CITY OF MIDLAND, TEXAS
BRIEFING SESSION AGENDA
July 10, 2012 - 8:15 AM
Council Chamber - City Hall
300 North Loraine
Midland, Texas

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

1. Conduct a budget work session for the purpose of reviewing and discussing the proposed 2012-2013 City of Midland budget.

AGENDA FOR CITY COUNCIL MEETING
July 10, 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 - Steve Mohr, Our Saviour's Lutheran Church

2. Pledge of Allegiance

PRESENTATIONS

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

    a. Hear a presentation from Keep Midland Beautiful regarding awards received.

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 26, 2012

6. Consider a resolution approving the City's enrollment in a three-year software program with Dell Marketing, L.P., through the Texas Department of Information Resources at a total cost of $395,855.82; and said enrollment will entitle the City to current Microsoft Office Software, Operating System Software, Exchange Software and Structured Query Language Software; and this item was not bid

but purchased through a State of Texas Cooperative Program; and the City Council adopts the recommendations of the Chief Information Officer and the City Manager that the City enroll in the software program. (GENERAL SERVICES) (2012 - 212)

7. Consider a resolution authorizing issuance of a request for proposals for wrecker and impound services for the City of Midland Police Department. (GENERAL SERVICES) (2012 - 213)

8. Consider a resolution rejecting the single bid received for Bid Number 5088-12 for painting at the Scharbauer Sports Complex. (GENERAL SERVICES) (2012 - 214)

9. Consider a resolution appropriating funds from the general liability self-insurance fund to the Atmos Rate Review Mechanism Project (8923) in the amount of $100,000.00; said funds represent reimbursement from Atmos for consulting/legal fees associated with the steering committee's analysis of their rate review mechanism costs; there is no impact to the General Fund. (CITY MANAGER'S OFFICE) (2012 - 215)

10. Consider a resolution authorizing the acceptance of additional grant funds from the Texas Department of State Health Services in the amount of $13,092.33 to assist the Health and Senior Service Division with the delivery of local public health services; and authorizing the execution of acceptance documents. (COMMUNITY SERVICES) (2012 - 216)

11. Consider a resolution establishing Project Number 8998 for future construction of an "I-20 Wildlife Preserve Pavilion and Restrooms," and appropriating funds in the amount of $250,000.00. (COMMUNITY SERVICES) (2012 - 217)

12. Consider a resolution approving plans and specifications and authorizing advertisement for bids for the Water and Wastewater Tap Project; said project will be for the installation of water and wastewater taps. (ENGINEERING SERVICES) (2012 - 218)

13. Consider a resolution authorizing the execution of Change Order Number One with TEC Excavation, Inc. regarding the Lamesa Road Water and Sewer Reconstruction Project; said change order to provide for the extension of a water main from the intersection of Lamesa Road and Golf Course Road to an existing water main in Carver Street, north of Scharbauer Draw; appropriating funds; and authorizing payment in the amount of $361,030.00. (ENGINEERING SERVICES) (2012 - 219)

14. Consider a resolution authorizing the execution of a contract with Onyx Contractors for the Hicks Avenue and Gist Avenue Community Development Block Grant (CDBG) Sidewalk Improvements Project at a cost of $234,756; and

appropriating funds. (ENGINEERING SERVICES) (2012 - 220)

15. Consider a resolution authorizing the filing of an application with the United States Government for the re-authorization of the 2008 Assistance to Firefighters Grant; said funds to be used to assist in purchasing wild land firefighting gear; the City of Midland has already met the original financial obligations. (FIRE) (2012 - 221)

SECOND READINGS

16. Consider an ordinance on second reading changing the zoning classification by amending Chapter One, Title XI, of the City Code of Midland, Texas, by permitting a 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)

17. 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 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)

PUBLIC HEARINGS

18. At approximately 10:30 a.m. hold a public hearing and consider a resolution of the City Council of Midland, Texas making a finding, pursuant to Chapter 26 of the Texas Parks and Wildlife Code, that there is no feasible and prudent alternative to the change in use of approximately 3.19 acres located in the southwest corner of Beal Park from public park use to a detention basin for storm water in connection with the Floyd Acres Housing Development; said housing development is to be located on a 12.63-acre tract of land out of the northwest quarter of Section 6, Block 39, T-2-S, T&P RR Co. Survey, City and County of Midland, Texas (Generally located on the east side of Loop 250,

approximately 1/4 of a mile north of Wall Street); and authorizing the negotiation of a Development Agreement regarding said use which shall be approved by the City Council. (DEVELOPMENT SERVICES) (2012 - 222)

19. 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 the remainder of Lot 4, Block 1, Amaron Addition, City and County of Midland, Texas, which is presently zoned LR-2, Local Retail District, to be used as a PD, Planned District for a Shopping Center (Generally located near the southwest corner of the intersection of West Interstate Highway 20 and Camp 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) (9037)

20. At approximately 10:36 a.m. hold a public hearing and consider an ordinance changing the zoning classification by amending Chapter One, Title XI, of the City Code of Midland, Texas, by permitting Lots 1-5, the remainder of Lot 6, and Lots 7-12, Block 110, Original Town, City and County of Midland, Texas, which is presently zoned C-3, Commercial District, to be used as a PD, Planned District for a Housing Development (Generally located between South Pecos Street and South Marienfeld Street, north of West Front 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) (9038)

