooper, Inc. ("Company").

WHEREAS, the City and Company are parties to an agreement dated February 9, 2011, concerning the development of the Sparks Park Target Area in Midland, Texas (the "Agreement"); and

WHEREAS, said Agreement was authorized by the City Council by Resolution No. 2011-027; and

WHEREAS, the Agreement has been in full force and effect since its effective date, and has not been allowed to lapse; and

WHEREAS, the City and Company desire to make certain amendments to said Agreement as shown below;

W I T N E S S E T H:

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

ARTICLE I.

In addition to those professional services set forth in the Agreement, Company shall perform the professional services set forth in Attachment "A" hereto. Attachment "A" is incorporated herein for all purposes.

ARTICLE II.

In consideration of Company performing those services described in Article I hereof, the City agrees to pay Company in an amount not to exceed \$9,500.00, in accordance with Attachment "B" hereto, upon presentation of a monthly invoice. Attachment "B" is incorporated herein for all purposes.

ARTICLE III.

The Agreement, inclusive of this Amendment, shall in all respects remain in full force and effect in accordance with its provisions and as amended above.

EXECUTED by the duly authorized officials as of the day and year first above written.

CITY OF MIDLAND

By: _____
Courtney Sharp, City Manager

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

PARKHILL SMITH & COOPER, INC.

By: _____

Title: _____

STATE OF TEXAS

§
§

COUNTY OF MIDLAND §

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

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

Notary Public, State of Texas

Printed Name

My Commission Expires: _____

d3e 3 63 3

ATTACHMENT A

PROPOSAL FOR GEOTECHNICAL SERVICES

SCOPE OF SERVICES

**Pavement Investigation
City of Midland Streets
Midland, Texas
Proposal No. 12-03-02**

Field Investigation, Phase 1: The subsurface investigation has been designed to provide data that will aid the design engineer in evaluating the natural materials for pavement design purposes. Five borings will be drilled at the site. Planned boring depth is 5.0 feet for each boring. This depth and the number of borings are based on the anticipated subsurface materials at the site.

Laboratory Testing, Phase 1: The laboratory testing program has been designed to provide general soil classification criteria. Atterberg limits, sieve analyses, and soil classification tests will be performed. In addition, pH tests, sulfate content tests, and chloride content tests will be performed. The number of laboratory tests will be dependent upon the type and quality of materials encountered.

Laboratory Testing, Phase 2: If the materials encountered appear suitable to be stabilized with some type of material (i.e., lime, fly ash, cement or asphalt), then a pH series and a strength series will be performed to evaluate the optimal amount of material to be added.

Engineering Services: Results of the field and laboratory portions of the investigation will be used in engineering studies to determine soil descriptions/classifications and pavement design based on traffic types and volumes provided by the client.

Reporting: Three copies of the report will be provided unless directed otherwise. Verbal information will be provided, when requested, after drilling operations are completed.

Scheduling: The schedule for the investigation described herein is as follows:

1. The field portion will require approximately one day to complete. We are prepared to begin work within three to fourteen working days after receipt of authorization to proceed.
2. The routine laboratory work for this project will require five to eight working days to complete.
3. The engineering study and report preparation portion of the investigation is estimated to require one to two working days.
4. These ranges are based on current commitments and are subject to change.

Based on these estimates, we anticipate that the investigation for Phase 1 described herein will be completed in approximately two to three weeks after drilling. It is our understanding that all utilities, if any, will be cleared prior to our drilling and that physical access to the holes will be provided.

ATTACHMENT B

PROPOSAL FOR GEOTECHNICAL SERVICES

FEE ESTIMATE

**Pavement Investigation
City of Midland Streets
Midland, Texas
Proposal No. 12-03-02**

<u>SCOPE OF SERVICE</u>	<u>QUANTITY</u>	<u>UNIT COST</u>	<u>EXTENSION</u>
<i>Phase 1:</i> Field Operations, Laboratory Investigation, Engineering Analysis, and Report	1.0 lump sum	\$ 5300.00	\$ 5,300.00
<i>Phase 2:</i> Laboratory Investigation, Engineering Analysis, and Report	1.0 lump sum	\$ 4200.00	\$ 4,200.00



City Council Agenda

Approved for Agenda:
csharp
City Manager's Office

MEETING DATE: 6/26/2012
TO: City Council / City Manager
FROM: Robert Isbell, Fire Chief
SUBJECT: Assistance to Firefighters Grant (AFG) 2012

Purpose:

Consider a resolution allowing the Midland Fire Department to apply for a grant, through the U.S. Department of Homeland Security, in the amount of \$50,000.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

The Midland Fire Department is seeking to apply for a \$50,000 grant with a 20% match that would be budgeted in the amount of \$10,000.

Discussion:

MFD firefighting breathing apparatus currently is configured for our personnel to share breathing regulators. Due to health and hygiene reasons there has been a national push to issue individual regulators for all firefighters. This grant would allow MFD to issue individual regulators to each firefighter assigned to shift work.

RESOLUTION NO.

RESOLUTION AUTHORIZING THE MIDLAND FIRE DEPARTMENT TO FILE AN APPLICATION WITH THE UNITED STATES GOVERNMENT FOR THE 2012 ASSISTANCE TO FIREFIGHTERS GRANT; SAID FUNDS WILL BE USED TO PURCHASE INDIVIDUAL BREATHING REGULATORS FOR FIREFIGHTERS; SAID GRANT IS A MATCHING FUNDS GRANT IN WHICH THE ASSISTANCE TO FIREFIGHTERS GRANT WOULD FUND 80% (\$40,000.00) OF THE TOTAL AMOUNT (\$50,000.00) AND THE CITY OF MIDLAND WOULD FUND 20% (\$10,000.00) OF THE TOTAL AMOUNT

WHEREAS, the United States Government has established the Assistance to Firefighters Grant Program to help municipal fire departments fund various programs; and

WHEREAS, the Midland Fire Department wishes to apply for said grant funds in the amount of 40,000.00; and

WHEREAS, said grant is a matching funds grant in which the Assistance to Firefighters Grant would fund 80% (\$40,000.00) and the City of Midland would fund 20% (\$10,000.00) for a total of \$50,000.00; and

WHEREAS, said grant funds would be used to purchase individual breathing regulators for firefighters; and

WHEREAS, the City Council finds it to be in the public interest to authorize the Midland Fire Department to apply for said grant funds;

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

THAT the Fire Chief and the City Manager are hereby authorized to execute all appropriate documents to apply for a grant from the United States Government for the purpose of purchasing individual breathing regulators for firefighters.

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

Council members voting “AYE”:

Council members voting “NAY”:

ATTEST:

W. Wesley Perry, Mayor

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Isbell, Fire Chief

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:
csharp
City Manager's Office

MEETING DATE: 6/26/2012

TO: City Council / City Manager

FROM: Price Robinson, Chief of Police

SUBJECT: Consider a Resolution to Accept and Appropriate \$60,339 Awarded to the Midland Police Department by the Governor's Office through the Edward Byrne Memorial Justice Assistance Grant Program

Purpose:

Consider a resolution to accept and appropriate \$60,339 awarded to the Midland Police Department by the Governor's Office through the Edward Byrne Memorial Justice Assistance Grant Program

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

That the Fiscal Year 2012 Edward Byrne Memorial Justice Assistance Grant Program grant in the amount of \$60,339 is hereby accepted and directed to be deposited into the General Fund (001) of the City, and;

That the sum of \$60,339 is hereby appropriated from to the General Fund (001) Unappropriated Fund Balance (5650) to the Use-of-Force Training Technology Project (7087)

No matching funds are required.

Discussion:

The Midland Police Department will use the grant funds awarded through the Edward Byrne Memorial Justice Assistance Grant Program to purchase a scenario-based use-of-force simulation technology system. The Midland Police Department will use the simulation technology system to dramatically enhance the use-of-force training provided to officers and recruits which will effectively improve their level of skill, thereby diminishing the risk of officer injury and liability.

RESOLUTION NO.

RESOLUTION AUTHORIZING THE CITY OF MIDLAND POLICE DEPARTMENT TO ACCEPT THE FISCAL YEAR 2012 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT IN THE AMOUNT OF \$60,339.00 PROVIDED BY THE GOVERNOR'S OFFICE; SAID GRANT FUNDS WILL BE USED FOR A USE-OF-FORCE TRAINING TECHNOLOGY PROJECT; AUTHORIZING THE EXECUTION OF ACCEPTANCE DOCUMENTS; AND APPROPRIATING FUNDS

WHEREAS, the City of Midland, Texas Police Department has received notice that it has been awarded \$60,339.00 through the Fiscal Year 2012 Edward Byrne Memorial Justice Assistance Grant Program, said grant funds will be used for a Use-of-Force Training Technology Project; and

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

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

SECTION ONE. That the City of Midland hereby accepts the grant award of \$60,339.00 awarded by the Governor's Office through the Edward Byrne Memorial Justice Assistance Grant Program. Said grant funds shall be used by the Midland Police Department for a Use-of-Force Training Technology Project.

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

SECTION THREE. That the Fiscal Year 2012 Edward Byrne Memorial Justice Assistance Grant Program grant in the amount of \$60,339 is hereby accepted and directed to be deposited into the General Fund (001) of the City, and; that the sum of \$60,339 is hereby appropriated from to the General Fund (001) Unappropriated Fund Balance (5650) to the Use-of-Force Training Technology Project (7087).

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

Robert McNaughton, Director of Finance

APPROVED AS TO CONTENT AND
COMPLETENESS:

Price Robinson, Chief of Police

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:
jnichols
City Manager's Office

MEETING DATE: 6/26/2012

TO: City Council / City Manager

FROM: Stuart Purvis, Utilities Director

SUBJECT: Approve the Execution of a Task Order for the Design and Construction Management of the T-Bar Chlorination Station with CDM Smith Inc. and Appropriate Funds

Purpose:

Consider a resolution approving the execution of a Task Order for the design and construction management of the T-Bar Chlorination Station with CDM Smith Inc. and appropriate funds.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Award amount is \$551,066.00 from the T-Bar Ranch Fund. That the sum of \$551,066 is hereby appropriated from the T-Bar Ranch Fund (340) Unappropriated Fund Balance (5650) to the T-Bar Chlorination Station (8995)

Discussion:

When the water passes through the Midland County Fresh Water Supply District No. 1's meter to us, it will contain a minor chlorine residual as required by TCEQ. This residual, however, is not of the appropriate type or of level necessary to insure that it will last in our system. Because of this, the City will operate a chlorine booster station just this side of the District's meter. This station will serve two purposes: 1) to boost the chlorine to levels necessary to sustain them throughout our distribution system and 2) to change the disinfectant from chlorine to chloramines by the addition of ammonia in order to match the disinfectant used throughout the system.

This station will be built under the District's contract but, due to the need to tightly integrate it into the existing operating system at the plant, it will be designed by CDM Smith Inc. who has designed and implemented the other parts of the system. This Task Order will cover the costs associated with the design and construction management of the chlorine booster station.

RESOLUTION NO.

**RESOLUTION AUTHORIZING THE EXECUTION OF
A PROFESSIONAL SERVICES AGREEMENT TASK
ORDER WITH CDM SMITH INC., FOR
PROFESSIONAL ENGINEERING SUPPORT
SERVICES REGARDING THE DESIGN AND
CONSTRUCTION MANAGEMENT OF THE T-BAR
CHLORINATION STATION, AT AN ESTIMATED
TOTAL COST OF \$551,066.00; AND APPROPRIATING
FUNDS**

WHEREAS, the City Manager advertised a Request for Qualifications for professional engineering support services (“Professional Services”); and

WHEREAS, CDM Smith Inc., has agreed to perform said Professional Services for an estimated \$551,066.00; and

WHEREAS, the Council finds that CDM Smith Inc., is qualified to perform said Professional Services; and

WHEREAS, the Council finds that the professional fees proposed by CDM Smith Inc., are consistent with and not higher than the recommended practices and fees published by the applicable professional associations and do not exceed any maximum provided by law; and

WHEREAS, the Council finds that CDM Smith Inc., provides professional services for a fair and reasonable price; and

WHEREAS, the Council finds it to be in the public interest to execute a professional services agreement task order with CDM Smith Inc., as the most highly qualified provider for such services based on demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee for the services;

**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 professional services agreement task order with CDM Smith Inc., for said Professional

Services, said agreement being attached hereto as Exhibit "1" and incorporated herein for all legal purposes.

SECTION TWO. That the sum of \$551,066.00 is hereby appropriated from the T-Bar Ranch Fund (340) Unappropriated Fund Balance (5650) to the T-Bar Chlorination Station (8995).

SECTION THREE. That the City Treasurer is hereby authorized and directed to make payments to CDM Smith Inc., for professional services pursuant to the terms of said agreement in an amount not to exceed \$551,066.00 from funds appropriated herein upon receipt of proper invoices or statements approved by the City Manager.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Stuart Purvis, Director of Utilities

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

**PROFESSIONAL SERVICES AGREEMENT TASK ORDER FOR
PERFORMANCE OF ENGINEERING SUPPORT SERVICES**

THIS AGREEMENT is made and effective the 27th day of June, 2012, by and between the CITY OF MIDLAND, TEXAS, a municipal corporation, hereinafter called "City," and CDM SMITH INC., hereinafter referred to as "Company."

**ARTICLE I.
PURPOSE**

The purpose of this Agreement is to state the terms and conditions under which Company shall perform Professional Engineering Services referred to as "T-Bar Water Supply System Disinfection Facility Project" and as enumerated on the Scope of Work attached hereto as Exhibit "A" and incorporated herein for all legal purposes.

**ARTICLE II.
SERVICES TO BE PERFORMED**

1. Company shall provide those services described in the Scope of Services attached hereto as Exhibit "A" and incorporated herein for all legal purposes.
2. Company shall perform all the services under this Agreement consistent with the same level of skill and care as other professionals in approximately the same location at approximately the same point in time and for the same types of projects. Company 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 Company in an amount not to exceed \$551,066.00 for the professional services described in Exhibit "A." City agrees to pay Company for Labor, Incidental Direct Costs and Sub-Contractor Costs as set forth in Exhibit "A" upon presentation of a monthly invoice. The invoice shall set out Labor fees for the month and those Incidental Direct Costs and Sub-Contractor Costs described in Exhibit "A" incurred during the previous month. The City Manager or Interim City Manager must approve all additional expenses and reimbursable

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

ARTICLE IV. TERM

The term of this Agreement shall be from June 27, 2012, until June 26, 2014, unless the project is completed sooner or the Agreement is terminated as provided below.

ARTICLE V. TERMINATION

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

ARTICLE VI. CONTRACT PERSONAL

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

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

All reports, information and other data ("instruments of service"), given to, prepared or assembled by Company 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 Company 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 Company, which consent shall not be unreasonably withheld.

ARTICLE VIII. INDEPENDENT CONTRACTOR

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

ARTICLE IX. INSURANCE

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

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

Company shall contractually require all contractors, subcontractors, and sub-subcontractors that work on any portion of the work that is the subject of this 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, Company shall provide one or more certificates of insurance specifically stating that these requirements have been met and subject to the approval of the City. The City shall not be required to provide any insurance whatsoever pursuant to this Contract.

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

ARTICLE X. ATTORNEY FEES

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

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

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

**ARTICLE XI.
SOVEREIGN IMMUNITY**

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

**ARTICLE XII.
NO THIRD PARTY BENEFICIARIES**

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

**ARTICLE XIII.
RELEASE**

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

**ARTICLE XIV.
GENERAL PROVISIONS**

A. Waiver. No waiver by City of a breach of any covenant, condition, or restriction of this Agreement shall be construed or held to be a waiver of any

succeeding or preceding breach of the same or any other covenant, condition, or restriction contained in this Agreement.

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

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

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

If to Company:	CDM Smith Inc. Attn: J. Dan Shannon, PE 777 Taylor Street, Ste. 1050 Fort Worth, Texas 76102
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The parties hereto may change the above designated addresses by giving notice pursuant to the terms of this Section.

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

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

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

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

**ARTICLE XV.
NOTICE OF ALLEGED BREACH:
STATUTORY PREREQUISITES**

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

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

this entire Agreement are reasonable.

**ARTICLE XVI.
ASSIGNMENT**

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

**ARTICLE XVII.
FEDERAL WAGE REQUIREMENTS**

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

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

Company :
CDM SMITH INC.

By: _____

Title: _____

STATE OF _____ §

COUNTY OF _____ §

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

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

Notary Public, State of Texas

Printed Name

My Commission Expires: _____



777 Taylor Street, Suite 1050

Fort Worth, TX 76102

tel: 817 332-8727

fax: 817 332-6870

May 25, 2012

Mr. Stuart T. Purvis, P.E.
Director of Utilities
City of Midland
300 N. Loraine
Midland, TX 79702

Subject: City of Midland
T Bar Water Supply System Disinfection Facility Project
Engineering Services Scope of Work Proposal

Dear Mr. Purvis:

Attached please find the proposed engineering services scope of work proposal for completing the T Bar Water Supply System Disinfection Facility project. The proposed fee to perform the scope of services is \$551,066.

Upon review of the proposal, please let me know if you have any questions or comments. We appreciate the opportunity to perform these services for the City of Midland.

Very truly yours,

A handwritten signature in black ink, appearing to read "Chun-Yi Chiang".

Chun-Yi Chiang, P.E.
CDM Smith Inc.
Texas PE Firm No. F-3043

cc: Danny Shannon

CITY OF MIDLAND
T BAR WATER SUPPLY SYSTEM DISINFECTION FACILITY PROJECT
PROFESSIONAL ENGINEERING SERVICES
SCOPE OF WORK PROPOSAL

Project Background

The City of Midland has agreed to enter into a contract with the Midland County Freshwater Supply District No. 1 that will deliver groundwater through a new 70-mile pipeline from City's T Bar Ranch property to Midland to meet increasing water demands. The new pipeline will be connected to City's water distribution system approximately five miles north of the Midland International Airport. The Midland County Freshwater Supply District No. 1 has agreed to have the water supply infrastructure in place by May of 2013. This pipeline and associated facilities will be constructed through a design-build contract.

To meet regulatory requirements, a disinfection facility will be required to add chlorine and ammonia to boost chlorine residual in the new water supply pipeline prior to entering the city's distribution system. Construction of the disinfection facility will be included under the water supply infrastructure project being performed by the design-build team. However, the disinfection facility will be designed outside of this design-build contract.

The Scope of Work Proposal presents the proposed engineering services scope of work and associated fee for design of the new disinfection facility, coordination with the design-build team during construction, and programming services.

Project Scope of Work

The following tasks describe in detail the Basic Services of the Engineer for the T Bar Water Supply System Disinfection Facility Project.

Task 1 - Design Services and General Services during Construction

- Duration: Twelve Months
- Deliverables: Preliminary layout for construction cost estimate
Plans and specifications for construction
Interim review documents
Shop drawing and submittal review comments

Engineer will coordinate with the design-build team and develop construction documents (plans and specifications) and provide general services during construction. The following tasks will be included in Task 1:

Task 1.1 Develop Preliminary Facility Layout

Engineer will develop and provide a preliminary facility layout and equipment selections to the design-build team and assist in developing a guaranteed maximum price for construction of the disinfection facility.

Task 1.2 Develop Plans

Engineer will coordinate with the design-build team and develop and prepare drawings for use in constructing the work. The drawings will include the following engineering disciplines:

- Civil
- Structural
- Architectural
- Process/Mechanical
- HVAC/Plumbing
- Electrical
- Instrumentation and Control

Engineer will provide five sets of interim review drawings to the Client at approximately 60% complete stage, and will conduct a review meeting with Client staff. Engineer will perform internal technical and QA/QC reviews. All appropriate comments will be incorporated prior to printing the final documents.

Task 1.3 Prepare Specifications

Engineer will prepare specifications for use in selecting equipment and constructing the work. Documents will include technical specifications for all engineering disciplines as required for the work.

Task 1.4 Submittal Review and Coordination

Engineer will perform technical and functional review of all shop drawings and other submittals. An estimate of 60 shop drawings and 10 O&M manuals are included.

Engineer will respond to all RFIs as necessary. An estimate of 40 RFIs are included.

Engineer will log-in, track, and distribute submittals to the various disciplines.

Task 1.5 Site Visits and Meetings

Engineer will attend construction progress meeting with the Client and the design-build team. An estimate of 9 construction meetings is included, with an average of two persons from Engineer's project team attending.

Engineer will make periodic visits to the project site to observe the progress and quality of the various aspects of the Contractor's work. Engineer will participate in substantial completion and final completion inspections. Up to 4 site visits are included.

Task 1.6 Equipment System Testing

Engineer will make visits to the project site to observe onsite field equipment system testing and instrumentation and control functional demonstration testing. Up to 3 site visits are included.

Task 1.7 Project Management

Engineer will perform project management related duties, similar to those in the previous task.

Task 2 – Programming Services

- Duration: Three Months
- Deliverables: Graphic printouts

During the construction phase, Engineer will provide Application Engineering (AE) services to support the new Disinfection Facility. Existing conventions for graphic layouts, color schemes, database tab tag names, etc. for the SCADA system will be followed to provide a solution that is consistent with the existing system. Engineer will perform the following tasks:

Task 2.1 Human Machine Interface Database and Graphics

Engineer will develop software for the new disinfection facility and modify the existing human machine interface (HMI) in the SCADA system to accommodate new I/O addressing. HMI modifications will consist of up to two Overview Displays, seven Process Displays, and seven associated Pop-Ups for the new equipment system. Graphic printouts will be submitted to the Client for review and approval.

Task 2.2 Historical Database and Trending

Engineer will develop software for the new disinfection facility and modify the existing historical database in the SCADA system to accommodate new I/O addressing. Modification of historical databases and modifications of existing trend screens to reflect the new equipment and I/O enhancements will be performed. Graphic printouts will be submitted to the Client for review and approval.

Task 2.3 Control Logic with Programmable Logic Controller

Engineer will develop control logic for the programmable logic controller(s) for the new disinfection facility.

Task 2.4 Startup, Testing, and Training

Upon completion of preliminary software testing at Engineer's facility, Engineer will supply onsite field commissioning assistance to demonstrate that application software implemented by Engineer performs as intended. During these activities, punch list items will be identified and Engineer will resolve appropriate items for final acceptance of the system.

At the conclusion of all work, Engineer will develop and deliver to the Client updates to be inserts into the Plant's O&M manual detailing the previously defined activities for this project. Following delivery of the O&M documents, Engineer will conduct onsite training in operation and maintenance of the modified system.

Task 2.5 Project Management

Engineer will perform project management related duties, similar to those in the previous task.

Schedule

The time periods for the performance of Engineer's services shall be as follows:

- Completion of Task 1: 12 months from Notice to Proceed
(approximately from May of 2012 thru June of 2012)
- Completion of Task 2: Through Completion of Construction Contract
(approximately February through April of 2013)

END OF SCOPE OF WORK PROPOSAL

City of Midland
T Bar Water Supply Disinfection Facility Project
Engineering Fee Calculation

Task No.	Task Description	Principal hrs	Proj. Mgr. hrs	Eng. 6/7 hrs	Eng. 4/5 hrs	Eng. 2/3 hrs	Designer hrs	Clerical hrs	OP \$	ODC \$	Totals \$
1	Design Services and General Services During Construction										
1.1	Develop Preliminary Facility Layout and Equipment Selection	4	16	24	24		20			\$1,000	\$13,160
1.2	Develop Plans										
	<i>Civil</i>		4	8	40		48	4		\$1,500	\$13,097
	<i>Structural</i>		4	40	180		150	4		\$1,200	\$44,976
	<i>Architectural</i>		4	40	40	200		4		\$1,200	\$34,736
	<i>Process/Mechanical</i>		4	40	240		250	24		\$1,800	\$63,496
	<i>HVAC/Plumbing</i>		4	16	80	80		4		\$500	\$22,644
	<i>Electrical</i>		4	40	150	40		24		\$1,000	\$33,000
	<i>Instrumentation and Control</i>		4	40	120	40		4		\$1,000	\$27,880
1.3	Prepare Specifications										
	<i>Civil</i>		4	8	24	10		8		\$1,000	\$7,560
	<i>Structural</i>		4	8	24			16		\$500	\$6,516
	<i>Architectural</i>		4	8	24			16			\$6,016
	<i>Process/Mechanical</i>		4	16	40	16		24		\$1,000	\$12,546
	<i>HVAC/Plumbing</i>		4		16			8		\$500	\$3,700
	<i>Electrical</i>		4	8	32			24		\$500	\$8,052
	<i>Instrumentation and Control</i>		4	24	40	24		16	\$5,000		\$18,158
1.4	Submittal/RFI Review and Coordination		40	120	260	150		40		\$2,500	\$79,780
1.5	Site Visits and Meetings		80	40	16					\$6,000	\$27,248
1.6	Equipment System Testing		8	24	24					\$1,500	\$9,718
1.7	Project Management	16	100	40				16		\$2,500	\$29,508
	Subtotal	20	300	544	1374	560	468	236	\$5,000	\$25,200	\$461,790
2	Programming Services										
2.1	HMI Database and Graphics			40	60				\$7,000	\$500	\$21,580
2.2	Historical Database and Trending			16	32					\$500	\$7,156
2.3	Control Logic with PLC			24	120					\$500	\$19,700
2.4	Startup, Testing, and Training			24	150	40				\$5,000	\$32,264
2.5	Project Management	4	8	40							\$8,576
	Subtotal	4	8	144	362	40			\$7,000	\$6,500	\$89,276
	Grand Total	24	308	688	1736	600	468	236	\$12,000	\$31,700	\$551,066

Notes: 1. OP = Outside Professional; ODC = Other Direct Costs



City Council Agenda

Approved for Agenda:
jnichols
City Manager's Office

MEETING DATE: 6/26/2012

TO: City Council / City Manager

FROM: Stuart Purvis, Utilities Director

SUBJECT: Approve the Execution of a Task Order for Additional Design Services and Construction Management Costs for the MBR Satellite Reclaimed Water Production Facility Project with CDM Smith Inc. and Appropriate Funds

Purpose:

Consider a resolution approving the execution of a Task Order for additional design services and construction management costs for the MBR Satellite Reclaimed Water Production Facility Project with CDM Smith Inc. and appropriate funds

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Award amount is \$585,980.00 from the 2012 CO Bond Fund. That the sum of \$585,980 is hereby appropriated from the Water and Sewer Improvements 2012 CO Bond Fund (381) Unappropriated Fund Balance (5650) to the Effluent Reuse Satellite Plant Project (8757) .

Discussion:

The Council awarded the construction of the MBR Satellite Reclaimed Water Production Facility Project during the Council meeting on May 8th. CDM Smith Inc. was the design firm on this contract.

During the final period of design on this project, Midland College indicated their need for additional water. It was more cost effective to increase this capacity now rather than retrofit at a later date. Because of this, the capacity was increased from 100,000 to 200,000 gallons per day. This Task Order covers the additional design costs required for this increase.

This Task Order also includes the costs necessary to oversee construction. This includes inspection services, submittal review, regulatory submittals, integration into our existing computer operations, and startup.

RESOLUTION NO.

**RESOLUTION AUTHORIZING THE EXECUTION OF
A PROFESSIONAL SERVICES AGREEMENT TASK
ORDER WITH CDM SMITH INC., FOR
PROFESSIONAL ENGINEERING SUPPORT
SERVICES REGARDING THE MEMBRANE
BIOLOGICAL REACTOR SATELLITE RECLAIMED
WATER PRODUCTION FACILITY PROJECT, AT
AN ESTIMATED TOTAL COST OF \$585,980.00; AND
APPROPRIATING FUNDS**

WHEREAS, the City Manager advertised a Request for Qualifications for professional engineering support services (“Professional Services”); and

WHEREAS, CDM Smith Inc., has agreed to perform said Professional Services for an estimated \$585,980.00; and

WHEREAS, the Council finds that CDM Smith Inc., is qualified to perform said Professional Services; and

WHEREAS, the Council finds that the professional fees proposed by CDM Smith Inc., are consistent with and not higher than the recommended practices and fees published by the applicable professional associations and do not exceed any maximum provided by law; and

WHEREAS, the Council finds that CDM Smith Inc., provides professional services for a fair and reasonable price; and

WHEREAS, the Council finds it to be in the public interest to execute a professional services agreement task order with CDM Smith Inc., as the most highly qualified provider for such services based on demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee for the services;

**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 professional services agreement task order with CDM Smith Inc., for said Professional

Services, said agreement being attached hereto as Exhibit "1" and incorporated herein for all legal purposes.

SECTION TWO. That the sum of \$585,980.00 is hereby appropriated from the Water and Sewer Improvements 2012 CO Bond Fund (381) Unappropriated Fund Balance (5650) to the Effluent Reuse Satellite Plant Project (8757).

SECTION THREE. That the City Treasurer is hereby authorized and directed to make payments to CDM Smith Inc., for professional services pursuant to the terms of said agreement in an amount not to exceed \$585,980.00 from funds appropriated herein upon receipt of proper invoices or statements approved by the City Manager.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Stuart Purvis, Director of Utilities

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

**PROFESSIONAL SERVICES AGREEMENT TASK ORDER FOR
PERFORMANCE OF ENGINEERING SUPPORT SERVICES**

THIS AGREEMENT is made and effective the 27th day of June, 2012, by and between the CITY OF MIDLAND, TEXAS, a municipal corporation, hereinafter called "City," and CDM SMITH INC., hereinafter referred to as "Company."

**ARTICLE I.
PURPOSE**

The purpose of this Agreement is to state the terms and conditions under which Company shall perform Professional Engineering Services referred to as "MBR Satellite Reclaimed Water Production Facility Project" and as enumerated on the Scope of Work attached hereto as Exhibit "A" and incorporated herein for all legal purposes.

**ARTICLE II.
SERVICES TO BE PERFORMED**

1. Company shall provide those services described in the Scope of Services attached hereto as Exhibit "A" and incorporated herein for all legal purposes.
2. Company shall perform all the services under this Agreement consistent with the same level of skill and care as other professionals in approximately the same location at approximately the same point in time and for the same types of projects. Company 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 Company in an amount not to exceed \$585,980.00 for the professional services described in Exhibit "A." City agrees to pay Company for Labor, Incidental Direct Costs and Sub-Contractor Costs as set forth in Exhibit "A" upon presentation of a monthly invoice. The invoice shall set out Labor fees for the month and those Incidental Direct Costs and Sub-Contractor Costs described in Exhibit "A" incurred during the previous month. The City Manager or Interim City Manager must approve all additional expenses and reimbursable

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

ARTICLE IV. TERM

The term of this Agreement shall be from June 27, 2012, until June 26, 2014, unless the project is completed sooner or the Agreement is terminated as provided below.

ARTICLE V. TERMINATION

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

ARTICLE VI. CONTRACT PERSONAL

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

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

All reports, information and other data ("instruments of service"), given to, prepared or assembled by Company 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 Company 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 Company, which consent shall not be unreasonably withheld.

ARTICLE VIII. INDEPENDENT CONTRACTOR

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

ARTICLE IX. INSURANCE

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

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

Company shall contractually require all contractors, subcontractors, and sub-subcontractors that work on any portion of the work that is the subject of this 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, Company shall provide one or more certificates of insurance specifically stating that these requirements have been met and subject to the approval of the City. The City shall not be required to provide any insurance whatsoever pursuant to this Contract.

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

ARTICLE X. ATTORNEY FEES

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

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

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

**ARTICLE XI.
SOVEREIGN IMMUNITY**

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

**ARTICLE XII.
NO THIRD PARTY BENEFICIARIES**

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

**ARTICLE XIII.
RELEASE**

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

**ARTICLE XIV.
GENERAL PROVISIONS**

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

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

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

**ARTICLE XV.
NOTICE OF ALLEGED BREACH:
STATUTORY PREREQUISITES**

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

The statutory prerequisites outlined herein constitute jurisdictional requirements pursuant to Section 271.154 of the Texas Local Government Code and Section 311.034 of the Texas Government Code. Notwithstanding any other provision, Company's failure to comply with the requirements herein shall perpetually bar Company's claim for damages under Chapter 271 of the Texas Local Government Code, and Section 311.034 of the

Texas Government Code, regardless if City has actual or constructive notice or knowledge of said claim or alleged damages. Company agrees that the requirements of this entire Agreement are reasonable.

**ARTICLE XVI.
ASSIGNMENT**

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

**ARTICLE XVII.
FEDERAL WAGE REQUIREMENTS**

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

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

Company :
CDM SMITH INC.

By: _____

Title: _____

STATE OF _____ §

COUNTY OF _____ §

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

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

Notary Public, State of Texas

Printed Name

My Commission Expires: _____



8140 Walnut Hill Lane, Suite 1000
Dallas, TX 75231
tel: 214 346 2800
fax: 214 987 2017

June 7, 2012

Mr. Stuart T. Purvis, P.E.
Director of Utilities
City of Midland
300 N. Loraine
Midland, TX 79702

Subject: City of Midland
MBR Satellite Reclaimed Water Production Facility Project
Engineering Services Scope of Work Proposal - Amendment

Dear Mr. Purvis:

Attached please find the proposed engineering services scope of work proposal amendment for completing the MBR Satellite Reclaimed Water Production Facility project. The proposed fee amendment to perform the scope of services is \$585,980.

Upon review of the proposal, please let me know if you have any questions or comments. We appreciate the opportunity to perform these services for the City of Midland.

Very truly yours,

Samir S Mathur, P.E., BCEE
Associate
Texas PE Firm No. F-3043

cc: Rodney Chapin, CDM Smith



CITY OF MIDLAND
MBR SATELLITE RECLAIMED WATER PRODUCTION FACILITY
PROFESSIONAL FOR ENGINEERING SERVICES
SCOPE OF WORK PROPOSAL

Project Background

The City of Midland (City) currently provides potable water for irrigation purposes at Midland College. The City is proposing to construct a new reclaimed water production facility to produce reclaimed water for landscape and turf irrigation purposes at Midland College and other locations.

In May, 2010, the City retained CDM to prepare a preliminary design report to evaluate site and process alternatives and provide engineering design services for the design of new MBR Satellite Reclaimed Water Production Facility. The fee for the project was based on the probable construction cost of \$ 2,591,600 as presented in HDR Memo dated June 22, 2007. The current project construction cost is \$ 6,540,000.00. The increase in project construction cost is due to increased complexity of the project, including but not limited to a CMU block building instead of a metal building with a much larger footprint, addition of multiple specialized process equipment and an odor control system, and other building ancillary systems. This added complexity has resulted in additional engineering effort during the design and construction phases of the project.

The following paragraphs present detailed engineering services scope of work and associated additional fee for the MBR Satellite Reclaimed Water Production Facility.

Project Scope of Work

Task 1 -Design

- **Duration:** Six Months
- **Deliverables:** 90% Review Documents
Construction Cost Estimate
Final Documents for Bidding

ENGINEER will develop Construction Documents (plans and specifications) for the purposes of bidding the project. The design will include those items determined under the Preliminary Design phase. The following list of items are included in the project.

- **Raw Wastewater Pump Station.** This pump station will pump raw wastewater from the trunk sewer into the treatment facility. This pump station will include one coarse screen, three pumps, valve box and associated electrical and instrumentation.
- **MBR Building:** All treatment processes except for the influent pump station will be located inside a building. The MBR building will include process area, electrical room,

chemical room, office room and blower room. The building design will include pavement design, grading and paving plans, fence and other ancillary systems.

- **Screening Facility.** Raw water screens will be required upstream of the membrane treatment process. Screening of raw water will include two fine screens to remove solids from the influent raw water. Fine screens will be located inside a building.
- **Membrane Bioreactor (MBR).** The MBR system is the main process and will include submerged type membranes. The MBR system will be designed to be installed in cast-in-place concrete tanks. The MBR treatment system will be located within a building.
- **Chemical Storage and Feed Facilities.** Storage tanks and feed pumps will be required for chemicals used in the treatment process and for membrane cleaning. Chemical system will be located in the chemical room of the MBR Building.
- **Treated Water Pump Station.** Pumping will be required for delivering the treated effluent to the Midland College ground storage tank for storage and reuse. This pump station will include three pumps and associated electrical and instrumentation.
- **Ancillary Facilities.** Provisions for viewing/touring of the facilities will be incorporated into the overall design.

The following tasks will be included in Task 1:

Task 1.1 - Develop Plans

ENGINEER will develop and prepare drawings for use in bidding and constructing the work. The drawings will include the following engineering disciplines:

- Process/Mechanical
- Structural/Architectural
- HVAC/Plumbing
- Electrical
- Instrumentation and Control

ENGINEER will provide five sets of review drawings to the Client at the 90% complete stage, and will conduct review meetings with Client staff. ENGINEER will perform internal technical and QA/QC reviews. All appropriate comments will be incorporated prior to printing the final documents.

Task 1.2 - Prepare Specifications

ENGINEER will prepare contract documents (specifications) for use in bidding and constructing the work. Documents will include General and Special Conditions, Bid Proposal Forms, Instructions to Bidders, Performance Specifications for the Membrane Facilities and all other sections generally considered to be necessary for solicitation of bids.

Task 1.3 - Construction Cost Estimate

ENGINEER will prepare an opinion of probable project cost based on the 90% documents.

Task 1.4 - Project Management

ENGINEER will perform project management related duties, similar to those in the previous tasks

Task 1.5 - Geotechnical Investigation

ENGINEER will conduct geotechnical investigation for design of the MBR Satellite Reuse Plant facilities.

Task 1.6 - Survey

ENGINEER will perform a topographical survey of the lift station and plant area for use in developing design drawings for the facilities.

Task 2 - General Services during Construction

- Duration: Bidding Services – Two Months
Construction Services – 13 Months
- Deliverables: Construction Meeting Minutes
Shop Drawing and Submittal Review Comments

During the Construction Services Phase, the following tasks will be provided.

Task 2.1 - Bidding

Bidding phase services will include the development of a pre-purchase specification and selection of the membrane facilities and preparation and bidding of contract documents for the remainder of the work and the installation of the membranes.

Membrane Pre-Purchase. ENGINEER shall prepare and deliver a performance specification for the membranes to be utilized in the treatment facility. ENGINEER shall distribute the performance specifications to prospective membrane suppliers and shall answer questions regarding the performance specifications. ENGINEER shall receive and evaluate bids from the membrane suppliers. Based on the performance and evaluation criteria and life-cycle costs, the ENGINEER shall recommend to OWNER the most qualified membrane supplier. ENGINEER shall assist the OWNER in negotiating the terms of the pre-purchase agreement for the membrane facilities.

Contract Documents Bidding Process. ENGINEER will reproduce and distribute contract documents to prospective bidders and vendors and maintain a log of distribution. ENGINEER will provide 30 sets of half-size drawings and specifications for distribution. Five full size sets of plans will also be provided.

ENGINEER will attend the pre-bid conference and answer, by written addenda, contractors' and suppliers' functional and technical questions during the bidding phase.

ENGINEER will provide clarifications and answer questions from prospective bidders during the bidding phase. If necessary, such clarifications will be included in addenda.

ENGINEER will attend bid opening, review bids, and assist with recommendations for contract awards.

Task 2.2 - Submittal Review

ENGINEER will perform technical and functional review of all shop drawings and other submittals. An estimate of 80 shop drawings and 20 O&M manuals are included.

ENGINEER will log-in, track, and distribute submittals to the various disciplines.

Task 2.3 - RFI Review

ENGINEER will respond to all RFIs, as necessary, submitted by the Contractor. An estimate of 20 RFIs are included.

ENGINEER will review and comment on all change order requests and initiate change order requests when appropriate. An estimate of 5 change requests are included.

ENGINEER will log-in, track, and distribute submittals to the various disciplines.

Task 2.4 - Site Visits and Meetings

ENGINEER will attend monthly construction progress meeting with City and Contractor. An estimate of 13 construction meetings are included, with one or two persons from ENGINEER's project team attending.

ENGINEER will make periodic visits to the project site to observe the progress and quality of the various aspects of the Contractor's work. ENGINEER will participate in substantial completion and final completion inspections. Up to 12 site visits are included.

Task 2.5 - Witnessed Factory Test

ENGINEER will perform the witnessed factory test at the integrators facility.

Task 2.6 - Functional Demonstration Test

ENGINEER will be on-site and witness the functional demonstration test by the integrator.

Task 2.7 - Record Drawings

ENGINEER will prepare a set of reproducible record drawings based on the Contractor's red line drawings prepared during construction.

Task 2.8 - Project Management

ENGINEER will perform project management related duties, similar to those in the previous tasks.

Task 2.9 - Concrete and Soils Testing

ENGINEER will provide for onsite field testing, including concrete cylinder compressive strength tests and soil compaction testing. An outside laboratory specializing in these services will be used.

Task 3 - General Services during Construction

- Duration: Construction Services - 13 Months
- Deliverables: Construction Meeting
Construction Review Notes/Progress Updates
Record Drawings

Task 3.1 - Resident Project Representation

ENGINEER will hire an outside subconsultant to perform full-time resident project representative (RPR) duties during the MBR Satellite Reclaimed Water Production Facility. ENGINEER will supplement these services as needed with specialty inspectors and senior staff throughout the construction project. The RPR services will be provided as needed for 24-hours per week for a duration of 13 months. This includes 12 months for construction and one month for closeout of the project. The estimated schedule for the RPR is June 2012 through July 2013.

ENGINEER will provide assistance to the onsite RPR during the course of the construction contract and coordinate between the Client, Contractor and RPR on construction related issues. Through more extensive on-site observations of the work in progress and field checks of materials and equipment by the RPR, ENGINEER shall endeavor to provide further protection for Client against defects and deficiencies in the work of Contractor. However, ENGINEER shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over Contractor's work nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences or procedures selected by Contractor, for safety precautions and programs incident to the work of Contractor, for any failure of Contractor to comply with laws, rules, regulations, ordinances, codes or orders applicable to Contractor's performing and furnishing the work, or responsibility of construction for Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.

The duties and responsibilities of the RPR are limited to those of ENGINEER in the agreement with the OWNER and in the construction Contract Documents, and are further limited and described as follows:

A. General

RPR is ENGINEER's agent at the site, will act as directed by and under the supervision of ENGINEER, and will confer with Consultant regarding RPR's actions. RPR's dealings in matters pertaining to the on-site work shall in general be with ENGINEER and Contractor, keeping OWNER advised as necessary. RPR's dealings with subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Client with the knowledge of and under the direction of ENGINEER.

B. Duties and Responsibilities of RPR

1. *Schedules:* Review the progress schedule, schedule of Shop Drawing submittals and schedule of values prepared by Contractor and consult with ENGINEER concerning acceptability.
2. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings.
3. *Liaison:*
 - a. Serve as ENGINEER's liaison with Contractor, working principally through Contractor's superintendent and assist in understanding the intent of Contract Documents; and assist ENGINEER in serving as Client's liaison with Contractor when Contractor's operations affect Client's on-site operations.
 - b. Assist in obtaining from OWNER additional details or information, when required for proper execution of the Work.
4. *Review of Work, Rejection of Defective Work, Inspections and Tests:*
 - a. Conduct on-site observations of the Work in progress to assist ENGINEER in determining if the Work is in general proceeding in accordance with the Contract Documents.
 - b. Report to ENGINEER whenever RPR believes that any Work will not produce a completed Project that conforms generally to the Contract Documents or will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise ENGINEER of Work that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
 - c. Verify that test, equipment and systems start-ups are conducted in the presence of appropriate personnel, and that Contractor maintains adequate records thereof; and observe, record and report to ENGINEER appropriate details relative to the test procedures and start-ups.
 - d. Accompany visiting inspectors representing public or other agencies having

jurisdiction over the Project, record the results of these inspections and report to ENGINEER.