21. At approximately 10:39 a.m. hold a public hearing and consider an ordinance changing the zoning use classification of the property described as Lot 9, Block 183, Southern Addition, City and County of Midland, Texas (Generally located on the northeast corner of the intersection of North Big Spring Street and West Dakota Avenue), which is presently zoned LR-2, Local Retail District, by permitting said property to be used under a Specific Use Permit with term for a billboard; making said permit subject to certain conditions and restrictions contained herein; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars ($2,000.00); and ordering publication. (DEVELOPMENT SERVICES) (9039)

22. At approximately 10:42 a.m. hold a public hearing and consider an ordinance changing the zoning classification by amending Chapter One, Title XI, of the City Code of Midland, Texas, by permitting Lots 1-12, Block 8, and A to be vacated 0.3863-acre portion of Elm Avenue right-of-way, which is presently zoned O-1, Office District, to be used as a PD, Planned District for a Housing Development; by permitting Lots 1-13, Block 7, and A to be vacated 0.1445-acre portion of Elm

Street right-of-way, which is presently zoned O-1, Office District, to be used as a TH, Townhouse Dwelling District; said property being all out of Lynside Addition, City and County of Midland, Texas; said 0.3863-acre tract and said 0.1445-acre tract being more specifically described by metes and bounds made a part hereof; said property is generally located on both sides of Elm Avenue, between Tyler Street and Carver 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) (9040)

a. Consider an ordinance vacating and abandoning a 0.3863-portion of Elm Avenue right-of-way adjacent to Lots 1-12, Block 8, and A 0.1445-acre portion of Elm Avenue right-of-way adjacent to Lots 11-13, Block 7, all out of Lynside Neighborhood Addition, City and County of Midland, Texas (Generally located on both the north and south sides of Elm Avenue between North Tyler Street and North Carver Street); adopting the appraisal by the City Manager of $2,312.00; waiving the fee for the cost of the right-of-way; and ordering recordation by the City Secretary. (DEVELOPMENT SERVICES) (9041)

MISCELLANOUS

23. Consider an ordinance amending Title X, “Traffic Regulations”, Chapter Four, “Traffic Control Devices”, Section 11, 'School Zones and Crossings”, of the Midland City Code, so as to designate each school zone and school crossing within the City and regulate the speed and movement of traffic therein; authorizing and directing the Traffic Engineer to install appropriate signs and markings; repealing Ordinance No. 8920; 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) (9042)

24. Consider a resolution authorizing the City Manager to negotiate and execute contracts with qualified firms for appraisal services regarding the valuation of two (2) City of Midland-owned properties located east of the Midland Center; and further described as (1) 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; and (2) 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. (CITY ATTORNEY'S OFFICE) (2012 - 223)

25. Consider making appointments to various Boards and Commissions.

EXECUTIVE SESSION

26. Pursuant to Texas Government Code §551.101, the Council will hold an Executive Session which is closed to the public to discuss the following matters as permitted under the following Texas Government Code Sections:

    a. Section 551.072 Deliberation Regarding Real Property

        a.1. Discuss the 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.

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 26, 2012

REGULAR SESSION

The City Council convened in regular session in the Council Chamber, City Hall, Midland, Texas, at 10:02 a.m., June 26, 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, 12, 13, 15, 16, 17, 18, 20, 21, 22, 24, 25, 10, 11, 14, 19, 23, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 30 (2nd time).

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:

   No presentations were given.

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 - 25 excluding, 10, 11, 14, 19, 23; 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.

5. Approved a motion approving the following minutes:

   a. Regular Meeting of June 12, 2012

6. Approved 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)

RESOLUTION NO. 2012 - 186

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

7. Approved 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 (GENERAL SERVICES)

RESOLUTION NO. 2012 - 187

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

8. Approved 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. (GENERAL SERVICES)

RESOLUTION NO. 2012 - 188

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

9. Approved 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. (GENERAL SERVICES)

RESOLUTION NO. 2012 - 189

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

12. Approved a resolution authorizing the advertisement of a Request for Proposals (RFP) for Terminal Food & Beverage Concessions at the Midland International Airport.

(AIRPORTS)

RESOLUTION NO. 2012 - 192

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

13. Approved 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. (AIRPORTS)

RESOLUTION NO. 2012 - 193

RESOLUTION AUTHORIZING ISSUANCE OF A REQUEST FOR PROPOSALS FOR TERMINAL GIFT AND NEWS CONCESSIONS AT THE MIDLAND INTERNATIONAL AIRPORT