5. *Interpretation of Contract Documents:* Report to ENGINEER when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by ENGINEER.
6. *Modifications:* Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report with RPR's recommendations to ENGINEER. Transmit to Contractor in writing decisions as issued by ENGINEER.
7. *Records:*
 - a. Maintain at the job site orderly files for correspondence, reports of job conferences, Shop Drawings and Samples, reproductions of original Contract Documents including all Work Changes, Addenda, Change Orders, Field Orders, additional Drawings issued subsequent to the execution of the Contract, ENGINEER's clarifications and interpretations of the Contract Documents, progress reports, Shop Drawing submittals received from and delivered to Contractor and other Project related documents.
 - b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the job site, weather conditions, data relative to questions of Work Change Directives, Change Orders or changed conditions, list of job site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to ENGINEER.
 - c. Record names, addresses and telephone numbers of all Contractors, subcontractors and major suppliers of materials and equipment.
8. *Reports:*
 - a. Furnish to ENGINEER periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
 - b. Consult with ENGINEER in advance of scheduled major tests, inspections or start of important phases of the Work.
 - c. Report immediately to ENGINEER and OWNER the occurrence of any accident.
9. *Payment Requests:* Review Applications for Payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to ENGINEER, noting particularly the relationship of the payment requested to the schedule of values, Work completed and materials and equipment delivered at the site but not incorporated in the Work.

C. Limitation of Authority by RPR

Resident Project Representative:

1. Shall not authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items), unless authorized by ENGINEER.
2. Shall not exceed limitations of ENGINEER's authority as set forth in the Agreement of the Contract Documents.
3. Shall not undertake any of the responsibilities of Contractor, Subcontractors, Suppliers, or Contractor's superintendent.
4. Shall not advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction unless such advice or directions are specifically required by the Contract Documents.
5. Shall not advise on, issue directions regarding or assume control over safety precautions and programs in connection with the Work.
6. Shall not accept Shop Drawing or Sample submittals from anyone other than Contractor.
7. Shall not authorize Client to occupy the Project in whole or in part.
8. Shall not participate in specialized field or laboratory tests or inspection conducted by others except as specifically authorized by ENGINEER.

Fee

Additional fee for the above scope of work is \$585,980 as included in the attached Fee Calculation.

END OF SCOPE OF WORK PROPOSAL

City of Midland
MBR RWPF
Additional Fee Request

Task No.	Task Description	QA/QC \$220 hrs	Principal \$200 hrs	Proj. Mgr. \$190 hrs	Eng. 6/7 \$175 hrs	Eng. 4/5 \$155 hrs	Eng. 2/3 \$120 hrs	Designer \$100 hrs	Resident Inspector \$75 hrs	Clerical \$70 hrs	OP \$	ODC \$	Totals \$
1	Additional Design Services												
1.1	Develop Plans and Specifications												
	General/Civil	4		8	0	0	0	0			\$46,000		
	Structural	8	16	12	32	48	48	48		12		\$500	\$48,400
	Architectural	8	16	8	24	36	40	32		16		\$500	\$32,180
	HVAC/Plumbing	6	8	8	16	48	24	16		12		\$500	\$25,880
	Process/Mechanical	16	24	24	60	140	180	120		48		\$500	\$20,500
	Electrical	8	16	8	24	64	60	32		16		\$500	\$82,540
	Instrumentation and Controls	8	16	16	32	48	52	24		16		\$2,000	\$32,620
1.2	Project Management			48						16		\$5,000	\$32,800
													\$15,240
	Summary of Task 1	58	96	132	188	384	404	272		136	\$46,000	\$9,500	\$290,160
2	General Services During Construction												
2.1	Submittal Review	2	8	40	24	80	100			48	\$15,000	\$1,000	\$57,600
2.2	RFI Review			16							\$1,500	\$1,000	\$5,540
2.3	Site Visits and Meetings	16		60	24	96					\$3,000	\$6,000	\$43,000
2.4	Automation Witness Factory Test				24								\$4,200
2.5	Startup Assistance			16	16	24						\$1,000	\$10,560
2.6	Record Drawings	2		8	8	16	40	40		40		\$1,000	\$17,440
2.7	Project Management	16		40								\$5,000	\$12,120
2.8	Concrete and Soils Testing											\$5,000	\$5,000
	Summary of Task 2	36	8	180	96	216	140	40		88	\$19,500	\$15,000	\$155,460
3	Resident Inspection Services												
3.1	Resident Inspection Services								1710			\$3,250	\$131,500
3.2	QA/QC					52						\$800	\$8,860
	Summary of Task 3	0	0	0	0	52	0	0		0	\$0	\$4,050	\$140,360
	Grand Total	94	104	312	284	652	544	312	0	224	\$ 65,500	\$ 28,550	\$ 585,980

Notes: 1. OP = Outside Professional



City Council Agenda

Approved for Agenda:
jnichols
City Manager's Office

MEETING DATE: 6/26/2012

TO: City Council / City Manager

FROM: Stuart Purvis, Utilities Director

SUBJECT: Approve Change Order Number 1 for the Water System Improvements: Rehabilitation & Lead Abatement of Airport and Shell Elevated Storage Tanks Project with A & M Construction and Utilities, Inc. and Appropriate Funds

Purpose:

Consider a resolution approving Change Order Number 1 for the Water System Improvements: Rehabilitation & Lead Abatement of Airport and Shell Elevated Storage Tanks Project with A & M Construction and Utilities, Inc. and appropriate funds.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Award amount is \$163,970 from the 2012 CO Bond Fund. That the sum of \$163,970 is hereby appropriated from the Water and Sewer Improvements 2012 CO Bond Fund (381) Unappropriated Fund Balance (5650) to the Airport and Shell Elevated Water Tower Rehabilitation Project (8971).

Discussion:

Council awarded this project during their November 18, 2011 meeting. This project was to repair and recoat the Shell and Airport elevated water storage towers. These towers haven't been recoated in over 10 years.

As the Shell elevated tower was blasted to remove the existing coatings, the structural members were found to be too corroded to save. This will require that the ceiling structural supports, along with the steel plating on the top of the tower, be replaced. Some of this was anticipated and included in the contract but not to this level.

It will result in an additional cost of \$163,970 and no additional days on the contract.

In order to insure the continued reliable service of this tower, this work must be completed. Staff recommends approval of the award.

RESOLUTION NO.

RESOLUTION AUTHORIZING THE EXECUTION OF CHANGE ORDER NUMBER ONE WITH A&M CONSTRUCTION & UTILITIES, INCORPORATED, ADDING \$163,970.00 FOR ADDITIONAL WORK TO THE EXISTING CONTRACT FOR THE WATER SYSTEM IMPROVEMENTS - REHABILITATION AND LEAD ABATEMENT OF AIRPORT AND SHELL ELEVATED STORAGE TANKS PROJECT; AND APPROPRIATING \$163,970.00; THE ORIGINAL CONTRACT WAS FOR \$1,432,500.00; THIS CHANGE ORDER BRINGS THE TOTAL CONTRACT PRICE TO \$1,596,470.00

WHEREAS, the City Council finds it to be in the public interest to authorize the execution of Change Order No. 1 with A&M Construction & Utilities, Inc., for additional work to the existing contract for the Water System Improvements - Rehabilitation and Lead Abatement of Airport and Shell Elevated Storage Tanks Project, and to appropriate necessary funds;

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

SECTION ONE. That the City Manager is hereby authorized and directed to execute, on behalf of the City of Midland, Change Order No. 1 with A&M Construction & Utilities, Inc., for additional work to the existing contract for the Water System Improvements - Rehabilitation and Lead Abatement of Airport and Shell Elevated Storage Tanks Project, said change order being on file in the office of the City Secretary and referenced by the date and number of this Resolution.

SECTION TWO. That the sum of \$163,970.00 is hereby appropriated from the Water and Sewer Improvements 2012 CO Bond Fund (381) Unappropriated Fund Balance (5650) to the Airport and Shell Elevated Water Tower Rehabilitation Project (8971).

SECTION THREE. That the City Treasurer is hereby authorized to pay A&M Construction & Utilities, Inc., according to the terms of the contract referenced herein as amended from funds appropriated herein upon the proper

receipt of an invoice approved by the City Manager.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Stuart Purvis, Director of Utilities

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

**CHANGE ORDER NO. 1 TO CONTRACT
BETWEEN THE CITY OF MIDLAND, TEXAS,
AND A&M CONSTRUCTION & UTILITIES, INC.**

THIS CHANGE ORDER NO. 1, entered into on this 27TH day of June, 2012, by and between the City of Midland, Texas, (hereinafter "City"), a Home Rule Municipal Corporation of the State of Texas, and A&M Construction & Utilities, Incorporated, (hereinafter "Contractor").

WHEREAS, the City and Contractor executed a Water System Improvements - Rehabilitation and Lead Abatement of Airport and Shell Elevated Storage Tanks Project Contract ("Contract"), which was duly authorized by Resolution No. 2011-278 of the City Council on November 8, 2011; and

WHEREAS, the City and Contractor have agreed to a change order to said Contract;

IT IS THEREFORE AGREED that said Contract is hereby amended, effective on the date when signed by the last party, as follows:

1. **Amendment 1:** The Scope of Work of the Contract is hereby amended to include the work specified in Exhibit "A" attached hereto by reference and incorporated herein for all legal purposes.
2. **Amendment 2:** As compensation to Contractor for performing the additional work specified in Exhibit "A," the funds to be paid to Contractor pursuant to the terms of the Contract are hereby increased by \$163,970.00.
3. Except as expressly amended in this Change Order No. 1, the provisions of the previously amended Contract remain in full force and effect according to the terms thereof.

CITY:

CITY OF MIDLAND, TEXAS

By: _____
Courtney Sharp, City Manager



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: June 26, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Z-12-017, Mike Jackson Zone Change.

Purpose:

Consider an ordinance on second reading on a request by Mike Jackson for a Zone Change from PD, Planned District for a Housing Development to Amended Planned District.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

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

Discussion:

Mr. Jackson is developing the Mockingbird Oaks subdivision, located on the north side of Mockingbird Lane, just west of Garfield Street. The land is currently zoned Planned District for a Housing Development, subject to the 1F-2 District regulations and a site plan that describes a screening fence required along Mockingbird Lane. He is requesting a reduction in front yard setback from 20 feet to 15 feet. The City Council approved this request during a public hearing on June 12, 2012. No public opposition has been received. It is now appropriate to consider this ordinance on second and final reading.



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: June 12, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Z-12-017, Mike Jackson Zone Change

Purpose:

Hold a public hearing at 10:33 a.m. and consider an ordinance on a request by Mike Jackson for a Zone Change from PD, Planned District for a Housing Development to Amended Planned District.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

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

Discussion:

Mr. Jackson recently received approval of a subdivision plat, Mockingbird Oaks, located on the north side of Mockingbird Lane, 700 feet west of Garfield Street. This plat contains 80 single-family lots that are subject to the 1F-2 District regulations. He is now requesting a zone change to allow a reduction in front yard setback from 20 feet, as specified in the 1F-2 District, to 15 feet. His basis for this request is to reduce landscape watering and maintenance. This subdivision is accessed only from a short looped street. The City Council has previously approved five-foot reductions in front yard setback when the affected streets are relatively short. In this case, only the owners in the subdivision will be affected by this proposed reduction. The Planning and Zoning Commission voted unanimously to recommend approval of this request, and no opposition has been noted.

Attachments:

May 14, 2012 P&Z Staff Report
Proposed Ordinance

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOTS 1-33, BLOCK 1, AND LOTS 1-51, BLOCK 2, MOCKINGBIRD OAKS, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT, TO BE USED AS AN AMENDED PLANNED DISTRICT (GENERALLY LOCATED ON THE NORTH SIDE OF MOCKINGBIRD LANE, 700 FEET WEST OF GARFIELD STREET); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

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

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

SECTION ONE. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned PD, Planned District for a Housing Development, and it shall be used as an Amended Planned District, subject to the special conditions and restrictions hereinafter set out, said property being described as follows:

Lots 1-33, Block 1, and Lots 1-51, Block 2, Mockingbird Oaks, City and County of Midland, Texas.

SECTION TWO. That said property shall be subject to the following special conditions and restrictions:

1. That this property shall continue to be subject to the conditions and regulations contained in City of Midland Ordinance No. 8858, except as otherwise stated below.
2. That the minimum front yard setback for all lots shall be 15 feet.

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

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

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

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

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

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the ____ day of _____, A.D., 2012; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the ____ day of _____, A.D., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2012.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Jim Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

**Planning and Zoning Commission
Minutes
May 14, 2012**

Z-12-017 - Hold a public hearing and consider a request by **Mike Jackson** for a *zone change* from PD, Planned District for a Housing Development to an Amended Planned District on Lots 1 through 33, Block 1 and Lots 1 through 51, Block 2, Mockingbird Oaks, City and County of Midland, Texas. (Generally located on the north side of Mockingbird Lane, approximately 700 feet west of N. Garfield Street.)

Applicant yielded to staff. Senior Planner Jim Compton gave an overview of the request and stated the applicant wished to reduce the 15-foot front yard setback to 10 feet. There are already three lots developed with a 15-foot front yard setback and the owners indicated they wish to join in the 10-foot setback. Staff recommended approval of the zone change subject to conditions A-D.

Vice-Chairman Gatten opened the public hearing.

There being no one wishing to speak in favor or in opposition to the item, Vice-Chairman Gatten closed the public hearing.

A motion for approval subject to conditions A-G was made by Commissioner Wolf; seconded by Commissioner Watkins. The motion carried by the following vote: AYE: Gatten, Wolf, Watkins, Norris, Wilton and York. NAY: Carrillo. ABSTAIN: None. ABSENT: Ferguson and Woodruff.

PLANNING AND ZONING COMMISSION

May 14, 2012

CASE: Z-12-017.

REQUEST: Hold a public hearing and consider a request for a zone change from PD, Planned District for a Housing Development to Amended Planned District.

APPLICANT: Mike Jackson.

OWNER: Mockingbird Oaks Development, LLC.

LEGAL DESCRIPTION: Lots 1-33, Block 1 and Lots 1-51, Block 2, Mockingbird Oaks, City and County of Midland, Texas.

LOCATION: North side of Mockingbird Lane, approximately 700 feet west of Garfield Street.

DETAILS OF REQUEST:

1. Mr. Jackson received approval of the subdivision plat of Mockingbird Oaks on April 30, 2012. The associated planned district zoning was approved on January 10, 2011. The current zoning requires that lots conform to the regulations of the 1F-2 District. A planned district was needed to regulate the character of the screening fence along Mockingbird Lane. The 1F-2 District requires a minimum front yard setback of 20 feet. Mr. Jackson is requesting a reduction to 15 feet.

SURROUNDING ZONING AND LAND USE:

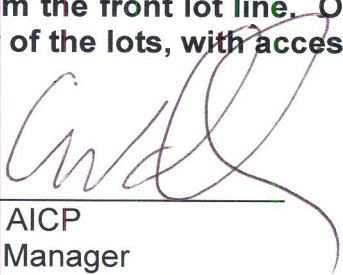
2. This property is located on the north side of Mockingbird Lane, an arterial street. There is a single looped street, along with some cul-de-sacs, that serve the lots in this subdivision. The land to the east is zoned Planned District for a Shopping Center and 1F-1 District, both of which are vacant. The area to the south is zoned AE District and is mostly vacant land. The Midland Classical Academy is located to the west.

ANALYSIS:

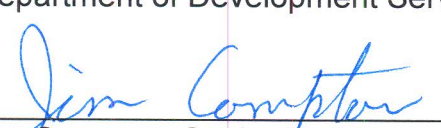
3. There are two points of ingress and egress for this 44-acre subdivision. These are where Mockingbird Oaks Boulevard, a looped street, intersects Mockingbird Lane. Because of this street design, the majority of persons driving on this street will be residents of the subdivision. Where short local streets are involved, the City Council has a recent history of approving front yard setback reductions. The proposed five-foot reduction would allow homeowners to reduce the maintenance and watering requirements in the front yards, and to enjoy either a larger home or larger rear yard, which most families use more than front yard. For these reasons, the staff believes that this request is reasonable.

STAFF RECOMMENDATION:

- A. We recommend approval of this request for a reduction in front yard setback from 20 feet to 15 feet, except as otherwise stated below.
- B. Any front-entry garage door must observe a minimum front yard setback of 20 feet from the front lot line. Otherwise, all garage doors must be located at the rear of the lots, with access from the alley.



Cameron Walker, AICP
Planning Division Manager
Department of Development Services



Jim Compton, Senior Planner
Department of Development Services

Attachments:

Application
Maps

Case Number: Z-12-017

CITY OF MIDLAND
Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

Mike Jackson 559 3486
Applicant Name (Phone/e-mail)
3209 Caldera 79705
Address Zip Code

Mockingbird Oaks Development LLC same
Property Owner Name (Phone/e-mail)
3209 Caldera 79705
Address Zip Code

Mike Jackson
Representative Name (Phone/e-mail)
same
Address Zip Code

Street address and Legal Description of property (complete Lot, Block, and Subdivision Name or if unplatted, attach a Metes and Bounds description with surveyor's seal). Each district must be described separately. Lots 1-51, Block 2, Lots ~~1-33~~ Block 1

Mockingbird Oaks 1-33

PRESENT ZONE: TF1 REQUESTED ZONE: PDHD
(List by tracts if more than one district is requested)

Reason for Zone Change Request: To have 15' Front setbacks

Present Use of Property: residential subdivision

Proposed Use of Property: same

How will zone change affect the public health, safety and welfare? no adverse affects

Describe how conditions affecting the property have changed since present zoning designation:
Need to reduce water usage.

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

APPLICATION FEES:

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

SITE PLAN SUBMITTALS (if applicable):

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

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

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

Property Owner (signature): Nile Jackson Date: 4-17-12

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

STATE of TEXAS
COUNTY OF MIDLAND

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

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

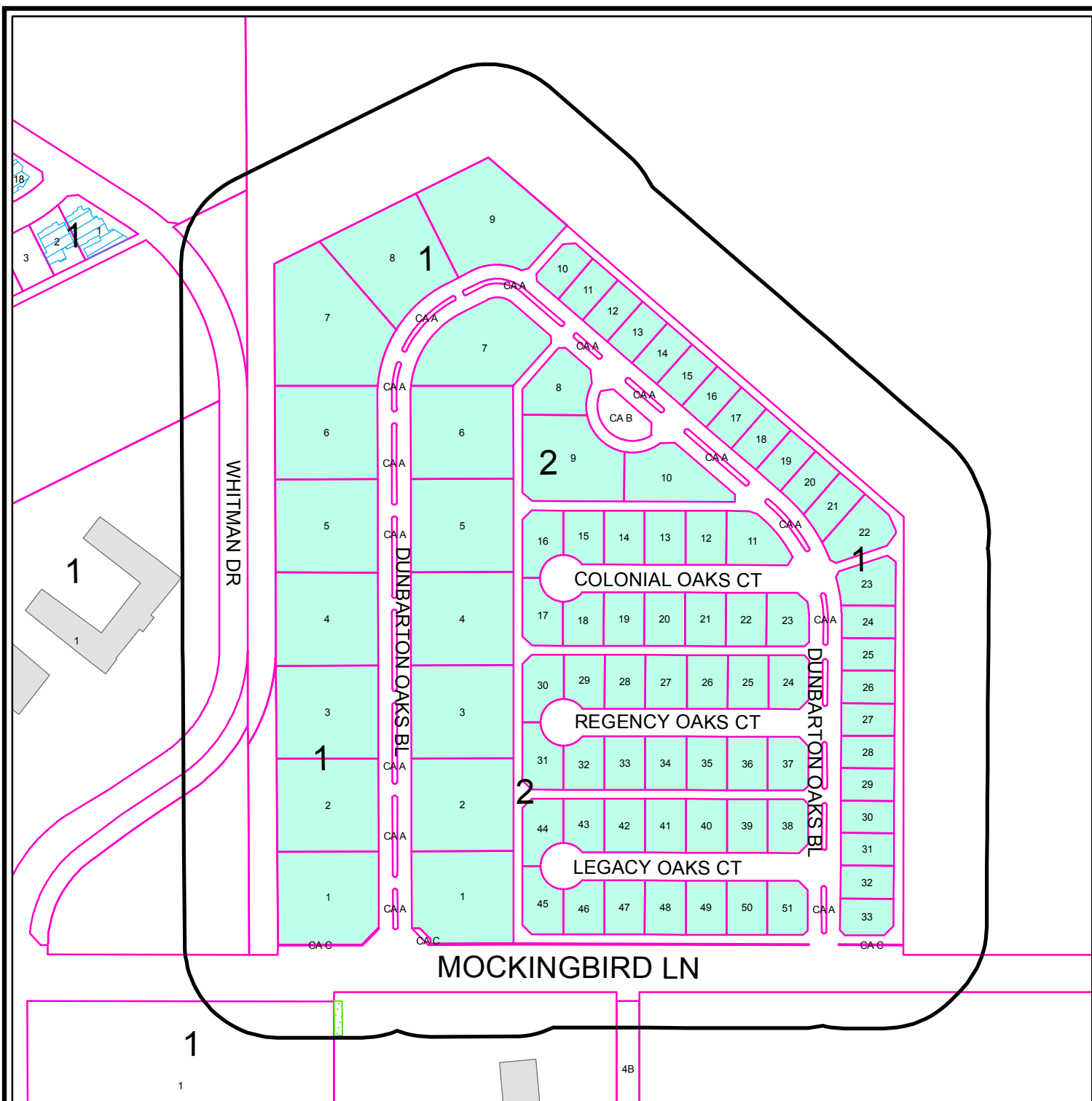
Authorized Agent (signature)

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

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: <u>JC</u>	Date: <u>4-17-12</u>
Assigned: <u>JC</u>	
For: <u>pdz</u>	On: <u>5-14-12</u>

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



PROPERTY OWNER NOTIFICATION MAP

Z - 12 - 017

Scale: 1" = 300'

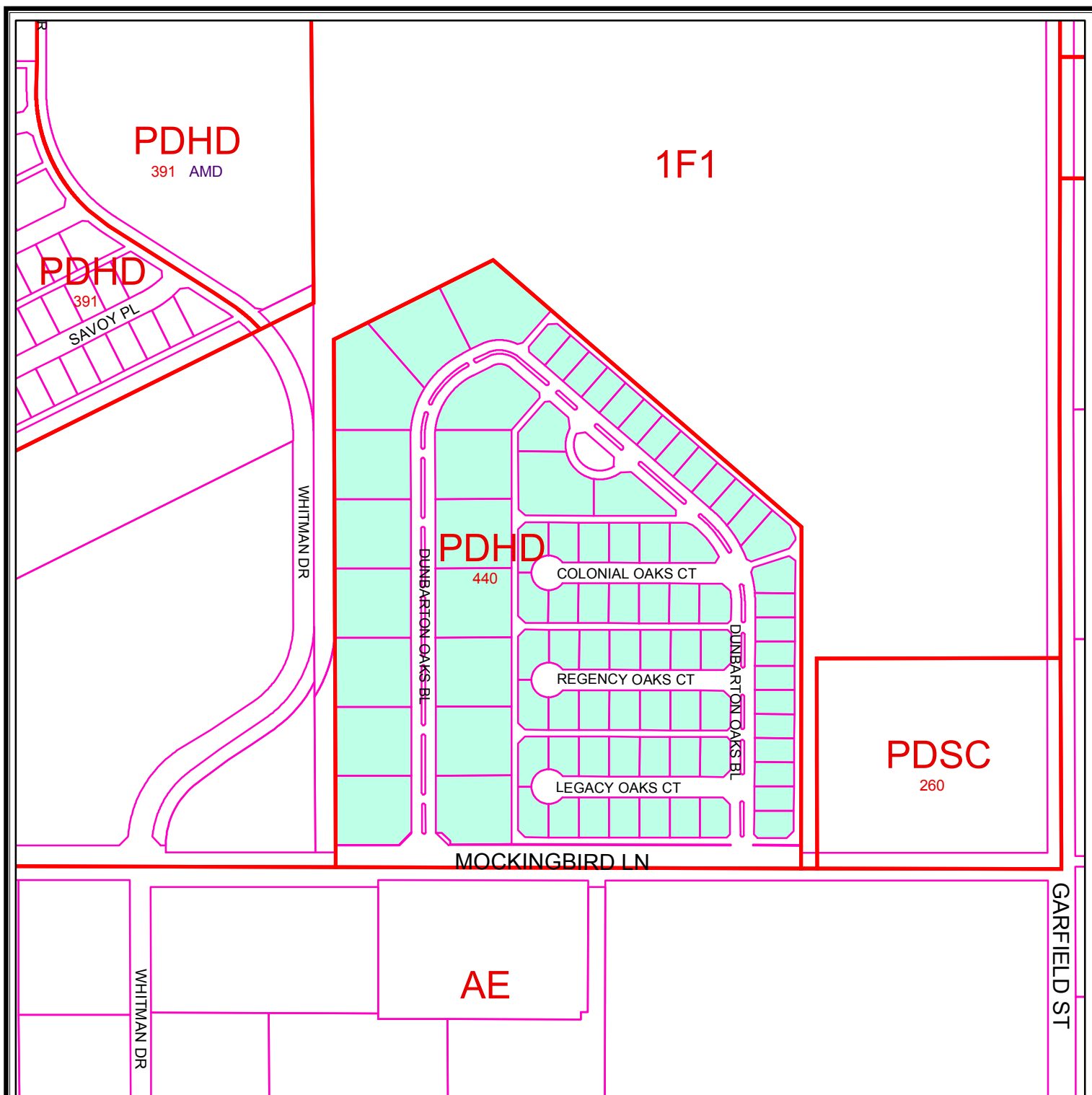
Consider a request for a zone change from PD, Planned District for a Housing Development, to an Amended Planned District on Lots 1 thru 33, Block 1 and Lots 1 thru 51, Block 2, Mockingbird Oaks, City and County of Midland, Texas.

LEGEND

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



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ZONING MAP

Z - 12 - 017

Scale: 1" = 400'

Consider a request for a zone change from PD, Planned District for a Housing Development, to an Amended Planned District on Lots 1 thru 33, Block 1 and Lots 1 thru 51, Block 2, Mockingbird Oaks, City and County of Midland, Texas.

LEGEND

ZONING PARCELS

ZONING DISTRICTS:

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

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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 6/26/2012

TO: City Council / City Manager

FROM: Gary Saunders,

SUBJECT: Ordinance establishing No Parking except by Permit - Faulkner Drive and Melville Drive (District 1 – Jeff Sparks)

Purpose:

Consider an ordinance for second reading prohibiting parking except by permit on a portion of the north side of Faulkner Drive between Whitman Drive and Chapel Hill Drive and a portion of the east and west side of Melville Drive north of Faulkner Drive.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Approximately \$2,250.00 for installation cost of signs and posts including materials, equipment and labor.

Discussion:

The Legal Department has prepared an ordinance for second reading on a request from adjacent property owners and tenants, prohibiting parking on a portion of the north side of Faulkner Drive beginning at a point 185 feet west of the centerline of Melville Drive and continuing east a distance of 640 feet to the north/south alley and on the east and west side of Melville Drive beginning at the centerline of Faulkner Drive and continuing north a distance of 130 feet to the east/west alley. The parking restriction is exclusive to residents whose property abuts this portion of Faulkner Drive and Melville Drive and have obtained a valid parking permit.

This portion of Faulkner Drive and Melville Drive is within City Council District 1.

Attached is a map indicating location of the proposed parking restriction.

Staff recommends approval of this ordinance.



City Council Agenda

Approved for Agenda:
jnichols
City Manager's Office

MEETING DATE: 6/12/2012

TO: City Council / City Manager

FROM: Gary Saunders, Transportation Manager

SUBJECT: Ordinance establishing No Parking except by Permit - Faulkner Drive and Melville Drive (District 1 – Jeff Sparks)

Purpose:

Consider an ordinance prohibiting parking except by permit on a portion of the north side of Faulkner Drive between Whitman Drive and Chapel Hill Drive and a portion of the east and west side of Melville Drive north of Faulkner Drive.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

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Attached is a map indicating location of the proposed parking restriction.

Staff recommends approval of this ordinance.

ORDINANCE NO.

AN ORDINANCE PROHIBITING PARKING ON THE NORTH SIDE OF FAULKNER DRIVE FROM A POINT 185 FEET WEST OF THE CENTERLINE OF MELVILLE DRIVE AND CONTINUING EAST A DISTANCE OF 640 FEET TO THE NORTH/SOUTH ALLEY AND THE EAST AND WEST SIDES OF MELVILLE DRIVE BEGINNING AT THE CENTERLINE OF FAULKNER DRIVE AND CONTINUING NORTH A DISTANCE OF 130 FEET TO THE EAST/WEST ALLEY EXCEPT TO RESIDENTS WHOSE PROPERTY ABUTS SUCH STREET AND HAVE OBTAINED A VALID PARKING PERMIT; AUTHORIZING AND DIRECTING THE TRAFFIC ENGINEER TO ERECT APPROPRIATE SIGNS; DECLARING ANY VEHICLE IN VIOLATION OF THE PROVISIONS OF THIS ORDINANCE A NUISANCE AND PROVIDING FOR THE REMOVAL OF SAME; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO HUNDRED DOLLARS (\$200.00); AND ORDERING PUBLICATION

WHEREAS, the Council finds that in order to expedite the orderly flow of traffic, to eliminate traffic congestion, to promote traffic safety, and to preserve the residential character of neighborhoods in the area of certain streets, it is in the public interest to regulate and restrict parking in the manner and on the portions of those streets described herein;

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

SECTION ONE. That on any of the streets or places described in Section Two hereof, no person shall stop, stand or park a motor vehicle. However, the owner or operator of a motor vehicle who resides on property immediately adjacent to said street or place and who has affixed to such vehicle a valid parking permit issued pursuant to the provisions of this ordinance shall not be prohibited from parking on any of the streets or places described in Section Two. It shall be an exception to the provisions of this ordinance that such person stopped or parked said vehicle because it was necessary to avoid conflict with other traffic or in compliance with law or the directions of a police officer or traffic control device.

SECTION TWO. The streets or places which are restricted by the terms of this ordinance are as follows:

- a. Faulkner Drive – on the north side of Faulkner Drive from a point 185 feet west of the centerline of Melville Drive, and continuing east a distance of 640 feet to the north/south alley.
- b. Melville Drive – on the east and west sides of Melville Drive beginning at the centerline of Faulkner Drive and continuing north a distance of 130 feet to the east/west alley.

SECTION THREE. A parking permit shall be issued by the Chief of Police or his designee upon application and payment of the fee authorized in Section Four hereof, only to the owner or operator of a motor vehicle who resides on property immediately adjacent to the street or place described in Section Two hereof.

SECTION FOUR. The Chief of Police is authorized to establish an annual residential parking permit fee to cover only the administrative costs of permits issued pursuant to the provisions of this ordinance.

SECTION FIVE. That all existing ordinances, or any part thereof, in conflict with this ordinance are hereby expressly repealed.

SECTION SIX. The repeal of the ordinances, or parts of ordinances, effectuated by the enactment of this ordinance shall not be construed as abating any actions pending under or by virtue of such ordinances; or as discontinuing, abating, modifying or altering any penalty accruing or to accrue; or as affecting the liability of any person, firm or corporation; or as waiving any right of the municipality under any section or provision existing at the time of the passage of this ordinance.

SECTION SEVEN. That in the event any vehicle shall be found parked in violation of the provisions of this ordinance, the same shall be a nuisance per se, and shall be removed by any police officer and taken to some place designated by the Chief of Police for such purpose, and be kept by such officer until the application for its redemption shall be made by the owner or his duly authorized agent, who shall be entitled to the possession thereof upon payment to the City of Midland of the charges specified in Section 2 of Chapter 3 of Title VI of the City Code of Midland, Texas. In the event any vehicle so impounded should not be redeemed by the owner or his duly authorized agent after notice as provided in Section 4 of Chapter 3 of Title VI of said Code, then such vehicle shall be disposed of in accordance with Sections 3 and 8 of Chapter 3 of Title VI of said Code.

SECTION EIGHT. When any vehicle is parked in violation of the provisions of this ordinance, such fact shall be prima facie evidence that the person in whose name said vehicle is registered is guilty of a violation of the parking provision herein contained.

SECTION NINE. That the Traffic Engineer is hereby authorized and directed to erect appropriate signs and markings at the designated locations, in conformance with the

State Highway Department's manual and specifications, where applicable, indicating and carrying out the provisions of this ordinance.

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

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

SECTION TWELVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two hundred dollars (\$200.00).

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

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2012; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2012, at a regular

meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2012.

W. Wesley Perry, Mayor

ATTEST:

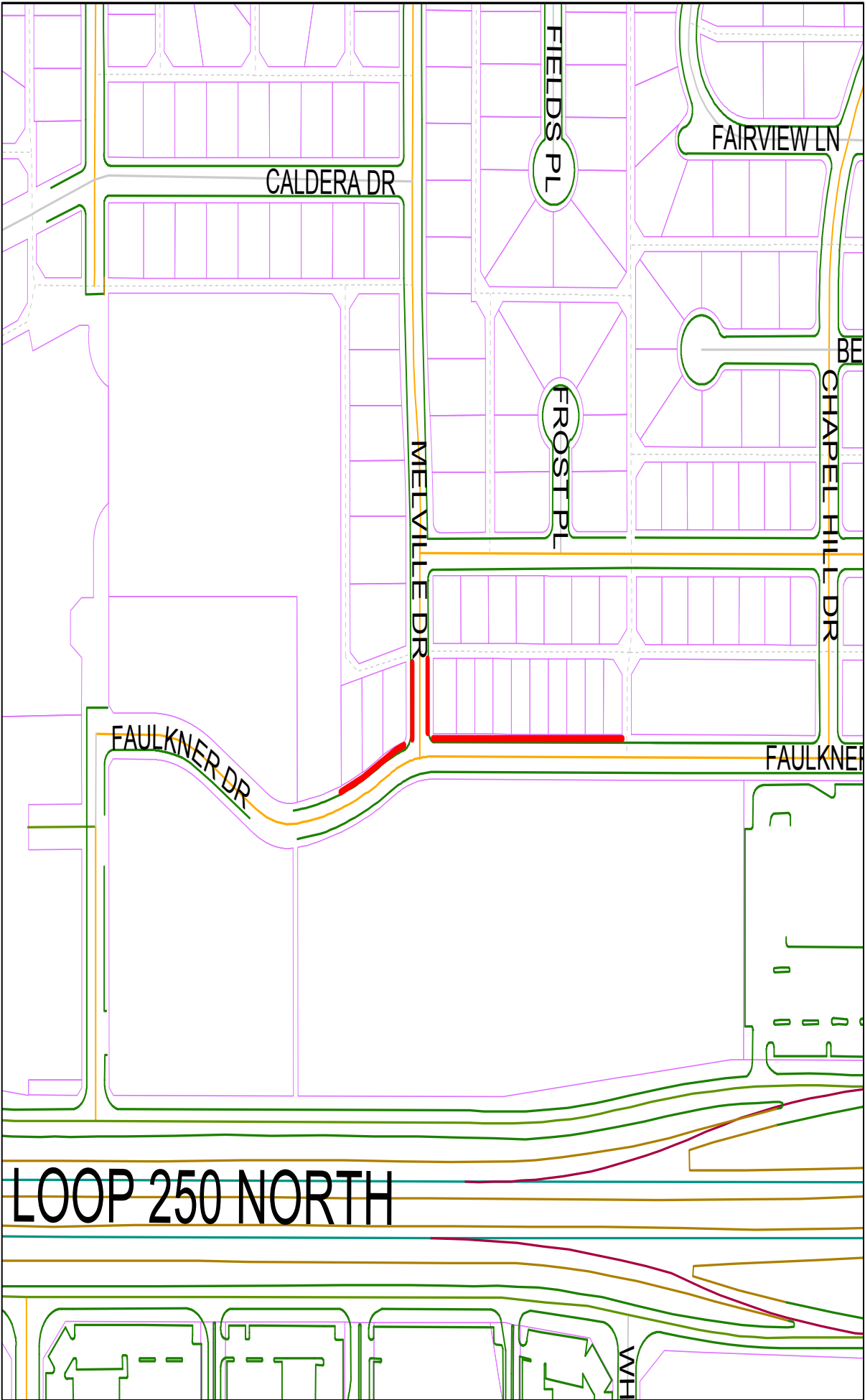
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Gary Saunders, Transportation Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



TRANSPORTATION
DIVISION

Proposed
permit parking
only



Map by TC 05/02/12



City Council Agenda

Approved for Agenda:

City Manager's Office

MEETING DATE: 6/26/2012

TO: City Council / City Manager

FROM: Gary Saunders,

SUBJECT: Ordinance - Stop Signs

Purpose:

Consider an ordinance for second reading establishing intersection stops at various locations within the City of Midland, Texas; requiring and authorizing the posting of appropriate signs at intersections; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two hundred dollars (\$200.00); and ordering publication.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Approximately \$900.00 for installation cost of signs including materials, equipment and labor.

Discussion:

The Legal Department has prepared an ordinance for second reading authorizing the installation of stop signs at various intersections within the City of Midland. This ordinance has been requested to assign right-of-way for the motorist at each intersection in compliance with the Texas Manual on Uniform Traffic Control Devices. The intersections are as follows:

On Community Ln. at "J" St. for east/west bound traffic.

On Fielder St. @ Crestgate Ave. for north bound traffic.

On Hickory Ave. @ Tyler St. for east and west bound traffic.

On Kelly St. at Travis Ave. for north bound traffic

On League Dr. @ Crowley Blvd. for west bound traffic.

On Onyx Dr. @ FM 1788 for east bound traffic.

Attached is a map indicating the location of each proposed stop sign.

Staff recommends approval of this ordinance.



City Council Agenda

Approved for Agenda:
jnichols
City Manager's Office

MEETING DATE: 6/12/2012

TO: City Council / City Manager

FROM: Gary Saunders, Transportation Manager

SUBJECT: Ordinance - Stop Signs

Purpose:

Consider an ordinance establishing intersection stops at various locations within the City of Midland, Texas; requiring and authorizing the posting of appropriate signs at intersections; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two hundred dollars (\$200.00); and ordering publication.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

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Discussion:

The Legal Department has prepared an ordinance authorizing the installation of stop signs at various intersections within the City of Midland. This ordinance has been requested to assign right-of-way for the motorist at each intersection in compliance with the Texas Manual on Uniform Traffic Control Devices. The intersections are as follows:

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On Kelly St. at Travis Ave. for north bound traffic

On League Dr. @ Crowley Blvd. for west bound traffic.

On Onyx Dr. @ FM 1788 for east bound traffic.

Attached is a map indicating the location of each proposed stop sign.

Staff recommends approval of this ordinance.

ORDINANCE NO.

**AN ORDINANCE ESTABLISHING INTERSECTION
STOPS AT VARIOUS LOCATIONS WITHIN THE CITY
OF MIDLAND, TEXAS; REQUIRING AND
AUTHORIZING THE POSTING OF APPROPRIATE
SIGNS AT INTERSECTIONS; CONTAINING A
CUMULATIVE CLAUSE; CONTAINING A SAVINGS
AND SEVERABILITY CLAUSE; PROVIDING FOR A
MAXIMUM PENALTY OR FINE OF TWO HUNDRED
DOLLARS (\$200.00); AND ORDERING PUBLICATION**

WHEREAS, the Council finds that the unusual character and volume of traffic on various intersecting streets within the City require that operators of motor vehicles traveling along said streets to stop before entering said intersections; and

WHEREAS, the Council finds it to be in the public interest to authorize and require the establishment of stop signs at said intersections;

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

SECTION ONE. In addition to all other stop signs, stop signs at the intersections enumerated in the following list are hereby ordered to be erected and are hereby validated and fully authorized, whether the same have already been placed and are existing upon said intersections, or shall be placed there hereafter, and all persons operating vehicles upon or over the streets of the City of Midland shall obey such stop signs. All streets located in the column under the word “On” are the streets on which stop signs are hereby ordered and authorized at their intersection with the streets listed on the same line and in the column immediately to the right headed by the word “At”.

ON

“A” St.
“A” St.
“A” St.
Aberdeen Dr.
Adams St.
Adams St.
Adams St.
Advance Ave.
Ainslee St.
Ainslee St.

AT

Indiana Ave.
Mockingbird Ln.
Soloman Ln.
Spraberry Dr.
Indiana Ave.
Pennsylvania Ave.
Wall St.
Industrial Ave.
Bedford Dr.
Cuthbert Ave.

ON

Ainslee St.
Ainslee St.
Ainslee St.
Airport 20 Rd.
Alice St.
Alice St.
Alice St.
Almont Pl.
Alpine St.
Alpine St.
Andrews Hwy. Frontage
Andover Ave.
Anetta Dr.
Anetta Dr.
Anetta Dr.
Anetta Dr.
Angelina Dr.
Apache Dr.
Apperson Dr.
Apperson Dr.
Apple Creek Rd.
Apple Creek Rd.
Arapahoe Rd.
Arbor Cir.
Arroyo Dr.
Ashwood Ct.
Aspen Dr.
Aster Ave.
Aster Ave.
Atlanta St.
Atlanta St.
Auburn Ct.
Auburn Dr.
Aurora Ln.
Aurora Ln.
Austin St.
Austin St.
Avalon Dr.
Avondale Dr.
Avondale Dr.
"B" St.
"B" St.
"B" St.
"B" St.
"B" St.
"B" St.
"B" St.
Baird St.
Baird St.
Baird St.
Baird St.

AT

Kansas Ave.
Louisiana Ave.
Princeton Ave.
La Force Blvd.
Barkley Ave.
Delano Ave.
Franklin Ave.
Gunnison Dr.
Cuthbert Ave.
Louisiana Ave.
Godfrey St.
Ward St.
Eisenhower Dr.
Raymond Rd.
Spraberry Dr.
Waverly Dr.
Haynes Ave.
Waverly Dr.
Maxwell Ave.
Whitney Dr.
Mathis St.
Oak Valley Dr.
Elkins Rd.
Sunshine Pkwy.
Haynes Ave.
Heritage Blvd.
Mark Ln.
Avalon Dr.
Golden Gate Dr.
Gist Ave.
Hicks Ave.
Ward St.
Whitney Dr.
McDonald Dr.
Suncrest Ave.
Bedford Dr.
Cuthbert Ave.
Briarwood Ave.
McDonald Dr.
Raymond Dr.
Cuthbert Ave.
Harvard Ave.
Indiana Ave.
Kansas Ave.
Louisiana Ave.
Michigan Ave.
Missouri Ave.
California Ave.
Hicks Ave.
Indiana Ave.
Kentucky Ave.

Baird St.
Baird St.
Baird St.
Baird St.
Baird St.
Baird St.
Baird St.
Baird St.
Baldwin St.
Baldwin St.
Baldwin St.
Baltic Ave.
Baltic Ave.
Banks Dr.
Banks Dr.
Barber St.
Barber St.
Barber St.
Barber St.
Barkley Ave.
Barkley Ave.
Baumann Ave.
Baybrook Dr./Ct.
Baybrook Dr./Pl.
Bedford Ave.
Bedford Ave.
Bedford Ave.
Bedford Ave.
Bedford Ave.
Bedford Ave.
Bedford Ave.
Bedford Dr.
Bedford Ave.
Bedford Ave.
Bedford Ave.
Bedford Ave.
Bedford Dr.
Bedford Ave.
Bedford Ave.
Belair Dr.
Bellechasse Ct.
Belmont St.
Belmont St.
Belmont St.
Benton St.
Benton St.
Benton St.
Benton St.
Bentwood Dr.
Bentwood Dr.
Bentwood Dr.
Bentwood Dr.

Longview Ave. (northbound)
 Longview Ave. (southbound)
 Louisiana Ave.
 Main St.
 Michigan Ave.
 New Jersey Ave.
 New York Ave.
 Taylor Ave.
 Brunson Ave.
 Holloway Ave.
 Kentucky Ave.
 Dormard Ave.
 Pacific Ave.
 La Force Blvd.
 Sloan Field Blvd.
 Dormard Ave.
 Golf Course Rd.
 Magnolia Ave.
 Shandon Ave.
 Crestview Rd.
 Powell St.
 Alpine St.
 Rockwood Dr.
 Valwood Dr.
 Alpine St.
 Austin St.
 Delmar St.
 E. Broadway St.
 "G" St.
 Godfrey St. (westbound)
 Idlewilde Dr.
 Lanham St.
 Maberry St.
 Manor St.
 McDonald St.
 Mogford St.
 "N" St.
 Tarleton St.
 Stonybrook Dr.
 Chapel Hill Dr.
 Gist Ave.
 Griffin Ave.
 Hicks Ave.
 Golf Course Rd.
 Indiana Ave.
 New York Ave.
 Oak Ave.
 Crescent Dr.
 Cuthbert Ave.
 Graceland Dr.
 Ric Dr.

ON

Billingsley Blvd.
Bishops Castle Dr.
Bluebird Ln.
Blue Bonnet Ave.
Blue Bonnet Ave.
Boeing Dr.
Boeing Dr.
Bonham St.
Boulder Dr.
Bowie Dr.
Boyd Ave.
Boyd Ave.
Boyd Ave.
Boyd Ave.
Boeing Dr.
Boyd Ave.
Brazos Ave.
Breckenridge Dr.
Brentwood Dr.
Broadway St.
Brookdale Dr.
Brookdale Dr.
Brooks Dr. (both intersections)
Brownwood Dr.
Bryant St.
Burchill Dr.
Burchill Dr.
Burchill Dr.
Burchill Dr.
Burleson St.
Burleson St.
Burleson St.
Butler Ave.
Butler Ave.
Butternut Ln.
Butternut Ln.
“C” St. (northbound traffic)
“C” St.
“C” St.
“C” St.
“C” St. (southbound traffic)
“C” St.
“C” St.
“C” St.
Calhoun St.
California Ave.
California Ave.
California Ave.
California Ave.
California Ave.
Camarie Ave.

AT

Caldera Blvd.
Castleford Rd.
Midkiff Rd.
Avalon Dr.
Golden Gate Dr.
Neely Ave.
Sentinel Dr.
Cuthbert Ave.
Haynes Ave.
Bentwood Dr.
Godfrey St.
Lanham St.
Mogford St.
“N” St.
Fannin Ave.
Tarleton St.
Amistad Dr.
Durango Dr.
Homestead Blvd.
Cuthbert Ave.
Anetta Dr.
Eisenhower Dr.
Raymond Rd.
Bentwood Dr.
Humble Ave.
Anetta Dr.
Erie Dr.
Parkdale Dr.
Pasadena Dr.
Brunson Ave.
Kentucky Ave.
Washington Ave.
Baird St.
Main St.
Jackson St.
Oak Ave.
College Ave.
Cuthbert Ave.
Golf Course Rd.
Gulf Ave.
Indiana Ave.
Louisiana Ave.
Michigan Ave.
Missouri Ave.
Indiana Ave.
Carver St.
Main St.
Marienfeld St.
Tilden St.
Webster St.
Lanham St.

ON

Camarie Ave.
Camarie Ave.
Camarie Ave.
Camarie Ave.
Camp St.
Camp St.
Camp St.
Camp St.
Canadian Ave.
Canemont Dr.
Cantebury Dr.
Canyon Dr. (both intersections)
Canyon/Devonian Dr.
Cardinal Ln.
Carlton St.
Carnation Ave.
Carnation Ave.
Carrizo St.
Carrizo St.
Carrizo St.
Carrizo St.
Carrizo St.
Carrizo St.
Carrizo St.
Carrizo St.
Carter Ave.
Carver St.
Carver St.
Carver St.
Castle Pine Rd.
Castleford Rd.
Castleford Rd.
Castleford Rd.
Castleford Rd.
Castlerock Ct.
Cedar Ave.
Cedar Ave.
Cedar Ave.
Cedar Spring Dr.
Cedar Spring Dr.
Cessna Dr.
Cessna Dr.
Cessna Dr.
Cessna Dr.
Cessna Dr.
Chapel Hill Dr.
Chapel Hill Dr.
Chatham Ct.
Cherokee Dr.
Cherry Ln.
Cherrywood Dr.

AT

Mogford St.
Tarleton St.
Ward St.
Whitney Dr.
Carter Ave.
Dakota Ave.
Griffin Ave.
Industrial Ave.
Amistad Dr.
Tremont Ave.
Polo Pkwy.
Raymond Rd.
Spraberry Dr.
Oriole Dr.
Kentucky Ave.
Avalon Dr.
Golden Gate Dr.
Cuthbert Ave.
Louisiana Ave.
Michigan Ave.
Missouri Ave.
Nobles Ave.
Ohio Ave.
Storey Ave.
Tennessee Ave.
Garfield St.
Dormard Ave.
Golf Course Rd.
Indiana Ave.
Spence Dr.
Lancashire Rd.
Los Alamitos Rd.
Melville Dr.
Polo Pkwy.
Durango Dr.
Cottonwood Ave.
Main St.
Tyler St.
Devonian Dr.
Raymond Rd.
Fannin Ave.
Neely Ave.
Sentinel Dr.
Shell Ave.
Stanolind Ave.
Bluebird Ln.
Keswick Rd.
Ward St.
Eisenhower Dr.
Carver St.
Lemonwood Dr.

ON

Cherrywood Dr.
Cherrywood Ct.
Chestnut Ave.
Cimmaron Ave.
Cimmaron Ave.
Cimmaron Ave.
Cimmaron Ave.
Cimmaron Ave.
Cimmaron Ave.
Cimmaron Ave.
Cimmaron Ave.
Cimmaron Ave.
Cimmaron Ave.
Cimmaron Ave.
Cimmaron Ave.
Cimmaron Ave.
Cindy Pl.
Claremont Dr.
Clarewood Dr.
Clarewood Dr.
Clark St.
Clark St.
Clay St.
Cloudercroft Ct.
Club Dr.
Co. Rd. 1220 S.
Co. Rd. 83
Collins Ave.
Colorado St.
Colorado St.
Colorado St.
Colorado St.
Colorado St.
Colorado St.
Colorado St.
Colorado St.
Colorado St.
Colorado St.
Colorado St.
Colorado St.
Commerce Dr.
Commerce Dr.
Community Ln.
Community Ln.
Community Ln.
Compton Dr.
Concho Dr.
Concord Ave.
Connell St.
Connell St.
Conroe Ct.

AT

Northcrest Dr.
Oriole Dr.
Carver St.
Dengar Ave.
"I" St.
Mogford St.
Lanham St.
Mark Ln.
McDonald Dr.
Racquet Club Dr.
Shandon Ave.
Tarleton St.
Ward St.
Wedgewood St.
Ward St.
Whitney Dr.
Wydeewood Dr.
Tremont Ave.
Greenville Cir.
Wood Dr.
Brunson Ave.
Kentucky Ave.
Indiana Ave.
Mark Ln.
Nobles Ave.
Industrial Ave.
Co. Rd. 1162
Main St.
Cuthbert Ave.
Dakota Ave.
Francis Ave.
Gist Ave.
Hicks Ave.
Kansas Ave.
Louisiana Ave.
Michigan Ave.
New Jersey Ave.
New York Ave.
Pennsylvania Ave.
Rhode Island Ave.
I-20 N. Frontage Rd.
Industrial Ave.
"H" St.
"J" St.
"N" St.
Haynes Ave.
Amistad Dr.
Lanham St.
Carter Ave.
Industrial Ave.
Rio Grande Dr.

Conroe St.
Conroe St.
Cotton Flat Rd.
Cottonwood Ave.
Cottonwood Ave.
Country Club Dr.
Country Club Dr.
Country Club Dr.
Country Club Dr.
Country Club Dr.
Country Club Dr.
Country Club Dr.
Country Club Dr.
Country Club Dr.
Country Club Dr.
Country Club Dr.
Country Club Dr.
Country Club Dr.
Cowden Ave.
Cowden Ave.
Cowden Ave.
Cowden Ave.
Cranston Pl.
Crenshaw Dr.
Crescent Dr.
Crescent Dr.
Crescent Dr.
Crest Dr.
Crestdale St.
Crested Butte Ct.
Crestfield St.
Crestgate Ave.
Crestgate Ave.
Crestgate Ave.
Crestgate Ave.
Crestmont Dr.
Crestmont Dr.
Crestview Rd.
Crestview Rd.
Crestview Rd.
Crestview Rd.
Crestview Rd.
Crestview Rd.
Crestview Rd.
Crestview Rd.
Crestview Rd.
Crestview Rd.
Crestview Rd.
Crestway Ln.
Crista Ln.
Crista Ln.
Crockett Ave.
Crockett Ave.
Crockett Ave.

Lavaca Ave.
Rio Grande Dr.
Industrial Ave.
Golf Course Rd.
Main St.
E. Broadway St.
W. Broadway St.
"D" St.
Delmar St.
"G" St.
Idlewilde Dr.
"L" St.
Lanham St.
Mogford St.
"N" St.
Ward St.
Carver St.
Dallas St.
Edwards St.
Main St.
Crowley Blvd.
Palmer Dr.
Bentwood Dr.
Eisenhower Dr.
Glenwood Dr.
Club Dr.
Crestgate Ave.
Gunnison Dr.
Crestgate Ave.
Crestdale St.
Crestfield St.
Crestway Ln.
Gateway St.
Tremont Ave.
Whittle Way
Delano Ave.
Kansas Ave.
Kessler Ave.
Louisiana Ave.
Mariana Ave.
Michigan Ave.
Ohio Ave.
Roosevelt Ave.
Storey Ave.
Travis Ave.
Crestgate Ave.
Bluebird Ln.
Caldera Blvd.
Bentwood Dr.
Edgewood Dr.
Goliad Dr.

ON

Crowley Blvd.
Crowley Blvd.
Crowley Blvd.
Crowley Blvd.
Crowley Blvd.
Culver Dr.
Culver Dr.
Cumberland Dr.
Cumberland Dr.
Cunningham Dr.
Cunningham Dr.
Cuthbert Ave.
Cuthbert Ave.
Cuthbert Ave.
Cuthbert Ave.
"D" St.
"D" St.
"D" St.
"D" St.
"D" St.
"D" St.
"D" St.
"D" St.
"D" St.
"D" St.
Dahlia Ave.
Dahlia Ave.
Dakota Ave.
Dakota Ave.
Dakota Ave.
Dakota Ave.
Dallas St.
Dallas St.
Dallas St.
Dallas St.
Dallas St.
Dallas St.
Dallas St.
Dallas St.
Dallas St.
Dallas St.
Dallas St.
Dartmouth Dr.
Daventry Rd.
Daventry Rd.
Davis Ave.
Davis Ave.
Davis Ave.
Dawn Cir. (both intersections)
Deeanna Ln.
Deeanna Ln.

AT

Grassland Blvd.
Hereford Blvd.
Heritage Blvd.
Highland Blvd.
Wadley Ave.
Neely Ave.
Sentinel Dr.
Neely Ave.
Ventura Ave.
Holly Dr.
Howard Dr.
Carver St.
Maberry St.
Main St.
Mogford St.
College Ave.
Cuthbert Ave.
Douglas Ave.
Golf Course Rd.
Harvard Ave.
Humble Ave.
Louisiana Ave.
Michigan Ave.
Missouri Ave.
Neely Ave.
Avalon Dr.
Golden Gate Dr.
Johnston St.
Main St.
Marshall St.
Weatherford St.
Cuthbert Ave.
Garden Ln.
Golf Course Rd.
Hicks Ave.
New Jersey Ave.
New York Ave.
Louisiana Ave.
Nobles Ave.
Ohio Ave.
Parker Ave.
Taylor Ave.
Culpepper Dr.
Castleford Rd.
Lancashire Rd.
Carver St.
Lamesa Rd.
Lee St.
Haynes Ave.
Crowley Blvd.
Hereford Blvd.

ON

Deer Run Ave.
Delano Ave.
Delano Ave.
Delano Ave.
Delano Ave.
Delano Ave.
Delmar Dr.
Delmar Dr.
Delmar Dr.(northbound only)
Delmar St.
Dengar Ave.
Dengar Ave.
Dengar Ave.
Dengar Ave.
Dengar Ave.
Dengar Ave.
Dengar Ave.
Dengar Ave.
Dengar Ave.
Dengar Ave.
Dengar Ave.
Dengar Ave.
Denterest Dr.
Denterest Dr.
Denterest Dr. (southern most intersection)
Denton St.
Denton St.
Desta Dr. (both intersections)
Devlin Pl.
Devonian Dr.
Devonian Dr.
Devonian Dr.
Devonian Dr.
Dormard Ave.
Dormard Ave.
Dormard Ave.
Dormard Ave.
Douglas Ave.
Douglas Ave.
Douglas Ave.
Douglas Ave.
Douglas Ave.
Douglas Ave.
Douglas Ave.
Douglas Ave.
Douglas Ave.
Douglas Ave.
Douglas Ave.
Douglas Ave.
Douglas Ave.

AT

Hilltop Dr.
E. Circle Dr.
Holly Dr.
Powell St.
Roosevelt Dr.
Tanner Dr.
Leddy Dr.
Cuthbert Ave.
Lockheed Ave.
Storey Ave.
Barber St.
Edwards St.
"I" St.
Lanham St.
Loma Dr.
Main St.
Mark Ln.
Neely Ave.
Pecos St.
Tarleton St.
Ward St.
Whitney Dr.
Wydeewood Dr.
Tremont Ave.
Whittle Way
Whittle Way
Cuthbert Ave.
Douglas Ave.
Smith Rd.
Crowley Blvd.
Cedar Spring Rd.
Monty Dr.
Raymond Rd.
Tanner Dr.
Boardwalk
Edwards St.
Loma Ave.
Main St.
Alpine St.
"B" St.
"D" St.
Delmar Ave.
"H" St.
"J" St.
"L" St.
McDonald St.
"N" St.
Tarleton St.
Ward St.
Whitney Dr.
Northrup Dr.

ON

Dowdle Dr.
Dowdle Dr.
Downing Ave.
Drexel Ct.
Dunbar St.
Durant Dr.
Durant Dr.
Durant Dr.
Dyer Cir.
"E" St.
"E" St.
"E" St.
"E" St.
E. Broadway St.
E. Broadway St.
E. Broadway St.
E. Broadway St.
E. Circle Dr.
E. Industrial Loop
Earhart Dr. (both intersections)
Edgewood Dr.
Eastview Dr.
Eastwood Dr.
Edgebrook Dr./Ct.
Edgebrook Dr./Pl.
Edgemont Dr.
Edgemont Dr.
Edgewood Dr.
Edgewood Dr.
Edgewood Dr.
Edwards St.
Edwards St.
Edwards St.
Edwards St.
Edwards St.
Edwards St.
Edwards St.
Edwards St.
Edwards St.
Edwards St.
Edwards St.
Edwards St.
Eisenhower Dr.
Eisenhower Dr.
Eisenhower Dr.
Elm Ave.
Elma Dr.
Elma Dr.
Elma Dr.
Emerson Dr.
Emerson Ln.
English Dr.
English Dr.

AT

Neely Ave.
Ventura Ave.
Norwood St.
Heritage Blvd.
Cuthbert Ave.
Maxwell Dr.
Ward St.
Whitney Dr.
Haynes Ave.
College Ave.
Indiana Ave.
Missouri Ave.
Washington Ave.
Cuthbert Ave.
Harvard Ave.
Louisiana Ave.
Michigan Ave.
Delano Ave.
Industrial Ave.
La Force Blvd.
Monty Dr.
Bluebird Ln. (northbound)
Ric Dr.
Rockwood Dr.
Valwood Dr.
Tremont Ave.
Whittle Way
Cuthbert Ave.
Dewberry Dr.
Eisenhower Dr.
Cedar Ave.
Cuthbert Ave.
Dormard Ave.
Golf Course Rd.
Mississippi Ave.
Oak Ave.
Parker Ave.
Pecan Ave.
Pine Ave.
Spruce Ave.
Anetta Dr.
Edgewood Dr.
Industrial Ave.
Main St.
Aspen Dr.
Whittle Way
Wydewood Dr.
Ward St.
Ward St.
Benton St.
Golf Course Rd.

ON

Erie Dr.
Erie Dr.
Estes Ave.
Estes Ave.
Estes Ave.
Estes Ave.
Estes Ave.
Evergreen Ave.
Evergreen Ave.
Exeter Ave.
“F” St.
“F” St.
“F” St.
“F” St.
“F” St.
“F” St.
Fairbanks Dr.
Fairfax Ct.
Fairgate Dr.
Fairhaven Ct.
Fairview Ln.
Fairwood Dr./Ct.
Fairwood Dr./Pl.
Fannin Ave.
Fannin Ave.
Fannin Ave.
Fannin Ave.
Fannin Ave.
Fannin Ave.
Fannin Ave.
Fannin Ave.
Fannin Ave.
Fargo Ave.
Fargo Ave.
Fargo Ave.
Fasken Dr.
Fern Ave.
Fern Ave.
Fieldcrest Ln.
Fielder St.
Fisher St.
Fort Worth St.
Fort Worth St.
Fort Worth St.
Fort Worth St.
Fort Worth St.
Fort Worth St.
Fort Worth St.
Fort Worth St.
Fort Worth St.
Fort Worth St.

AT

Eisenhower Dr.
Meadow Dr.
Carver St.
Main St.
Marienfeld St.
Pecos St.
Whitaker St.
Avalon Dr.
Golden Gate Dr.
Ward St.
College Ave.
Cuthbert Ave.
Kentucky Ave.
Louisiana Ave.
Michigan Ave.
Missouri Ave.
Mark Ln.
Ward St.
Mark Ln.
Whittle Way
Chapel Hill Dr.
Rockwood Dr.
Valwood Dr.
Dengar Ave.
Lanham St.
Mark Ln.
McDonald Dr.
Mogford St.
Tarleton St.
Ward St.
Whitney Dr.
Boulder Dr.
Norwood St.
Stillmeadow Dr.
Anetta Dr.
Avalon Dr.
Golden Gate Dr.
Northfield Dr.
Crestgate Ave.
Francis Ave.
Cuthbert Ave.
Gist Ave. (northbound)
Golf Course Rd.
Hicks Ave.
Indiana Ave.
Longview Ave. (northbound)
Louisiana Ave.
Michigan Ave.
Mississippi Ave.
New Jersey Ave.
New York Ave.

ON

Fort Worth St.
Fort Worth St.
Fort Worth St.
Fort Worth St.
Fort Worth St.
Fort Worth St.
Fort Worth St.
Fort Worth St.
Fort Worth St.
Fox Hollow Ct.
Francis Ave.
Francis Ave.
Francis Ave.
Franklin Ave.
Franklin Ave.
Fredna Pl.
Fredna Pl.
Fringewood Dr.
Frontier Dr.
Frontier Dr.
Frontier Dr.
Frontier Dr.
"G" St.
"G" St.
"G" St.
"G" St.
"G" St.
"G" St.
"G" St.
"G" St.
"G" St.
Garden Ln.
Garden Ln.
Garfield St.
Garfield St.
Gaston Dr.
Gaston Dr.
Gateway St.
George Ave.
Geraldine St.
Gist Ave.
Gist Ave.
Gist Ave.
Gladewood Dr.
Gladewood Dr.
Gladiola Ave.
Gladiola Ave.
Glen Mist Dr.
Glen Mist Dr.
Gleneagles Ct.
Gleneagles Dr.

AT

Parker Ave.
Peck Ave. (southbound)
Stokes Ave. (northbound)
Stokes Ave. (southbound)
Summit Ave. (northbound)
Summit Ave. (southbound)
Taylor Ave.
Wolcott Ave. (northbound)
Wolcott Ave. (southbound)
Greenbriar Dr.
Camp Dr.
Colorado St.
Main St.
E. Circle Dr.
Williams St.
Dengar Ave.
Neely Ave.
Homestead Blvd.
Fannin Ave.
Lanham St.
Ward St.
Whitney Dr.
Bedford Ave.
Community Ave.
Cuthbert Ave.
Douglas Ave.
Golf Course Rd.
Harvard Ave.
Louisiana Ave.
Michigan Ave.
Missouri Ave.
Dallas St.
Terrell St.
Bluebird Ln.
Carter Ave.
Delano Ave.
Raymond Rd.
Caldera Blvd.
Marienfeld St.
Neely Ave.
E. Industrial Loop
Main St.
Terrell St.
Homestead Blvd.
Prairie Ridge Dr.
Avalon Dr.
Golden Gate Dr.
Fringewood Dr.
Gladewood Dr.
Greenbriar Dr.
Greenbriar Dr.

ON

Gleneagles Dr.
Goddard Dr.
Goddard Pl.
Godfrey Ct.
Godfrey St.
Godfrey St.
Godfrey St.
Godfrey St.
Godfrey St.
Godfrey St.
Godfrey St.
Godfrey St.
Godfrey St.
Godfrey St.
Golden Gate Dr.
Golf Course Rd.
Golf Course Rd.(westbound)
Goliad Dr.
Goliad Dr.
Goode St.
Goode St.
Gossett St.
Graceland Dr.
Graceland Dr.
Graham Dr.
Grassland Blvd.
Grassland Blvd.
Greathouse Ave.
Greathouse Ave.
Greathouse Ave.
Greenbriar Ave.
Greenbriar Dr.
Greenbriar Dr.
Greenbriar Dr.
Greenridge
Greenville Dr.
Griffin Ave.
Griffin Ave.
Griffin Ave.
Griffin Ave.
Griffin Ave.
Guadalupe St.
Gulf Ave.
Gulf Ave.
Gulf Ave.
Gulf Ave.
Gulf Ave.
Gulf Ave.
Gulf Ave.
Gulf Ave.
Gulf Ave.

AT

Mark Ln.
Ward St.
Whitney Dr.
Godfrey St.
Cuthbert Ave.
Douglas Ave.
Haynes Ave.
Louisiana Ave.
Neely Ave.
Northfield Dr.
Roosevelt Ave.
Shandon Ave.
St. Andrews Dr.
Tanner Dr.
Briar Wood Ave.
Main St.
Scharbauer Dr.
Crockett Ave.
Cuthbert Ave.
Carter Ave.
Francis Ave.
Missouri Ave.
Bentwood Dr.
Eisenhower Dr.
Palmer Dr.
Crowley Blvd.
W. Heritage Blvd.
Hilltop Dr.
Mathis St.
Spence Dr.
Hyde Park Ave.
Radcliff Ct.
Springfield Ct.
St. Andrews Dr.
Heritage Blvd.
Valwood Dr.
Dallas St.
Goode St.
Johnston St.
Main St.
Weatherford St.
Rio Grande Ave.
Cessna Dr.
Culver Dr.
Godfrey St.
"I" St.
"L" St.
Lanham St.
McDonald Dr.
Mark Ln.
Mogford St.

ON

Gulf Ave.
Gulf Ave.
Gulf Ave.
Gulf Ave.
Gulf Ave.
"H" St.
"H" St.
"H" St.
"H" St.
"H" St.
"H" St.
"H" St.
"H" St.
"H" St.
Hamby Ave.
Hamby Ave.
Hamby Ave.
Hamby Ave.
Harlowe Dr.
Hart Ave.
Hart Ave.
Harvard Ave.
Harvard Ave.
Harvard Ave.
Harvard Ave.
Harvard Ave.
Harvard Ave.
Harvard Ave.
Harvard Ave.
Harvard Ave.
Hathaway Ct.
Haynes Ave.
Haynes Ave.
Haynes Ave.
Haynes Ave.
Haynes Ave.
Haynes Dr.
Haynes Dr.
Haywood Dr.
Heartland Ave.
Heartland Ave./Ct.
Henderson St.
Hereford Blvd.
Hereford Blvd.
Heritage Blvd.
Heritage Blvd.
Heritage Blvd.
Heritage Blvd.
Hickory Ave.
Hickory Ave.
Hickory Ave.

AT

"N" St.
Northrup Dr.
Tarleton Dr.
Ward St.
Whitney Dr.
College Ave.
Golf Course Rd.
Humble Ave.
Indiana Ave.
Michigan Ave.
Missouri Ave.
Neely Ave.
Ohio Ave.
Princeton Ave.
Carver St.
Main St.
Marienfeld St.
Tyler St.
Devonian Dr.
Main St.
Marienfeld St.
"D" St.
Delmar St.
"H" St.
Idlewilde Dr.
"L" St.
Lanham St.
Maberry St.
"N" St.
Whitney Dr.
Heritage Blvd.
Godfrey St.
Lanham St.
Norwood St.
Skyline Dr.
Ward St.
Ward St.
Whitney Dr.
Prairie Ridge Dr.
Hereford Blvd.
Heritage Blvd.
Rochester St.
Crowley Blvd.
Grassland Blvd.
Crowley Blvd.
Grassland Blvd.
Heartland Ave./Ct.
Highland Blvd.
Benton St.
Lincoln St.
Tyler St.

ON

Hicks Ave.
Hicks Ave.
Hicks Ave.
Highland Blvd.
Hill Ave.
Hillcrest Ct.
Hillcrest Ct.
Hilltop Dr.
Hodges St.
Hodges St.
Hollandale Dr.
Hollandale Dr.
Holloway Ave.
Holloway Ave.
Holly Dr.
Holly Dr.
Holmsley St.
Holmsley St.
Homestead Blvd.
Howard Dr.(both intersections)
Hoya Dr.
Hughes St.
Humble Ave.
Humble Ave.
Humble Ave.
Humble Ave.
Humble Ave.
Humble Ave.
Humble Ave.
Huntington St.
Hyde Park Ave.
Hyde Park Ave.
Hyde Park Ave.
"I" St.
"I" St.
"I" St.
"I" St.
"I" St.
"I" St.
"I" St.
Idlewilde Dr.
Idlewilde Dr.
Illinois Ave.
Illinois Ave.
Illinois Ave.
Imperial Ave.
Imperial Ave.
Indiana Ave.
Indiana Ave.

AT

Jefferson St.
Main St.
Terrell St.
Heritage Blvd.
Holly Dr.
Hereford Pl.
Heritage Blvd.
Oriole Dr.
Community Ln.
Neely Ave.
Carver St.
Parkway Dr.
"G" St.
"H" St.
Raymond Rd.
Travis Ave.
Marienfeld St.
Pecos St.
Hereford Blvd.
Raymond Rd.
Sunshine Pkwy.
Neely Ave.
Godfrey St.
"I" St.
"L" St.
Lanham St.
Mark Lane
"N" St.
Tarleton St.
Western Dr.
Neely Ave.
Godfrey St.
Greenbriar Dr.
Tarleton St.
Cimmaron Ave.
College Ave.
Golf Course Rd.
Holloway Ave.
Indiana Ave.
Kentucky Ave.
Missouri Ave.
Neely Ave.
Cuthbert Ave.
Preston Dr.
Carver St.
Lee St.
Terrell St.
Godfrey St.
Tarlton St.
Carver St.
"G" St.

ON

Indiana Ave.
Indiana Ave.
Indiana Ave.
Idlewilde Dr.
Industrial Ave.
Industrial Ave.
Industrial Ave.
Industrial Ave.
Inwood Ct.
Island Dr.
Island Dr.
Island Dr.
"J" St.
"J" St.
"J" St.
"J" St.
"J" St.
"J" St.
Jackson St.
Jackson St.
Jackson St.
Jacotte Cir. (both intersections)
Jadewood Dr.
Jax Ave.
Jax Ave.
Jax Ave.
Jefferson St.
Jefferson St.
Jefferson St.
Jefferson St.
Johnston St.
Johnston St.
Jordan Ave.
"K" St.
"K" St.
"K" St.
"K" St.
"K" St.
"K" St.
"K" St.
Kansas Ave.
Kansas Ave.
Kansas Ave.
Kansas Ave.
Kansas Ave.
Kansas Ave.
Kansas Ave.
Kansas Ave.
Kansas Ave.
Kansas Ave.

AT

"L" St.
Lee St.
Marienfeld St.
Ric Dr.
Carver St.
Lee St.
Main St.
Marienfeld St.
Ward St.
Greentree Blvd.
Island Circle/Dr.
Rustic Tr.
College Ave.
Community Ave.
Golf Course Rd.
Harvard Ave.
Holloway Ave.
Missouri Ave.
Chestnut Ave.
Golf Course Rd.
Indiana Ave.
Golf Course Rd.
Homestead Blvd.
Carver St.
Main St.
Marienfeld St.
Gist Ave.
Indiana Ave.
New Jersey Ave.
Wall St.
Carter Ave.
Industrial Ave.
Godfrey Ct.
College Ave.
Community Ln.
Cuthbert Ave.
Francis Ave.
Golf Course Rd.
Missouri Ave.
Washington Ave.
Alpine St.
Baird St.
E. Broadway
Carrizo St.
"D" St.
"F" St.
Godfrey St.
McDonald St.
Main St.
Marienfeld St.
Pecos St.

Kansas Ave.
Kansas Ave.
Keith St.
Keith St.
Keith St.
Keith St.
Kelly St.
Kent St.
Kent St.
Kent St.
Kentucky Ave.
Kentucky Ave.
Kentucky Ave.
Kentucky Ave.
Kentucky Ave.
Kentucky Ave.
Kentucky Ave.
Kentucky Ave.
Kentucky Ave.
Kessler Ave.
Kessler Ave.
Keswick Rd.
Key St.
Key St.
Keystone Ct.
Kimbrough St.
King Richards Row
Kingwood Ct.
Kiowa Dr.
“L” St.
“L” St.
“L” St.
“L” St.
“L” St.
“L” St.
“L” St.
“L” St.
“L” St.
“L” St.
“L” St.
“L” St.
“L” St.
“L” St.
“L” St.
“L” St.
La Force Blvd.
La Salle Cir.
Lamesa Rd.
Lancashire Rd.

Terrell St.
W. Broadway
Cowden Ave.
Humble Ave.
Nobles Ave.
Parker Ave.
Travis Ave.
Kansas Ave.
Louisiana Ave.
Michigan Ave.
Bankhead Hwy.
Carver St.
"G" St.
"K" St.
Lamesa Rd.
Lee St.
Main St.
Marienfeld St.
Pecos St.
Tilden St.
Crestview Rd.
Powell St.
Melville Dr.
Brunson Ave.
Kentucky Ave.
Gunnison Dr.
Delano Ave.
Oriole Dr.
Valwood Dr.
Eisenhower Dr.
Bedford Dr.
Carter Ave.
Cimmaron Ave.
College Ave.
Community Ave.
Cuthbert Ave.
Holloway Ave.
Humble Ave.
Louisiana Ave.
Michigan Ave.
Missouri Ave.
Neely Ave.
Shell Ave.
Sinclair Ave.
Stanolind Ave.
Warwick Pl.
Washington Ave.
Sloan Field Blvd.
Mark Ln.
Indiana Ave.
Castleford Rd.

ON

Lancashire Rd.
Lanham St.
Lanham St.
Lanham St.
Lanham St.
Lanham St.
Lanham St.
Lanham St.
Lanham St.
Lanham St.
Lanham St.
Lanham St.
Lanham St.
Laura Dr.
Laura Dr.
Lavaca Ave.
Lavaca Ave.
Lawson Ave.
League Dr.
Learmont Dr.
Leddy Dr.
Leddy Dr.
Leddy Dr.
Lee St.
Lee St.
Lee St.
Lehigh Dr.
Leisure Dr.
Leisure Dr.
Liddon Ave.
Liddon Ave.
Liddon Ave.
Lincoln St.
Lincoln St.
Lincoln St.
Lincoln St.
Lincoln St.
Lincoln St.
Lindbergh Dr.
Lindbergh Dr.
Lindbergh Dr.
Lindora Way
Lindora Way
Livingston St.
Lockheed Dr.
Lockheed Dr.
Lockheed Dr.
Lockheed Dr.
Lockheed Dr.
Loma Dr.

AT

Polo Parkway
Cimmaron Ave.
Cuthbert Ave.
Fannin Ave.
Haynes Ave.
Kansas Ave.
Louisiana Ave.
Maxwell Dr.
Neely Ave.
Princeton Ave.
Shandon Ave.
Shell Ave.
Storey Ave.
Ward St.
Bentwood Dr.
Edgewood Dr.
Conroe St.
Spence Dr.
“H” St.
Crowley Blvd.
Chapel Hill Dr.
Cedar Spring Dr.
Harlowe Dr.
Mercedes Dr.
New York Ave.
South Ln.
Walnut Ln.
Norwood St.
Bentwood Dr.
Eisenhower Dr.
Bryant St.
Keith St.
Marienfeld St.
Indiana Ave.
New York Ave.
Oak Ave.
Orchard Ln.
Pecan Ave.
Pine Ave.
Banks Dr.
Windecker St.
Wright Dr.
Sinclair Ave.
Sunshine Pkwy.
Rio Grande Ave.
Boeing Dr.
Cessna Dr.
Lanham St.
Ward St.
Whitney Dr.
Neely Ave.

ON

Loma Dr.
Longview Ave.
Longview Ave.
Longview Ave.
Loop 250 E. Frontage Rd.
Loraine St.
Loraine St.
Loraine St.
Loraine St.
Loraine St.
Loraine St.
Loraine St.
Loraine St.
Loraine St.
Loraine St.
Los Alamitos Dr.
Louisiana Ave.
Louisiana Ave.
Louisiana Ave.
Louisiana Ave.
Louisiana Ave.
Lynn Ave.
Lynn Ave.
McClintic St.
McClintic St.
McDonald Dr.
McDonald Dr.
McDonald Dr.
McDonald Dr.
McDonald Dr.
McDonald Dr.
McDonald Dr.
McDonald Dr.
McDonald Dr.
McDonald Dr.
McDonald Dr.
McDonald Dr.
McDonald Dr.
McDonald St.
McGarvey St.
McKenzie St.
McKenzie St.
"M" St.
"M" St.
"M" St.
"M" St.
"M" St.
"M" St.
Maberry St.
Maberry St.
Maberry St.
Maberry St.
Maberry St.

AT

Pecan Ave.
Baird St. (eastbound)
Baird St. (westbound)
Terrell St. (eastbound)
Industrial Ave.
California Ave.
Cuthbert Ave.
Dakota Ave.
Gist Ave.
Hicks Ave.
Kansas Ave.
Louisiana Ave.
Michigan Ave.
New Jersey Ave.
Pennsylvania Ave.
Lancashire Rd.
Alpine St.
Delmar St.
Lamesa Rd.
Main St.
McDonald Dr.
Cottonwood Ave.
Tyler St.
Community Ave.
Neely Ave.
Bedford Ave.
Cedar Spring Dr.
Cimmaron Ave.
Cuthbert Ave.
Gulf Ave.
Neely Ave.
Ohio Ave.
Kansas Ave.
Shell Ave.
Spraberry Dr.
Tanner Dr.
Greenbriar Dr.
Kentucky Ave.
Carter Ave.
Francis Ave.
Holloway Ave.
Indiana Ave.
Louisiana Ave.
Michigan Ave.
Missouri Ave.
Washington Ave.
Country Club Dr.
Cuthbert Ave.
Kansas Ave.
Neely Ave.
Storey Ave.

ON

Madison St.
Madison St.
Madison St.
Madison St.
Magnolia Ave.
Magnolia Ave.
Main St.
Main St.
Main St.
Mann St.
Manor Ct.
Manor St.
Manor St.
Maple Ave.
Maple Ave.
Maple Ave.
Mariana Ave.
Mariana Ave.
Marienfeld St.
Marienfeld St.
Marienfeld St.
Marienfeld St.
Marienfeld St.
Marienfeld St.
Marienfeld St.
Mark Ln.
Mark Ln.
Mark Ln.
Mark Ln.
Mark Ln.
Market St.
Market St.
Marmon Dr.
Marmon Dr.
Marshall St.
Marshall St.
Marshall St.
Marshall St.
Mathis St.
Mathis St.
Mathis St.
Maxwell Dr.
Maxwell Dr.
Maxwell Dr.
Mayfield Pl.
Meadow Dr.
Meadow Dr.
Meadow Dr.
Meadow Dr.
Meadowbrook Dr.

AT

Indiana Ave.
New York Ave.
South Ln.
Wall St.
Benton St.
Lincoln St.
Cuthbert Ave.
Gist Ave.
Golf Course Rd.
Kentucky Ave.
Douglas Dr.
Cuthbert Ave.
Douglas Dr.
Benton St.
Lincoln St.
Tyler St.
Michigan Ave.
Ohio Ave.
Carter Ave.
Cowden Ave.
Cuthbert Ave.
Louisiana Ave.
Michigan Ave.
Nobles Ave.
Ohio Ave.
Parker Ave.
Dengar Ave.
Neely Ave.
Sinclair Ave.
St. Andrews Dr.
Whittle Way
I-20 N. Frontage Rd.
Industrial Ave.
St.
Whitney Dr.
Gist Ave.
Hicks Ave.
Indiana Ave.
Wall St.
Briarwood Ave.
Canadian Ave.
Spence Dr.
Lanham St.
Ward St.
Whitney Dr.
Mockingbird Ln.
Anetta Dr.
Comanche Dr.
Erie Dr.
Pasadena Dr.
Moss Ave.

ON

Meadowlark Ln.
Meadowridge Dr.
Melville Dr.
Melville Dr.
Mercedes Dr.
Merrill Dr.
Mesquite Ln.
Mesquite Ln.
Metz Ct.
Metz Dr.
Metz Dr.
Michigan Ave.
Michigan Ave.
Michigan Ave.
Michigan Ave.
Michigan Ave.
Michigan Ave.
Michigan Ave.
Michigan Ave.
Midkiff Rd.
Midkiff Rd.
Midland Dr.
Mineola St.
Mineola St.
Mineola St.
Mineola St.
Mineola St.
Mineola St.
Mineola St.
Mission Ct.
Mississippi Ave.
Mississippi Ave.
Missouri Ave.
Missouri Ave.
Missouri Ave.
Missouri Ave.
Mitchell St.
Mockingbird Ln.
Mockingbird Ln.
Mockingbird Ln.
Mogford St.
Mogford St.
Mogford St.
Mogford St.
Mogford St.
Mogford St.
Mogford St.
Mogford St.
Mogford St.
Mogford St.

AT

Oriole Dr.
Skyline Dr.
Bluebird Ln.
Faulkner Dr.
Eisenhower Dr.
Norwood St.
Lee St.
Tyler St.
Ward St.
Ward St.
Whitney Dr.
Alpine St.
Delmar St.
Godfrey St.
Lamesa Rd.
Main St.
McDonald St.
Powell St.
Terrell St.
Bluebird Ln.
Mockingbird Ln.
U.S. 80 Service Rd.
Gist Ave.
Hicks Ave.
Indiana Ave.
Kentucky Ave.
New Jersey Ave.
New York Ave.
Wall St.
Godfrey St.
Baird St.
Dallas St.
Carver St.
"G" St.
Lee St.
Main St.
Delano Ave.
"A" St.
Midkiff Rd.
Oriole Dr.
Cimmaron Ave.
Cuthbert Ave.
Dengar Ave.
Fannin Ave.
Kansas Ave.
Louisiana Ave.
Michigan Ave.
Neely Ave.
Princeton Ave.
Shandon Ave.
Storey Ave.

[illegible]

Main St.
Leddy Dr.
McDonald St.
Mercedes Dr.
Raymond Rd.
Carter Ave.
Dakota Ave.
Griffin Ave.
Industrial Ave.
Golf Course Rd.
Ward St.
Whitney Dr.
Madison St.
Princeton Ave.
Bedford Dr.
Brunson Ave.
College Ave.
Community Ln.
Cuthbert Ave.
Harvard Ave.
Holloway Ave.
Humble Ave.
Indiana Ave.
Louisiana Ave.
Michigan Ave.
Missouri Ave.
Neely Ave.
Seaboard Ave.
Sinclair Ave.
Washington Ave.
Godfrey St.
Tarleton St.
Whittle Way
Wydewood Dr.
Cumberland Dr.
“D” St.
Oaklawn Dr.
Camp St.
Johnston St.
Main St.
Marshall St.
McKenzie St.
Terrell St.
Carver St.
Industrial Ave.
Main St.
Marienfeld St.
Tilden St.
Carver St.
Edwards St.
Main St.

Nobles Ave.
Noel Ave.
Norman
Normandy Ln.
North Service Rd.
Northcrest Dr.
Northfield Ct.
Northfield Dr.
Northfield Dr.
Northgate Ave.
Northgate Ave.
Northrup Dr.
Northrup Dr.
Northrup Dr.
Northtown Pl.
Norwood St.
Norwood St.
"O" St.
Oak Ave.
Oak Ave.
Oak Valley Dr.
Oak Valley Dr.
Oak Valley Dr.
Oaklawn Dr.
Oaklawn Dr.
Oakmont Dr.
Ohio Ave.
Ohio Ave.
Ohio Ave.
Ohio Ave.
Ohio Ave.
Ohio Ave.
Ohio Ave.
Ohio Ave.
Ohio Ave.
Ohio Ave.
Ohio Ave.
Ohio Ave.
Ohio Ave.
Ohio Ave.
Ohio Ave.
Ohio Ave.
Ohio Ave.
Ohio Ave.
Onyx Dr.
Orchard Ln.
Orchard Ln.
Oriental Ave.
Oriole Dr.
Oriole Dr.
Oriole Dr.
Osage St.
Pacific Ave.

Pecos St.
Ward St.
Bankhead Hwy.
Polo Pkwy.
Windecker St.
Hilltop Dr.
Godfrey St.
Godfrey St.
Skyline Dr.
Briarwood Ave.
Northcrest Dr.
Neely Ave.
Princeton Dr.
Sentinel Dr.
Whitney Dr.
Lehigh Dr.
St. Andrews Dr.
Missouri Ave.
Butternut Ln.
Main St.
Greathouse Ave.
Oriole St.
Spence Dr.
Neely Ave.
Ventura Ave.
Tremont Ave.
Alpine St.
Baird St.
“C” St.
“D” St.
Delmar St.
“F” St.
Fort Worth St.
“G” St.
Godfrey St.
“L” St.
Main St.
Marienfeld St.
Mineola St.
“N” St.
Powell St.
Weatherford St.
Farm-to-Market Rd. 1788
Carver St.
Lee St.
Ventnor Ave.
Mockingbird Ln.
Tanforan Ave.
Teakwood Trc.
Spruce Ave.
Boardwalk

ON

Pacific Ave.
Pagewood Dr.
Palmer Dr.
Park Ln.
Parker Ave.
Parker Ave.
Parkwood Dr.
Pasadena Dr.
Pasadena Dr.
Peach St.
Pecan Ave.
Pecan Ave.
Pecan Ave.
Pecan Ave.
Pecan Ave.
Pecan Ave.
Peck Ave.
Peck Ave.
Pecos St.
Pecos St.
Pecos St.
Pecos St.
Pecos St.
Pecos St.
Pecos St.
Pecos St.
Pecos St.
Pecos St.
Pecos St.
Pecos St.
Pecos St.
Pennsylvania Ave.
Pennsylvania Ave.
Pennsylvania Ave.
Pennsylvania Ave.
Pennsylvania Ave.
Pennsylvania Ave.
Peterson St.
Peterson St.
Pilot Ave.
Pilot Ave.
Pine Ave.
Pine Ave.
Pine Ave. (westbound only)
Pine Ave.
Pine Ave.
Pine Ave.
Pine Ave.
Pine Ave.
Pinemont Dr.
Plaza St.