15. Approved a resolution regarding allocation of funds to the Software Upgrade Project (CISD)

RESOLUTION NO. 2012 - 195

RESOLUTION APPROPRIATING $350,000.00 TO THE SOFTWARE UPGRADE PROJECT

16. Approved a resolution regarding allocation of funds to the Computer and Accessories Upgrade Project (CISD)

RESOLUTION NO. 2012 - 196

RESOLUTION APPROPRIATING $400,000.00 TO THE COMPUTER AND ACCESSORIES UPGRADE PROJECT

17. Approved a resolution regarding allocation of funds to the Central Hardware Upgrade Project (CISD)

RESOLUTION NO. 2012 - 197

RESOLUTION APPROPRIATING $258,500.00 TO THE CENTRAL HARDWARE UPGRADE PROJECT

18. Approved a resolution authorizing an agreement with Rock the Desert Ministries, Inc. (CITY ATTORNEY'S OFFICE)

RESOLUTION NO. 2012 - 198

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

20. Approved a resolution approving a Professional Services Agreement with Parkhill, Smith & Cooper authorizing additional geotechnical services in the amount of $9,500 for the Sparks Park Target Area. (ENGINEERING SERVICES)

RESOLUTION NO. 2012 - 200

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

21. Approved a resolution allowing the Midland Fire Department to apply for Assistance to Firefighters Grant (AFG) 2012. (FIRE)

RESOLUTION NO. 2012 - 201

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

22. Approved a resolution accepting and appropriating $60,339 awarded to the Midland Police Department by the Governor's Office through the Edward Byrne Memorial Justice Assistance Grant Program. (POLICE)

RESOLUTION NO. 2012 - 202

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

24. Approved 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. (UTILITIES)

RESOLUTION NO. 2012 - 204

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

25. Approved 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.

(UTILITIES)

RESOLUTION NO. 2012 - 205

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

The following items were pulled from consent agenda and considered individually.

10. 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. (GENERAL SERVICES)

RESOLUTION NO. 2012 - 190

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

Discussion ensued regarding the frequency of the warning system tests, community notifications and county participation.

Council Member James moved to adopt Resolution No. 2012 - 190; 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.

11. Consider a resolution approving plans and specifications and authorizing advertisement for bids for playground and recreational equipment for the Community Services Department. (GENERAL SERVICES)

RESOLUTION NO. 2012 - 191

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

Brief discussion ensued regarding the purchase of Big Belly trash receptacles and the possibility of getting private sector sponsorships.

Council Member James moved to adopt Resolution No. 2012 - 191; seconded by Council Member Trost. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

14. Consider a resolution regarding allocation of funds to the Wireless System Project (CISD)

RESOLUTION NO. 2012 - 194

RESOLUTION APPROPRIATING $250,000.00 TO THE WIRELESS SYSTEM PROJECT

Brief discussion was held regarding the complete overhaul of infrastructure and software. These were projects that were part of the Certificates of Obligations that were previously approved.

Council Member James moved to adopt Resolution No. 2012 - 194; 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.

19. 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. (COMMUNITY SERVICES)

RESOLUTION NO. 2012 - 199

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

Brief discussion ensued regarding the need to appropriate the Certificate of Obligation money in order to continue the hike/bike trail system project and the possibility of using in-kind investors.

Council Member Morales moved to adopt Resolution No. 2012 - 199; 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.

23. 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. (UTILITIES)

RESOLUTION NO. 2012 - 203

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

Brief discussion ensued regarding whether this was a separate item from the original directive to the Midland Fresh Water District and that CDM would be designing it. The Water District will be constructing it under their contract for extended infrastructure and the City will be pay for the design.

Council Member Morales moved to adopt Resolution No. 2012 - 203; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Morales, Hailey, Perry, Dufford, James, Sparks. NAY: Trost. ABSTAIN: None. ABSENT: None.

SECOND READINGS

26. 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. (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

City Secretary Turner read the caption of Ordinance No. 9031.

Council Member Hailey moved to approve the second and final reading of Ordinance No. 9031 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.

27. Consider an ordinance on second reading 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

City Secretary Turner read the caption of Ordinance No. 9032.

Council Member Hailey moved to approve the second and final reading of Ordinance No. 9032 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.

28. Consider an ordinance on second reading 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

City Secretary Turner read the caption of Ordinance No. 9033.

Council Member Dufford moved to approve the second and final reading of Ordinance No. 9033 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.

29. Consider an ordinance on second reading 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

City Secretary Turner read the caption of Ordinance No. 9034.

Council Member Hailey moved to approve the second and final reading 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.

PUBLIC HEARINGS

30. At approximately 10:30 a.m. hold a public hearing 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. (DEVELOPMENT SERVICES)

ORDINANCE NO. 9035

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

Planning Division Manager Walker gave an overview of the item noting this was a request for zoning a site plan review for property located at Mockingbird Lane and Midkiff Road. The request was for adoption of a site planned as a Planned District Site Plan, which is for a mixed-use development including retail and residential uses. One letter of objection had been received which was concerning traffic at that intersection.

Discussion ensued regarding the need for a traffic impact analysis, screening the storage units, height restrictions, landscaping, lighting and fencing.

Mayor Perry opened the public hearing at 10:49 a.m.

Eric West, Parkhill, Smith & Cooper, 1700 West Wall, spoke about the storage units in the development which would not be open to the public. The architecture of the storage units would be similar to office/retail buildings. He addressed parking concerns noting there would be less traffic because it was 55 percent office space.

Matt Hanson, 4605 East Highway 80, noted that xeriscaping should be considered when planning the landscape due to a limited water supply.

There being no one else wishing to speak, the public hearing was closed at 10:59 a.m.