AT

Carver St.
Prairie Ridge Dr.
Nicklaus St.
Holly Dr.
Carver St.
Main St.
Brownwood Dr.
Eisenhower Dr.
Spraberry Dr.
Kessler Ave.
Cumberland Dr.
“D” St.
“I” St.
“L” St.
Main St.
Oaklawn Dr.
Baird St. (westbound)
Terrell St. (eastbound)
Boyd Ave.
Cuthbert Ave.
Dormard Ave.
Indiana Ave.
Industrial Ave.
Louisiana Ave.
Michigan Ave.
Missouri Ave.
Neely Ave.
Ohio Ave.
Spruce Ave.
Storey Ave.
Tennessee Ave.
Carver St.
Lamesa Rd.
Main St.
Marienfeld St.
Tilden St.
Tyler St.
Oak Ave.
Pecan Ave.
La Force Blvd.
Wright Dr.
Cumberland Dr.
“I” St.
“L” St.
Loma Dr.
Main St.
Neely Ave.
Oaklawn Dr.
Pecos St.
Tremont Ave.
E. Circle Dr.

Pleasant Dr.
Pleasant Dr.
Pleasant Dr.
Pliska Dr.
Polo Club Dr.
Polo Club Dr.
Polo Parkway
Powell St.
Powell St.
Powell St. (northern most intersection only)
Prairie Ridge Dr.
Pratt St.
Pratt St.
Preston Dr.
Preston Dr.
Preston Dr.
Preston Dr.
Princeton Ave.
Princeton Ave.
Princeton Ave.
Princeton Ave.
Princeton Ave.
Princeton Ave.
Princeton Ave.
Princeton Ave.
Princeton Ave.
Princeton Ave.
Princeton Ave.
Princeton Ave.
Princeton Ave.
Princeton Ave.
Princeton Ave.
Princeton Ave.
Princeton Ave.
Princeton Ave.
Princeton Ave.
Princeton Ave.
Quicksand Dr.
Quicksand Dr.
Racquet Club Dr.
Racquet Club Dr.
Radcliff Ct.
Rainbow Rd.
Raymond Rd.
Raymond Rd. (southernmost intersection)
Redwood Run
Rees Ln.
Rees Ln.
Reeves Cir.
Rhode Island Ave.
Rhode Island Ave.
Ric Dr.
Ric Dr.
Ric Dr.
Ric Dr.

Bentwood Dr.
Eisenhower Dr.
Raymond Rd.
North Service Rd.
Bluebird Ln.
Polo Pkwy.
Lancashire Dr.
Kansas Ave.
Louisiana Ave.
Mariana Ave.
Jadewood Dr.
Carter Ave.
Francis Ave.
Aspen Dr.
Sunburst Dr.
Whittle Way
Wydewood Dr.
Alpine St.
Boeing Dr.
"D" St.
Delmar St.
"G" St
Godfrey St.
Idlewilde Dr.
"J" St.
"L" St.
Maberry St.
McDonald St.
"N" St.
Tarleton St.
Ward St.
Whitney Dr.
Woodcrest Dr.
Mathis St.
Spence Dr.
Cimmaron Dr.
Neely Ave.
Greenbriar Dr.
Idlewilde Dr.
Anetta Dr.
Canyon Dr.
Teakwood Trc.
Dengar Ave.
Neely Ave.
Anetta Dr.
Colorado St.
Johnston St.
Bentwood Dr.
Edgewood Dr.
Stoneybrook Dr.
Storey Ave.

ON

Ridgemont Pl.
Ridgemont Ct.
Ridglea Dr.
Ridglea Dr.
Rio Grande Dr.
Rio Grande Dr.
Riverside Dr.
Riverside Dr.
Robin Ln.
Rochester St.
Rockwood Dr.
Roosevelt Ave.
Roosevelt Ave.
Roosevelt Dr.
Roosevelt Dr.
Roosevelt Dr.
Roosevelt Dr.
Rosemont Dr.
Rosewood Dr.
Rosewood Dr.
Rosewood Dr.
Ruby Rd.
Ruidoso Ct.
Russell Dr.
Rustic Trail

Sage St.
Sagemont Dr.
San Angelo St.
San Angelo St.
San Angelo St.
San Antonio Ave.
Scharbauer Dr.
Seaboard Ave.
Seaboard Ave.
Seaboard Ave.
Seaboard Ave.
Seaboard Ave.
Seaboard Ave.
Seaboard Ave.
Seaboard Ave.
Secor St.
Seminole Dr.
Sentinel Dr.
Sentinel Dr.
Sentinel Dr.
Sequoia St.
Shadylane Dr.
Shadyview Pl.
Shandon Ave.

AT

Hereford Blvd.
Heritage Blvd.
Cuthbert Ave.
Nobles Ave.
Amistad Dr.
Conroe St.
Hilltop Dr.
Oak Valley Dr.
Oriole Dr.
Bankhead Hwy.
Tanforan Ave./Ct.
Mitchell St.
Powell St.
Crestview Rd.
Leddy Dr.
McDonald Dr.
Raymond Rd.
Tremont Ave.
Lemonwood Dr.
Northcrest Dr.
Oriole Dr.
Raymond Rd.
Mark Ln.
Norwood St.
Greentree Blvd. (at east and west intersections)
Hollandale Dr.
Tremont Ave.
Louisiana Ave.
Michigan Ave.
Tennessee Ave.
Amistad Dr.
Main St.
Godfrey St.
"H" St.
"I" St.
"L" St.
Lanham St.
Mogford St.
"N" St.
Tarleton St.
Whitney Dr.
Ohio Ave.
Eisenhower Dr.
Maberry St.
Murray St.
Whitney Dr.
Green Tree Blvd.
Bentwood Dr.
Tanforan Ave.
Cimmaron Ave.

ON

Shandon Ave.
Shandon Ave.
Shandon Ave.
Shandon Ave.
Shandon Ave.
Shandon Ave.
Shandon Ave.
Shandon Ave.
Shell Ave.
Shell Ave.
Shell Ave.
Shell Ave.
Shell Ave.

Shell Ave.
Shell Ave.
Shirley Ln.
Shirley Ln.
Shirley Ln.
Sinclair Ave.
Sinclair Ave.
Sinclair Ave.
Sinclair Ave.
Sinclair Ave.
Sinclair Ave.
Sinclair Ave.
Sinclair Ave.
Sinclair Ave.
Sinclair Ave.
Sinclair Ave.
Sinclair Ave.
Skyline Dr.
Skyline Dr.
Smith Rd. (both intersections)
Soloman Ln.
Solomon Ln.
South St.
South St.
Sparks St.
Spartan Dr.
Spartan Dr.
Spence Dr.
Spence Dr.
Spence Dr.
Spraberry Dr.
Spraberry Dr.
Spraberry Dr.
Spraberry Dr.
Springfield Ct.
Spring Meadow Ln.
Spring Meadow Ln.
Spruce Ave.

AT

Godfrey St.
Lanham St.
Loma Dr.
Main St.
Mogford St.
Tarleton St.
Ward St.
Whitney Dr.
Godfrey St.
"I" St.
"L" St.
"N" St.
McDonald St. (westernmost intersection)
Tarleton St.
Upland St.
"D" St.
Oaklawn Dr.
Cumberland Dr.
Culver Dr.
Godfrey St.
Hughes St.
Huntington St.
Lanham St.
Lindora Way
"N" St.
Northrup Drive
Tarleton St.
Ward St.
Wydewood Dr.
Haynes Ave.
Northfield Dr.
Desta Dr.
"A" St.
Lamesa Rd.
Carver St.
Lamesa Rd.
Princeton Ave.
Fannin Ave.
Neely Ave.
Canadian Ave.
Hilltop Dr.
Rio Grande Ave.
Anetta Dr.
Canyon/Devonian Dr.
Pleasant Dr.
Raymond Rd.
Greenbriar Dr.
Meadowpark Dr.
Pine Meadow Dr.
Loma Dr.

ON

Spruce Ave.
Spruce Ave.
Spruce Ave.
Spur Dr.
St. Andrews Ct.
St. Andrews Dr.
St. Andrews Dr.
St. Andrews Dr.
Stanolind Ave.
Stanolind Ave.
Stanolind Ave.
Stanolind Ave.
Stanolind Ave.
Stanolind Ave.
Stanolind Ave.
Stanolind Ave.
Stanolind Ave.
Stanolind Ave.
Stanolind Ave.
Stanolind Ave.
Sterling Pl.
Sterling Ct.
Stewart Ave.
Stillmeadow Dr.
Stokes Ave.
Stokes Ave.
Stonecrest
Stonecrest
Stoneleigh Rd.
Stonewall St.
Stonewall St.
Stoneybrook Dr.
Stoneybrook Dr.
Storey Ave.
Storey Ave.
Storey Ave.
Storey Ave.
Storey Ave.
Storey Ave.
Storey Ave.
Storey Ave.
Storey Ave.
Storey Ave.
Storey Ave.
Storey Ave.
Stutz Ct.
Stutz Dr.
Stutz Dr.

AT

Main St.
Neely Ave.
Pecos St.
I-20 N. Frontage Rd.
Godfrey St.
Godfrey St.
Mark Ln.
Norwood St.
"D" St.
Godfrey St.
"H" St.
"I" St.
"L" St.
Lanham St.
Mark Ln.
McDonald Dr.
Mogford St.
Tarleton St.
Wedgewood St.
Western Dr.
Whitney Dr.
Crowley Blvd.
Heritage Blvd.
Tarleton St.
Fargo Ave.
Baird St. (westbound)
Terrell St. (eastbound)
Hereford Blvd.
Windrift
Lancashire Rd.
Indiana Ave.
New York Ave.
Ric Dr.
Shadylane Dr.
"B" St.
Bentwood Dr.
"D" St.
Edgewood Dr.
"F" St.
"G" St.
Godfrey St.
Lanham St.
Maberry St.
Marienfeld St.
McDonald St.
Powell St.
Stoneybrook Dr.
Ward St.
Ward St.
Ward St.
Whitney Dr.

ON

Summit Ave.
Summit Ave.
Sunburst Dr.
Sunburst Dr.
Suncrest Ave.
Sundance Pl.
Sundance Ct.
Sunnyside Dr.
Sunset Blvd.
Sunset Blvd.
Sunshine Pkwy.
Sunshine Pkwy.
Sweetbriar Dr.
Sycamore Ave.
Tanforan Ave.
Tanforan Ave.
Tanner Dr.
Tanner Dr.
Tanner Dr.
Tanner Dr.
Tarleton St.
Tarleton St.
Tarleton St.
Taylor Ave.
Taylor Ave.
Taylor Ave.
Taylor Ave.
Teakwood Tr.
Tejas
Telluride Dr./Ct.
Tennessee Ave.
Tennessee Ave.
Tennessee Ave.
Tennessee Ave.
Tennessee Ave.
Tennessee Ave.
Tennessee Ave.
Tennessee Ave.
Tennessee Ave.
Tennessee Ave.
Tennessee Ave.
Tennessee Ave.
Tennessee Ave.
Tennessee Ave.
Tennessee Ave.
Terrace Ave.
Terrace Ave.
Terrell St.
Terrell St.
Terrell St.

AT

Baird St. (westbound)
Terrell St. (eastbound)
Preston Dr.
Sunshine Pkwy.
Dengar Ave.
Crowley Blvd.
Heritage Blvd.
Stonybrook Dr.
Michigan Ave.
Ohio Ave.
Idlewilde Dr.
Wydewood Dr.
Ric Dr.
Holly Dr.
Oriole Dr.
Widener Strip
Devonian Dr.
Leddy Dr.
McDonald St.
Raymond Rd.
Cuthbert Ave.
Neely Ave.
Shandon Ave.
Main St.
Marshall St.
Mineola St.
Terrell St.
Oriole Dr.
Shawnee
Durango Dr.
Baird St.
"C" St.
Colorado St.
"D" St.
E. Broadway St.
"F" St.
Fort Worth St.
"G" St.
Loraine St.
"L" St.
"M" St.
Main St.
Marienfeld St.
"N" St.
Terrell St.
W. Broadway
Neely Ave.
Ward St.
Cuthbert Ave.
Gist Ave.
Golf Course Rd.

ON

Terrell St.
Terrell St.
Terrell St.
Terrell St.
Terrell St.
Texas Ave.
Texas Ave.
Thames Ct.
Thomas Ave.
Thomas Ave.
Tilden St.
Tilden St.
Tilden St.
Timberglen Pl./Cir.
Travis Ave.
Travis Ave.
Travis Ave.
Tremont Ave.
Tremont Ave.
Tremont Ave.
Tremont Ave.
Tremont Ave.
Trinity Dr.
Trinity Ct.
Trinity Meadows Dr.
Trinity Meadows Pl.
Truman St.
Truman St.
Truman St.
Tyler St.
Tyler St.
Tyler St.
Tyler St.
Tyler St.
Tyler St.
Tyler St.
Tyler St.
Tyler St.
Tyler St.
Tyler St.
U.S. 80 Service Rd.
U.S. 80 Service Rd.
U.S. 80 Service Rd.
Upland St.
Upland St.
Upland St.
Upland St.
Upland St.
Upland St.
Upland St.
Upland St.

AT

Hicks Ave.
Illinois Ave.
Louisiana Ave.
Parker Ave.
Taylor Ave.
Carver St.
Lee St.
Lancashire Rd.
Crestview Rd.
Raymond Rd.
Golf Course Rd.
Indiana Ave.
Orchard Ln.
Valwood Dr.
Crestview Rd.
Holly Dr.
Waverly Dr.
Dentcrest Dr.
Edgemont Dr.
Mark Ln.
Sagemont Dr.
Whittle Way
Godfrey St.
Greenbriar Dr.
Skyline Dr.
Skyline Dr.
Delano Ave.
Franklin Ave.
Mariana Ave.
Cuthbert Ave.
Garden Ln.
Golf Course Rd.
Hamby Ave.
Illinois Ave.
Indiana Ave.
Oak Ave.
Orchard Ln.
Pine Ave.
South Ln.
Wall St.
County Rd. 1162
Elkins Rd.
Todd Rd.
Baumann Ave.
Bedford Ave.
Cuthbert Ave.
Kansas Ave.
Louisiana Ave.
Michigan Ave.
Ohio Ave.
Princeton Ave.

ON

Valley Dr.
Valwood Dr.
Ventnor Ave.
Ventnor Ave.
Ventura Ave.
Ventura Ave.
Vermont Ave.
Versailles Dr.
Versailles Dr.
Versailles Dr.
Versailles Dr.
Virginia Ave.
Vista West Pkwy.
Vista West Pkwy.
W. Broadway St.
W. Broadway St.
W. Broadway St.
W. Broadway St.
W. Circle Dr.
W. Industrial Loop
Walcott Ave.
Wall St.
Wall St.
Walnut Ln.
Ward St.
Ward St.
Ward St.
Ward St.
Ward St.
Ward St.
Ward St.
Ward St.
Ward St.
Ward St.
Ward St.
Warehouse Rd.
Washington Ave.
Washington Ave.
Washington Ave.
Washington Ave.
Washington Ave.
Washington Ave.
Washington Ave.
Washington Ave.
Washington Ave.
Washington Ave.
Watson St.
Watson St.
Waverly Dr.
Waverly Dr.
Weatherford St.

AT

Haynes Ave.
Tanforan Ave.
Boardwalk
Carver St.
"I" St.
"L" St.
Pacific Ave.
Burchill Dr.
Devonian Dr.
Eisenhower Dr.
Meadow Dr.
Pacific Ave.
Bluebird Ln.
Caldera Blvd.
Cuthbert Ave.
Harvard Ave.
Louisiana Ave.
Michigan Ave.
Delano Ave.
Industrial Ave.
Main St.
Carver St.
Lee St.
Carver St.
Auburn Dr.
Cuthbert Ave.
Fannin Ave.
Haynes Ave.
Haynes Dr.
Louisiana Ave.
Michigan Ave.
Neely Ave.
Princeton Ave.
Sentinel Dr.
Industrial Ave.
"B" St.
"C" St.
Carver St.
"D" St.
"G" St.
"L" St.
Lee St.
Main St.
"N" St.
Pecos St.
Tilden St.
Cuthbert Ave.
Pecos St.
Anetta Dr.
Raymond Rd.
Cuthbert Ave.

ON

Weatherford St.
Weatherford St.
Weatherford St.
Weatherford St.
Weatherford St.
Weatherford St.
Weatherford St.
Weatherford St.
Weatherford St.
Weatherford St.
Webster St.
Webster St.
Wedgewood Ct.
Wedgewood St.
Wedgewood St.
Wedgewood St.
Wedgewood St.
Western Dr.
Western Dr.
Western Dr.
Westminster Dr.
Westview Dr.
Whitaker St.
Whitaker St.
Whitman Dr.
Whitney Dr.
Whitney Dr.
Whitney Dr.
Whitney Dr.
Whittle Way
Whittle Way
Whittle Way
Willingham Dr.
Wilshire Dr.
Wilshire Dr.
Wilshire Dr.
Wimberley Spring Ct.
Windecker St.
Windecker St.
Windecker St.
Windridge Cr.
Windrift
Winfield Rd.
Winfield Rd.
Winfield Rd.
Wolcott Ave.
Wolcott Ave.
Wolcott Ave.
Wood Dr.
Wood Dr.
Woodbar Ct.

AT

Golf Course Rd.
Hicks Ave.
Indiana Ave.
Kentucky Ave.
Louisiana Ave.
Michigan Ave.
Mississippi Ave.
New Jersey Ave.
New York Ave.
Taylor Ave.
Indiana Ave.
New York Ave.
Godfrey St.
Godfrey St.
Humble Ave.
Neely Ave.
Shell Ave.
Golf Course Rd.
Neely Ave.
Stanolind Ave.
Norwood St.
Bluebird Ln. (northbound)
Cuthbert Ave.
Kansas Ave.
Bluebird Ln.
Haynes Dr.
Maxwell Dr.
Moss Ave.
Neely Ave.
Preston Dr.
Sunshine Pkwy.
Tremont Ave.
McDonald St.
Eisenhower Dr.
Graceland Dr.
Parkdale Dr.
Spence Dr.
La Force Blvd.
Sloan Field Blvd.
Wright Dr.
Mockingbird Ln. (both intesections)
Crowley Blvd.
Humble Ave.
"I" St.
"L" St.
Baird St.
Terrell St. (eastbound)
Main St.
Oriole Dr.
Valwood Dr.
Northcrest Dr.

Woodcrest Dr.
Woodcrest Dr.
Woodcrest Dr.
Woodhaven Ct.
Woodhaven Dr.
Woodhollow Dr.
Woodhollow Dr.
Woodhollow Dr.
Woodhollow Dr.
Woodland Park Ave.
Woodland Park Ave.
Woodland Park Ave.
Wright Dr.
Wydewood Dr.
Wydewood Dr.
Wydewood Dr.
Wydewood Dr.

Cuthbert Ave.
Princeton Ave.
Ric Dr.
Skyline Dr.
Skyline Dr.
Hilltop Dr. / Lemonwood Dr.
Mathis St.
Northcrest Dr.
Oriole Dr.
“A” St.
Breckenridge Dr.
Gunnison Dr.
Sloan Field Blvd.
Dengar Dr.
Everglade Ave.
Neely Ave.
Sinclair Ave.

SECTION TWO. That the Traffic Engineer is hereby authorized and directed to erect and install appropriate signs and markings at the designated locations in conformance with the State Highway Department’s Manual and Specifications, indicating and carrying out the provisions of this ordinance.

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

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

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two hundred dollars (\$200.00).

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

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2012; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2012.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Gary Saunders, Transportation Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

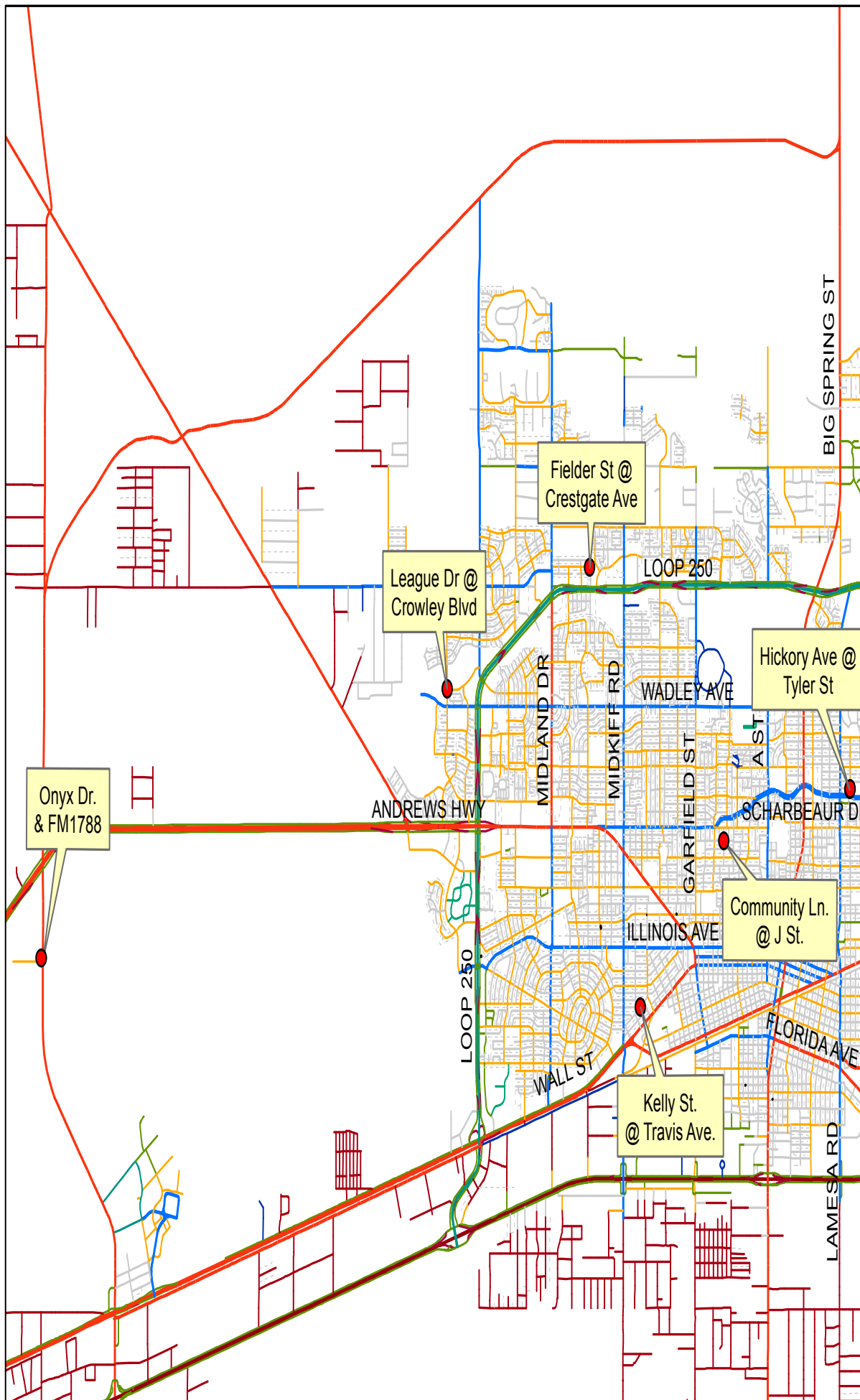
TRANSPORTATION DIVISION

● Proposed stop
sign installations



Map by TC 4/24/12

28.40





City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 6/26/2012

TO: City Council / City Manager

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Second reading to consider an ordinance on a request by BRW Investments for the vacation of a 0.08-acre portion of the rights-of-way of W. Louisiana Avenue and N. Colorado Street adjacent to the south 200 feet of the west half of Block 12, Homestead Addition, City and County of Midland, Texas.

Purpose:

This is the second reading to consider an ordinance on a request by BRW Investments for the vacation of a 0.08-acre portion of the rights-of-way of W. Louisiana Avenue and N. Colorado Street adjacent to the south 200 feet of the west half of Block 12, Homestead Addition, City and County of Midland, Texas. No changes have been made to this item since its first reading on June 12, 2012.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

There is no cost to the City associated with this application. A payment to the City for one-half the assessed value, being \$1742.40, has been received.

Discussion:

Andrew Mellen of the West Company is representing BRW Investments concerning the replatting of the south 200 feet of the west half of the block located at the northeast corner of Colorado Street and Louisiana Avenue. They are requesting the vacation of the above described right-of-way to improve site development and lot size for a new office building.

This property is currently vacant, as is the entire block, with the exception of a small office on the lot to the north. This property is located to the southeast of the YMCA that fronts Big Spring Street.

The area to be vacated is a 10' wide strip that abuts the property line rather than the roadside and has not been used for public travel. If vacated, the new lot line will still be approximately nine feet behind the Louisiana Ave. and Colorado St. curb edges. The area is approximately 3484.80 square feet and is valued at \$1.00 per square foot which establishes its value at \$3484.80. As there are existing utilities in this right-of-way, the applicant will have to dedicate this area as an easement which will be covered in the platting phase. Therefore, a payment to the City for one-half the assessed value, being \$1742.40, was required prior to second reading.



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: June 12, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: V-12-005; BRW Investments

Purpose:

Consider an ordinance on a request by BRW Investments for the vacation of a 0.08-acre portion of the rights-of-way of W. Louisiana Avenue and N. Colorado Street adjacent to the south 200 feet of the west half of Block 12, Homestead Addition, City and County of Midland, Texas.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

There is no cost to the City associated with this application. A payment to the City for one-half the assessed value, being \$1742.40, must be received prior to second reading.

Discussion:

Andrew Mellen of the West Company is representing BRW Investments concerning the replatting of the south 200 feet of the west half of the block located at the northeast corner of Colorado Street and Louisiana Avenue. They are requesting the vacation of the above described right-of-way to improve site development and lot size for a new office building.

This property is currently vacant, as is the entire block, with the exception of a small office on the lot to the north. This property is located to the southeast of the YMCA that fronts Big Spring Street.

The area to be vacated is a 10' wide strip that abuts the property line rather than the roadside and has not been used for public travel. If vacated, the new lot line will still be approximately nine feet behind the Louisiana Ave. and Colorado St. curb edges. The area is approximately 3484.80 square feet and is valued at \$1.00 per square foot which establishes its value at \$3484.80. As there are existing utilities in this right-of-way, the applicant will have to dedicate this area as an easement which will be covered in the platting phase. Therefore, a payment to the City for one-half the assessed value, being \$1742.40, must be received prior to second reading.

Attachments:

Application, Map, Land Survey

ORDINANCE NO.

AN ORDINANCE VACATING AND ABANDONING A 0.08-ACRE PORTION OF WEST LOUISIANA AVENUE RIGHT-OF-WAY AND NORTH COLORADO STREET RIGHT-OF-WAY ADJACENT TO THE SOUTH 200 FEET OF THE WEST HALF OF BLOCK 12, HOMESTEAD ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTHEAST CORNER OF NORTH COLORADO STREET AND WEST LOUISIANA AVENUE); ADOPTING THE APPRAISAL BY THE CITY MANAGER OF \$1,742.40; RETAINING A GENERAL UTILITY EASEMENT; AND ORDERING RECORDATION BY THE CITY SECRETARY

WHEREAS, it has been determined by the Midland City Council that a 0.08-acre portion of West Louisiana Avenue right-of-way and North Colorado Street right-of-way adjacent to the south 200 feet of the west half of Block 12, Homestead Addition, City and County of Midland, Texas, is no longer needed for public use; and

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

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

WHEREAS, the City Manager has appraised the value of the City's property interest in the right-of-way at \$1,742.40 , as shown in Exhibit "B" attached hereto and incorporated herein by reference; and

WHEREAS, the Council finds it to be in the public interest to abandon and vacate the right-of-way described herein, and to retain a general utility easement;

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

SECTION ONE. That the 0.08-acre portion of West Louisiana Avenue right-of-way and North Colorado Street right-of-way adjacent to the south 200 feet of the west half of Block 12, Homestead Addition, City and County of Midland, Texas, as described in Exhibit

“A” attached hereto and made a part hereof for all legal purposes, is hereby vacated and abandoned for all public purposes. Provided, however, that the City is hereby only abandoning the public interest in said property and this ordinance in no way affects any private easement or access easement which abutting property owners may have in said right-of-way.

SECTION TWO. That this Ordinance shall not be effective until the City of Midland has received from the property owner(s) the sum of \$1,742.40.

SECTION THREE. That the City herein retains a general utility easement along, on, under, above and across said right-of-way.

SECTION FOUR. That upon the City’s receipt of the sum set forth in Section Two hereof, the City Secretary is hereby authorized and directed to file a certified copy of this Ordinance with the County Clerk of Midland County, Texas, for purposes of recording in the Official Records of Midland County, Texas.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2012; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2012, at a regular meeting of the City Council:

Council members voting “AYE”:

Council members voting “NAY”:

PASSED AND APPROVED THIS _____ day of _____, A.D., 2012.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Jim Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

Case Number: V-12-005

CITY OF MIDLAND
Planning Division

APPLICATION TO VACATE RIGHT-OF-WAY

- I. Application is hereby made to the City Council to vacate the following public right-of-way or easement:
EAST 10' OF COLORADO STREET RIGHT-OF-WAY AND
NORTH 10' OF LOUISIANA AVENUE RIGHT-OF-WAY
- II. Reason for Request: IMPROVE SITE DEVELOPMENT AND LOT SIZE
- III. Reasons, in applicant's opinion, why the requested vacation will not adversely affect the public welfare or will contribute to it in a positive way:
ADEQUATE RIGHT-OF-WAY FOR PUBLIC TRANSPORTATION

IV. REQUIRED ITEMS:

1. Applicant(s) Information: (Attach extra sheets as necessary.)

Name: ANDREW L. MELLON, P.E. / BRW Investments

Address: 110 W. LOUISIANA AVE. STE. 110 Phone: 687-0865

Street

MIDLAND

City

TX

State

79701

Zip Code

- 2/ Metes and bounds description of property to be vacated.
- 3/ Map showing property to be vacated and its relationship to the applicant's property.
- NA Letter(s) of Concurrence signed by adjacent property owner(s). (See attached)

5. Application Fee: \$300.00

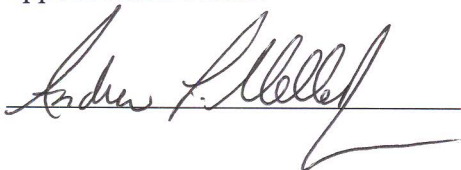
Required items Attached? Date Received: 1. _____ 2. _____ 3. _____ 4. _____ 5. _____

- V. Clearance is needed from the following utility companies: City of Midland / Atmos Energy
Caprock Energy / TXU Electric / AT&T / Suddenlink Cable TV Co. / Grande Communications

The City will route the request to these companies, but it is the applicant's responsibility to ensure clearance has been obtained and to work out any issues that may arise.

VI. Policies:

1. If the vacation request involves only a portion of a section right-of-way, such that approval would not affect the public's ability to travel along said right-of-way, then the request will be scheduled for consideration by the City Council. No public hearing will be needed.
2. If the vacation request involves an entire section of right-of-way, such that approval would cause the public to lose all rights to use it, then the following procedures apply:
 - a. Nearby land owners who have a reasonable expectation to use said right-of-way, as determined by the Planning Division, must first agree to the proposed vacation. It is the applicant's responsibility to obtain a letter of concurrence signed by the affected land owners.
 - b. If all letters are received indicating that the affected land owners agree to the request, then a public hearing before the City Council will be scheduled. Public notice of the hearing will be mailed by the Planning Division to land owners within 1,000 feet of the affected right-of-way.
 - c. If a request is approved, the right-of-way shall be divided into two equal parts, with each half becoming the property of the respective abutting owner. If the applicant desires to own the entire width, he or she must negotiate with the opposite land owner.

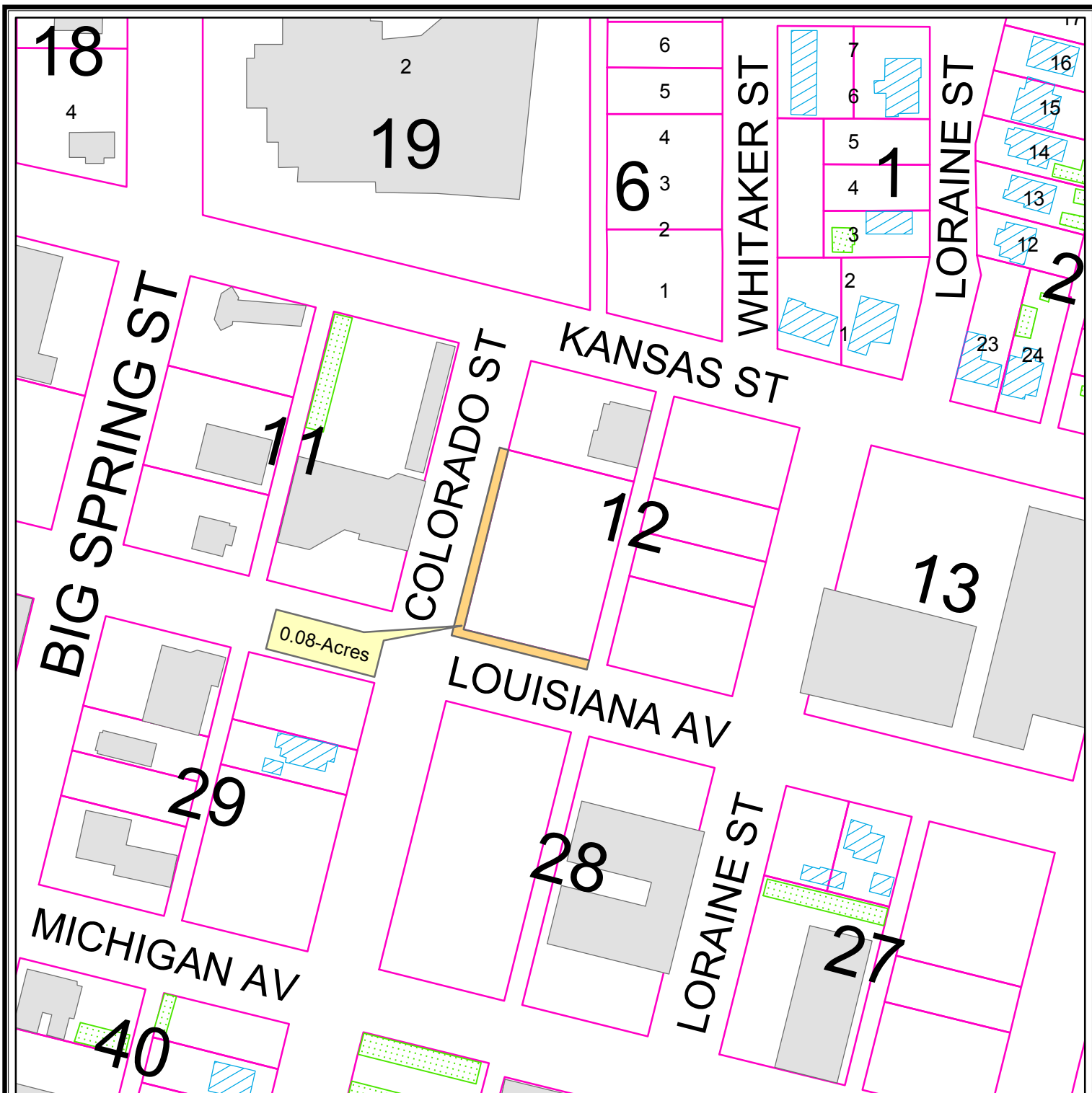
Signature of applicant:  Date: 4/13/12

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

To be completed by City of Midland staff:

According to the policy guidelines outlined above, a public hearing will ____ will not ____ be required.

FOR OFFICE USE ONLY	
Rec'd. By: <u></u>	Date: <u>4/13/12</u>
Assigned: <u>KV</u>	
For: _____	On: _____



LOCATION MAP

V - 12 - 005

Scale: 1" = 200'

Consider a request for the vacation of a 0.08-acre portion of the rights-of-way of W. Louisiana Avenue and N. Colorado Street adjacent to the south 200 feet of the west half of Block 12, Homestead Addition, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



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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 DECISIONS SOLELY ON THE INFORMATION CONTAINED HEREIN.



Office of
City Manager

300 N. Loraine
P.O. Box 1152
Midland, TX 79702-1152

432.685.7203
Fax 432.686.1600

June 4, 2012

Midland City Council
City of Midland, Texas

RE: Request for vacation of a 0.08-acre portion of West Louisiana Avenue right-of-way and North Colorado Street right-of-way adjacent to the south 200 feet of the west half of Block 12, Homestead Addition, City and County of Midland, Texas

Dear Members of the City Council:

The above-referenced property has been appraised in accordance with Chapter 272 of the Texas Local Government Code. The fair market value of the property is \$1,742.40. The property can be vacated and recorded in the Midland County Clerk's office when the City of Midland has received this amount from the adjoining property owner(s).

Very truly yours,

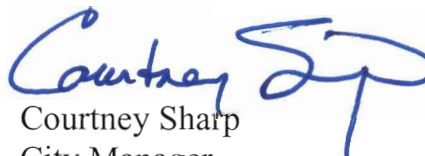
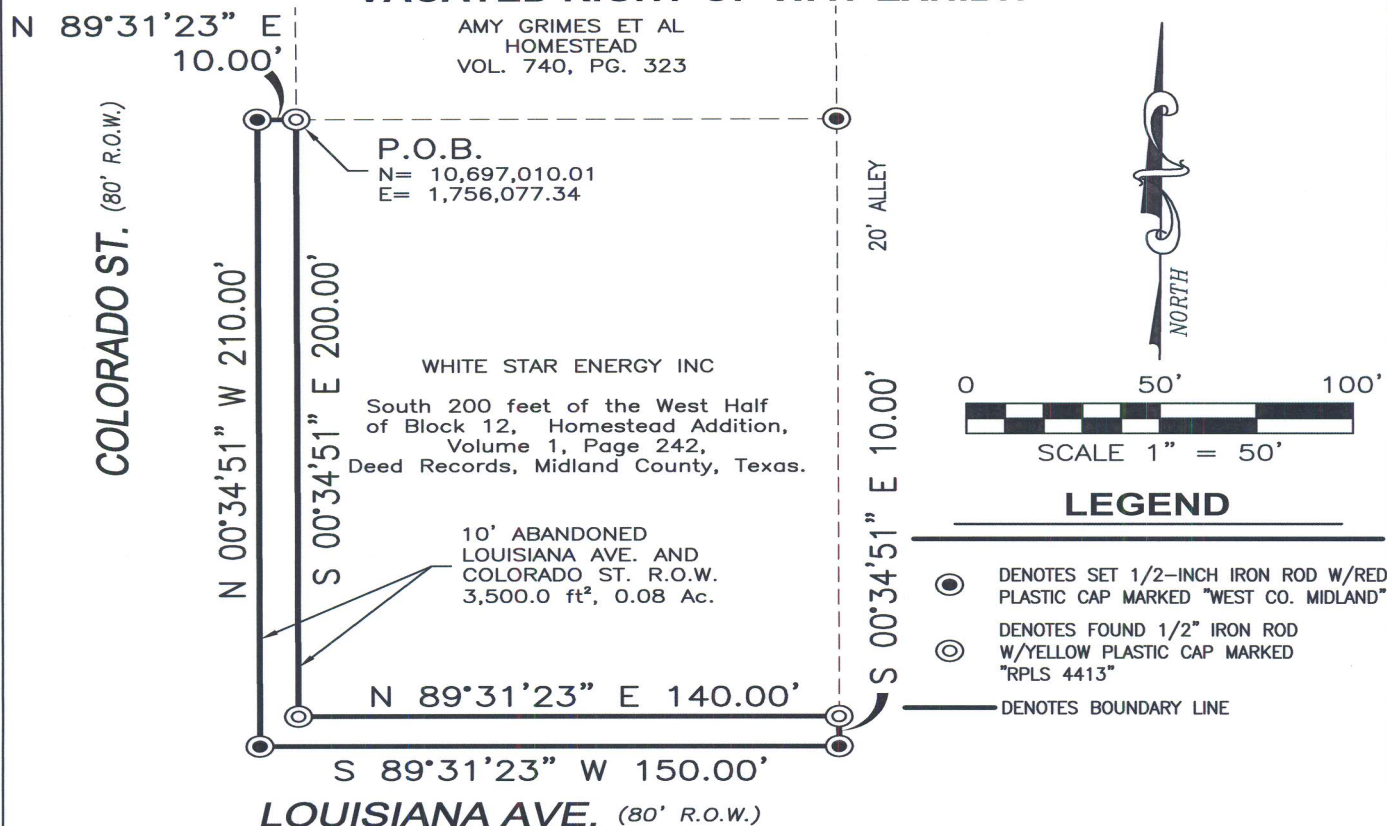

Courtney Sharp
City Manager

Exhibit "B"

L:\Ordinances\Planning\Vacate & Abandon\2012\Louisiana Avenue & Colorado Street, Blk 12, Homestead Addition Appraisal Letter.wpd

LOUISIANA AVE AND COLORADO ST.

VACATED RIGHT-OF-WAY EXHIBIT



LEGAL DESCRIPTION of a 0.08 acre tract of land out of Louisiana Avenue Right-of-way and Colorado Street Right-of-Way located in the Homestead Addition to the City of Midland, Texas according to the map or plat thereof filed of record in Volume 1, Page 242, Deed Records of Midland County, Texas and being situated in Section 26, Block 39, T-1-S, T&P RR Co. Survey, Midland County, Texas. Subject Tract being more particularly described by metes and bounds as follows;

BEGINNING at (N: 10,697,010.01, E: 1,756,077.34) the most northerly Northeast corner of the herein described tract a 1/2 inch Iron Rod with yellow plastic cap marked "RPLS 4413" found at the Northwest corner of the South 200 feet of the West half of Block 12;

THENCE S 00°34'51" E with the West line said Block 12 and the East Right-of-Way line of Colorado Street a distance of 200.00 feet to an interior corner of the herein described tract a 1/2 inch Iron Rod with yellow plastic cap marked "RPLS 4413" found at the Southwest corner of said Block 12;

THENCE N 89°31'23" E with the South Line said Block 12 and the North Right-of-Way line of Louisiana Avenue a distance of 140.00 feet a 1/2 inch Iron Rod with yellow plastic cap marked "RPLS 4413" found for the Southeast corner of the west half of Block 12;

THENCE S 00°34'51" E across Louisiana Avenue Right-of-Way a distance of 10.00 feet to a 1/2 inch Iron Rod with red plastic cap marked "West Co. Midland" set for the Southeast corner of this tract;

THENCE S 89°31'23" W 10 feet South of and parallel with the South line of Block 12 the North Right-of-way line of Louisiana Avenue a distance of 150.00 feet to a 1/2 inch Iron Rod with red plastic cap marked "West Co. Midland" set for the Southwest corner of this tract;

THENCE N 00°34'51" W 10 feet West of and parallel with the West line of said Block 12 the East Right-of-way line of said Colorado Street a distance of 210.00 feet to a 1/2 inch Iron Rod with red plastic cap marked "West Co. Midland" set for the Northwest corner of this tract;

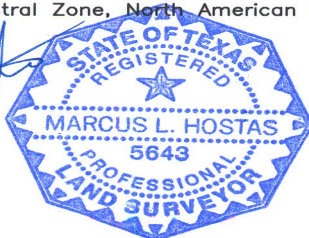
THENCE N 89°31'23" E across Colorado Street Right-of-Way a distance of 10.00 feet to the POINT OF BEGINNING

Subject Tract containing a total of 0.08 acres (3,500 ft²) of land.