Discussion ensued regarding the widening of Midkiff, the potential need for a traffic study and the developer's part of the improvement of Mockingbird Lane and Midkiff Road.

City Secretary Turner read the caption of Ordinance No. 9035.

Discussion ensued regarding the landowner's participation in half of Mockingbird to the end of their property and half of Midkiff to the end of their property as part of the purchase of the land.

Council Member Trost moved approval of the first of two readings of Ordinance No. 9035 in accordance with the Charter of the City of Midland with the amendment to require a traffic study; seconded by Council Member Morales. The motion carried by the following vote: AYE: Morales, Trost, James, Sparks. NAY: Hailey, Perry, Dufford. ABSTAIN: None. ABSENT: None. (Note: This item was reconsidered later in the meeting.)

31. At approximately 10:33 a.m. hold a public hearing 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. (DEVELOPMENT SERVICES)

ORDINANCE NO. 9036

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

Planning Division Manager Walker gave an overview of the item noting it was a request to change the zoning from O-1 District to PD for an Office Center primarily to allow for some additional building height. The building fits in the downtown area and is in the TIRZ #1 District. No letters of objection had been received and staff recommended approval.

Discussion ensued regarding the current parking lot and a potential parking structure.

Mayor Perry opened the public hearing at 11:29 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

City Secretary Turner read the caption of Ordinance No. 9036.

Council Member Hailey moved approval of the first of two readings of Ordinance No. 9036 in accordance with the Charter of the City of Midland; seconded by Council Member Trost. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

32. At approximately 10:36 a.m. hold a public hearing and consider a resolution on a request by Matt Hanson for a Temporary Land Use Permit for an Outdoor Sales Event.

(DEVELOPMENT SERVICES)

RESOLUTION NO. 2012 – 206

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

Planning Division Manager Walker gave an overview of the item noting it was a request for a continuation of the Downtown Farmer's Market. The event occurs every Saturday from 9:00 a.m. to 1:00 p.m. The landowner has constructed shade structures used for covered parking and it provides shade and cooling for those in attendance. There were no records of concerns or problems related to the use and no letters of objection had been received. Staff recommended approval.

Mayor Perry opened the public hearing at 11:31 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Council Member Morales moved to adopt Resolution No. 2012 - 206; seconded by Council Member Trost. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

MISCELLANOUS

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, (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.) (DEVELOPMENT SERVICES)

RESOLUTION NO. 2012 – 207

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)

Oil & Gas Compliance Officer Ron Jenkins reported that this was an application for a non-commercial salt-water disposal well by Callon Petroleum, which would be located near the battery and that Council approved previous applications for this property. This well will be used for water produced from their wells permitted previously and in the future. The Callon well is the first salt-water disposal to be brought before Council and it will reduce the truck traffic that goes to the battery. Callon was requesting a variance from the installation of landscaping until future development occurs. Irrigation would be installed within two years from the time the permit was approved. The closest occupied

residence to this well is 1,950 feet.

Discussion ensued regarding groundwater contamination and an incident that happened in Stanton which was a different type operation.

Jimmy Wright, 5212 Mathis, reported that they would be disposing the produced water into the San Andreas formation, which was significantly below any potable fresh water zones. The railroad commission requires that they undertake very specific standards of practice when drilling through any fresh water zones whether it is a salt-water disposal well or a commercial production well. There would be additional casing to protect them as they get through the Santa Rosa Zone just to go above and beyond any concerns. The main function of the salt-water disposal well is to provide for disposal of the produced water in Section 22 and 23 wells to reduce the truck traffic that comes in and out of the entrance to the tank battery.

Council Member James moved to adopt Resolution No. 2012 - 207; 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 551.074 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. Section 551.072 Deliberation Regarding Real Property

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.

Mayor Perry recessed the meeting to executive session at 11:43 a.m. The Council met in executive session until 2:40 p.m.

Mayor Perry reconvened the meeting to regular session at approximately 2:41 p.m.

Council Member Sparks moved to reconsider agenda item number 30 as presented; 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.

30. At approximately 10:30 a.m. hold a public hearing 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. (DEVELOPMENT SERVICES)

ORDINANCE NO. 9035

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

Discussion ensued regarding Council's desire not to impact the project by requiring a traffic study. Consensus was to do the traffic study in house.

Council Member Sparks moved to approve the first reading of Ordinance No. 9035 in accordance with the Charter of the City of Midland without a traffic study requirement; seconded by Council Member James. The motion carried by the following vote: AYE: Morales, Hailey, Perry, Dufford, James, Sparks. NAY: Trost. ABSTAIN: None. ABSENT: None.

All of the business at hand having been completed, the meeting adjourned at 2:50 p.m.

PASSED AND APPROVED the 10th day of July, 2012.

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

City Council Agenda

Approved for Agenda:

City Manager's Office

MEETING DATE: 7/10/2012

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving the purchase of a Microsoft Enterprise Agreement for 3 years from Dell Marketing L.P. of Austin, Texas through State Contract DIR-SDD-890-TX for the Communications and Information Systems Department. File 5184-12

Purpose:

Consider approving the purchase of a Microsoft Enterprise Agreement for 3 years for the Communications and Information Systems Department.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

$88,000.00 from the General Fund
$43,951.94 from the 2012 GPCO-Information Technology Bond Fund

Discussion:

Entering into a Microsoft Enterprise agreement with Dell will provide the City with current Microsoft Office software, operating system software, Exchange software and SQL software for desktops and servers. The Microsoft Enterprise Agreement is available from Dell through Texas Contract DIR-SDD-890-TX. Please see the memo from the Chief Information Officer for further discussion on this purchase.