Coordinates, bearings, distances and areas shown hereon are lambert grid and conform to the "Texas Coordinate System", Texas Central Zone, North American Datum 1983.

© COPYRIGHT 2011 WEST COMPANY OF MIDLAND

Handwritten signature of Marcus L. Hostas



WEST COMPANY



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

T:\CIVIL DRAWINGS\2012-0256\EXHIBITS\2012-0256 VACATED ROW EXHIBITS.dwg



City Council Agenda

Approved for Agenda:
jnichols
City Manager's Office

MEETING DATE: 6/26/2012

TO: City Council / City Manager

FROM: Jim Compton, Senior Planner

SUBJECT: Z-12-014, Zone Change for D. K. Boyd.

Purpose:

Hold a public hearing at approximately 10:30 a.m. and consider an ordinance on a request by D. K. Boyd for a zone change from PD, Planned District for a Shopping Center to Amended Planned District.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

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

Discussion:

This property was zoned Planned District for a Shopping Center in June of 2000, subject to LR-2 District regulations and site plan approval. The applicant is proposing a mixed use development with retail and office uses, which are allowed in the LR-2 District. Exhibits A, B and C are submitted to comply with the site plan review requirement. Exhibit A shows 15 freestanding buildings and one storage building. The storage is not available to the public, but only to owners within this development. Exhibits B and C illustrate the elevation views of the buildings and storage units. The one-story buildings will have a maximum ridge height of 33 feet, which the staff feels is reasonable, considering the additional building setbacks shown. Landscaping will be planted along the east side of the storage units for visual screening. The Planning and Zoning Commission recommended approval of this request. One letter of opposition has been received as of this writing.

Attachments:

June 4, 2012 P&Z Staff Report
Proposed Ordinance and Exhibits A, B and C

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 20.22-ACRE TRACT OF LAND OUT OF SECTION 9, BLOCK "X", H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, AND MORE SPECIFICALLY DESCRIBED IN SECTION ONE HEREOF, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A SHOPPING CENTER, TO BE USED AS AN AMENDED PLANNED DISTRICT (GENERALLY LOCATED ON THE NORTHEAST CORNER OF MOCKINGBIRD LANE AND MIDKIFF ROAD); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

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

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

SECTION ONE. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned PD, Planned District for a Shopping Center, and it shall be used as an Amended Planned District,

subject to the special conditions and restrictions hereinafter set out, said property being described as follows:

A 20.22-acre tract of land out of Section 9, Block "X", H.P. Hilliard Survey, 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 development of this property as a mixed-use center for office and retail development shall conform to the conditions shown on the site plans which are attached hereto and incorporated herein as Exhibits "A", "B" and "C", except as otherwise stated below.
2. That the combined floor area of all buildings shown on Exhibit "A" shall not exceed 193,000 square feet.
3. That the development of this property shall comply with all applicable regulations regarding business signs, landscaping, outdoor lighting and driveway design.
4. That the storage units shown in the northwest corner on Exhibit "A" shall only be used by tenants or owners within this development; these storage units shall not be used by the general public.
5. That prior to the development of this property, a subdivision plat must be approved in accordance with City of Midland regulations.

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

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

SECTION FIVE. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of

Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

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

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

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the ____ day of _____, A.D., 2012; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the ____ day of _____, A.D., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2012.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

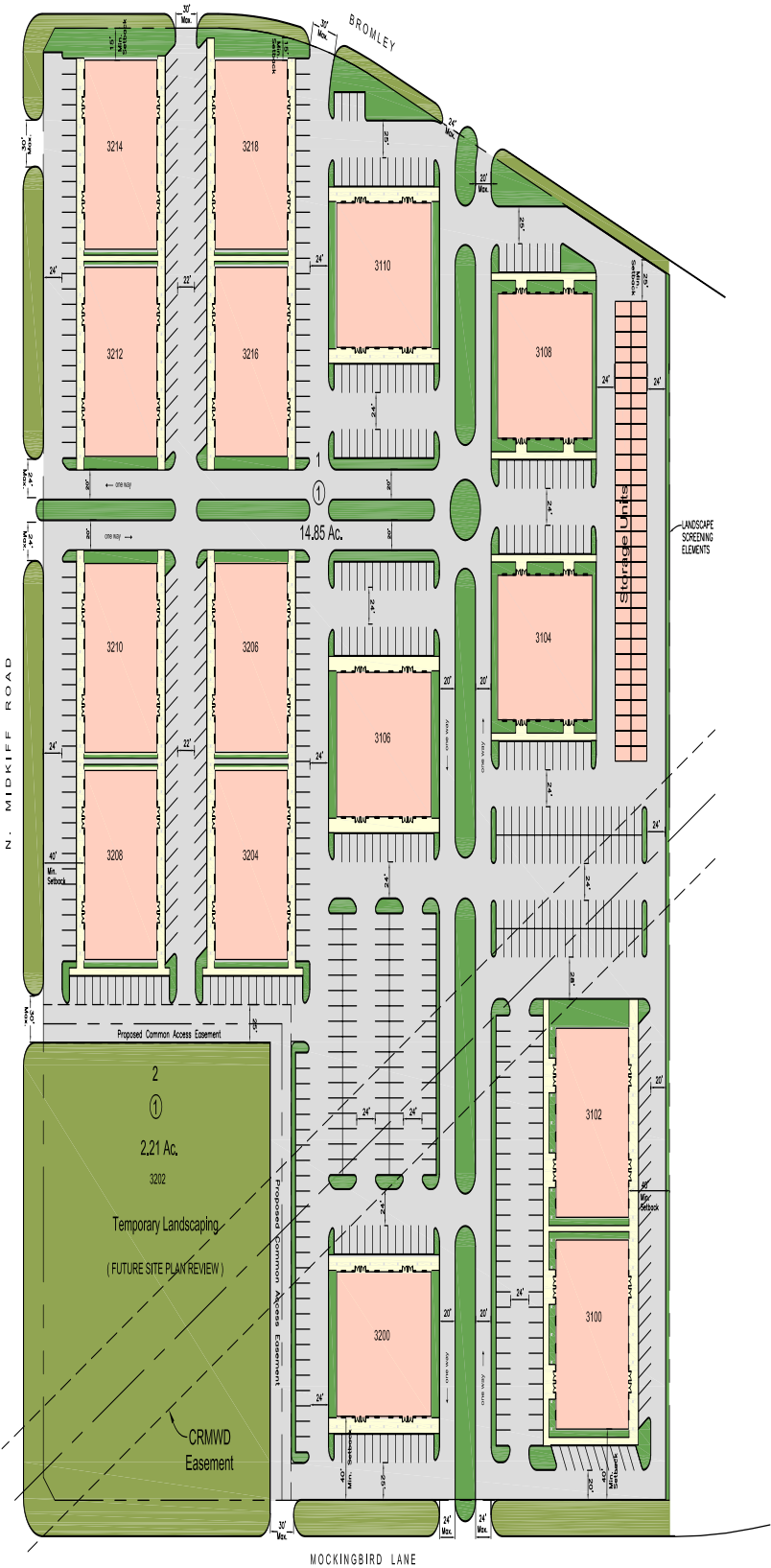
Jim Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

MADERA VISTA

A DEVELOPMENT
IN THE
MAYFIELD PLACE ADDITION



- NOTES:
- A NEW OFFICE/RETAIL DEVELOPMENT CONSISTING OF FIFTEEN (15) NEW SINGLE STORY, FREESTANDING BUILDINGS AND ONE (1) NEW, SINGLE STORY, FREESTANDING SELF STORAGE UNIT BUILDING. EACH OFFICE/RETAIL BUILDING IS 12,000 SQ. FT. TOTAL AND STORAGE UNIT IS APPROXIMATELY 12,430 SQ. FT. TOTAL NEW BUILDING FOR THE PROJECT IS 192,951 SQ. FT.
 - 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 ARE BUILDINGS.
 - SHADED AREAS DENOTED BY TO BE CONCRETE.
 - SHADED AREAS DENOTED BY TO BE PAVED OR OTHER DRIVING SURFACE.
 - SHADED AREAS DENOTED BY TO BE IRRIGATED & LANDSCAPED INCLUDING TREES, GRASS OR SHRUBS - WHICH MAY BE ENHANCED BY OTHER LANDSCAPE MATERIALS.
 - SHADED AREAS DENOTED BY TO BE IRRIGATED & LANDSCAPED INCLUDING TREES, GRASS OR SHRUBS - WHICH MAY BE ENHANCED BY OTHER LANDSCAPE MATERIALS (TEMPORARY UNTIL FURTHER DEVELOPMENT).
 - LANDSCAPED AREA (NOT INCLUDING ROWS) WILL BE A MINIMUM OF 10% OF TOTAL LOT AREA, LESS THE BUILDING AREA.
 - EXTERIOR BUILDING MATERIALS SHALL BE AS INDICATED ON EXHIBITS "B" & "C".
 - ROOF MATERIALS SHALL BE AS INDICATED ON EXHIBITS "B" & "C".
 - 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.
 - HVAC UNITS WILL HAVE GROUND PLACEMENT AND SURROUNDED BY A SCREEN WALL.
 - ALL DRIVEWAYS SHALL BE IN CONFORMANCE WITH CITY OF MIDLAND STANDARDS.

SITE DATA (not including 3202)	
SITE AREA	648920 SF±
BUILDING AREA (Foot Print)	192,951 SF ±
LANDSCAPE AREA REQUIRED	45,397 SF ±
LANDSCAPED AREA SHOWN	70,350 SF ±
PARKING SPACES REQUIRED (45% Retail / 55% Office)	653
PARKING SPACES PLANNED	653

MADERA VISTA



THIS DOCUMENT IS RELEASED ON 3/20/12 FOR THE PURPOSE OF INTERIM REVIEW UNDER THE AUTHORITY OF DAVID ROLAND GERMAN P.A. LICENSE #17347. IT IS NOT TO BE USED FOR REGULATORY APPROVAL, CONSTRUCTION, BIDDING OR PERMIT PURPOSES.

**Madera Vista
Development**
(Mayfield Place Addition)

**A New
Office/ Retail Development**

Midland, Texas

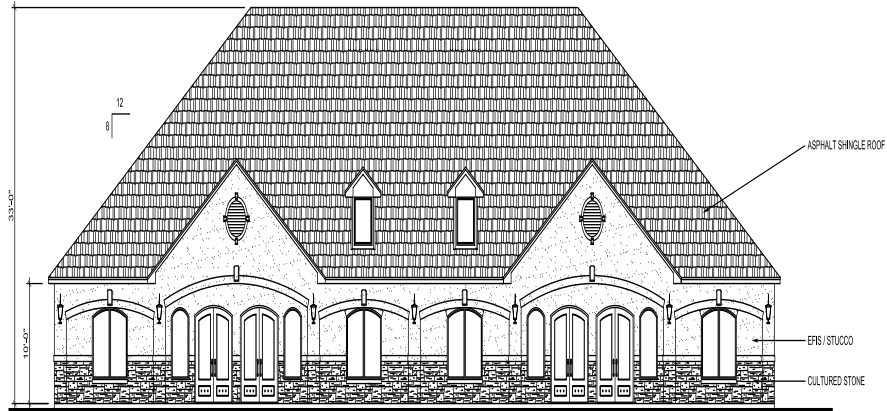
KEY PLAN

NO.	DATE	DESCRIPTION
ISSUING OFFICE	Lubbock	PROJECT NO: 981611

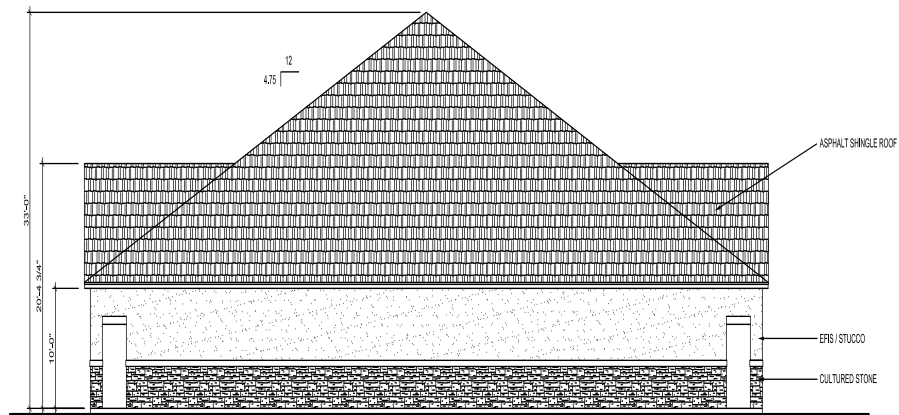
Planned District Submittal:

Exterior Elevations

A- 30.7



C2 FRONT AND REAR ELEVATIONS
1/8" = 1'-0"



A2 SIDE ELEVATIONS
1/8" = 1'-0"

THIS DOCUMENT IS RELEASED ON 3/20/12 FOR THE PURPOSE OF INTERIM REVIEW UNDER THE AUTHORITY OF DAVID ROLAND GERMAN R.A. LICENSE #17347. IT IS NOT TO BE USED FOR REGULATORY APPROVAL, CONSTRUCTION, BIDDING OR PERMIT PURPOSES.

**Madera Vista
Development**
(Mayfield Place Addition)

A New
Office/ Retail Development

Midland, Texas

KEY PLAN

NO.	DATE	DESCRIPTION
ISSUING OFFICE	22	Lubbock
PROJECT NO.	2	9816.11

Planned District Submittal:

Exterior Elevations
Storage Units

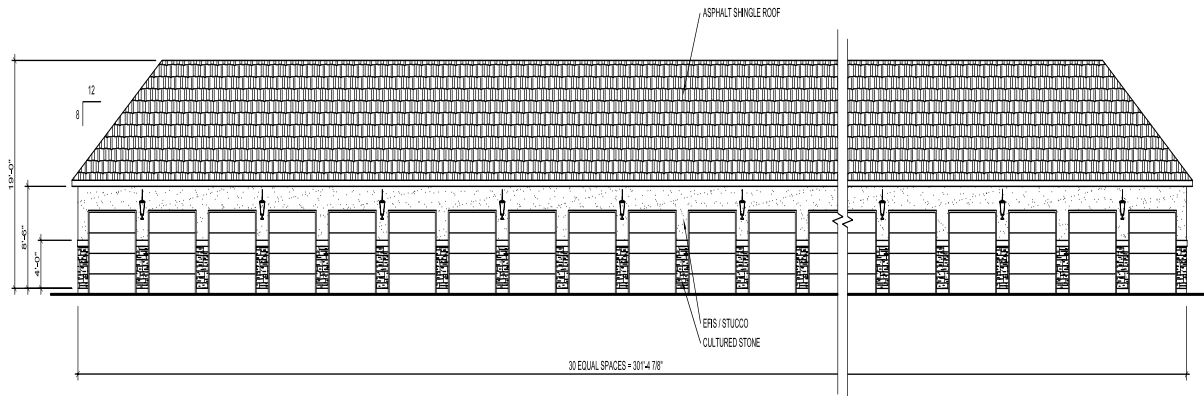
A- 30.8

D

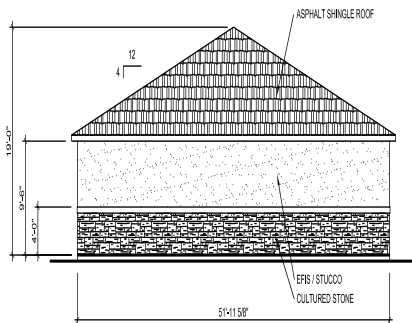
C

B

A



C2 FRONT AND REAR ELEVATIONS
1/8" = 1'-0"



A1 SIDE ELEVATIONS
1/8" = 1'-0"

PD-SC Zoning

LEGAL DESCRIPTION OF A 20.22 ACRE TRACT
LOCATED IN THE SOUTH HALF OF SECTION 9,
BLOCK X, H. P. HILLIARD SURVEY,
CITY OF MIDLAND, MIDLAND COUNTY, TEXAS

RECEIVED

MAY 10 2012

CITY OF MIDLAND
PLANNING DIVISION OFFICE

Boundary being further described by metes and bounds as follows:

BEGINNING at (N= 10,713,064.26' and E= 1,738,652.10') the Southwest corner of said Section 9 and this tract;

QTHENCE N14°27'49"W with the West line of said Section 9, at 60.00 feet pass the most Southwesterly corner of Mayfield Place Addition, Section 2, as recorded in Cabinet "G", Page 188, Plat Records of Midland County, Texas continuing with a West line of said Mayfield Place Addition, Section 2, a distance of 1049.50 feet to the Northwest corner of this tract;

THENCE N75°32'06"E with the centerline of Bromley Place, a distance of 288.17 feet to a point of curvature of said Bromley Place and this tract;

THENCE around a curve to the right in an Easterly direction with the centerline of Bromley Place, with a radius of 690.00 feet, delta angle of 18°31'24", arc length of 223.07 feet and a chord distance of 222.10 feet which bears N84°47'48"E to a point of tangency of said Bromley Place and of this tract;

THENCE S85°56'30"E with the centerline of Bromley Place, a distance of 388.82 feet to the Northeast corner of this tract;

THENCE S14°27'49"E with a West line of Lot 2, Block 3, Mayfield Place Addition as recorded in Cabinet "G", Page 153, Plat Records of Midland County, Texas, a distance of 890.24 feet to the Southeast corner of this tract;

THENCE S75°32'06"W with the South line of said Section 9, a distance of 876.11 feet to the Place of Beginning. Tract contains 880,917 square feet or 20.22 acres.

Bearings, distances, and coordinates are relative to the Texas State Plane Coordinate System, NAD 1983/86, Central Zone, with a combined grid factor of 0.9999202, and a theta angle equal to -0°54'48.39" at U.S.C. & G. station "MIDLAND" with published values of Y= 10,690,154.70 and X= 1,746,696.78 in U.S. Survey Feet.

I, J. Stan Piper, Registered Professional Land Surveyor, do hereby certify that this legal description is based on an actual survey made by me or under my supervision, and that the same is true and correct to the best of my knowledge and ability as surveyed on the ground on October 11, 2011.


J. Stan Piper
Registered Professional Land Surveyor
April 4, 2012

Prepared for:
Parkhill, Smith, and Cooper, Inc.
1700 W. Wall Street, Suite 100
Midland, TX 79703

PIPER SURVEYING COMPANY, P.O. BOX 60432, MIDLAND, TX, 79711, 432-550-7810

EXHIBIT D

PLANNING AND ZONING COMMISSION

June 4, 2012

30.10

CASE: Z-12-014.

REQUEST: Hold a public hearing and consider a request for a zone change from PD, Planned District for a Shopping Center to Amended Planned District.

APPLICANT/OWNER: D. K. Boyd.

REPRESENTATIVE: Parkhill, Smith and Cooper.

LEGAL DESCRIPTION: A 20.22-acre tract out of Section 9, Block "X", H. P. Hilliard Survey, Midland County, Texas.

LOCATION: Northeast corner of N. Midkiff Road and Mockingbird Lane.

DETAILS OF REQUEST:

1. This property is currently zoned PD, Planned District for a Shopping Center, which is subject to the LR-2 District regulations and a requirement for a site plan to be approved in the same manner as a zone change before a building permit can be issued. The applicant is proposing a mixed use office and retail center, which is allowed uses under the LR-2 District. The applicant has submitted the attached Exhibits A, B and C to satisfy the site plan requirement.

SURROUNDING ZONING AND LAND USE:

2. This land was zoned for retail use in June of 2000, but has remained vacant. A retirement facility is located due east of this site. The land to the south is zoned Planned District for a Housing Development, and is developed with residences located on lots that are two acres or larger. The land across Midkiff Road to the west is zoned Planned District for a Shopping Center and AE District; the land in both districts is vacant. The area to the north is developed with the Vantage apartments.

ANALYSIS:

3. Please refer to the attached Exhibit A. There is a 2.25 acre tract at the corner of Mockingbird Lane and Midkiff Road that is labeled "Temporary Landscaping" and is not a part of this site plan. We recommend that this tract be labeled "Future Site Plan Review". Two driveways are shown along Mockingbird Lane, three on Midkiff Road, and three on Bromley Place. Driveways on arterial streets must be located at least 170 feet apart. However, the minimum spacing is not labeled on the site plan. The only driveway dimension shown on Exhibit A is the 30-foot width of the driveways, which is labeled as a minimum width. According to City regulations, 30 feet is the maximum opening width. We recommend that a note be added to the site plan stating that all driveways shall be constructed in accordance to City of Midland standards, and that the driveway width be labeled as a maximum dimension. The applicant has agreed to these conditions.

A note on Exhibit A describes this development as a retail/office condominium. It further indicates that 15 freestanding buildings and one storage unit building will be constructed. The office and retail uses are allowed in the LR-2 District, but self storage units are not. However, we are advised that the storage units will not be available to the general public, but will only be used by tenants/owners in this development. With this condition, the staff has no objection.

The Zoning Code states that the minimum parking requirement for a standard office use is one parking space for each 400 square feet of floor area. A medical office must provide one space for each 300 square feet, and a retailer must provide one space for each 200 square feet of floor area. A table at the bottom of Exhibit A states that the maximum combined floor area will be 192,951 square feet. Based on this floor area, and assuming 100 percent retail occupancy, 965 parking spaces would be required. However, only 653 are provided. The basis for this reduction is obtained by limiting the maximum amount of retail use to 45 percent of the total area, leaving 55 percent for office use. A concern we have is that should the market demand for retail uses exceed that for office space, there could be a parking shortage. Conceivably, some buildings could not be occupied because the available parking is taken up with uses with a higher parking demand. The staff studied this matter in detail. It is clearly the owner's responsibility to manage the mix of uses to ensure a parking shortage would not occur; this is not a staff responsibility. Further, we are advised that this business center will be constructed in phases. Should the owner fail to maintain a proper mix of uses, the staff would withhold further building permits until additional parking is provided. Finally, certificates of Occupancy can be withheld should the mix of uses changes in the future. For these reasons, the staff is satisfied with the parking plan.

EXHIBITS B AND C:

4. The attached Exhibits B illustrates typical building elevations, including front, rear and side views. The front and rear elevations would have a 10-foot plate height, and a ridge height of 33 feet. An 8:12 roof pitch is proposed, with both hip and gable designs. The maximum building height in the LR-2 District is 28.75 feet. Typically, where greater building heights are requested, an increase in building setback is required to avoid a sense of overcrowding. The LR-2 District requires

a minimum 15-foot front yard setback, and this site has three front yards. Using a standard 18-foot depth for a parking space, the building setbacks along Mockingbird Lane, Midkiff Road and Bromley Court are 43 feet, 42 feet and 42 feet, respectively, with one exception. The building setbacks for Buildings 3214 and 3318 are not labeled, but they must observe at least a 15-foot setback. However, based on the roof design shown on Exhibit A, the maximum ridge height is setback 34 feet from the face of the building, plus the 15-foot setback provides a 49-foot setback for the roof peak. This setback, combined with the fact that the apartments north across Bromley Court are three stories tall, adequately addresses our concern for a slightly taller ridge height.

Notes on Exhibits A and B further describe the proposed buildings. The exterior building materials include glazing, decorative or painted CMU, face brick, pre-cast concrete, tilt wall, Stucco or similar material. Roof materials listed on Exhibit A include composite, built-up or standing seam metal. However, Exhibit B identifies the roof material as asphalt shingles. We recommend that the exhibits be amended to list consistent materials. We recommend that the option of built-up roof be removed, since this type is only used on flat roofs.

Exhibit C illustrates the proposed storage units for clients on this site. The building has a gable roof with asphalt shingles, and overhead doors along the east and west sides. Besides the overhead doors, the balance of the facades is proposed to have a wainscot of cultured stone, with EFIS/Stucco above that. The view from Bromley will be that of the narrow end of the building, and the units would not be visible from Midkiff Road. However, there is no screening of any type shown along the east side of the storage building. Further, the land east of the storage units will not be developed, as it is a detention basin. Thus, the storage units would be visible from Mayfield Place as one enters this neighborhood. We discussed this matter with the applicant's representative, who indicated that his client preferred to use landscaping for screening purposes. They hope to work with City staff and provide a final landscaping plan to the City Council. This satisfies our concern for storage unit screening.

The Landscaping Code requires that 10 percent of the site area, less the building footprint, be landscaped. Additionally, one tree is needed for each 15 parking spaces, and one tree is needed for every 30 feet of street frontage. Exhibit A indicates that 64,569 square feet of the site must be landscaped, and that 76,100 square feet will be provided. A detailed landscaping plan will be reviewed through the building permit process.

CONDOMINIUM ARRANGEMENT:

5. The application indicates that this facility will operate under a condominium arrangement. Under such a plan, the "owners" do not purchase the land or buildings, only the space inside the buildings. The land that is not occupied by a

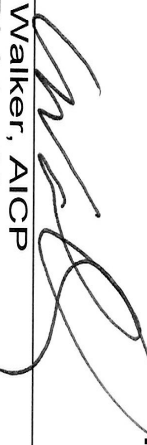
building becomes a "common area" with each occupant owning a specified interest in it. Therefore, the owner must establish the common area, and create a property owners association that will be responsible for the ownership and maintenance responsibilities of the common areas. Since this property is currently unplatted, there is a requirement that this review opportunity must occur prior to final plat approval.

STAFF RECOMMENDATION:

We recommend approval of this request for a zone change from PD, Planned District for a Shopping Center to Amended Planned District, subject to the following conditions:

- A. That the development of this property as a mixed use center for office and retail uses shall conform to the conditions shown on Exhibits A, B and C in all respects.

- B. The maximum floor area of the retail buildings, office buildings and storage units shall not exceed 192,951 square feet.
- C. Exhibit A should be amended to conform to Exhibits B and C regarding roof materials.
- D. The development of this property will conform to the applicable City Codes regarding business signs, landscaping, outdoor lighting and driveway design. The label for the maximum driveway width should be removed or changed to a maximum width.
- E. The area on Exhibit A that is labeled "Temporary Landscaping" must include the label "Future Site Plan Review".
- F. The storage units shown in the northwest corner of Exhibit A shall only be used by tenants/owners of this business center. These storage units may not be leased to the general public. Further, a landscaping screening shall be planted along the east side of the storage units.
- G. The two drive aisles for center driveway on Midkiff Road must have a minimum width of 20 feet each.
- H. Since this is to be a "condominium" development, the developer must establish common areas, consisting of all private land not occupied by buildings. The City Staff review, and the Planning Commission must approve, a declaration of restrictive covenants before a final plat can be approved.


Cameron Walker, AICP
Planning Division Manager
Department of Development Services


Jim Compton, Senior Planner
Department of Development Services

Attachments:

Application
Maps
Exhibits A, B and C

CITY OF MIDLAND
Planning Division

Case Number:

2014
7-12-014

APPLICATION TO CHANGE ZONING CLASSIFICATION

D. K. Boyd

432-685-1022

Applicant Name

(Phone/e-mail)

P.O. Box 11351

Midland, Texas 79702

Address

Zip Code

D. K. Boyd

432-685-1022

Property Owner Name

(Phone/e-mail)

P.O. Box 11351

Midland, Texas 79702

Address

Zip Code

Parkhill, Smith & Cooper, Inc.

432-697-1447

Representative Name

(Phone/e-mail)

1700 W. Wall, Suite 100

Midland, Texas 79701

Address

Zip Code

Street address and Legal Description of property (complete Lot, Block, and Subdivision Name or if unplatted, attach a Metes and Bounds description with surveyor's seal). Each district must be described separately. Per Ordinance 7947, case number Z-10-012, and pd number 334, this property was zoned PDSC. Metes and bounds were attached to the original documents submitted to the city.

PRESENT ZONE:

PDSC

REQUESTED ZONE:

Amended PD

Reason for Zone Change Request: To better facilitate the development of this property for retail and office use.

Present Use of Property: None

Proposed Use of Property: Retail and office space

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 ☒ 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 D. K. Boyd, 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. Boyd
 Authorized Agent (signature)

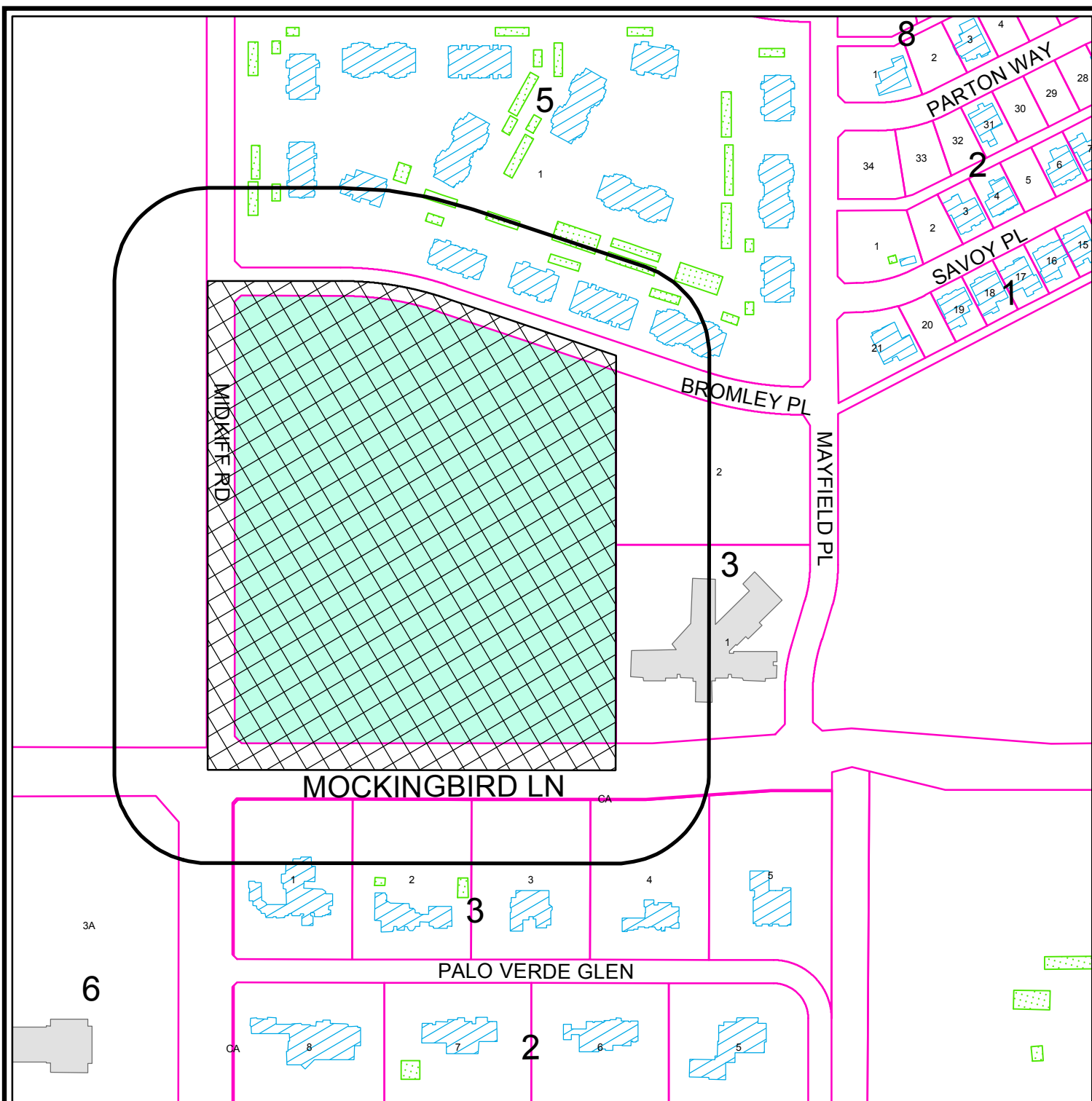
Subscribed and sworn to before me, this 23rd day of March, 20 12, to certify which witness my hand and seal of office.

Darcy Y. Knight
 NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: <u>CWJ</u>	Date: <u>3/28/12</u>
Assigned: <u>TRC</u>	
For: <u>P+L</u>	On: <u>4-30-12</u>



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



PROPERTY OWNER NOTIFICATION MAP

Z - 12 - 014

Scale: 1" = 200'

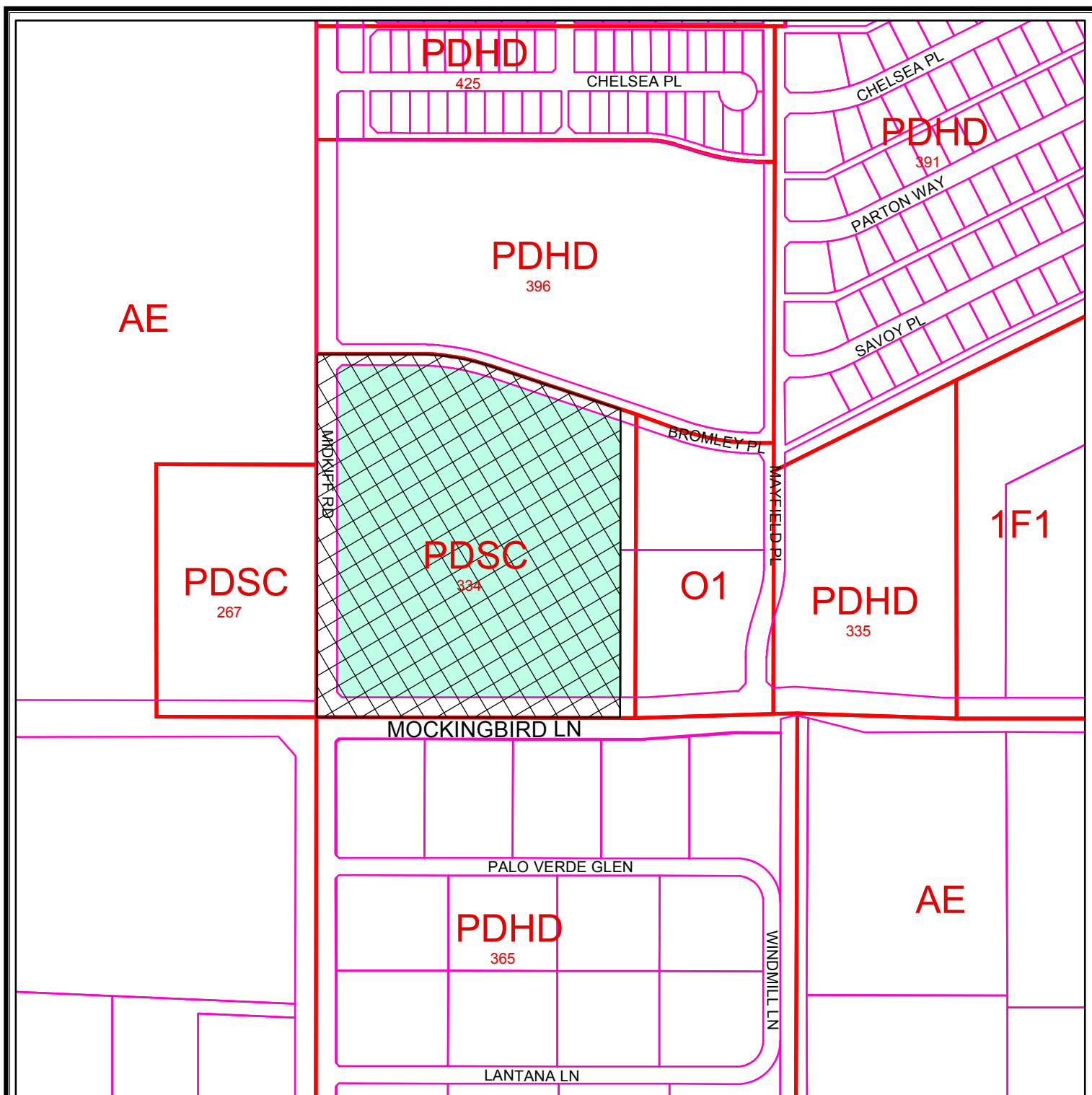
Consider a request for a zone change from PD, Planned District for a Shopping Center, to an Amended Planned District on 20.22-acres out of Section 9, Block "X", H. P. Hilliard Survey, City and County of Midland, Texas.

LEGEND

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



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ZONING MAP

Z - 12 - 014

Scale: 1" = 400'

Consider a request for a zone change from PD, Planned District for a Shopping Center, to an Amended Planned District on 20.22-acres out of Section 9, Block "X", H. P. Hilliard Survey, 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: 6/26/2012

TO: City Council / City Manager

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Hold a public hearing at approximately 10:33 a.m. and consider an ordinance on a request by Bill McClain for a zone change from an O-1, Office District to a Planned District for an Office Center.

Purpose:

Hold a public hearing at approximately 10:33 a.m. and consider an ordinance on a request by Bill McClain for a zone change from an O-1, Office District to a Planned District for an Office Center.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

There is no cost to the City associated with approving this request.

Discussion:

The applicant plans to develop this block at W. Kansas Avenue and N. Marienfeld Street with a 4-story office building and an adjacent surface lot for parking. The current O-1, Office District, carries a maximum permitted height is two and one-half stories, in addition to use restrictions in both type and floor space for retail. Desiring a mixed-use, retail potential on the first floor with office space on the floors above, the applicant is requesting that this property be considered for rezoning to a Planned District for an Office Center subject to C-1, Central Area District regulations. This zoning would accommodate both the intended use and height. The site plan also provides for a future parking garage as demand exceeds the adjacent surface lot. Staff proposed a 3-story cap on the future parking garage with materials matching the main building with designs requiring administrative review.

This property is currently a paved parking lot bounded on the south and southwest by the large C-1, Central Area District. The most prominent structure in the immediate area is the 12-story Security Bank Office Building across the Marienfeld/Louisiana intersection from the applicant's proposed development. The remainder of the neighboring properties are zoned Office District with a mix of current uses being a large credit union to the west, a few houses to the north across Kansas Avenue and a parking lot to the east.

The height of the building, including the screened HVAC equipment, is 75 feet. This height is permitted under neighboring C-1, Central Area District regulations if rezoned as requested to the Planned District Office Center. The scale of the proposed building provides a transition to larger nearby structures including the 12-story office building to the southeast and contextually aligns with the 6-story, Graham Building, on the adjacent block to the south. The building façade will be composed of neutral earth tones in stone veneers and stucco with plenty of glass to soften any "urban canyon" feel to Marienfeld. This property is also positioned at the northern edge of Midland's Downtown TIRZ District and staff recommends approval of this project and the leveraging benefits of turning an empty lot into a large, mixed-use office building.

Staff concurs with the Planning & Zoning Commission and finds the proposed office and parking development to be a complementary use in this area and consistent with adding to the revitalization of the Downtown TIRZ District. Staff therefore recommends this zone change from an O-1, Office District to a Planned District for an Office Center, subject to development in accordance with Exhibits A – E.

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING BLOCK 31A, THE VACATED 0.10-ACRE NORTH/SOUTH ALLEY, AND THE VACATED ADJACENT 0.05-ACRE PORTION OF NORTH MARIENFELD STREET RIGHT-OF-WAY, HOMESTEAD ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED O-1, OFFICE DISTRICT, TO BE USED AS A PD, PLANNED DISTRICT FOR AN OFFICE CENTER (GENERALLY LOCATED ON THE SOUTHWEST CORNER OF THE INTERSECTION OF WEST KANSAS AVENUE AND NORTH MARIENFELD STREET); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

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

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

SECTION ONE. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned O-1, Office District, and it shall be used as a Planned District for an Office Center, subject to the

special conditions and restrictions hereinafter set out, said property being described as follows:

Block 31A, the vacated 0.10-acre north/south alley, and the vacated adjacent 0.05-acre portion of North Marienfeld Street right-of-way, Homestead Addition, 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 C-1, Central Area District zoning regulations.
2. That the new construction shall be consistent with the Site Plan (Exhibit "A"); the Structure Elevations (Exhibits "B" and "C"); and the Office Building Renderings (Exhibits "D" and "E"). Said exhibits are attached hereto and incorporated herein.
3. That the maximum height of the office building shall not exceed 75 feet.
4. That the Site Plan indicating a future parking garage shall be considered sufficient for future administrative review provided the structure is consistent with its proposed location, matches the primary building's earth tone stonework, and the height does not exceed three stories.
5. That the landscaping shall conform to City of Midland regulations in place at the time of development.
6. That the air conditioners, dumpsters and any mechanical equipment shall be appropriately screened.
7. That all driveways shall comply with current City of Midland design standards.

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

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

SECTION FIVE. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not

affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

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

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

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2012; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2012.

W. Wesley Perry, Mayor

ATTEST:

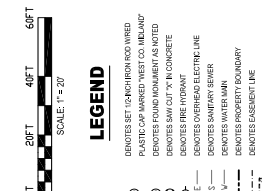
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Jim Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



- 1 TREE FOR EVERY 30 FEET STREET FRONTAGE
- 1 TREE FOR EVERY 15 PARKING SPACES
- 1,062 FT STREET FRONTAGE; 35:1 TREES
- 83 ONSITE PARKING SPACES; 6:2 TREES
- TOTAL REQUIRED: 42 TREES
- PROVIDED: 12 TREES SHOWN

NOTE: REMAINDER OF TREE REQUIREMENT TO BE SATISFIED BY CONTRIBUTING TO THE CITY OF MIDLAND PARKS AND RECREATION ENHANCEMENT FUND AN AMOUNT EQUAL TO THE COST OF INSTALLATION OF THE REMAINING TREES. ONE PER CENTER LOTS BY THE INSTALLATION OF ONE CIVIC ART AND/OR SIMILAR STREET STRENGTHENING ENHANCEMENT COMPONENTS AS APPROVED BY THE PARKS COMMITTEE OR CITY COUNCIL.

FREE REQUIREMENTS

10% OF LOT AREA LESS STRUCTURE
LOT AREA = 60,341 ft²
MINIMUM STRUCTURE FOOTPRINT: 29,608 ft²
REQUIRED LANDSCAPE AREA: 30,733 ft²
PROVIDED LANDSCAPE AREA: 3,038 ft² (12%)

NOTE: LANDSCAPE CALCULATIONS ARE
PRELIMINARY. FINAL LANDSCAPE AREA WILL
DEPEND ON ULTIMATE BUILDING DESIGN.

ALL SUBMITTED LANDSCAPE PLANS SHOULD
ACHIEVE A SCORE OF AT LEAST 20 POINTS.

2/21S. PERMEABLE WEED BARBERS
10/10 SP. IRRIGATION IN AREAS 15' OR
GREATER

5/21S. DROUGHT TOLERANT SOIL IS PRIMARY
VARIETY OF TURF GRASS

2/21S. 50% OF ALL PLANT MATERIAL IS WATER
EFFICIENT.

2/21S. LANDSCAPE AREA EXCEEDS
REQUIRED AREA BY AN ADDITIONAL 10% OF
STRUCTURE AREA

REQUIREMENTS:

- SPACE FOR EACH 500 SQUARE FEET OF
- GROSS FLOOR AREA OR 1 SPACE PER EACH 2 EMPLOYEES ON THE MAXIMUM SHIFT, WHICHEVER IS GREATER.

PROVIDED:

- 50 ON-SITE PARKING SPACES (INCL. 6 HANDICAPPED PARKING SPACES)
- 147 TOTAL PARKING SPACES

[illegible]

BUILDING SUMMARY

KEY:

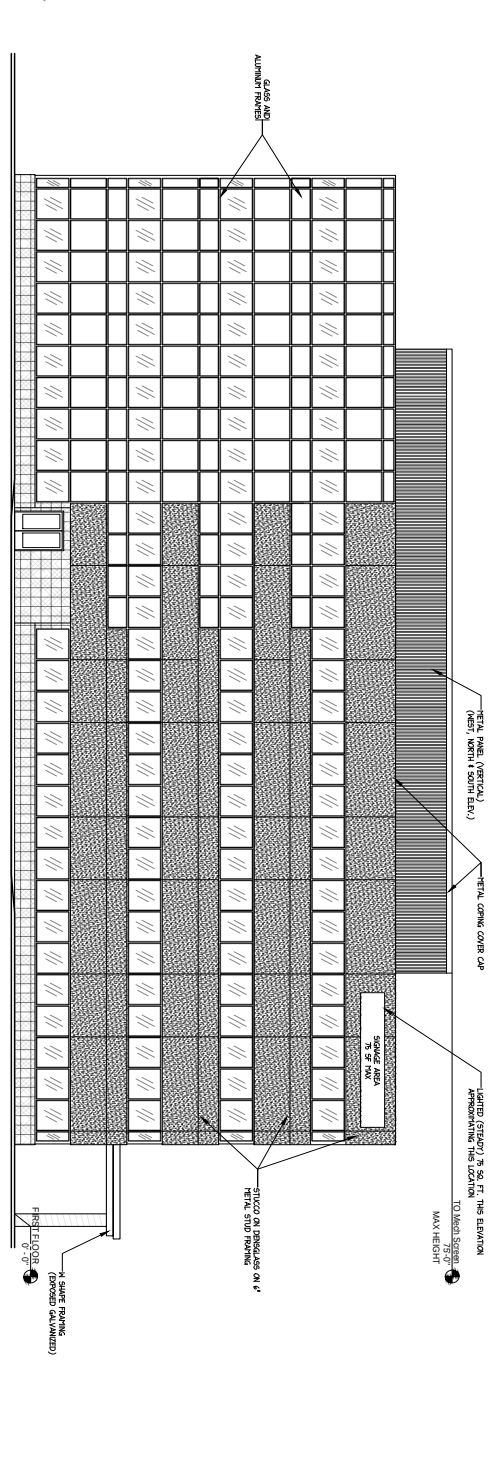
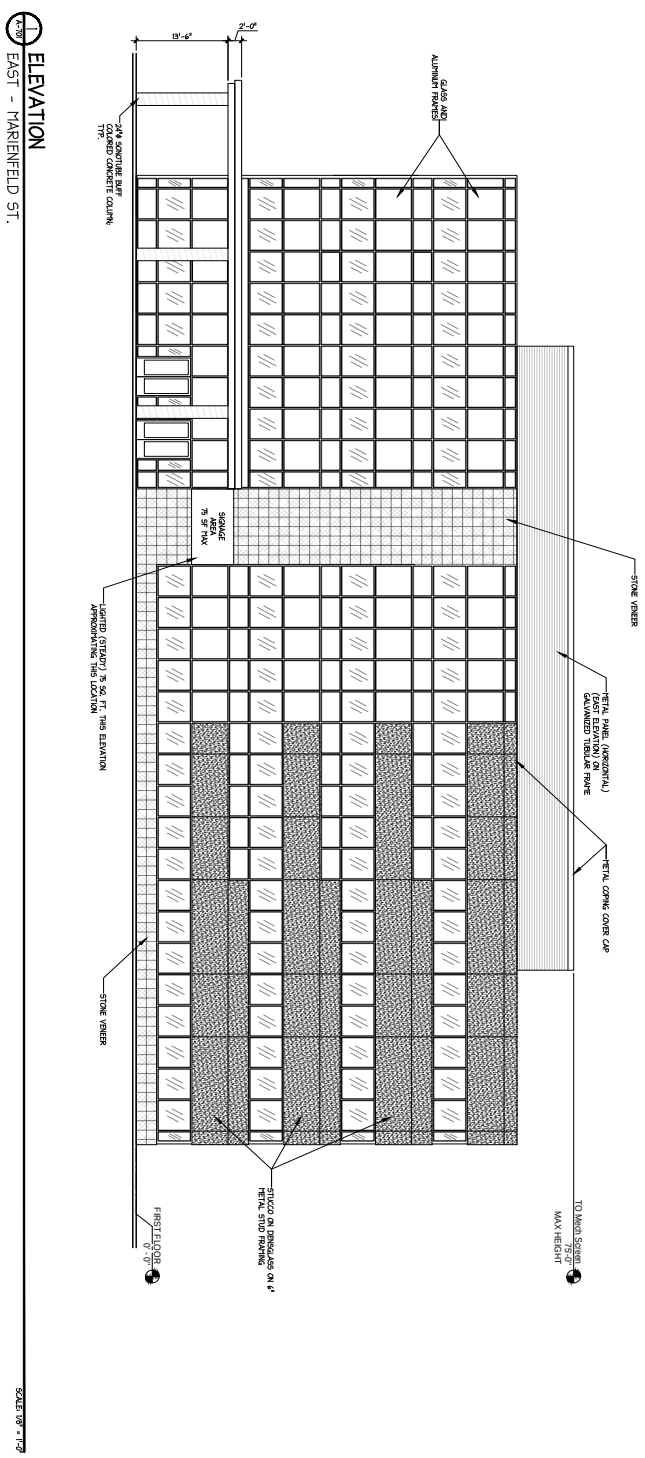


GLASS AND ALUMINUM FRAMED



STONE VENEER

NOTE: ALL OTHER UNITS ARE SPANDREL UNITS.

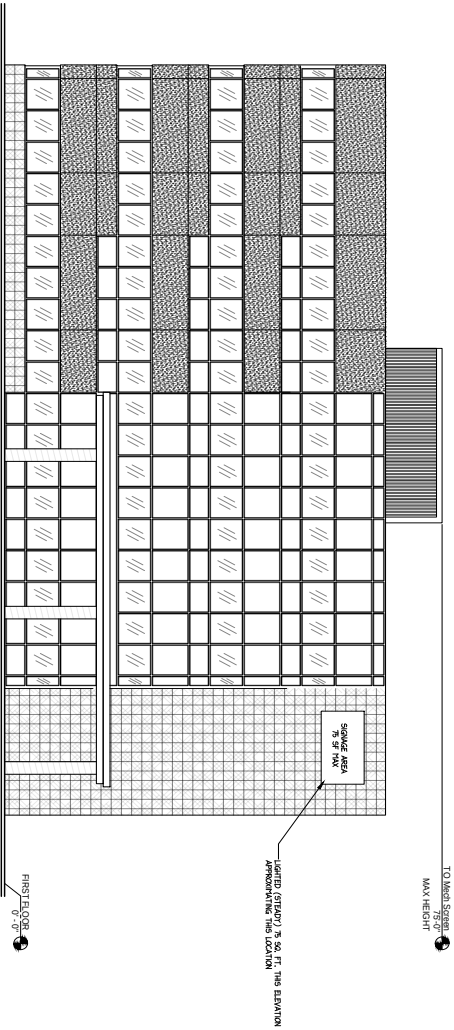


KEY:

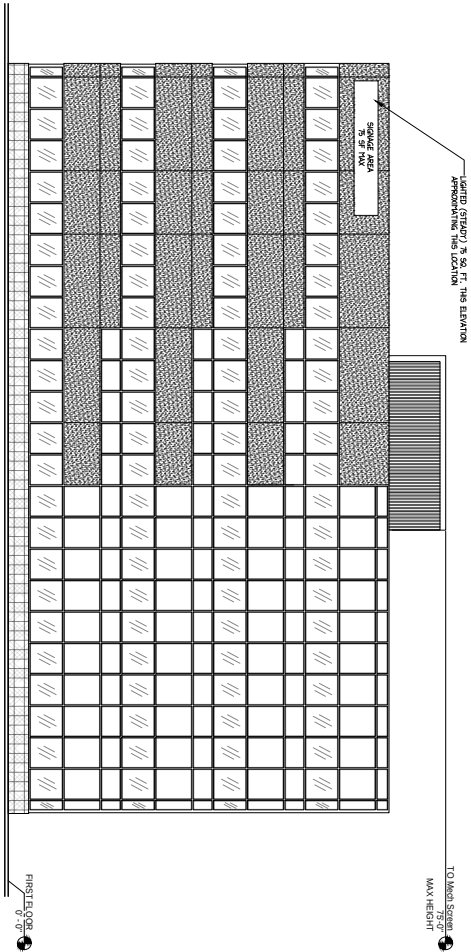

VISION GLASS PANELS

NOTE: ALL OTHER UNITS ARE SHOWN IN UNITS.

2 ELEVATION
SOUTH - LOUISIANA AVE.



1 ELEVATION
NORTH - KANSAS AVE.





LOT 1A, BLOCK 31A, HOMESTEAD ADD'N

PLANNED DISTRICT PROPOSAL

February 17, 2012

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PERSPECTIVE VIEW 2

LOT 1A, BLOCK 31A, HOMESTEAD ADD'N

PLANNED DISTRICT PROPOSAL

PLANNING AND ZONING COMMISSION

June 4, 2012

CASE: Z-11-043.

REQUEST: Hold a public hearing and consider a request for a zone change from O-1, Office District to a Planned District for an Office Center.

APPLICANT/OWNER: Bill McClain (LMB Real Estate).

LEGAL DESCRIPTION: A replat of Block 31A, the vacated 0.10-acre north/south alley, and the vacated adjacent 0.05-acre portion of the right-of-way of N. Marienfeld Street, Homestead Addition, City and County of Midland, Texas.

LOCATION: Generally located on the southwest corner of the intersection of W. Kansas Avenue and N. Marienfeld Street.

CURRENT ZONING: O-1, Office District.

DETAILS OF REQUEST:

1. The applicant plans to develop this paved parking lot with a 4-story office building with an adjacent parking lot. The property is currently zoned O-1, Office District. While an office building and on-site parking lot are permitted in the O-1, Office District, the maximum permitted height is two and one-half stories. Therefore, the applicant is requesting that this property be considered for rezoning to a Planned District for an Office Center subject to C-1, Central Area District regulations. This would accommodate both the intended use and height.

SURROUNDING ZONING AND LAND USE:

2. This property is bounded on the south and southwest by the large C-1, Central Area District. The most prominent structure in the immediate area is the 12-story TexStar Office Building across the Marienfeld/Louisiana intersection from the applicant's proposed development. The remainder of the neighboring properties are zoned Office District with a mix of current uses being a large credit union to the west, a few houses to the north across Kansas Avenue and a parking lot to the east.

ANALYSIS:

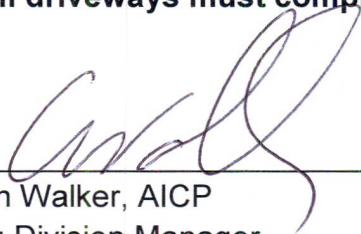
3. The building is shown to have a ground floor footprint of 23,949 square feet in total. The area provided for landscaping is adequate; however, the required number of parking spaces provided is below what is required for a 95,796 square foot building (Exhibit A – Site Plan). The height of the building is 75 feet including the screened HVAC equipment, which is greater than what is currently allowed under the existing O-1, Office District. However, rezoned as Planned District Office Center, subject to C-1, Central Area District regulations the height is within the contextual fit of nearby structures including the 12-story office building to the southeast and the 6-story, Graham Building, on the adjacent block to the south. The building façade will be composed of neutral earth tones in stone veneers and stucco with plenty of glass to soften any “urban canyon” feel to Marienfeld (Exhibits B & C – Elevations). The site provides adequate driveways for ingress and egress, and does note plans for a future elevated parking structure to address future demand. Any future parking structure should significantly match the textures and earth tones placed in the primary building’s stonework (Exhibits D & E – Color Renderings). While the dumpster locations are not noted, they will need to be placed for city access and screened with brick matching the building materials. Staff will work with the developer to determine parking needs as the actual use of the lease spaces are determined. This property is also positioned at the northern edge of Midland’s Downtown TIRZ District and staff recommends approval of this project and the leveraging benefits of turning an empty lot into a large, mixed-use office building.

STAFF RECOMMENDATION:

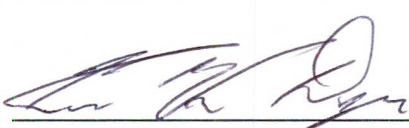
Staff recommends approval of this request for a zone change from O-1, Office District to a Planned District for an Office Center, subject to the following conditions:

- A. That this Planned District is subject to C-1, Central Area District zoning regulations;**
- B. That the new construction is consistent with the Site Plan (Exhibit A), Structure Elevations (Exhibits B & C), and Office Building Renderings (Exhibits D & E);**
- C. That the maximum height of the office building shall not exceed 75 feet;**
- D. That the Site Plan indicating a future parking garage shall be considered sufficient for future administrative review provided the structure is consistent with its proposed location, matches the primary building’s earth tone stonework, and the height does not exceed three stories;**

- E. That the landscaping shall conform to City regulations in place at the time of development;
- F. That the air conditioners and dumpsters and any mechanical equipment shall be appropriately screened;
- G. All driveways must comply with current City of Midland design standards;



Cameron Walker, AICP
Planning Division Manager
Department of Development Services



Ken Van Dyne, Senior Planner
Department of Development Services

Attachments:

Application
Site Plan – Exhibit A
Elevations – Exhibits B & C
Building Renderings – Exhibit D & E
Maps

Case Number: ~~2-12-008~~
2-11-043

CITY OF MIDLAND
Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

Bill McClain 686-2800
Applicant Name (Phone/e-mail)
1031 Andrews Hwy, Ste 100 Midland, TX 79701
Address Zip Code

Midpar, Ltd.
Property Owner Name (Phone/e-mail)
P.O. Box 50290 Midland, Texas 79710
Address Zip Code

Andrew Mellen, P.E. 687-0865
Representative Name (Phone/e-mail)
110 W Louisiana Ave., Ste 110 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. All of Block 31A, Homestead Addition, 0.10 acres of vacated alley, and 0.05 acres of vacated Mariented St. Right-of-way.
205 N. Mariented St.

PRESENT ZONE: 02 REQUESTED ZONE: PD C1
(List by tracts if more than one district is requested)

Reason for Zone Change Request: To allow for the construction of a commercial office building.

Present Use of Property: Parking lot

Proposed Use of Property: office building

How will zone change affect the public health, safety and welfare? New building will provide needed downtown office space and improve aesthetics of the block.

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 ☒ Yes ☐ No

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

SITE PLAN SUBMITTALS (if applicable):

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

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

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

Property Owner (signature): _____ Date: _____

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

STATE of TEXAS
COUNTY OF MIDLAND

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

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

Andrew L. Mellon Jr.

Authorized Agent (signature)

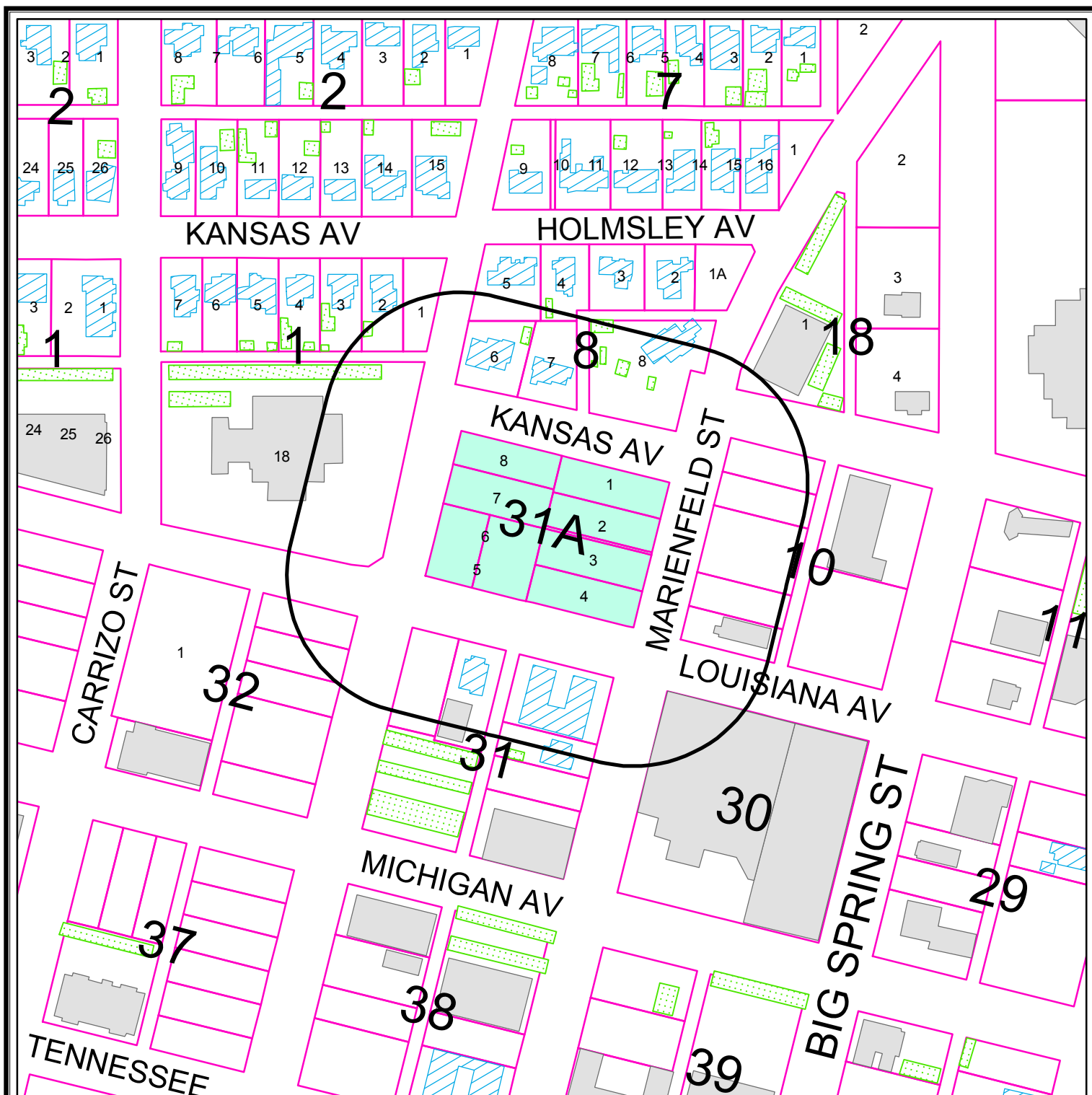
Subscribed and sworn to before me, this 18th day of February, 20 12, to certify which witness my hand and seal of office.

Debbie Brown
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: <u>RS</u>	Date: <u>2/29/12</u>
Assigned: _____	
For: _____	On: _____



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



PROPERTY OWNER NOTIFICATION MAP

Z - 11 - 043

Scale: 1" = 200'

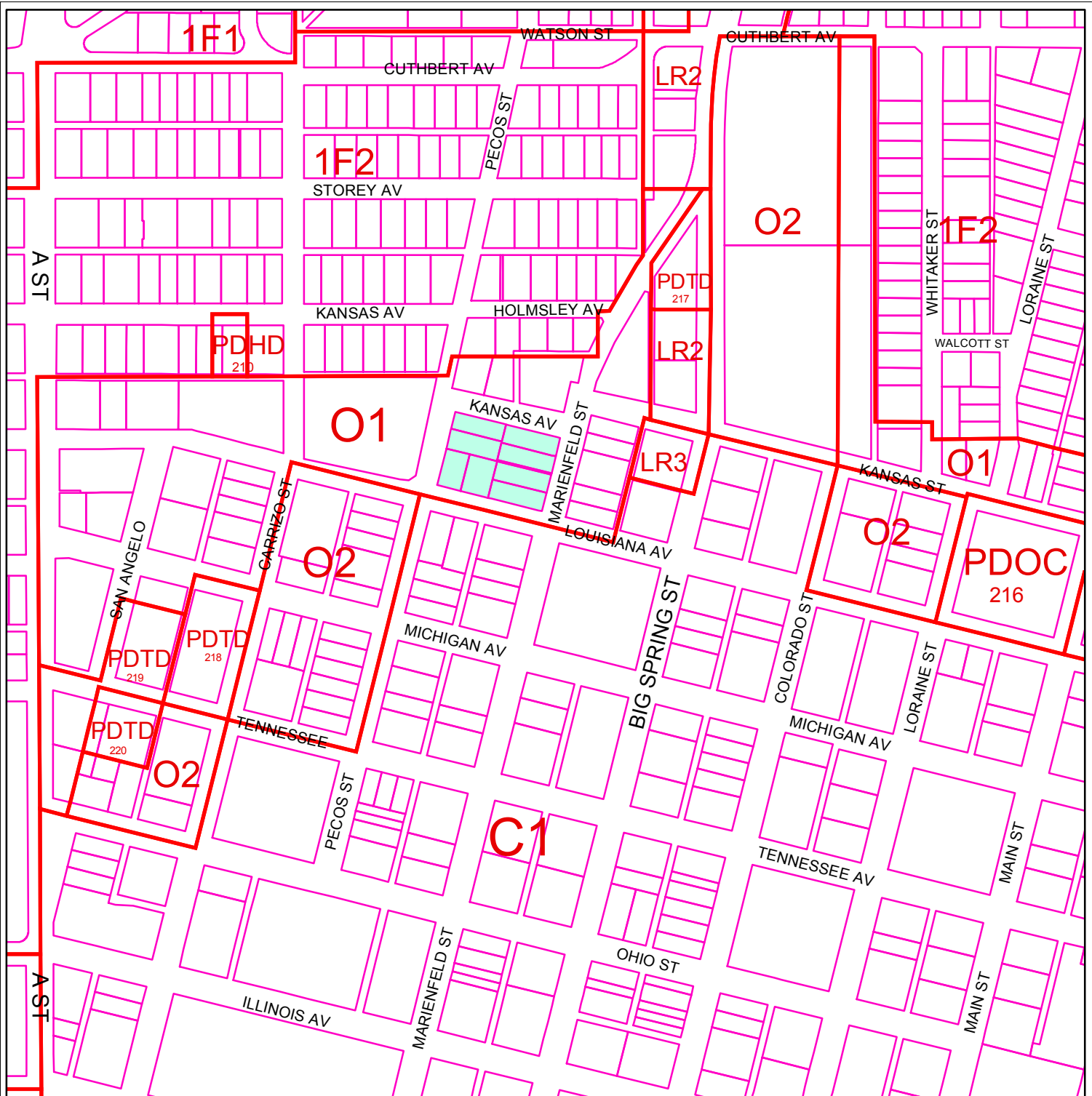
Consider a request for a zone change from O-1, Office District, to PD, Planned District for an Office Center on Block 31A, the vacated 0.10-acre north/south alley, and the vacated adjacent 0.05-acre portion of the right-of-way of N. Marienfeld Street, Homestead Addition, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 1,000 FT. LEGAL NOTICE LIMIT
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



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ZONING MAP

Z - 11 - 043

Scale: 1" = 400'

Consider a request for a zone change from O-1, Office District, to PD, Planned District for an Office Center on Block 31A, the vacated 0.10-acre north/south alley, and the vacated adjacent 0.05-acre portion of the right-of-way of N. Marienfeld Street, Homestead Addition, City and County of Midland, Texas.

LEGEND

ZONING

PARCELS

ZONING DISTRICTS:

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

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City Council Agenda

Approved for Agenda:
jnichols
City Manager's Office

MEETING DATE: 6/26/2012
TO: City Council / City Manager
FROM: Jim Compton, Senior Planner
SUBJECT: M-12-013, Downtown Farmer's Market

Purpose:

Hold a public hearing at approximately 10:36 a.m. and consider a Resolution on a request by Matt Hanson for a Temporary Land Use Permit for an Outdoor Sales Event.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

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

Discussion:

The applicant has been operating an outdoor market in the downtown area. The site is located at the south side of Texas Avenue, between Pecos and Marienfeld Streets, beneath the covered parking. This event allows an opportunity for local growers to offer produce, food products, crafts and artwork for sale. The event is held every Saturday between 9:00 a.m. and 1:00 p.m. We are not aware of any problems occurring during past years. We see this as an opportunity to provide an activity in the downtown area. We recommend approval of this request, subject to the conditions contained in the attached Resolution.

Attachments:

Proposed Resolution and Site Plan

RESOLUTION NO.

**RESOLUTION AUTHORIZING THE TEMPORARY
USE OF LAND FOR OUTDOOR SALES ON LOTS 1,
2, 10, 11 AND 12, BLOCK 58, ORIGINAL TOWN, CITY
AND COUNTY OF MIDLAND, TEXAS (GENERALLY
LOCATED ON THE SOUTH SIDE OF WEST TEXAS
AVENUE, BETWEEN PECOS STREET AND
MARIENFELD STREET); 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, Matthew Hanson has applied for authorization to temporarily use land for outdoor sales on Lots 1, 2, 10, 11 and 12, Block 58, Original Town, 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 Matthew Hanson is hereby authorized by the City Council to have outdoor sales on the following described land:

On Lots 1, 2, 10, 11 and 12, Block 58, Original Town, 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 use of this property for outdoor sales (Farmers' Market) shall conform to the site plan attached hereto as Exhibit "A" and incorporated herein for all purposes.
- B. That such outdoor sales shall only be conducted at this location on Saturdays from 9:00 a.m. to 1:00 p.m.
- C. That the term of this permit shall be from June 26, 2012 through June 25, 2013.

SECTION THREE. The City Council reserves at all times the full right and power to revoke said temporary use for violation of any of its terms or any misrepresentations contained in the application, after a hearing of which the holder of

said temporary use has been given at least one (1) day notice.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Jim Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

SITE PLAN

RECEIVED

MAY 16 2012

CITY OF MIDLAND
PLANNING DIVISION OFFICE

CASE NO. M-12-013



TEXAS AVE.

VENDOR
SETUP

PECOS ST.

MARIENFELD ST.

WALL ST.

RECEIVED

MAY 13 2011

CITY OF MIDLAND
PLANNING DIVISION OFFICE

EXHIBIT A

SITE PLAN

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: Matthew Hanson Farmers' Market ^{Midland Downtown} Phone: 432-853-9338
E-mail: farmermatt.hanson@gmail.com
Applicant's Address: PO Box 50145 Midland
Property Owner: David Arrington Oil + Gas Phone: 432-~~485-6685~~ 682-6685
E-mail: _____
Owner's Address: PO Box 2071 Midland, TX 79702

Other required information:

1. Street address and legal description of property: Lots 1, 2, 10, 11, + 12, Block 58,
Original Town, City + County of Midland, TX
2. Zoning District: C-1 Commercial
3. Type of temporary use requested: Farmers' Market
4. Duration of temporary use: Every Saturday, 9am - 1pm; Year Round * 1 year
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: Every Saturday; 9am - 1pm; Year Round
6. Will alcoholic beverages be sold? _____ Yes X 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: X Yes _____ No

8. Are you requesting the temporary closure of any streets? _____ Yes X No

If yes, you must:

- A. Obtain and complete the "Special Event and Street Closure Application", available in the Transportation 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: N/A
Number of restrooms provided: 1; Portable Toilet
Type of music (carnival, live, etc.): live Music
Showmobile requested _____ Days and hours _____
10. A **\$500.00 Clean-up Deposit** and a **\$500.00 Damage Deposit** are required for all events. Checks need to be dated day of event. Inspection of site after the event for trash and damage is a City responsibility. The deposits, or a portion thereof, may be refunded following inspection.
Clean-up Deposit received: __ (Y) __ (N) **Clean-up Deposit refunded:** __ (Y) __ (%) __ (N)
Damage Deposit received: __ (Y) __ (N) **Damage Deposit refunded:** __ (Y) __ (%) __ (N)
11. A **\$200 Application Review fee** is required. **Fee received:** _____ Yes _____ No
\$25.00 for each additional event date.

Owner or Operator (if other than Applicant) responsible for ensuring that the conditions of this permit will be observed:

Matthew Hanson PO Box 50145 79710 432-853-9338
Printed Name of Owner/Operator Address Zip Phone

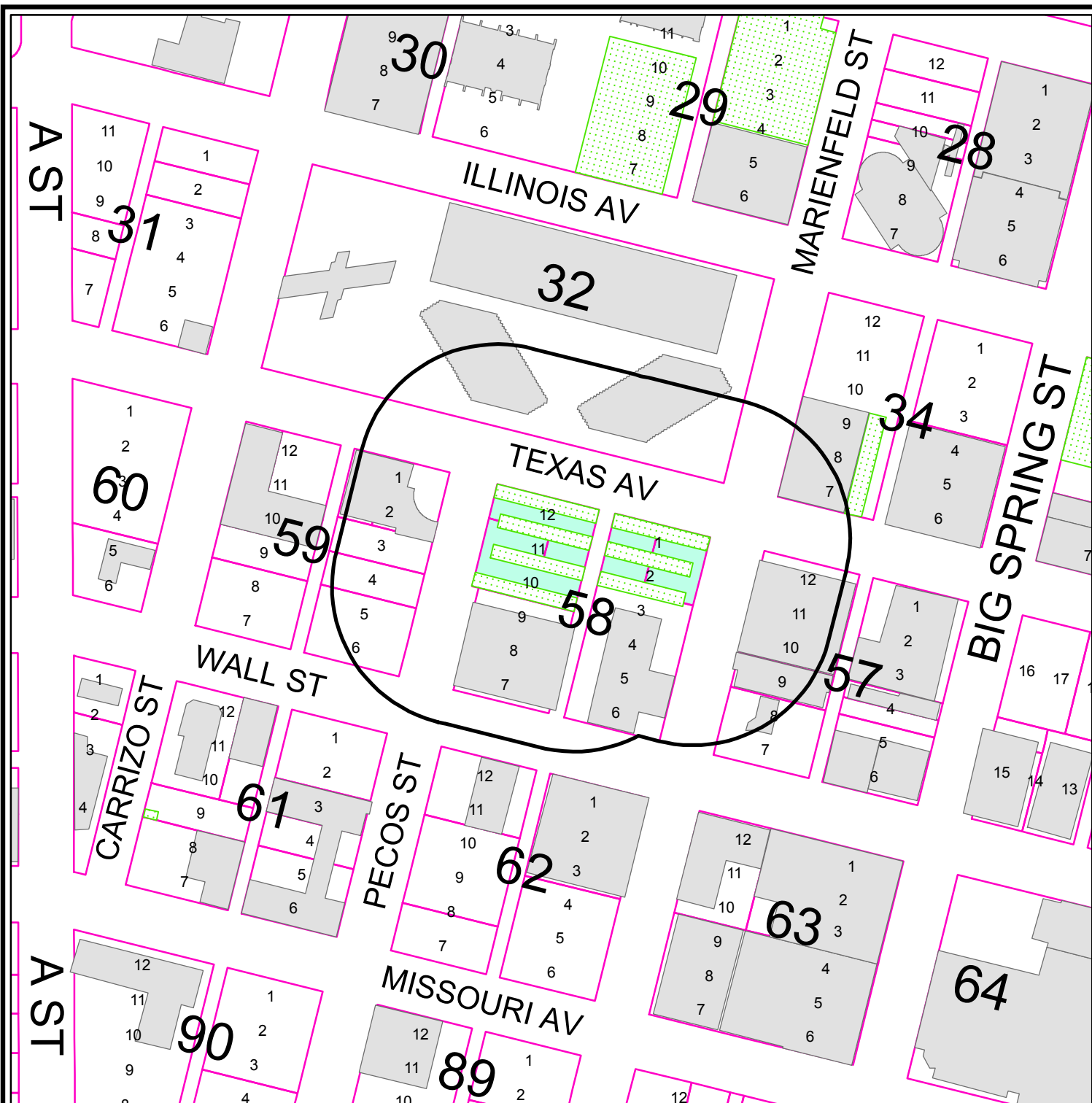
Matthew Hanson 5/16/12
Signature of Owner/Operator Date

Matthew Hanson 5/16/12
Signature of Applicant Date

Randi Smith, Building Manager 5/16/12
Signature of Property Owner, if other than Applicant Date

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

FOR OFFICE USE ONLY	
Received By: <u>S.O.</u>	Date: <u>5-16-12</u>
Assigned: _____	
For: _____	On: _____



PROPERTY OWNER NOTIFICATION MAP

M - 12 - 013

Scale: 1" = 200'

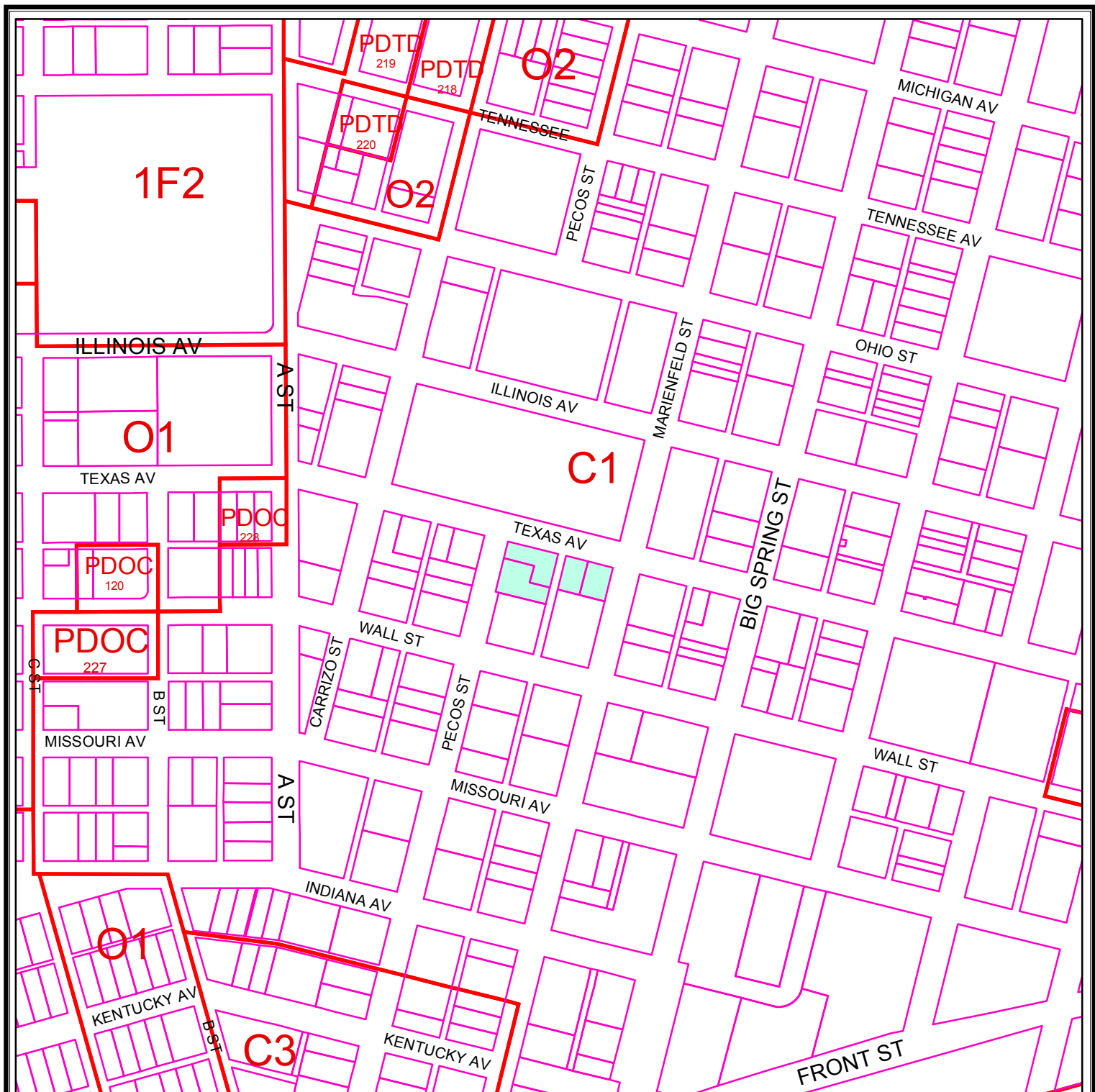
Consider a request for a Temporary Land Use Permit for outdoor sales on Lots 1, 2, 10, 11 and 12, Block 58, Original Town, City and County of Midland, Texas.

LEGEND

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



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ZONING MAP

M - 12 - 013

Scale: 1" = 400'

Consider a request for a Temporary Land Use Permit for outdoor sales on Lots 1, 2, 10, 11 and 12, Block 58, Original Town, City and County of Midland, Texas.

LEGEND

ZONING

PARCELS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT
PD	PLANNED DISTRICT
AE	AGRICULTURE ESTATE
CE	COUNTRY ESTATE
IF1, IF2, IF3	ONE-FAMILY DWELLING
MH	MOBILE HOME DWELLING
TH	TOWNHOUSE DWELLING
2F	TWO-FAMILY DWELLING
MF1, MF2	MULTIPLE FAMILY DWELLING

BP	BUSINESS PARK
P	PARKING
O1, O2	OFFICE
NS	NEIGHBORHOOD SERVICE
LR1, LR2, LR3	LOCAL RETAIL
C1, C2, C3	COMMERCIAL
IP, IP1, IP2, IP3	INDUSTRIAL PARK
LI	LIGHT INDUSTRY
HI	HEAVY INDUSTRY

BP	BUSINESS PARK
P	PARKING
O1, O2	OFFICE
NS	NEIGHBORHOOD SERVICE
LR1, LR2, LR3	LOCAL RETAIL
C1, C2, C3	COMMERCIAL
IP, IP1, IP2, IP3	INDUSTRIAL PARK
LI	LIGHT INDUSTRY
HI	HEAVY INDUSTRY





City Council Agenda

Approved for Agenda:
jnichols
City Manager's Office

MEETING DATE: 6/26/2012

TO: City Council / City Manager

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Consider a resolution approving the issuance of a permit to Callon Petroleum Operating Company (Operator), to Drill a Non-Commercial Salt-Water Disposal Well within the City Limits, (Pecan Acres 23 #1D) located 1,066 feet from the west line and 2,480 feet from the north line located in Section 23, Block 40, T & P RR Co. Survey, City and County of Midland, Texas. (Generally located on the west side of Golden Gate Drive, approximately ½ mile north of Briarwood Avenue.)

Purpose:

Consider a resolution approving the issuance of a permit to Callon Petroleum Operating Company (Operator), to Drill an Non-Commercial Salt-Water Disposal Well within the City Limits, (Pecan Acres 23 #1D) located 1,066 feet from the west line and 2,480 feet from the north line located in Section 23, Block 40, T & P RR Co. Survey, City and County of Midland, Texas. This is an application for a non-commercial salt-water disposal well for Callon Petroleum's own use and located on its own property. The injection water will be pumped from fiberglass storage tanks at the tank battery using an injection pump.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

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

Discussion:

Per Ordinance 8769, 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.

Callon Petroleum Operating Company application is the first salt-water disposal well application the City has received by an operator. The Ordinance doesn't list specific requirements for salt-water disposal wells; therefore any requirements are at the Council's discretion.

The use of a salt-water disposal well will reduce truck traffic by limiting the hauling of produced water from the tank battery to a location outside of the city using city streets.

Callon Operating is requesting a variance from the installation of landscaping until future development occurs. Irrigation will be installed within 2 yrs from the time the permit is approved.

Attachments: Application; Location map; Exhibit E - Drill site location, Exhibit G9 - Casing/Cementing Program, Exhibit G10 - Tank Battery.

RESOLUTION NO.

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO CALLON PETROLEUM OPERATING COMPANY ("OPERATOR") TO DRILL A NON-COMMERCIAL SALT-WATER DISPOSAL WELL WITHIN THE CITY LIMITS LOCATED 1,066 FEET FROM THE WEST LINE AND 2,480 FEET FROM THE NORTH LINE, SECTION 23, BLOCK 40, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF GOLDEN GATE DRIVE, APPROXIMATELY 1/2 OF A MILE NORTH OF BRIARWOOD AVENUE)

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, Section 6-1-23(L)(28) of the City Code of Midland, Texas, provides that no salt-water disposal well of any type shall be used within the corporate limits of the

City of Midland unless a plan is approved by the City Council; and

WHEREAS, Operator has submitted an application and plan to drill a salt-water disposal 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 a non-commercial salt-water disposal well within the City limits located 1,066 feet from the west line and 2,480 feet from the north line, Section 23, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. Said permit is attached hereto as Exhibit "A" and incorporated herein for all legal purposes.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Jim Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

NON-COMMERCIAL SALT-WATER DISPOSAL WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on June 26, 2012, considered the application of Callon Petroleum Operating Company, dated May 14, 2012, to drill a non-commercial salt-water disposal 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 a non-commercial salt-water disposal well, in the application of Callon Petroleum Operating Company, dated May 14, 2012, and filed with the Oil & Gas Compliance Officer and incorporated herein for all legal purposes.

The location of Callon Petroleum Operating Company, Pecan Acres 23 #1D non-commercial salt-water disposal well shall be 1,066 feet from the west line and 2,480 feet from the north line, Section 23, Blk 40, T1S, T & P RR Co. Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in that application of Callon Petroleum Operating Company, which is incorporated herein. Further, all operations done under this permit shall be done and accomplished in strict accordance with the Midland City Code, Ordinance 8769, which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit. Also, all operations done under this permit shall be done and accomplished in strict accordance and compliance with the General Conditions, which are attached hereto marked as Exhibit "A" and incorporated into and made a part of this permit for all purposes. All operations done and required under this permit shall be done and accomplished in strict accordance and compliance with the Specific Conditions which are attached hereto, marked as Exhibit "B", and incorporated into and made a part of this permit for all purposes.

This permit shall be effective from June 26, 2012, through June 26, 2013, and so long thereafter as the well is used as a non-commercial salt-water disposal well or until such time as the permittee has permanently abandoned the operations of the well or facility for which this permit is issued.

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts the permittee from its responsibilities or obligations as to third parties. The issuance of this permit only means that the permittee has, at this time, complied with Ordinance No. 8769 and that the Midland City Council, as a regulatory body, will allow the permittee to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize the recipient to act with impunity as to third parties, nor does it insulate the permittee from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize the permit holder from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a “negative pronouncement” that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. The permittee has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill a non-commercial salt-water disposal 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 non-commercial salt-water disposal facility, oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, utility and drainage rights-of-way.