Therefore, please consider the approval of an agreement with Dell Marketing L.P. of Austin, Texas in accordance with Texas Contract DIR-SDD-890-TX for $131,951.94 per year with a total cost of $395,855.82 for 3 years.

CITY OF MIDLAND
Communications and Information Services Department
Interoffice Memorandum

Date: May 11, 2012
To: Robert Patrick, Director of General Services
From: Sharlett Chowning, Chief Information Officer
Subject: Purchase of Microsoft Enterprise Agreement from Dell

City staff proposes the purchase of a Microsoft Enterprise Agreement through Dell. Dell currently has the Texas Department of Information Research (DIR) bid as preferred vendor for Microsoft products in the state of Texas (DIR-SDD-890-TX).

A quote was received from Dell for purchase of Microsoft Office, the operating systems, Exchange, SQL and System Data Center. This will provide the City with current software for desktops and servers. Microsoft offers the Enterprise Agreement for a period of three (3) years at a cost of $131,951.94 per year through the Texas DIR. The total cost over three years is $395,855.82.

The funding will come from two sources. $88,000 was budgeted in 001-003-0032-8900 in FY12 for the replacement of the eMail system. This proposal includes electronic mail. The remaining funds, $43,051.94, will come from the Software Upgrade Project 776-700-8986-8900.

CISD is recommending the procurement of the Microsoft Enterprise Agreement through the Texas DIR.

RESOLUTION NO. _____

RESOLUTION APPROVING THE CITY'S ENROLLMENT IN A THREE-YEAR SOFTWARE PROGRAM WITH DELL MARKETING, L.P., THROUGH THE TEXAS DEPARTMENT OF INFORMATION RESOURCES AT A TOTAL COST OF $395,855.82; AND SAID ENROLLMENT WILL ENTITLE THE CITY TO CURRENT MICROSOFT OFFICE SOFTWARE, OPERATING SYSTEM SOFTWARE, EXCHANGE SOFTWARE AND STRUCTURED QUERY LANGUAGE SOFTWARE; AND THIS ITEM WAS NOT BID BUT PURCHASED THROUGH A STATE OF TEXAS COOPERATIVE PROGRAM; AND THE CITY COUNCIL ADOPTS THE RECOMMENDATIONS OF THE CHIEF INFORMATION OFFICER AND THE CITY MANAGER THAT THE CITY ENROLL IN THE SOFTWARE PROGRAM

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

WHEREAS, the Chief Information Officer for the Communications and Information Systems Department has arranged for the City's enrollment in a three-year Software Program, to be purchased from Dell Marketing, L.P., at a total proposed cost to the City of $395,855.82 through the DIR; and

WHEREAS, the enrollment documents for participation in said Software Program incorporate by reference two (2) agreements, and the Chief Information Officer for the Communications and Information Systems Department and the City Manager are comfortable with the City of Midland being bound by the terms of said incorporated agreements; and

WHEREAS, said incorporated agreements contain provisions other than what is typical of agreements to which the City is a party; and

WHEREAS, the Chief Information Officer for the Communications and Information Systems Department and the City Manager recommend the City's participation in said Software Program; and

WHEREAS, the Chief Information Officer for the Communications and Information Systems Department and the City Manager find the price proposed for participation in said

Software Program through the DIR to be fair and reasonable; and

WHEREAS, the Chief Information Officer for the Communications and Information Systems Department and the City Manager find it to be in the public interest to enroll in said Software Program through the DIR;

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

SECTION ONE. That the City Manager is hereby authorized and directed to execute all documents necessary for the City's enrollment in said Software Program at a total estimated cost of $395,855.82, said enrollment documents with incorporated agreements being on file in the office of the City Secretary, referenced by the date and number of this Resolution.

SECTION TWO. That the City Treasurer is hereby authorized and directed to pay Dell Marketing, L.P., for the City's participation in said Software Program from funds available in the Fiscal Year 2011 – 2012 General Fund (001) Communications and Information Systems (030) Information Systems (0032) budget account and in the Software Upgrade Project (8986) budget account upon proper receipt of invoices or statements approved by the City Manager.

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

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

DIR-VPC-03-011

Microsoft Business **Agreement** – State and Local-NO SERVICES

Microsoft Business Agreement Number
Microsoft affiliate to complete

U1063194

This Microsoft Business Agreement is entered into between the following entities as of the effective date identified below. Each party will notify the other in writing if any of the information in the following table changes.