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

CITY OF MIDLAND, TEXAS

BY: _____

W. Wesley Perry, Mayor

UNDERSTOOD AND AGREE THIS _____ day of June, 2012.

Callon Petroleum Operating Company

By: _____

Jimmy Baggett

Operations Manager



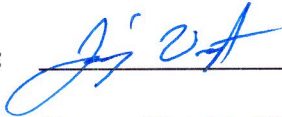
APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information		
Date 05/14/2012	Operator Name (must match W-1) Callon Petroleum Operating Company	Operator Address P.O. Box 1287 Natchez, MS 39121
Representative Name Jimmy Baggett	Representative Address (within Midland City Limits) 4305 N. Garfield, Suite 235 Midland, TX 79705	Rep. Tele. (432) 686-1828 Rep. Fax (432) 686-2764
Fee: \$4,000.00 Rec'd Yes ___ No ___		
Permit Compliance Contact (Choose 1): Option A: 24/7 Answering Services - No. 1 (tele) _____ No. 2 (Tele.): _____ Option B: Jimmy Baggett 4305 N. Garfield, Suite 235 Midland, TX 79705 Company Compliance Representative (Name, Address, Local Telephone) (ATTACH STATEMENT AS EXHIBIT A):		
Emergency Contact Representative (Name, Address, 24-Hour Tele. No.): Vince Borrello (432) 553-9522 4305 N. Garfield, Suite 235 Midland, TX 79705		
Other Permitted Wells in City (ATTACH EXHIBIT B [see § J(26)]). Eight: Annie 3 & 8; Pecan Acres 23A #1,2,3; Pecan Acres 23 #3,6,12		
II. Mineral Ownership		
Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease): <i>See Attached List</i>		
1. _____		
2. _____		
3. _____		
ATTACHED AS EXHIBIT C is (a Title Opinion by Mike Canon , a licensed Texas Attorney/Title Commitment by Abstract Company/a Take-off from _____, a Certified Petroleum Landman/an opinion letter from _____, a licensed Texas Attorney) indicating that Operator has a legal right to develop the mineral estate that is the subject of this Application. [See § J(5)]. Attached		
III. Surface Ownership & Use		
General Description of Current Surface Use (within 860 feet of proposed surface location): Agricultural use (zoned AE).		
ATTACHED AS EXHIBIT D is (a Title Opinion by _____, A licensed Texas Attorney/a Take-off from _____, a Certified Petroleum Landman/ Current Tax Roll from Midland Central Appraisal District), which lists the name(s) and address(es) of all surface owners within 860 feet of the surface well location. [See § J(7)]. Attached		
ATTACHED AS EXHIBIT E is a (map/p lat/satellite/aerial photo) depicting all Residences, commercial structures, public buildings, all publicly dedicated Streets and alleys, Rights of Way, and permanent accessory structures surrounding the proposed Drill Site. The (map/p lat/satellite/aerial photo) includes two circles, as required by the Ordinance - on depicting a 500 foot radius and one depicting an 860 foot radius from the proposed well's surface location. [See § J(10)]. Attached		
ATTACHED AS EXHIBIT F is a copy of the notification letter(s) sent to 100 percent of the surface owners, Certified Mail, Return Receipt Requested. [See § J(36)]. Attached		

IV. Well & Operations Information
Proposed Well Name: Pecan Acres 23 #1D
Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary) [See § J(11) and § L(4)]: Attached
Legal Description of Proposed Well Site: 1,066' FWL, 2,480' FNL of Section 23, Block 40, T1S, T&P RR Co. Survey, Midland County, Texas (Abstract 252)
ATTACHED AS EXHIBIT G is the Location Site Plan [See § J(9)]. Attached ATTACHED AS EXHIBIT H is the Map with the proposed transportation route(s) and road(s) for equipment, chemicals, or refuse products used or produced in the proposed oil and gas operations. [See § J(12)]. Attached ATTACHED AS EXHIBIT I is a copy of the approved Texas Railroad Commission permit to drill (Form W-1), together with all attachments (<i>also file copy of W-1 with City Secretary before commencement of drilling operations</i>). [See § J(16) and (20)]. Attached ATTACHED AS EXHIBIT J is a copy of the required TCEQ report as to depth of usable quality ground water. [See § J(1) Attached ATTACHED AS EXHIBIT K (if applicable) is the list of alternative locations developed in consultation with the Oil & Gas Advisory Committee. [See § J(27)]. Attached ATTACHED AS EXHIBIT L is the Fencing and Irrigation Plan. [See § J(30)]. Attached variance request ATTACHED AS EXHIBIT M is the Road Repair Agreement and Letter of Credit/Certificate of Deposit/Surety bond in the amount of at least \$25,000. <i>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):</i> Beause 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 <i>letter of credit/certificate of deposit/surety bond</i> in conjuncton with this request. [See § J(31)]. Attached ATTACHED AS EXHIBIT N is the Concept Plan depicting the proposed Operations Site (which includes tanks, roads, power lines, and pipeline routes). [See § J(32)]. Attached
Description of Public Utilities required during (1) drilling and (2) operations: (1) Drilling: No public utilities will be needed during drilling operations. (2) Operations: See Exhibit N and N-3. Electricity provided by Oncor Electric.
Deescription of water source to be used during Drilling: Water will be pulled from water wells existing on adjacent property and hauled if necessary. Water wells are depicted on Exhibit G herein and are located on that certain 380.2733 acre tract described in document 2012-926 of the Official Public Records of Midland County, Texas.
Description of all electric lines to production facilities (reference exhibits as necessary) [See § L(10)]: See Exhibits G & N attached.
Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]: See Exhibit O - Pits will be deep buried in accordance with City of Midland requirements.
V. Additional Required Exhibits
ATTACHED AS EXHIBIT P is the Letter of Credit/Certificate of Deposit in accordance with Subsection (K)(2). [See § J(18)]. Attached ATTACHED AS EXHIBIT Q are Tax certificates from Midland Central Appraisal District to be submitted indicating that all taxes on personal and real property, including minerals, owned by Applicant are current. [See § J(29)]. Attached ATTACHED AS EXHIBIT R is the required Insurance Certificate. [See § J(19) and § K(3)]. Attached ATTACHED AS EXHIBIT S (if applicable) is the Drainage Plan approved by the City Engineer relating to Applicant's proposed operations. [See § J(21)]. Attached ATTACHED AS EXHIBIT T is Applicant's Emergency Action Response Plan. [See § J(22)]. See Exhibit T and Attachment T-1 ATTACHED AS EXHIBIT U is Applicant's Hazardous Materials Management Plan, a copy of which has been submitted and is on file with the Midland Fire Department. [See § J(23)]. Attached

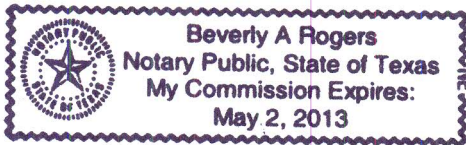
Callon Petroleum Operating Company

By: 

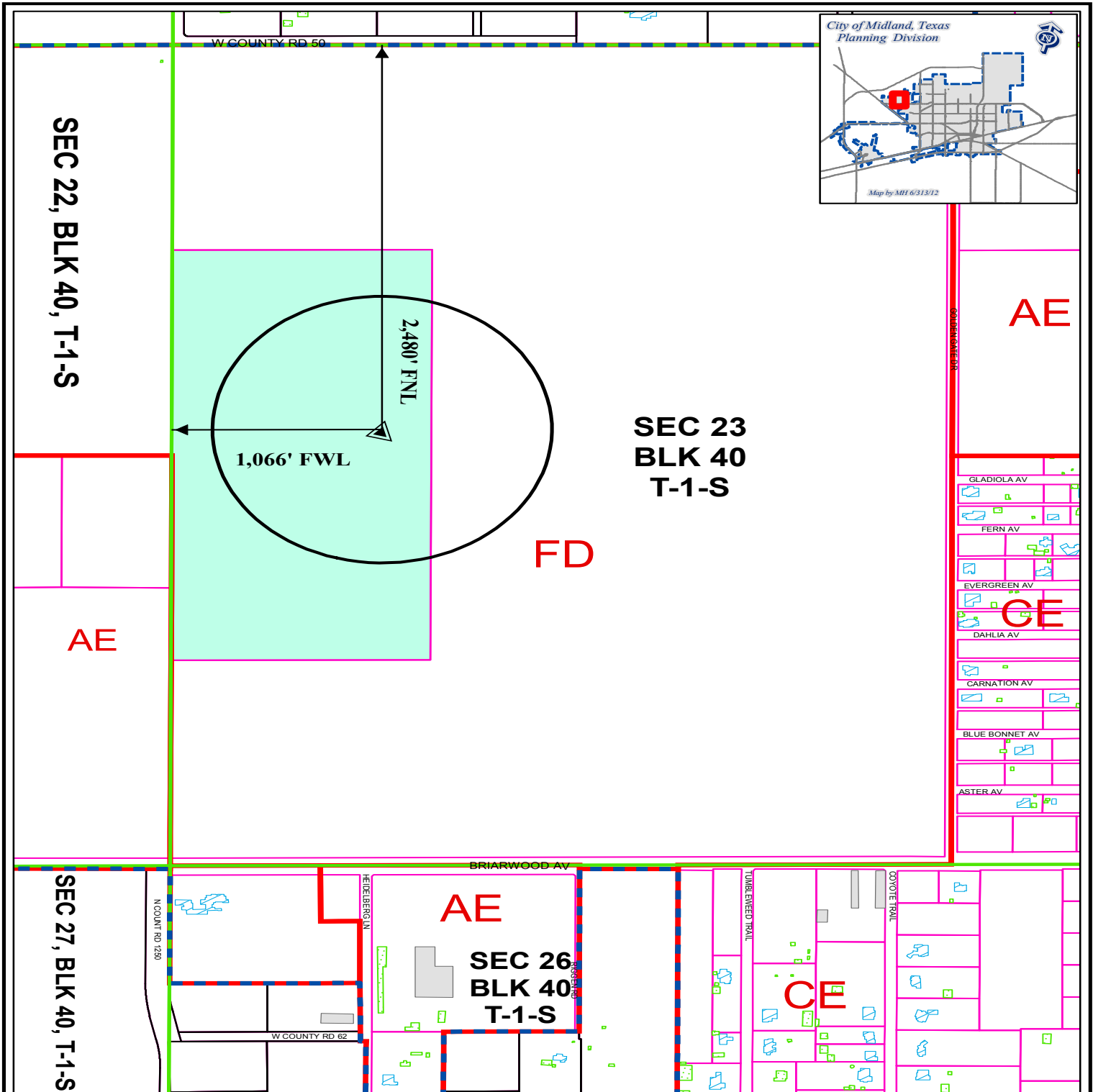
Jimmy Wright, CPL
Land Manager-Permian Basin

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

This instrument was acknowledged before me on the 14 day of May, 2012 by Jimmy Wright, Land Manager-Permian Basin of Callon Petroleum Operating Company, who personally appeared before me and states that he has read the above application and attached exhibits and the statements therein are true and correct to the best of his knowledge.




Notary Public, State of Texas



LOCATION AND ZONING MAP

O - 12 - 008

Scale: 1" = 700'

Consider a request for a Permit to drill an Non-Commercial Salt-Water Disposal Well within the City Limits located 1,066' FWL and 2,480' FNL, Section 23, Block 40, T-1-S, T & P RR Co. Survey, Midland County, Texas.

Pecan Acres 23 #1D

© THE CITY OF MIDLAND 2012. THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA. WHILE THIS DATA IS MADE AVAILABLE TO THE PUBLIC, IT WAS CREATED FOR INTERNAL USE BY THE CITY OF MIDLAND WHICH MAKES NO CLAIM AS TO ITS ACCURACY OR COMPLETENESS. THIS DATA IS NOT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING, CITING, OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.

LEGEND

	CITY PARCELS		PUBLIC BLDGS		CITY LIMITS
	COUNTY PARCELS		PRIVATE BLDGS		860 FT. BUFFER
	ZONING		ACCESSORY BLDGS		SURVEY SEC.

ZONING DISTRICTS:

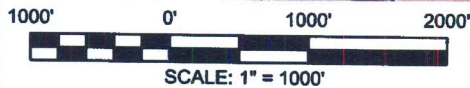
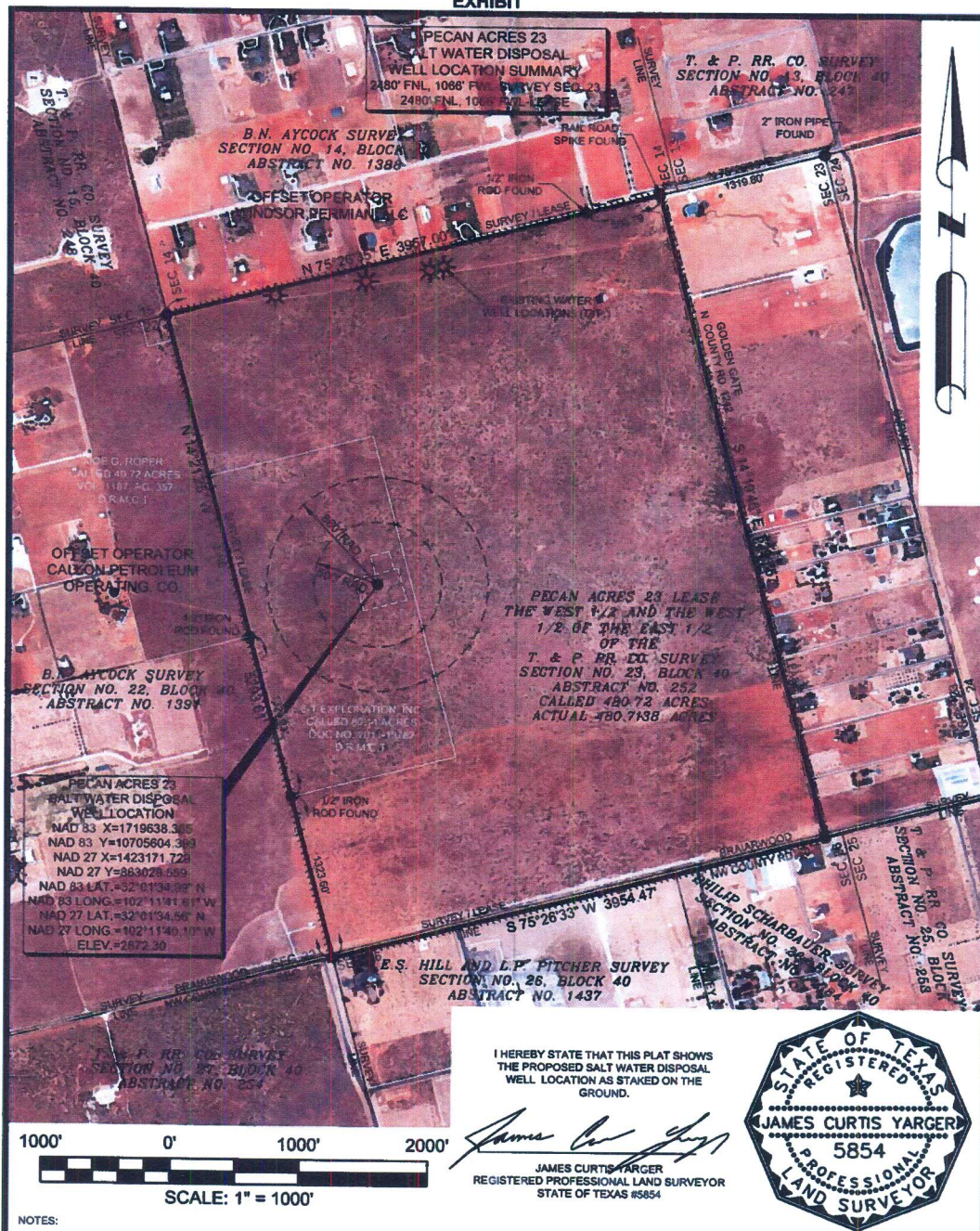
FD
PD
AE
1F1, 1F2, 1F3
MH
TH
2F
MF1, MF2

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

EXHIBIT



NOTES:

1.) BEARINGS & COORDINATES SHOWN HEREON ARE REFERENCED TO THE TEXAS STATE PLANE COORDINATE SYSTEM, NAD 83 DATUM (TEXAS CENTRAL ZONE 4203) DERIVED FROM GPS OBSERVATIONS AND ARE BASED ON NGS MONUMENT MDD A (GRID COORDINATES X=1750074.49, Y=10709180.31)

2.) LATITUDE & LONGITUDE ARE NAD 83 & 27 GEOGRAPHIC

3.) THIS IS A PROPOSED SALT WATER DISPOSAL WELL PLAT AND DOES NOT REPRESENT A TRUE BOUNDARY SURVEY. THIS SURVEY IS BASED ON OWNERSHIP AND EASEMENT INFORMATION PROVIDED BY CALLON PETROLEUM OPERATING COMPANY. SURVEYOR DID NOT ABSTRACT SUBJECT TRACT AND THERE MAY BE EASEMENTS OR OTHER ENCUMBRANCES THAT AFFECT THE SUBJECT TRACT THAT ARE NOT SHOWN HEREON.

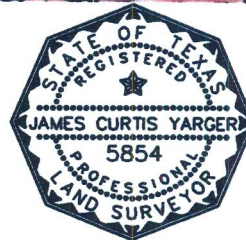
REV.	DATE	BY:	DESCRIPTION	CHK
			PROJECT NO. 1109036	

ZPSMS
Zero Degrees Surveying & Mapping Services

403 West Loop 820, Suite 160
Fort Worth, Texas 76108
(817) 367-6900 ~ Fax (817) 367-1973

I HEREBY STATE THAT THIS PLAT SHOWS
THE PROPOSED SALT WATER DISPOSAL
WELL LOCATION AS STAKED ON THE
GROUND.

James Curtis Yarger
JAMES CURTIS YARGER
REGISTERED PROFESSIONAL LAND SURVEYOR
STATE OF TEXAS #5854



Callon Petroleum Operating Company

PECAN ACRES 23

"FOR PERMITTING PURPOSES ONLY"
SALT WATER DISPOSAL WELL
RESIDENCE STRUCTURE PLAT

SITUATED IN THE
T. & P. RR. CO. SURVEY
SECTION NO. 23, BLOCK 40, ABSTRACT NO. 252
MIDLAND COUNTY, TEXAS
PECAN ACRES 23 LEASE

BEING THE WEST 1/2 AND THE WEST 1/2 OF THE EAST 1/2 OF SECTION NO. 23, CALLED 482.72
ACRES, (ACTUAL 480.7138 ACRES) RECORDED IN DOCUMENT NO. 2009-24676
DEED RECORDS, MIDLAND COUNTY, TEXAS
SAID WELL LOCATION BEING N 69°12' W, 7.0 MILE FROM THE CITY OF MIDLAND
MIDLAND COUNTY, TEXAS

DRAWN BY: GG

DATE: 06-06-12

DWG. NO.

REV.

CHECKED BY: CY

DATE: 06-06-12

1109036 PECAN ACRES 23 SMO RESIDENCE STRUCTURE PLAT

0

SCALE: 1"=1000'

APP.:

PAGE 1 OF 1

EXHIBIT E
DRILL SITE

CASE NO. 0-12-007 33.13

Location:	
API #:	42-329
Field:	Spraberry (Trend Area)
Footage:	2480 FNL & 1068 FWL
Sec. Blk.:	23, Blk 40 T1S
Srvy. County:	T&P RR Co., Midland
Elevations:	2884' GR
KB	16'
USDW	250'

(Typical Proposed)

Note Size:	17-1/2"
Surf csg :	13 3/8", 48#, H-40
Set @:	350'
Cement:	340 sxs
Circ:	Yes

Hole Size:	12-1/4"
Surf csg :	9-5/8", 36#, J or K-55
Set @:	2000'
Cement:	1510 sxs

TOC of 7" Csg @ 2300'

Packer @ 4700'

Injection Zone 4830' - 5930'

Hole Size:	9-7/8"
Prod. Csg:	7", 20#, J-55, LTC
Set @:	6000'
Cement:	1200 sxs

[illegible]

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EXHIBIT G-9

CASING CEMENTING PROGRAM

CASE NO. 0-12-008

**NON-COMMERCIAL SALT-WATER WELL PERMIT: ORDINANCE 8769 GENERAL CONDITIONS-
EXHIBIT "A"**

(K)

General Conditions of all Oil and Gas Well Permits.

1.

General Obligations of Operator.

The Operator shall be required to:

a.

Comply with the terms and conditions of this Section, the Midland City Code, the rules and regulations of the Railroad Commission, and any other state or federal agency that enforces land use, mineral use, or environmental protection regulations.

b.

Promptly clear Drill and Operation sites of litter, trash, refuse and other substances used, allowed, or occurring in the operations, and after abandonment or completion, grade, level, and restore such property to the same surface conditions as nearly as practicable as existed before operations.

c.

Indemnify and hold harmless the City of Midland, the City's officers, agents and employees, from any and all claims, losses, damages, causes of action, suits, and liability of any kind, including all expenses of litigation, court costs, and attorney's fees, for injury to or death of any Person, or for damage to any property arising out of or in connection with the work done by Operator under an Oil and Gas well permit: where such injuries, death or damages are caused by Operator's sole negligence or the joint negligence of the Operator and any other Person or entity.

d.

Promptly pay all fines, penalties and other assessments imposed due to breach of any of the conditions herein. If the Operator does not agree that a breach has occurred, the Operator may file a written objection with the City Manager within ten (10) days of being notified of the alleged breach. The City Manager shall review the objections and give the Operator the opportunity to be heard and present facts that the Operator deems relevant.

e.

Promptly restore to its former condition any public property damaged by the oil and gas operation.

f.

Except as permitted by Subsection U, hereof, Operator shall not, either directly or indirectly, assign all or any part of an Oil and Gas Well Permit.

g.

If required by the Permit, Operator shall execute a "Road Repair Agreement" between itself and the City of Midland and submit all necessary information and insurance and guarantees to the City prior to the issuance of any Oil and Gas Well Permit under this Section.

2.

Irrevocable Letter of Credit, Certificate of Deposit, or Surety Bond.

Prior to the issuance of an Oil and Gas well permit, the Operator shall provide the City Attorney with a guarantee in the form of an irrevocable letter of credit, certificate of deposit, or surety bond in the name of the City. The Applicant shall be entitled to receive the interest earned if the certificate of deposit reaches maturity. The letter of credit, certificate of deposit, or surety bond must satisfy the following:

a.

The letter of credit, certificate of deposit or surety bond shall be issued by a reliable bank or insurance carrier authorized to do business in the State of Texas;

b.

The letter of credit, certificate of deposit or surety bond shall be effective starting on or before the effective date of the Oil and Gas Well Permit;

c.

The letter of credit, certificate of deposit or surety bond shall be in the amount of twenty-five thousand dollars (\$25,000.00);

d.

The letter of credit, certificate of deposit or surety bond shall remain in full force and effect for a period of three years; and

e.

The letter of credit, certificate of deposit or surety bond shall authorize the City of Midland to draw upon such credit in the event the City Manager, or his designee, determines said credit is needed to remedy any violation of this Section.

If the well is still producing or if the well has not been abandoned or plugged, the Operator must renew the letter of credit, certificate of deposit or surety

bond on or before one hundred twenty (120) days prior to the expiration of the letter of credit, certificate of deposit or surety bond.

The City of Midland may draw upon the letter of credit, certificate of deposit or surety bond to recover costs of repairs, modifications, or construction to remedy any violations by the Operator under this Section. The City may make partial or full draws of the letter of credit, certificate of deposit or surety bond. The City may draw upon the letter of credit, certificate of deposit or surety bond in the event the City has not received a new letter of credit, certificate of deposit or surety bond within the one hundred twenty (120) day renewal time period required above.

The Operator shall maintain the principal amount of \$25,000.00 in the form of a letter of credit, certificate of deposit or surety bond at all times throughout the term of the permit. In the event such letter of credit, certificate of deposit or surety bond is not restored to \$25,000.00 within ten (10) days after the date of the reduction of the letter of credit, certificate of deposit or surety bond, the City may draw and receive the remaining balance of the letter of credit, certificate of deposit or surety bond, and the Oil and Gas Well Permit shall be suspended on such date and the Operator's right to operate under Oil and Gas Well Permit shall immediately cease until the Operator files the required letter of credit, or certificate of deposit or surety bond.

If an operator has three (3) or more Oil and Gas Well Permits in effect which have been approved by the City Council, the Operator may petition the Council to consolidate the letter of credits, certificate of deposits or surety bonds into one letter of credit, certificate of deposit or surety bond that would cover all Oil and Gas Wells in the City limits. The consolidated letter of credit, certificate of deposit or surety bond shall be in an amount determined by the City Council as sufficient to cover the costs of repairs, modifications, construction or to remedy violations by the Operator but in no event shall the amount be less than \$75,000.00.

3.

Insurance.

In addition to the letter of credit, certificate of deposit or surety bond required above, the Operator shall carry a policy or policies of insurance issued by an admitted insurer or eligible surplus lines insurer authorized to do business in the State of Texas. In the event such insurance policy or policies are cancelled, any Oil and Gas Well Permit issued under this Section shall be suspended on such date of cancellation and the Operator's right to operate under such Oil and Gas Well Permit shall immediately cease until the Operator files additional insurance as required herein.

- a. General requirements applicable to all policies.
 - i. The City, the City's officials, employees, agents and officers shall be endorsed as an "Additional Insured" on all policies, except under Operator's Workers Compensation Policy.
 - ii. All policies shall be written on an occurrence basis, except for Environmental Pollution Liability (Seepage and Pollution coverage) and Excess and Umbrella Liability, which may be on a claims-made basis.
 - iii. All policies shall be written by an admitted insurer or eligible surplus lines insurer authorized to do business in the State of Texas.
 - iv. Deductibles shall be listed on the Certificate of Insurance and shall be on a "per occurrence" basis unless otherwise stipulated herein.
 - v. Certificates of Insurance shall be delivered to the City of Midland, P.O. Box 1152, Midland, Texas 79702, Attn: City Attorney's Office, evidencing all the required coverages, including endorsements, prior to the issuance of an Oil and Gas Well Permit under this Section.
 - vi. All policies shall be endorsed with a waiver of subrogation providing rights of recovery in favor of the City.
 - vii. Any failure on the part of the City to request required insurance documentation shall not constitute a waiver of the insurance requirements specified herein.
 - viii. Each policy shall be endorsed to provide the City a minimum thirty (30) day notice of cancellation, non-renewal, and/or material change in policy terms or coverage. A ten (10) day notice shall be acceptable in the event of non-payment of premium.
 - ix.

During the term of any Oil and Gas Well Permit issued hereunder, the Operator shall report, in writing, within thirty (30) days of the occurrence, to the City Manager, any known loss occurrence which could give rise to a liability claim or lawsuit or which could result in a property loss.

x.

Upon request, certified copies of all insurance policies shall be furnished to the City.

xi.

Operator shall have the right to maintain a qualified, self-insurance plan and/or maintain prudent levels of self-insured retentions for insurance coverage required in this section; however, Operator shall remain financially obligated for all self-insured retention amounts and deductibles. To the extent of the liabilities assumed by the Operator, Operator's insurance shall be primary coverage as to any liabilities of the City.

b.

Standard Commercial General Liability Policy.

This coverage must include premises, operations, blowout or explosion, products, completed operations, sudden and accidental pollution, blanket contractual liability, underground resources damage, broad form property damage, independent contractors protective liability, accidental death and personal injury. This coverage shall be a minimum Combined Single Limit of \$1,000,000.00 per occurrence for Bodily Injury, Accidental Death, and Property Injury.

c.

Excess or Umbrella Liability.

\$1,000,000	Excess, if the Operator has a stand-alone Environmental Pollution Liability (EPL) policy.
-------------	---

\$10,000,000	Excess, if the Operator does not have a stand-alone EPL policy. Coverage must include an endorsement for sudden or accidental pollution. If Seepage and Pollution coverage is written on a "claims made" basis, the Operator must maintain continuous coverage and purchase Extended Coverage Period when necessary.
--------------	--

d.

Environmental Pollution Liability Coverage.

Operator shall purchase and maintain in force for the duration of any Oil and Gas Well Permit issued hereunder, insurance for environmental pollution liability applicable to bodily injury, property damage, including loss of use of damaged property or of property that has not been

physically injured or destroyed; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense or settlement of claims; all in connection with any loss arising from the insured site. Coverage shall be maintained in an amount of at least \$1,000,000 per loss, with an annual aggregate of at least \$10,000,000.

Coverage shall apply to sudden and accidental pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids or gases, refuse material or other irritants, contaminants or pollutants.

e.

Workers Compensation and Employers Liability Insurance.

i.

Workers Compensation benefits shall be Texas Statutory Limits.

ii.

Employers Liability shall be a minimum of \$1,000,000.00 per accident.

iii.

Such coverage shall include a waiver of subrogation in favor of the City of Midland and provide coverage in accordance with applicable State and Federal laws.

f.

Automobile Liability Insurance.

i.

Combined single limit of \$1,000,000.00 per occurrence for bodily injury and property damage.

ii.

Coverage must include all owned, hired and not-owned automobiles.

g.

Certificates of Insurance.

i.

The company must be licensed or authorized to do business in the State of Texas.

ii.

The insurance set forth by the insurance company must be underwritten on forms that have been approved by the Texas State Board of Insurance or ISO or an equivalent policy form acceptable to the City, with the exception of environmental pollution liability and control of well coverage.

iii.

Set forth all endorsements and insurance coverage according to requirements and instructions contained herein.

iv.

Shall specifically set forth the notice of cancellation, termination, or change in coverage provisions to the City. All policies shall be endorsed to read "THIS POLICY WILL NOT BE CANCELLED OR NON-RENEWED WITHOUT THIRTY (30) DAYS ADVANCE WRITTEN NOTICE TO THE OWNER AND THE CITY, EXCEPT WHEN THIS POLICY IS BEING CANCELLED FOR NONPAYMENT OF PREMIUM, IN WHICH CASE, TEN (10) DAYS ADVANCE WRITTEN NOTICE IS REQUIRED".

v.

Original endorsements affecting coverage required by this section shall be furnished with the certificates of insurance.

vi.

At the request of an Operator, the Council may grant a variance to insurance requirements if the Council determines that the insurance procured by the Operator is sufficient to protect the City. A variance of this type may be required because of a change in underwriting policies of admitted insurance carriers.

Indemnification.

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

Notice.

The notices provided in this permit may be served in person or by registered or certified mail. Operator shall within ten (10) days notify the City Manager in writing of any change in such agent or mailing address unless operations in the City are discontinued and abandonment is complete.

Notice addresses are as follows:

City of Midland
Attn: Office of the City Manager
P. O. Box 1152
Midland, Texas 79702

OPERATOR: _____
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NON-COMMERCIAL SALT-WATER WELL: ORDINANCE 8769 SPECIFIC CONDITIONS-EXHIBIT “B”

(L)

Specific conditions of all Oil and Gas Well Permits; On-Site Requirements.

1.

Abandoned wells. All wells shall be abandoned in accordance with the rules of the Railroad Commission and pursuant to Subsection (O) of this Section.

2.

Automated audible alarm system. After completion, the appropriate system for flowing gas and/or flowing oil wells must be maintained to provide warnings for a substantial drop in pressure, or the release of any oil or gas, or a fire. Said audible alarm system must be approved by the Fire Marshal prior to installation of production equipment at the flowing gas and/or flowing oil well site.

3.

Blowout prevention. In all cases, ram-type and annular Blowout Preventers shall be used on all wells being drilled. In cases where Re-working is being performed on a Well, ram-type or annular Blowout Preventers shall be used. Protection shall be provided to prevent blowout during Drilling operations as required by and in conformance with the requirements of the Railroad Commission and the recommendations of the American Petroleum Institute. In addition to the Blowout Preventers stated above, all drilling must be equipped with flow lines and valves commensurate with the working pressures involved as required by the Railroad Commission each Blowout Preventer shall be a double-ram design with blinds and pipe. After surface casing has been set and cemented to surface, each Blowout Preventer shall be tested and witnessed by Operator's personnel and the results of such test shall be documented in the Operator's well file. Testing expenses shall be the responsibility of the Operator. The Operator shall provide a complete report of the well blowout prevention test to the City Manager within fifteen (15) days of the test.

4.

Casing. The surface portions of the Well shall be cased with cement circulated to the surface. All surface and intermediate casing must comply with all applicable rules of the Railroad Commission and the Texas Commission on Environmental Quality.

5.

Compliance. Operator shall comply at all times with all applicable federal, state and City requirements.

6.

Discharge. No person shall place, deposit, discharge, or cause or permit to be placed, deposited or discharged, any oil, naphtha, petroleum, asphalt, tar, hydrocarbon substances or any refuse including water or brine from any oil and gas operation or the contents of any container used in connection with any oil and gas operation in, into, or upon any Right-of-way, alleys, streets, lots, storm

drain, ditch or sewer, sanitary drain without permits from the appropriate City departments, or any body of water or onto any private property in the City.

7.

Drilling notice. The operator shall provide at least a forty eight (48)-hour notice to the City Manager prior to mobilizing the Drilling Equipment. In addition to notification to the City Manager, the operator shall provide a notice to the owners of at least forty eight (48) hours or more prior to mobilizing the drilling equipment through a publication in the Midland Reporter Telegram and a posting in the City Secretary's Office.

8.

Drill stem testing. No drill stem testing shall be allowed.

9.

Dust, vibration, odors. All drilling and production operations shall be conducted in such a manner as to minimize, so far as practicable, dust, vibration, or noxious odors, and shall be in accordance with the best accepted practices incident to drilling for the production of oil, gas and other hydrocarbon substances in urban areas. All equipment used shall be so constructed and operated so that, vibrations, dust, odor or other harmful or annoying substances or effect will be minimized by the operations carried on at any Drill Site or Operation Site or from anything incident thereto, to the injury or annoyance of persons living in the vicinity; nor shall the site or structures thereon be permitted to become dilapidated, unsightly or unsafe. Proven technological improvements in industry standards of drilling and production in this area shall be adopted as they become available if capable of reducing factors of dust, vibration and odor.

10.

Electric lines. All electric lines going under City roadways must be bored and encased pursuant to city standards. All electric lines to production facilities may be overhead service unless the surrounding neighborhood is developed with underground electric service. If the surrounding neighborhood is developed with underground electric service, then all electric lines to production facilities shall be buried underground.

11.

Electric motors. Only electric prime movers or motors shall be permitted for the purpose of pumping wells. No electric power shall be generated on location. All electrical installations and equipment shall conform to the City ordinances and the appropriate national codes.

12.

Emergency response plan. Prior to the commencement of any oil or gas production activities, Operator shall submit to the City Manager an emergency response plan establishing written procedures to minimize any hazard resulting from drilling, completion or producing of oil and gas wells. Said plan shall use existing guidelines established by the Railroad Commission, Texas Commission on Environmental Quality, Department of Transportation and/or the Environmental Protection Agency and City Fire Code. A copy of the Emergency Response Plan shall be kept at the Operator's office.

13.

Equipment painted. All production equipment on the site shall be painted beige and maintained at all times, including pumping units, tanks, buildings and structures. The City shall regularly inspect all painted structures and inform Operator when repainting is necessary. Operator shall repaint within sixty (60) days written notice from City. When requiring re-painting of such facilities, the City Manager shall consider the deterioration of the quality of the material of which such facility or structure is constructed, the degree of rust, and its appearance. Upon request of the Operator, a color other than beige may be approved by the City Council.

14.

Explosives. Use of an explosive perforating gun during completion operations and during plugging operations and down-hole operations that require such explosives shall be allowed.

15.

Fire notice. In the event of a fire or discovery of a fire, smoke, or unauthorized release of flammable or hazardous materials on any property, the Operator shall immediately report such condition to the Fire Department in accordance with the City of Midland Fire Code. The reporting limits for hazardous materials release shall conform to the requirements of the Railroad Commission and not exceed any state or federal permitting limit.

16.

Fire prevention; sources of ignition. Firefighting apparatus and supplies as approved by the Fire Marshal and required by any applicable federal, state, or local law shall be provided by the Operator, at the Operator's cost, and shall be maintained on the drilling site at all times during drilling and/or reworking operations. The Operator shall be responsible for the maintenance and upkeep of such equipment.

17.

Fracing operations. No fracing or formation fracture stimulation operations may take place before 7:00 a.m. or after 7:00 p.m.

18.

Fresh water wells. The measurements required by this Subsection shall be in a direct line from the closest Oil and Gas well to the fresh water well.

a.

Upon request of an owner of a fresh water well within 860 feet of an Oil and Gas well, who has been duly notified, Operator shall provide the City Manager with a "pre-drilling" and "post-drilling" water analysis from any such existing fresh water well(s).

b.

Operator shall conduct and fund annual testing for water wells that have been tested pursuant to Subsection (L)18.a. above. This testing program shall continue for the production life of The Well plus three years for a producing well, or for a period of one (1) year for a dry hole.

19.

Compressors. No onsite compressor used to "lift gas" shall be used. No compressor of any type shall be used. In the event Operator determines the use of such compressor is necessary, a detailed plan shall be submitted by Operator to the City Council for consideration. An on-site compressor plan shall include the following information:

- a. The physical size of the compressor;
- b. The power source of the compressor;
- c. The horsepower of the compressor;
- d. The noise of the compressor; and
- e. The manufacturer of the compressor.

No compressor of any type shall be used unless a plan is approved by the City Council.

20.

Gas emission or burning restricted. Operator shall not allow, cause or permit gases to be vented into the atmosphere or to be burned by open flame except as provided by law or as permitted by the Railroad Commission. If the venting of gases into the atmosphere or the burning of gases by open flame is authorized as provided by law or as permitted by the Railroad Commission, then such vent or open flame shall not be located closer than three hundred thirty (330) feet from any building not used in operations on the drilling site and such vent or open flame shall be screened in an effort to minimize detrimental effects to adjacent owners. Operator shall provide notice to the Fire Marshall prior to any open flaring of gas. Gas may not be flared unless for a limited time when completing, or recompleting a well, and only if flaring will not constitute a fire hazard to other owners. If flaring gas, it shall not be burned at a rate greater than 3,000 mcf/d. No gas may be flared between the hours of 7:00 p.m. and 7:00 a.m., except in an emergency.

21.

Gas processing onsite. Except for a conventional gas separator or line heater, no refinery, processing, treating, dehydrating or absorption plant of any kind shall be constructed, established or maintained on the premises without prior written consent of the City Manager.

22.

Grass, weeds, trash. All Drill sites and Operation sites shall be kept clear of high grass, weeds, and combustible trash within a radius of one hundred (100) feet around any Tanks, production facilities, or producing wells.

23.

Hazardous plan. Hazardous Materials Management Plan (HMMP) and all Material Safety Data Sheets (MSDS) for all hazardous materials that will be located, or stored, on the Operations Site shall be submitted to the City Manager.

24.

Lights. Except under emergency circumstances, operator shall not Operate any lights located at the Drill Site. To the extent practicable, and taking into account safety considerations, emergency site lighting shall be directed downward and internally so as to avoid glare on public roads and adjacent dwellings and buildings within three hundred (300) feet. This paragraph does not apply during initial Drilling Operations.

25.

Monitoring for H₂S gas. If required by the Railroad Commission, equipment for the monitoring of H₂S gas shall be used during Drilling. The Operator will comply with all requirements found in Statewide Rule 36 of the Railroad Commission, as amended. Within sixty (60) days after completion, and annually thereafter, Operator shall submit to the City Manager results of testing to determine the concentration of H₂S produced from the Well. If the results of the H₂S testing proves to be one hundred (100) PPM H₂S or greater, the Operator is responsible for determining the one hundred (100) PPM H₂S radius of exposure for each Well and production facility. Wells and facilities where the concentration of H₂S is equal to or greater than one hundred (100) PPM will be considered "Sour." Safety systems described herein must be approved by the Fire Marshall.

a.

The following safety alarms and equipment are required at the well site of all wells that are capable of producing at a sustained rate of at least one hundred twenty-five (125) barrels of oil per day and/or three hundred (300) MCF of gas per day and for "sour" wells whose one hundred (100) PPM H₂S radius of exposure is greater than fifteen (15) feet:

i.

H₂S monitors located along the fencing, as set forth in Subsection M (for "sour" wells only).

ii.

Automated audible alarms to provide warnings for a substantial drop in pressure or for the presence of H₂S in concentrations greater than one hundred (100) PPM.

iii.

Automated valve to shut-in production from the well if a substantial drop in pressure or if the presence of H₂S in concentrations greater than one hundred (100) PPM is detected.

b.

The following safety alarms and equipment are required at "Sour" Tank battery facilities:

i.

H₂S monitors located along the fencing, as set forth in Subsection M.

ii.

Automated audible alarm to provide warnings for the presence of H₂S in concentrations greater one hundred (100) PPM.

iii.

An electrical device capable of shutting down power to all "Sour" wells producing into the battery in the event H₂S in concentrations great than 100 PPM is detected.

26.

Muffling exhaust. Exhaust from any internal combustion engine or compressor, stationary or mounted on wheels, used in connection with the Drilling of any well or for use on any production equipment shall not be discharged into the open air unless it is equipped with an exhaust muffler, or mufflers or an exhaust muffler box constructed of noncombustible materials sufficient to suppress noise and disruptive vibrations and prevent the escape of obnoxious gases, fumes or ignited carbon or soot.

27.

Pits. The following applies for pits used for Drilling and completion operations:

a.

No pit shall be placed in a floodplain without obtaining a floodplain development permit from the City Department of Development Services.

b.

No fresh water pit may be placed in any City recognized drainage way, FEMA floodplain or floodway. Construction of the fresh water pit must comply with all City, state and federal regulations.

c.

The use of earthen pits shall be allowed so long as the construction, use, dewatering and closure of such pits meets or exceeds the requirements of the applicable Railroad Commission rules and Texas Commission on Environmental Quality rules. In addition to compliance with applicable Railroad Commission rules, and Texas Commission on Environmental Quality rules, such earthen reserve pits shall also meet the following requirements;

(i)

the maximum size of a reserve pit shall be no greater than two hundred (200) feet by two hundred (200) feet;

(ii)

The pits shall be lined with a plastic liner having a minimum thickness of eight (8) mil reinforced polyethylene;

(iii)

Reserve pits used in Drilling operations shall be fenced on all open sides during such operations and shall be enclosed on all sides once Drilling operations have ceased;

(iv)

Reserve pits shall be closed within one hundred (180) days of the cessation of drilling operations;

(v)

Drill cuttings may be disposed of on the Drill Site using a deep burial method provided that the burial pit containing the cuttings is located entirely within one hundred thirty five (135) feet of the surface location of the Well, provided that all free water has been removed prior to burying the cuttings, and an impermeable liner is placed above the cuttings prior to covering the cuttings and liner with top soil, and provided that the burial pit is constructed in such a manner that the cuttings will be covered with a minimum of thirty six (36) inches of clean, compactable soil. A survey and description of the location of any closed pit used in connection with the Drill Site shall be recorded in the property records of the county in which the real property is located.

28.

Salt water wells. No commercial salt-water disposal wells that receive water by truck shall be located within the City of Midland. In the event the operator determines that the use of a non-commercial salt-water well is necessary, a detailed plan shall be submitted by the operator to the City Council for consideration. No salt water disposal well of any type shall be used unless a plan is approved by the City Council.

29.

Signs.

a.

A sign shall be immediately and prominently displayed at the gate on the temporary and permanent site fencing erected pursuant to Subsection (M) of this Section. Such sign shall be durable material, maintained in good condition and, unless otherwise required by the Railroad Commission, shall have a surface area of not less than two square feet not more than four square feet and shall be lettered with the following:

i.

Well name and number;

ii.

Name of operator;

iii.

The emergency 911 number; and

iv.

A 24-hour phone number that will provide an emergency phone number of Operator's Representatives as stated in Subsection F.

b.

Permanent weatherproof signs reading "DANGER NO SMOKING OR OPEN FLAME ALLOWED IN THIS AREA" shall be posted immediately upon completion of the well site fencing at the entrance of the well site and tank battery or in any other location approved or designated by the Fire Chief of the City. Sign lettering for this sign shall be two (2) inches or greater in height and shall be red on a white background or white on a red background. Each sign shall include the emergency notification numbers of the Fire Department and the Operator, well and lease designations required by the Texas Railroad Commission.

c.

Provide a National Fire Prevention Association (NFPA) 704 diamond hazard identification signs are required at the entrance to the Operation Site adjacent to the Operator's sign if chemicals are present. A label must be located on each chemical Tank indicating exact chemicals that may be contained in such Tank. Text shall be minimum two inches or greater in height, contrasting with the background color.

30.

Storage of equipment. Storage of equipment and materials shall be minimized and limited to the immediate operational needs of the well. Lumber, pipes, empty drums, trucks, trailers, automobiles, junk tubing, casing and rods shall not be left on the operation site except when drilling or reworking operations are being conducted on the site.

No vehicle or item of machinery shall be parked or stored on any Street, Right-of-Way or in any driveway, alley or upon any Operation Site which constitutes a fire hazard or an obstruction to or interference with fighting or controlling fires except that equipment which is necessary for Drilling or production operations on the site. The Fire Department shall be the entity that determines whether any equipment on the site shall constitute a fire hazard.

31.

Tank Battery Facilities. At the tank battery for either oil and/or gas Wells a sensor for fire detection should be appropriately placed near heater treaters, separators, and oil storage tanks that would allow an automated valve placed at the header to be closed in the event of a detected fire. All storage tanks shall be equipped with a secondary containment system. The secondary containment system shall be a minimum of three (3) feet in height and one and one-half (1½) times the contents of the total tank volume. Drip pots shall be provided at the pump out connection to contain the liquids from the storage tanks. No storage tank shall be over sixteen 16 feet in height. All storage tanks shall be built on an adequate foundation with a twelve 12-mil liner being placed

beneath each tank, extending a minimum of three (3) feet beyond the edge of each tank.

Operator must use portable steel storage tanks or fiberglass tanks for storing all fluids from the well. Tanks must meet the American Petroleum Institute standards. All tanks must have a vent line, lightning arrester and pressure relief valve. All tanks must be enclosed by a fence as required by Section (M) herein. No tank shall exceed sixteen (16) feet in height. No tank battery shall be constructed within five hundred (500) feet of any Occupied Residence, Occupied Commercial Structure or Occupied Public Building, unless a variance is granted by the City Council.

Drilling mud, cuttings, liquid hydrocarbons and all other field refuse derived or resulting from or connected with the drilling, re-working or deepening of any well shall be discharged into a steel pit or an approved earthen pit. All disposals must be in accordance with the rules of the Railroad Commission and with a plan submitted to and approved by the City Manager. Water stored in on-site tanks shall be removed as necessary.

All refuse shall be disposed of in such a manner as to comply with the applicable air and water pollution control regulations of the state, the conditions of this permit, and any applicable ordinance of the City.

Temporary flowback tanks shall be removed within ninety (90) days after completion date of the well at the pad site unless permission is obtained from the City Manager to extend the time period for no more than thirty (30) days. Completion date is that date which is stated as the "completion or recompletion date" shown on the Form W-2 or G-I filed with the Railroad Commission.

All tanks shall be set back pursuant to the standards of the Railroad Commission and the National Fire Protection Association, but in all cases, shall be at one hundred (135) feet from any street or alley right-of-way, three hundred thirty (330) feet from any public athletic field, and five hundred (500) feet from an Occupied Residence, Occupied Commercial Structure or Occupied Public Building, church, public or private school, hospital, nursing home, college or university or daycare center unless a variance is granted by the Midland City Council. Operator shall institute operational practices involving the daily monitoring of tank integrity and fluid levels within each tank. The use of a remote monitoring system is acceptable.

No meters, storage tanks, separation facilities, or other aboveground facilities, other than the well head and flow lines, shall be placed in a floodway identified by FEMA on the most current FIRM or the 100-year floodplain without a floodplain development permit obtained from the Department of Development services.

All fluids and tank bottoms will be disposed of in accordance with Railroad Commission regulations.

32.

Valves. Each flowing high volume well must have an automated shut-off valve to shut-in the well's production at the Operation Site for either a fire or

abnormal change in pressure. The fire department shall have access to the Operation Site and the shut-off valve in an emergency.

33.

Work hours for site development. No construction activities involving the excavation of, demolition of, alteration to, or repair work on any access road or pad site shall occur before 7:00 a.m. or after 7:00 p.m.

34.

Wellhead status after fracing. The wellhead between the time of Drilling/completion and tank battery construction, shall be:

a.

Surrounded with a six (6) foot tall temporary chain link fence having a gate and lock until permanent fencing is installed;

b.

The gate shall be locked at all times, except when the Operator is involved in active operations;

c.

The cellar shall be filled or closed; and

d.

The Bradenhead shall be piped to the surface and open to the atmosphere or have an observable and adequate pressure gauge with operable test valve.

35.

Inspections. In accordance within applicable law, the City Manager, or his designee, at his sole cost, risk and expense shall have a right of entry to the Drill Site/Operation Site and may, at his discretion, visit the Drill Site/Operation Site to make sure operator is in compliance with the requirements of this Section.

36.

Violation. In the event a violation of this ordinance is determined by the City's official (or officials), the City may act in any or all of the following ways:

a.

The City, through its designated official (or officials), may issue a notice of violation to the Operator, its agent, agents, employees or independent contractors (whether on site or not), or to any Person participating in the Drilling of the Well. Such notice may include a citation to appear before the Midland Municipal Court.

b.

If the City Manager, or his designee, finds the Operator to be in violation of any requirement of the applicable Oil and Gas well permit, then the City reserves the right after giving ten (10) business days written notice to the Operator regarding such violation, to draw upon the letter of credit, certificate of deposit or surety bond as outlined in Subsection (K) of this Section, in order to remedy such violation. In the event that a violation is not capable of being remedied within such ten (10) business day period, then Operator must have commenced efforts

to remedy such violation within said ten (10) business day period and thereafter continue with such efforts to remedy said violation with due diligence until completed, and as long as the Operator continues with efforts to remedy a violation with due diligence, the City shall not draw against the letter of credit, certificate of deposit or surety bond. In the event the City makes a claim on the letter of credit, certificate of deposit or surety bond pursuant to the terms hereof, reinstatement of the full amount of the letter of credit, certificate of deposit or surety bond shall be a condition to the cure of the violation leading to such claim. Alternatively, if the City Manager finds the Operator to be in violation of any requirement of the applicable Oil and Gas Well Permit, the City Manager shall give written notice to the Operator that unless all violations are corrected within ten (10) business days of the Operator's receipt of notice of the violation, the City Manager shall recommend to the City Council that the Oil and Gas Well Permit be cancelled by the City Council. In the event that a violation is not capable of being remedied within such ten(10)business-day period, then Operator must have commenced efforts to remedy said violation within said ten (10) business-day period and thereafter continue with such efforts to remedy said violation with due diligence until completed, and as long as the Operator continues with efforts to remedy a violation with due diligence, as determined by the City, the City shall not draw against the letter of credit, certificate of deposit or surety bond. If the City Council determines to consider the cancelling of the permit, it shall give the Operator written notice of the date and time of the hearing and shall give the Operator the opportunity to be heard and present facts the Operator deems relevant. The cancelling of a permit requires the majority vote of the City Council.

c.

Prosecution of violations of this Section shall be given priority and expedited upon the Municipal Court docket. Provided, however, that this subsection does not grant or guarantee Persons cited a right to expedited consideration of their citation before the Midland Municipal Court.

d.

In the event that there exists an imminent threat to public health and safety, a certified peace officer, in conjunction with the Railroad Commission, may order the temporary cessation of operations. An Operator may appeal the order to an appropriate Court in Midland County, Texas and request an expedited hearing. With respect to the contestation of an order issued pursuant to this subsection, an Operator retains all of its legal remedies.

M.

Fencing and landscaping.

1.

Fences.

A fencing plan shall be submitted, said plan containing a description of the building materials, dimensions, and locations of the proposed fence/walls and gates. The plan shall take into consideration the surrounding area and neighborhood.

At a minimum, tank battery facilities, wellheads and any production equipment associated with Oil and Gas wells shall be enclosed by a chain link fence at least seven (7) feet in height with beige-colored slats woven through the chain link, topped with three (3) strands of barbed wire angled outward or concertina wire, and shall be equipped with a locking gate. Gates shall be provided with a combination catch and locking attachment for a padlock, and shall be kept locked except when being used for access to the operation site. Operator must provide the City Fire Chief with a "Knox Padlock" or "Knox Box with a key" to access the Operation Site to be used only in case of an emergency.

The City Council may require additional or a different type of fencing to the extent necessary to conform with architectural standards and building materials existing on lots and/or lands immediately adjacent to the well and within five (500) feet of the Well at the time the Oil and Gas Well Permit is issued.

Additionally, if at any time within twenty-four (24) months following the issuance of an Oil and Gas Well Permit, a structure intended for permanent occupancy is constructed within five hundred (500) feet of the Well, the City Council may require the operator to undertake a one-time revision of the fencing plan to account for architectural standards and building materials associated with such structure to the extent that the revised fencing plan is consistent with, but not better than, the architectural standards and building materials associated with such structure.

Fences shall not be required on drill sites during drilling, completion or re-working operations as long as 24-hour on-site supervision is provided.

2.

Landscaping.

a.

The City will require tree preservation and/or planting measures.

i.

A minimum number of eight trees shall be required to be planted within 25 feet from the outside perimeter of the wall or walls required herein.

ii.

At least 75 percent of the trees shall be evergreen.

iii.

The minimum size of each tree planted will be at least four inches in diameter measured one foot above ground level.

iv.

All trees that die within three years of the date of project completion will be replaced by another replacement tree. The replacement tree carries the same three-year replacement requirement. A replacement of any tree that dies within three years of planting will be replaced by the Operator or agent and a new three-year guarantee will begin at the time of replacement.

b.

The following list of trees is considered desirable. Planting of trees for this list is acceptable. Other trees will be considered by the City Manager. The approval of additional species will be judged on adaptability, long-term health and growing characteristic of the tree type.

Scientific Name	Common Name
Pinus elarica	Afghan Pine, Mondell Pine
Pinus Sylvestris	Russian Pine
Ulmas Crassifolia	Cedar Elm

c.

Operator may submit a plan in lieu of subparagraphs (M)2.a and b above. The Operator must describe the type, number, and location of trees to be planted under this Section. The City Council may consider any proposal prepared in accordance with this subparagraph. Any alternative plan shall not be effective unless approved by the City Council.

d.

Operator shall submit an irrigation plan detailing the measures to be taken to adequately irrigate all landscaping, including indicating the proposed water source for irrigation, and the proposed efforts to replace dead or dying screening vegetation. Upon request by the Operator, the City may provide access to fresh water to be used for such irrigation if water is readily available and in conformance with City policies and procedures.

e.

In such instances, where City water is not available, a variance may be requested. Additionally, when City water becomes available, the provisions of this subsection shall be required.

(N)

Cleanup and Maintenance.

1.

Cleanup after well servicing. After the well has been completed or plugged and abandoned, the Operator shall clean the drill site or operation site, complete restoration activities and repair all damage to public property caused by such operations within one hundred eighty (180) days.

2.

Clean-up after spills, leaks and malfunctions. After any Railroad Commission reportable spill, leak or malfunction, the Operator shall remove or cause to be removed to the satisfaction of the City Fire Chief and the City Manager all refuse materials from any public or private property affected by such spill, leak or malfunction. Clean-up operations must begin immediately. The Operator shall comply with all requirements found in Statewide Rule 91 of the Railroad Commission, as amended. If Statewide Rule 91 requires reporting of the spill, the operator shall comply with the notification and reporting requirements found in Statewide Rule 20 of the Railroad Commission, as amended. Upon request the Operator shall furnish the City Manager with all information filed with the Railroad Commission. If the Operator fails to begin site clean-up immediately the City Manager may then employ any cleanup expert or experts or other contractors or suppliers of special services, or may incur any other expenses for labor and material which the City Manager deems necessary to clean-up such spill, leak or malfunction. The City shall then be able to collect from operator the costs involved in the site clean-up. The City may collect from the posted letter of credit, certificate of deposit or surety bond or any other legal means.

3.

Free from debris. The public street entrance and property on which a well site is located shall at all times be kept free of mud, debris, pools of water or other liquids, contaminated soil, weeds, brush, trash or other refuse material within a radius of one hundred (100) feet around any production facilities, tanks and producing wells.

4.

Painting. All production equipment shall be painted beige and maintained at all times, including pumping units, tanks, secondary containment and buildings or structures. When requiring painting of such facilities, the City Manager shall consider the deterioration of the quality of the material of which such facility or structure is constructed, the degree of rust, and its appearance.

5.

Blowouts. In the event of the loss of control of any well, Operator shall immediately take all reasonable steps to regain control regardless of any other provision of this permit and shall provide the City Manager with the same information as required to be filed with the Railroad Commission under Statewide Rule 20 as soon as practicable.

6.

Cleanup after Drilling/Completion. After the well has been drilled and completed, the Operator shall clean the Drill site, complete restoration activities and repair all damage to public property caused by such operations within ninety (90) days as specified previously in Subsection (L)27.

O.

Drilled and Abandoned Wells.

1.

Surface Requirements for Plugged and Abandoned Well. Whenever abandonment occurs pursuant to the requirements of the Railroad Commission, the Operator so abandoning shall be responsible for the restoration of the Operation site to its original condition as nearly as practicable, in conformity with the requirements of this permit underground pipelines associated with operations shall be purged of all fluids and may be abandoned in place.

2.

Surface Requirements for Drilled and Abandoned Well. Abandonment shall be approved by the City Manager after restoration of the Drill Site has been accomplished in conformity with the following requirements at the discretion of the City Manager:

a.

The Derrick and all appurtenant equipment thereto shall be removed from Drill site;

b.

All tanks, towers, and other surface installations shall be removed from the Drill site;

c.

All concrete foundations, above ground piping, wood, guy anchors and other foreign materials regardless of depth, except surface casing, shall be removed from the site, unless otherwise directed by the Railroad Commission;

d.

All holes and depressions shall be filled with clean, compactable soil;

e.

All, refuse and trash shall be removed from the Drill Site; and

f.

During abandonment, Operator shall comply with all applicable subsections in this section; and

g.

The drill site shall be restored, as close as practicable, to its original condition.

h.

Unless modified by the approved plan, deep burying of pits within the drill site perimeter is permitted. A survey and description of the location of any closed pit used in connection with the drill site shall be recorded in the property records of the county in which the real property is located. In any event the Operator shall comply with Subsection (L), Paragraph 27.

3.

Abandoned well requirement. The Operator shall furnish the following to the City Manager:

a.

A copy of the W-3A "Notice of Intention to Plug & Abandon" and W-3 "Plugging Record" forms on the same date these forms are submitted to the Railroad Commission.

b.

Prior 48-hour notice of intention to abandon under the provisions of this section and stating the date such work will be commenced. Abandonment may then be commenced on or subsequent to the date so stated.

c.

All wells shall be abandoned in accordance with the rules of the Railroad Commission; however, all well casings and cellars shall be cut and removed to a depth of at least three feet below the surface. A permanent abandonment marker, with the well identity and location permanently inscribed, shall be welded to the casing.

4.

Abandonment requirements prior to new construction. All abandoned or deserted wells or drill sites shall meet the most current abandonment requirements of the Railroad Commission prior to the issuance of any building permit for development of the property. No structure shall be built over an abandoned well.

P.

Certificate of Request for Inspection and Extension of Permit.

On or before ninety (90) days prior to each annual anniversary date of Operator's Oil and Gas Well Permit, Operator shall submit to the City Manager a Certificate of Request for Inspection of Permit. The Certificate of Request for Inspection of Permit must state the location and name of the well and the date the permit was granted by the City Council. The Certificate of Request for Inspection of Permit must be signed by the Operator before a notary public stating that the well is in compliance with the permit and all applicable Ordinances. The Certificate of Request for Inspection of Permit must be accompanied by an application and inspection fee of \$300.00. The City Manager shall grant a one-year inspection approval on the oil/gas drilling permit if the Operator is in compliance with the permit and all applicable ordinances as they apply to the

inspected well. Prior to authorizing the inspection approval, the City Manager, or his designee, shall inspect the oil and gas well site that is subject to the oil/gas drilling permit. The City Manager shall issue his decision in writing, within thirty (30) days of receiving the Certificate for Request for Inspection of Permit, either granting or denying the inspection of the oil/gas drilling permit.

The Operator may appeal the City Manager's denial of an oil/gas drilling permit inspection by submitting, in writing, an appeal to the City Council within thirty (30) days of the City Manager's written denial of the oil and gas well permit inspection. If an appeal is received by the City Council, a hearing shall be set before a meeting of the City Council to consider the denial of the oil/gas drilling permit inspection. The City Council shall hear and consider the recommendation of the City Manager, or his designee, before deciding whether or not to uphold the City Manager's decision. The Operator shall be allowed to speak and present any relevant evidence for consideration by the City Council prior to a vote of the council. A majority vote of the City Council shall be required to uphold the denial of the Oil and Gas Well Permit inspection by the City Manager. An inspection that is approved shall be valid for one (1) year from the inspection date.

(Q)

Measurement.

The measurement of all distances set forth herein shall be calculated from the proposed surface location of the well and tank batteries in a straight line, without regard to intervening structures or objects, to the closest exterior point of the object.

(R)

Effect of denial of oil and gas well permit.

If an application for an Oil and Gas Well Permit is denied by the City Council, nothing herein contained shall prevent a new permit application from being submitted to the City Council for the same proposed Oil and Gas Well or a different location for a well. A new application may also be filed on any of the mineral estate owned or leased by the applicant. Once all of the Operator's administrative and legislative remedies have been exhausted herein, the Operator may appeal or challenge the denial of an application in an appropriate Court in Midland County Texas under applicable state or federal law.

(S)

Amendment to Oil and Gas Well Permit.

1.

Amendment required. Within one hundred eighty (180) days after an Operator has been granted an Oil and Gas Well Permit, an Operator may submit an application to the City to amend an existing Oil and Gas Well Permit to commence Drilling from a new Drill site that is not shown on (or incorporated by reference as part of) the existing Oil and Gas Well Permit.

2.

Application Requirement for Amendment to Permit. An application for an amended Oil and Gas Well Permit shall meet all the requirements of this

Section, shall be in writing, shall be on forms provided by the City, shall be signed by the Operator, and shall include the following:

- a. An amendment fee of \$1,000.00.
- b. A description of the proposed amendments.
- c. Any changes to the information previously submitted with the application for the existing oil/gas drilling permit (if such information has not previously been provided to the City).
- d. Such additional information as is reasonably required by the City to demonstrate compliance with the original oil/gas drilling permit.
- e. Such additional information as is reasonably required by the City to prevent imminent destruction of property or injury to persons.

3.

Review of Application for Amendment to Permit. All applications for an amended oil/gas drilling permit shall be considered in accordance with the factors listed in Subsection (I) herein. The City Council may elect to consider the application for an amended oil/gas drilling permit without the requirement of a public hearing.

4.

Standard of review.

- a. **No Material Change from Existing Permit.** If the activities proposed by the amendment are not materially different from the activities covered by the existing Oil and Gas Well Permit, and are otherwise in conformance with the requirements of this section, other applicable City Ordinances, the Oil/Gas Drilling Permit then the City Council shall approve the Amended Application.
- b. **Material Change from Existing Permit.** If the activities proposed by the amendment are materially different from the activities covered by the existing Oil/Gas Well Permit, are not in conformance with the requirements of this Section, other applicable City Ordinances, the Oil/Gas Well Permit, or if, in the judgment of the City Council, the activities proposed by the amendment might create a risk of imminent destruction of property or injury to persons or property or that were not otherwise taken into consideration by the existing Oil/Gas Well Permit, the City Council may require the amendment to be processed as a new Oil and Gas Well Permit Application.

T.

Independent Contractor. Operator understands and agrees that Operator, its employees, servants, agents, and representatives, shall at no time represent themselves to be employees, servants, agents, and/or representatives of the City. The City shall not have any control over the means or methods by which Operator shall perform its obligations hereunder. Operator shall furnish all equipment and materials necessary to perform hereunder and shall at all times be acting as an independent contractor. No action by either party should be construed to create a partnership, joint venture, or other dual enterprise between the parties.

U.

Assignability; Transfer Permit.

1.

The Operator shall not, either directly or indirectly, assign, sell, or transfer any part of the Oil and Gas Well Permit, or any interest, right, duty, obligation or privilege under the permit, except in accordance with this Subsection.

2.

An Oil and Gas Well Permit may be transferred upon written request by the Operator with the consent of the City Council:

a.

If the transferee agrees in writing to be bound by the terms and conditions of the current Oil and Gas Well Permit and road repair agreement;

b.

If all information previously provided to the City as part of the current Oil and Gas Well Permit is updated to reflect any changes; and

c.

If the transferee provides the insurance and security required by this section.

3.

In determining whether to approve the transfer permit, the City Council may consider the financial standing of the transferee and its record of compliance with respect to existing permits. Should the transfer permit be denied, the transferee may file an application for a new Oil and Gas Well Permit.

4.

The insurance and security provided by the transferor shall be released if the transfer permit is approved; provided, however, that the transfer shall not relieve the transferor from any liability to the City arising out of any activities conducted prior to the transfer, except to the extent that the transferee expressly agrees in writing to assume such liabilities as part of the transfer.

5.

Applications for the transfer of Oil and Gas Well Permits shall be filed with the City's planning department. A non-refundable administration fee shall be charged for each application in the amount of five hundred (\$500.00).

V.

Time Limit Requirements. The failure of the City Council to review and approve an Oil and Gas Well Permit within a specified time limit shall not cause the application for the Oil and Gas Well Permit to be deemed approved. If the City Council denies a request for a permit, the applicant may file a request with the City Council to re-consider the application. The applicant may present any new evidence to the council and may present any extenuating circumstances or other matters deemed relevant by the applicant. The decision of the City Council regarding the issuance of a permit is not final until the request for re-consideration is voted upon by the City Council.

W.

Indemnification. The oil and gas well permit may contain the following language:

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

X.

Incident Reports or Written Complaints. The Operator shall provide a copy of any "incident reports" or written complaints submitted to the Railroad Commission or any other state or federal agency within thirty (30) days after Operator has notice of the existence of such reports or complaints.

Y.

Expiration of permit. Drilling must commence on the Well covered by the Oil and Gas Well permit twelve (12) months of approval by the City Council, after which the Oil and Gas Well Permit shall automatically expire if no drilling has commenced. A permit extension for a maximum time period of six (6) months may be granted by the City Manager without reapplication after the City Manager receives a written request from the Operator.

Z.

Takings determination.

1.

Any aggrieved applicant that believes that an action taken pursuant to this Section by the City Council or any officer or employee of the City constitutes a taking under the Texas or United States Constitution or under other state law, may file an application with the City Council requesting a takings determination.

2.

The applicant seeking a takings determination from the Council shall file its appeal with the office of the City Secretary. The City Secretary shall then

forward the appeal to the City Council for consideration. An appeal fee in the amount of two hundred fifty (\$250.00) dollars shall accompany each filing.

3.

The appeal shall state the reasons that the applicant believes would support a finding that the City's actions constitute a taking under the Texas or United States Constitution or pursuant to other State law and shall include evidence substantiating the purported diminution in value of the applicant's real property.

4.

If the Council finds by a majority vote in favor of the applicant it may: (1) grant the relief requested, or (2) direct the City Manager to rescind action taken by City Staff that formed the basis of the takings determination appeal. If the Council denies the appeal, or after a favorable determination the City Council fails to take action as specified above, the applicant may appeal the decision or inaction of the City Council to the county or district court of the county in which the affected real property is located within thirty (30) days of the date that the Council issues its final decision or in the event the Council does not act on the application, then the operator may appeal to the county or district court after the expiration of one hundred twenty (120) days from the date the application is heard by the City Council.

Notice addresses are as follows:

City of Midland
Attn: Office of the City Manager
P. O. Box 1152
Midland, Texas 79702

OPERATOR: _____
Jimmy Baggett, Operations Manager

Callon Petroleum Operating Company
4305 N. Garfield Operating Company
Midland, Texas 79705
(432) 686-1828

City of Midland
City Secretary's Office
Interoffice Memorandum

Date: June 21, 2012
To: The Honorable Mayor Perry and Council
From: Amy M. Turner, City Secretary
Subject: Membership - Boards and Commissions

Attached is an updated membership listing for the City's Boards and Commissions effective June 26, 2012. Remaining expirations and vacancies are listed below:

CONSTRUCTION BOARD OF ADJUSTMENTS AND APPEALS –Two terms expired on September 30, 2011 and two vacancies for Alternate terms expired on September 30, 2007.

MIDLAND FOOTBALL-SOCCER AND BASEBALL COMPLEX DEVELOPMENT CORPORATION – Two terms expired in November 2011.

MIDLAND HIGHER EDUCATION FACILITIES CORPORATION – Three vacancies expired on January 1, 2007, one term expired on January 1, 2009, two terms expired on January 1, 2010 and one term expired on January 1, 2012.

MIDLAND HOUSING FINANCE CORPORATION –One vacancy expired on September 30, 2010 and two terms expired on September 30, 2011.

MIDLAND MUNICIPAL MANAGEMENT DISTRICT BOARD – One vacancy.

PARKS AND RECREATION COMMISSION –One term expired on September 30, 2011.

PERMIAN BASIN AIRPORT BOARD – Two terms expired on September 30, 2010 (Carlsbad and Hobbs New Mexico) and three terms expired on September 30, 2011.

PERMIAN BASIN COMMUNITY CENTER FOR MENTAL HEALTH AND MENTAL RETARDATION – One term expiring in June 2012.

PLANING AND ZONING COMMISSION – One term expired on September 30, 2011.

TAX INCREMENT REINVESTMENT ZONE BOARD – One term expired on March 20, 2009 (one College representative), seven terms expired on March 20, 2010, two terms expired March 20, 2011 and two terms expired on March 20, 2012. (Four City representatives, two Hospital representatives, two County representatives and one College representative.)

ZONING BOARD OF ADJUSTMENT AND AIRPORT ZONING BOARD OF ADJUSTMENT- Two terms expired on September 30, 2011, one vacancy for Alternate term expired on September 30, 2006 and one vacancy for Alternate term expired September 30, 2009.

BOARDS AND COMMISSIONS OF THE CITY OF MIDLAND

June 26, 2012

AIRPORT PLANNING AND DEVELOPMENT BOARD

(Advisory)

(Membership-10; Terms - 3 Years expiring 3-3-4.)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Ronald Schwisow	09/06	Sept 30 2012	Sept 30 2012
Herbert Blankinship	09/06	Sept 30 2012	Sept 30 2012
Jerry Walton	11/09	Sept 30 2012	Sept 30 2015
Mike Owen	10/07	Sept 30 2013	Sept 30 2013
Gregory F. Baiano	09/10	Sept 30 2013	Sept 30 2016
John T. Echols	09/10	Sept 30 2013	Sept 30 2016
Dallas L. Smith	09/10	Sept 30 2013	Sept 30 2016
Earl Erdmann, Chairman	09/08	Sept 30 2014	Sept 30 2014
Brooks Smith	11/11	Sept 30 2014	Sept 30 2017
Don "Woody" Woodward	11/11	Sept 30 2014	Sept 30 2017

Ex-Officio members are Harry Spannaus, the City Manager and the City Attorney. The Secretary is the Director of Aviation.

ANIMAL SERVICES ADVISORY COMMISSION

(Advisory)

(Membership - 6; Terms - 4 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Dr. Tom Green (Veterinarian)	10/07*	Sept 30 2013	Sept 30 2017
Kelly Spencer	09/09	Sept 30 2013	Sept 30 2017
Laura Hollifield	09/08*	Sept 30 2013	Sept 30 2017
Justin Petty	04/07*	Sept 30 2013	Sept 30 2017
Tony Carrillo	09/09	Sept 30 2013	Sept 30 2017
Paul O'Neill	09/09	Sept 30 2013	Sept 30 2017

BUILDING CODES REVIEW COMMITTEE

(Membership – 9; Terms – 2 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
James Rikken	12/09	Dec 31 2013	Dec 31 2013
Chris Repman	12/09	Dec 31 2013	Dec 31 2013
John Cooper	12/09	Dec 31 2013	Dec 31 2013
Bill Routh	12/09	Dec 31 2013	Dec 31 2013
Tom Woodruff	12/09	Dec 31 2013	Dec 31 2013
Ron Ainsworth	12/09	Dec 31 2013	Dec 31 2013
Walter Pate	12/09	Dec 31 2013	Dec 31 2013
Robert Harrington	12/09	Dec 31 2013	Dec 31 2013
Jerry Morales	12/09	Dec 31 2013	Dec 31 2013

* Indicates appointment to an unexpired term.

CITY DEVELOPMENT ADVISORY COMMITTEE

(Advisory)

(Membership - 5; Terms - 2 Years expiring 2 even & 3 odd)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Vicky Hailey	09/10	Sept 30 2012	Sept 30 2014
Reggie Lawrence	09/10	Sept 30 2012	Sept 30 2014
Lena Margita	10/09	Sept 30 2013	Sept 30 2013
Alonda Massey	11/11	Sept 30 2013	Sept 30 2015
Tim Bryson	11/11	Sept 30 2013	Sept 30 2015

CONSTRUCTION BOARD OF ADJUSTMENTS AND APPEALS

(Decision Making)

(Membership - 7; Terms - 4 Years expiring 2-2-2-1)

To sunset December 31, 2011

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Joe Molina, Jr.	09/03	Sept 30 2011	Sept 30 2011
James W. Rigger (Architect)	09/99	Sept 30 2011	Sept 30 2011
Don Woodward (At Large)	11/11*	Sept 30 2012	Sept 30 2020
Richard D. Dunham	10/05	Sept 30 2013	Sept 30 2013
Greg Turner	03/11*	Sept 30 2013	Sept 30 2021
Chris Repman	10/07*	Sept 30 2014	Sept 30 2018
Jay K. Bradford	09/10	Sept 30 2014	Sept 30 2018

ALTERNATES:

Vacancy	Sept 30 2007
Vacancy	Sept 30 2007

HOTEL/MOTEL TAX ADVISORY BOARD

(Advisory)

(Membership - 7; Terms - 2 Years Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Tyler Wolfe	04/11*	Sept 30 2012	Sept 30 2012
Jon S. Blair	02/09*	Sept 30 2012	Sept 30 2014
Karmen Hendrix Bryant	02/12*	Sept 30 2013	Sept 30 2017
David Baur	09/10	Sept 30 2013	Sept 30 2014
Lisa Grissom	9/09	Sept 30 2013	Sept 30 2013
Steve Jones	02/09*	Sept 30 2013	Sept 30 2013
Alex Singh-Hotel/Motel Assn. Rep.	09/09	Dec 31 2013	Assn. Appt.
Vicky Hailey (Liaison Officer)			

* Indicates appointment to an unexpired term.

HOUSING AUTHORITY COMMISSION

(Membership - 5; Terms - 2 Years expiring 2 even & 3 odd.)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Rosie Gransberry	06/08*	Oct 2012	Oct 2012
Norma Duran	11/08*	Oct 2012	Oct 2014
Gregory Maes	11/11	Oct 2013	Oct 2015
Carla Repman, Vice Chairman	09/09	Oct 2013	Oct 2013
James A. Blischke	01/10	Oct 2013	Oct 2013

ALTERNATES:

Dennis Bade	11/11	Oct 2013	Oct 2015
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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	01/02
Joel Roberts	11/00
Neil McDonald	11/00

MANAGED COMPETITION COMMITTEE

(Ad Hoc)

	<u>Appt. Date</u>
Jon Morgan	01/02
Wes Perry	01/02
Roy Nelson	01/02
Hugh "Andy" Shaffer	12/03
Scott Dufford	01/02
Ted Tipton	04/04
Kevin Sparks	11/07
Scott Lovett	04/10
P. Lourcey Sams	04/10

Ex-Officio members are the Mayor and the City Manager.

- Indicates appointment to an unexpired term.

MIDLAND CENTER ADVISORY BOARD

(Advisory & Decision Making)

(Membership - 9; Terms - 3 Years expiring 3-2-2.)

		<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Brent Blackburn	(City)	09/09*	Sept 30 2013	Sept 30 2016
Charles Spence	(CC)	11/07	Sept 30 2013	N/A
Lorri Lyon West	(City)	09/10	Sept 30 2013	Sept 30 2016
Patricia S. Blackwell	(City)	10/07*	Sept 30 2014	Sept 30 2014
Paula Mitchell	(City)	09/08	Sept 30 2014	Sept 30 2014
Greg Turner	(CC)	12/11	Sept 30 2014	N/A
Tracy Bacon	(CC)	12/11	Sept 30 2014	N/A
Jerry Morales (Liaison Officer)				

Ex-Officio members are the City Manager and Executive Director of the Chamber of Commerce.

MIDLAND CENTRAL APPRAISAL DISTRICT BOARD OF DIRECTORS

Five Directors, Elected by Local Taxing Entities.

City Nominates/Cast Vote for one Director

(Terms - 2 Years)

	<u>Appt Date</u>	<u>Term Expires</u>
Chad Clark	3/12*	Dec 31 2013

MIDLAND DEVELOPMENT CORPORATION

(Membership - 5; Terms -3 Years - Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Michael Trost	02/11*	Jan 14 2013	Jan 14 2019
Cary J. Love	12/09	Jan 14 2013	Jan 14 2016
Gary Douglas	11/11*	Jan 14 2013	Jan 14 2019
Laura Roman	01/08	Jan 14 2014	Jan 14 2014
Robert Rendall, Chairman	01/09*	Jan 14 2014	Jan 14 2017

- Indicates appointment to an unexpired term.

MIDLAND FRESH WATER SUPPLY DISTRICT #1

(Ad Hoc)

(3 Non Voting Members)

	<u>Appt Date</u>
Wes Perry	05/12
Gary Harris	05/12
Wayne Merritt	05/12

**MIDLAND FOOTBALL-SOCCER AND BASEBALL COMPLEX
DEVELOPMENT CORPORATION**

(Decision Making)

Membership - 7; Terms - 2 Years)

	<u>Appt Date</u>	<u>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 2012	Jan 1 2012

- Indicates appointment to an unexpired term.

MIDLAND HOUSING FINANCE CORPORATION

(Decision Making)

(Membership - 5; Terms - 2 Years - Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Vacancy - (Damon L. Blakeley)	07/07*	Sept 30 2010	
Adrienne Valencia	10/07	Sept 30 2011	Sept 30 2011
Melissa Wicker	10/07	Sept 30 2011	Sept 30 2011
Jerry Morales (Liaison Officer)	10/08	Sept 30 2012	Sept 30 2012
Nathan Miller	11/11*	Sept 30 2012	Sept 30 2016

MIDLAND MUNICIPAL MANAGEMENT DISTRICT BOARD

(Ad Hoc)

Appt. Date

Vacancy	
Richard Hatchett	11/08
W. L. "Scooter" Brown	09/04
Ken Burgess	09/04
Jim Hightower	11/08
Ted H. Jones	09/04
Mitch Malouf	11/08
Christi Newton	09/04
Dan Rush	09/04

MIDLAND-ODESSA URBAN TRANSIT DISTRICT BOARD

(Decision Making)

(Membership - 6; Terms - 2 Years Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Willie Barber	09/08	Sept 30 2012	Sept 30 2012
Raymond McCarthy	09/08	Sept 30 2012	Sept 30 2012
Michael Trost	09/08	Sept 30 2012	Sept 30 2012
John H. James	09/09	Sept 30 2013	Sept 30 2013
Karen York	06/09*	Sept 30 2013	Sept 30 2013
Guy McKenize	03/11*	Sept 30 2013	Sept 30 2015

- Indicates appointment to an unexpired term.

OIL AND GAS ADVISORY COMMITTEE

(Advisory)

(Membership – 5; Terms – 3 Years expiring 2-2-1)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Richard D. Dunham (Realtor/Petro Eng.)	01/10	Sept 30 2013	Sept 30 2016
D. Patrick Darden (Petroleum Eng.)	02/10	Sept 30 2012	Sept 30 2015
Don Eubank (Drilling Eng.)	04/10	Sept 30 2012	Sept 30 2015
Paul Brown	11/11	Sept 30 2014	Sept 30 2017
David Rosen	11/11	Sept 30 2014	Sept 30 2017

PARKS AND RECREATION COMMISSION

(Advisory)

(Membership - 9; Terms - 3 Years expiring 3-3-3.)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Berry Simpson	09/10*	Sept 30 2011	Sept 30 2017
Amanda McCann	11/11*	Sept 30 2012	Sept 30 2018
David Ham	09/06	Sept 30 2012	Sept 30 2012
Charles A. Spence	01/10*	Sept 30 2013	Sept 30 2016
Susan Nichols	02/06*	Sept 30 2013	Sept 30 2013
Eric L. West	10/07	Sept 30 2013	Sept 30 2013
Kenny Harper	03/12*	Sept 30 2013	Sept 30 2019
P. Lourcey Sams	09/08	Sept 30 2014	Sept 30 2014
Tina Corbett	09/08	Sept 30 2014	Sept 30 2014

PERMIAN BASIN AIRPORT BOARD

(Advisory)

(Membership - 30; Terms - 1 year.)

	<u>Appt. Date</u>	<u>Term Expires</u>
10 Members of the Airport Planning and Development Board		
Bob Forrest (Carlsbad, NM)	10/04	Sept 30 2010
Larry Shed (Hobbs, NM)	10/01	Sept 30 2010
Larry Gill (Abilene)	10/10	Sept 30 2011
Isabelle Blanchard (Pecos)	10/10	Sept 30 2011
David Harrell (Snyder)	10/07	Sept 30 2011
Elvin Brownlee III (Andrews)	12/10*	Sept 30 2012
Jim Little (Big Spring)	09/03	Sept 30 2012
David Hardwick (Ft. Stockton)	10/07	Sept 30 2012
Don Bethel (Lamesa)	02/91	Sept 30 2012
Henry Cutbirth (Monahans)	09/05	Sept 30 2012

- Indicates appointment to an unexpired term.

PERMIAN BASIN AIRPORT BOARD CON'T

	<u>Appt. Date</u>	<u>Term Expires</u>
Willie Taylor (Odessa)	02/00	Sept 30 2012
Gloria Pena (Odessa)	03/03*	Sept 30 2012
Barbara Graff (Odessa)	06/10*	Sept 30 2012
Luis E. Elguezabal (San Angelo)	10/07	Sept 30 2012
Lex Hinds (Seminole)	10/08	Sept 30 2012
Glenn Wortham (Sweetwater)	10/07	Sept 30 2012
Lance Goodrich (Artesia, NM)	09/09	Sept 30 2012
Larry Fry (Roswell, NM)	09/00	Sept 30 2012

Ex-Officio members are the City Manager and the City Attorney. The Secretary is the Director of Aviation.

**PERMIAN BASIN COMMUNITY CENTER FOR MENTAL HEALTH
AND MENTAL RETARDATION**

(Decision Making)
(Membership - 2 (City); Terms - 2 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Janet R. Pritchett (City)	05/09*	June 2012	June 2014
Larry Edgerton	07/10*	June 2013	June 2015

PERSONNEL BOARD OF APPEALS

(Decision Making)
(Membership - 3; No designated terms.)

	<u>Appt. Date</u>
John James	03/08
Hugh A. "Andy" Shaffer	09/05
Michael Trost	01/10

- Indicates appointment to an unexpired term.

PLANNING AND ZONING COMMISSION

(Advisory & Decision Making)
(Membership - 9; Terms - 3 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Becky Ferguson, Chairman	03/04*	Sept 30 2011	Sept 30 2011
Kevin Wilton	09/08*	Sept 30 2012	Sept 30 2015
Bill Woodruff	02/05*	Sept 30 2012	Sept 30 2012
Royce Watkins	02/08*	Sept 30 2012	Sept 30 2015
Karen York	01/10*	Sept 30 2012	Sept 30 2018
Jane Wolf	03/09*	Sept 30 2013	Sept 30 2016
Cindy Lanning	09/10	Sept 30 2013	Sept 30 2016
Jay Norris	11/11	Sept 30 2014	Sept 30 2017
Galen Gatten, Vice Chairman	09/08	Sept 30 2014	Sept 30 2014

ALTERNATES:

Tony Carrillo	11/11	Sept 30 2014	Sept 30 2017
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TAX INCREMENT REINVESTMENT ZONE BOARD

(Decision Making)

(Membership - 12; Terms - 2 Years, or 3 Years if appointed after 3/1/07)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Neil Florer (College)	07/01	Mar 20 2009	Mar 20 2009
Dan Rush (City)	07/01	Mar 20 2010	Mar 20 2010
Mark T. Wellen (City), Vice Chairman	07/01	Mar 20 2010	Mar 20 2010
Jay Reynolds (Hospital)	03/02	Mar 20 2010	Mar 20 2010
Ralph Way (College)	07/01	Mar 20 2010	Mar 20 2010
Randy Prude (County)	03/07	Mar 20 2010	Mar 20 2013
Judge Mike Bradford (County)	01/07*	Mar 20 2010	Mar 20 2014
C. Mark Wheeler (City), Treasurer	04/08	Mar 20 2011	Mar 20 2014
Bob Lanier (City), Secretary	04/03	Mar 20 2011	Mar 20 2011
Brent Kennedy (City)	06/09	Mar 20 2012	Mar 20 2015
John L. Kennedy (City)	10/09*	Mar 20 2012	Mar 20 2018
Pete Hulder (Hospital)	03/10	Mar 20 2013	Mar 20 2016

Ex-Officio member is President, Board of Trustees, Midland Independent School District

- Indicates appointment to an unexpired term.

ZONING BOARD OF ADJUSTMENT
AND
AIRPORT ZONING BOARD OF ADJUSTMENT

(Decision Making)

(Membership - 5; Terms - 2 Years expiring 3 odd & 2 even.)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Trudi Edwards	10/07	Sept 30 2011	Sept 30 2011
Manny Ribera	10/07	Sept 30 2011	Sept 30 2011
Todd Byars	02/08*	Sept 30 2012	Sept 30 2014
Ken Morgan	01/10*	Sept 30 2012	Sept 30 2014
Carla Repman	01/10*	Sept 30 2013	Sept 30 2015

ALTERNATES: (not applicable to Airport Zoning)

Vacancy		Sept 30 2006	
Vacancy		Sept 30 2009	
Annabel Holguin	11/11	Sept 30 2013	Sept 30 2015
Greg Turner	11/11	Sept 30 2013	Sept 30 2015

* **Indicates appointment to an unexpired term.**