Customer		
Name of Entity	**The State of Texas, acting by and through the Department of Information Resources**	Contact Name (This person receives notices under this agreement unless a different contact for notices is provided in the notices section below.) **Stephanie Miller**
Street Address	**300 W. 15th Street** **Suite 1300**	Contact E-mail Address (required for online access) stephanie.miller@dir.state.tx.us
City **Austin**	State/Province **Texas**	Phone **512-463-6362**
Country **USA**	Postal Code **78701**	Fax **512-475-4759**
		Microsoft Account Manager Name **John Haines & Lue Ann Ray**

Contracting Microsoft Affiliate
MSLI, GP - 6100 Neil Road, Suite 210 - Reno, Nevada USA 89511-1137 - Dept. 551, Volume Licensing

If notices should be sent to someone or some place other than above, complete the relevant portions below:		
Name of Entity		Contact Name
Street address		Contact E-mail Address
City	State/Province	Phone
Country	Postal Code	Fax
Notices to Microsoft should be sent to: MSLI, GP 6100 Neil Road, Suite 210 Reno, Nevada USA 89511-1137 Dept. 551, Volume Licensing		**Copies should be sent to:** Microsoft Law and Corporate Affairs One Microsoft Way Redmond, WA 98052 USA Volume Licensing Group VLG-USA@Microsoft.com (425) 936-7329 fax

This agreement contains terms of the relationship between you (the entity signing the agreement and its affiliates) and us (the Microsoft affiliate signing below and its affiliates). ***Consulting and Support Services shall not be included in this agreement, but shall instead be covered by separate agreement(s) between the parties.*** Nothing in this agreement obligates either party to enter into any license agreements.

By signing below, you acknowledge that you have read and understood the terms of this agreement, agree to be bound by these terms, and represent and warrant that the information you provide on this cover page is accurate.

Customer	***Contracting Microsoft Affiliate***
Name **The State of Texas, acting by and through the Department of Information Resources**	**MSLI, GP**
Signature	Signature
Printed Name Patrick M. Hogan	Printed Name **Erik Stevenson**
Printed Title Director, Business Operations	Printed Title **Contract Administrator**
Signature Date 11/1/02	Effective Date (date Microsoft affiliate countersigns) 11/1/02

OK
10/31/02

Terms and Conditions

1. Definitions. In this agreement, "you" means the entity that has entered into this agreement (or a license agreement under this agreement) and its affiliates, and "we" or "us" means the Microsoft affiliate that has entered into this agreement (or a license agreement under this agreement) and its affiliates. In addition, the following definitions apply:

"affiliate" means (a) with regard to you, (i) any government agency, department, instrumentality, division, unit or other office of your state or local government that is supervised by or is part of you, or which supervises you or of which you are a part, or which is under common supervision with you; (ii) any county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality established by the laws of your state and located within your state's jurisdiction and geographic boundaries; and (iii) any other entity expressly authorized by the laws of your state to purchase under state contracts; provided that a state and its affiliates shall not, for purposes of this definition, be considered to be affiliates of the federal government and its affiliates; and (b) with regard to us, any legal entity that we own, that owns us, or that is under common ownership with us.

"available" means, with respect to a product, that we have made licenses for that product available for ordering under a particular licensing program;

"commercial product" means any product we make available for license for a fee;

"fixes" means bug fixes, workarounds, patches, beta fixes and beta builds;

"free product" means any product we make commercially available for license without charge;

"pre-release" or "beta" products are products provided prior to commercial release;

"product" means all commercial, free, pre-release and beta products;

"Product List" means, with respect to any licensing program, the statement published by Microsoft from time to time (which statement may vary by region) which identifies the products that are or may be made available under the program and any product-specific conditions or limitations on the acquisition of licenses for those products;

"run" or "use" means to copy, install, use, access, display, run or otherwise interact with;

2. Use and ownership. Unless otherwise specified in a license agreement, use of any product that you license from us is governed by product use rights specific to each product and version and by the terms of the license agreement under which you licensed the product. We will provide you with a copy of the applicable product use rights, or will make them available to you either by publication on the World Wide Web at a site we identify to you or by some other reasonable means. You acknowledge that you have access to the World Wide Web. We do not transfer any ownership rights in any licensed product and we reserve all rights not expressly granted.

Use of any fixes is defined by the product use rights for the affected product or, if the fix is not provided for a specific product, any other use terms we provide. All fixes are licensed to you.

3. Restrictions on use. You may not:

- Separate the components of a product made up of multiple components by running them on different computers, by upgrading or downgrading them at different times, or by transferring them separately, except as otherwise provided in the product use rights;
- Rent, lease, lend or host products, except where we agree by separate agreement;
- Reverse engineer, de-compile or disassemble products, or fixes, except to the extent expressly permitted by applicable law despite this limitation;
- Transfer licenses to, or sublicense, products, or fixes to the U.S. Government.

Products licensed under this agreement are of US-origin unless otherwise indicated by us. You agree to comply with all applicable international and national laws that apply to these products, including the U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by U.S. and other governments. For additional information on exporting Microsoft products, see http://www.microsoft.com/exporting/.

4. ***Confidentiality.*** Subject to the requirements of your public records law:

   a. ***Confidential information.*** Confidential information means information marked or otherwise identified in writing by a party as proprietary or confidential or that, under the circumstances surrounding the disclosure, ought in good faith to be treated as proprietary or confidential. It includes non-public information regarding either party's products, features, marketing and promotions, and the negotiated terms of our agreements. All beta products are confidential unless excepted below.

   Confidential information does not include information which: (i) the recipient developed independently; (ii) the recipient knew before receiving it under the relevant agreement; or (iii) is or subsequently becomes publicly available or is received from another source, in both cases other than by a breach of an obligation of confidentiality.

   b. ***Use of confidential information.*** For a period of five years after disclosure, neither party will use the other's confidential information without the other's written consent except in furtherance of this business relationship or disclose the other's confidential information except (i) to obtain advice from legal or financial consultants, or (ii) if compelled by law, in which case the disclosing party will use its best efforts to give the other party notice of the requirement so that the disclosure can be contested.

   You and we will take reasonable precautions to safeguard each other's confidential information. Such precautions will be at least as great as those we each take to protect our own confidential information. You and we will disclose each other's confidential information to our employees or consultants only on a need-to-know basis and subject to the confidentiality obligations imposed here. When confidential information is no longer necessary to perform any obligation under any of the agreements, each of us will return it to the other or destroy it at the other's request.

   c. ***Retained rights.*** You and we are free to develop products independently without the use of the other's confidential information. Neither you nor we are obligated to restrict the future work assignments of people who have had access to confidential information. In addition, you, we and these people are free to use the information that these people remember related to information technology, including ideas, concepts, know-how or techniques, so long as confidential information of the other party is not disclosed in violation of this agreement in the course of such use. This use shall not grant either party any rights under the other's copyrights or patents and does not require payment of royalties or separate license.

   We or you may provide suggestions, comments or other feedback to the other with respect to the other's confidential information. Feedback is voluntary and the receiving party is not required to hold it in confidence. The receiving party will not disclose the source of feedback without the providing party's consent. Feedback may be used for any purpose without obligation of any kind.

   d. ***Cooperation in the event of disclosure.*** Each of us will immediately notify the other upon discovery of any unauthorized use or disclosure of confidential information and will cooperate in any reasonable way to help the other regain possession of the confidential information and prevent further unauthorized use.

5. ***Warranties.***

   a. ***Limited product warranty.*** We warrant that each version of a commercial product will perform substantially in accordance with our user documentation. This warranty is valid for a period of 90 days from the date you first run a copy of the version. To the maximum extent permitted by law, any warranties imposed by law concerning the products are limited to the same extent and the same 90-day period. This warranty does not apply to components of products which you are permitted to redistribute under applicable product use rights, or if failure of the product has resulted from accident, abuse or misapplication. If you notify us within the warranty period that a product does not meet this warranty, then we will, at our option, either (i) return the price paid for the product or (ii) repair or replace the product. To the maximum extent permitted by law, this is your exclusive remedy for any failure of any commercial product to function as described in this sub-section.

b. ***Free and beta products.*** To the maximum extent permitted by law, free and beta products are provided "as-is," without any warranties. You acknowledge that the provisions of this paragraph with regard to pre-release and beta products are reasonable having regard to, among other things, the fact that they are provided prior to commercial release so as to give you the opportunity (earlier than you would otherwise have) to assess their suitability for your business, and without full and complete testing by us.

c. ***NO OTHER WARRANTIES.*** TO THE EXTENT PERMITTED BY APPLICABLE LAW, WE DISCLAIM AND EXCLUDE ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED OR STATUTORY, OTHER THAN THOSE IDENTIFIED EXPRESSLY IN THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO WARRANTIES OR CONDITIONS OF TITLE, NON-INFRINGEMENT, SATISFACTORY QUALITY, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE PRODUCTS AND RELATED MATERIALS AND SERVICES. WE WILL NOT BE LIABLE FOR ANY SERVICES OR PRODUCTS PROVIDED BY THIRD PARTY VENDORS, DEVELOPERS OR CONSULTANTS IDENTIFIED OR REFERRED TO YOU BY US UNLESS SUCH THIRD PARTY PRODUCTS OR SERVICES ARE PROVIDED UNDER WRITTEN AGREEMENT BETWEEN YOU AND US, AND THEN ONLY TO THE EXTENT EXPRESSLY PROVIDED IN SUCH AGREEMENT.

6. ***Defense of infringement claim.*** We will defend you against any claim by an unaffiliated third party that any commercial product infringes its patent or copyright, and will pay the amount of any resulting adverse final judgment (or settlement to which we consent), subject to section 7(a) below. You must notify us promptly in writing of the claim and give us sole control over its defense or settlement. You agree to provide us with reasonable assistance in defending the claim, and we will reimburse you for reasonable out of pocket expenses that you incur in providing that assistance.

Our obligations will not apply to the extent that the claim or adverse final judgment is based on (i) your running of the product after we notify you to discontinue running due to such a claim; (ii) your combining the product with a non-Microsoft product, data or business process; (iii) use of, or access to, the product by any person or entity other than an employee of you or one of your affiliates; (iv) your altering the product; or (v) your distribution of the product to an unaffiliated third party (though nothing in this paragraph (vii) authorizes such distribution). You will be responsible for any costs or damages that result from these actions.

If we receive information concerning an infringement claim related to a commercial product, we may, at our expense and without obligation to do so, either (i) procure for you the right to continue to run the allegedly infringing product, or (ii) modify the product or replace it with a functional equivalent, to make it non-infringing, in which case you will stop running the allegedly infringing product immediately. If, as a result of an infringement claim, your use of a commercial product is enjoined by a court of competent jurisdiction, we will use commercially reasonable efforts to either procure the right to continue its use, replace it with a functional equivalent, or modify it to make it non-infringing.

If any other type of third party claim is brought against you regarding our intellectual property, you must notify us promptly in writing. We may, at our option, choose to treat these claims as being covered by this section.

7. ***Limitation of liability.***

a. ***Limitation.*** There may be situations in which you have a right to claim damages or payment from us. Except as otherwise specifically provided in this paragraph, whatever the legal basis for your claims, our liability will be limited, to the maximum extent permitted by applicable law, to direct damages up to the amount you have paid for the product giving rise to the claims. In the case of our responsibilities with respect to third party patent or copyright infringement claims, our obligation to defend such claims will not be subject to the preceding limitation, but our liability to pay damages awarded in any final adjudication (or settlement to which we consent) will be. In the case of free product or code you are authorized to redistribute to third parties without separate payment to Microsoft, our total liability to you will not exceed US$5000, or its equivalent in local currency. The limitations contained in this paragraph will not apply with respect to our obligations under Section 4 (confidentiality).

b. ***No liability for certain damages.*** To the maximum extent permitted by applicable law, neither party nor any of its affiliates or suppliers will be liable for any indirect damages (including, without limitation, consequential, special or incidental damages, damages for loss of profits or revenues, business interruption, or loss of business information) arising in connection with any agreement or product, even if

advised of the possibility of such damages or if such possibility was reasonably foreseeable. This exclusion of liability does not apply to either party's liability to the other for violation of its confidentiality obligation or of the other party's intellectual property rights.

c. ***Application.*** The limitations on and exclusions of liability for damages in this agreement apply regardless of whether the liability is based on breach of contract, tort (including negligence), strict liability, breach of warranties, or any other legal theory.

8. Verifying compliance. Each enrolled affiliate under a license agreement must keep records relating to the products it and any affiliate participating under such enrolled affiliate's enrollment run. We have the right to verify compliance with any license agreement or enrollment, at our expense, during the term of the license agreement and any enrollment and for a period of one year thereafter. To do so, we will engage an independent accountant from a nationally recognized public accounting firm, which will be subject to a confidentiality obligation. Verification will take place upon not fewer than 15 days notice, during normal business hours and in a manner that does not interfere unreasonably with your or an enrolled affiliate's operations. As an alternative, we may require an enrolled affiliate under a license agreement to accurately complete our self-audit questionnaire relating to the products it and any affiliates participating under its enrollment use. An enrolled affiliate will have the right to conduct a self-audit prior to any third-party audit if (a) the governor of your state has issued an executive order (or state legislation exists) requiring software licensing compliance statewide and for state-funded agencies (including local governments), and (b) your state has adopted and implemented a statewide licensing compliance software asset management program reasonably acceptable to Microsoft; and (c) the enrolled affiliate has also adopted and implemented such statewide licensing compliance software asset management program. If verification or self-audit reveals unlicensed use of products, the enrolled affiliate must promptly order sufficient licenses to permit all product usage disclosed. If material unlicensed use is found (license shortage of 5% or more), the enrolled affiliate must reimburse us for the costs we have incurred in verification and acquire the necessary additional licenses as single retail licenses within 30 days. If we undertake such verification and do not find material unlicensed use of products, we will not undertake another verification of the same enrolled affiliate for at least one year. We and our auditors will use the information obtained in compliance verification only to enforce our rights and to determine whether an enrolled affiliate is in compliance with the terms of the applicable license agreement. By invoking the rights and procedures described above, we do not waive our rights to enforce this agreement or to protect our intellectual property by any other means permitted by law.

9. Term and Termination. This agreement will remain in effect until terminated. Either party to this agreement may terminate it at any time by giving at least 60 days written notice. To the extent necessary to implement the termination provisions of this agreement, each of the parties waives any right or obligation that the other party may have now or in the future under any applicable law or regulation, to request or obtain the approval, order, decision or judgment of any court to terminate this agreement. The sole effect of terminating this agreement will be to terminate the ability of either party to enter into subsequent license agreements under this agreement. Termination of this agreement will not, by itself, result in the termination of any license agreements previously entered into under this agreement, and any terms of this agreement incorporated by reference into such a license agreement will continue in effect unless and until that license agreement itself is terminated or expires.

10. Miscellaneous.

a. ***Notices.*** All notices, authorizations, and requests given or made in connection with a license agreement must be sent by post, express courier, facsimile, or email to the addresses and numbers indicated in the applicable license agreement. Any notice of termination of this agreement must be sent by post, express, courier, facsimile or email to the addresses and numbers indicated in the cover page to this agreement. Notices will be deemed delivered on the date shown on the postal return receipt or on the courier, facsimile or email confirmation of delivery.

b. ***Assignment.*** This agreement and any license agreement may be assigned by either party only to an affiliate, but assignment will not relieve the assigning party of its obligations under the assigned agreement. If either party assigns this agreement or any license agreement, it must notify the other party of the assignment in writing.

c. ***Severability.*** If a court holds any provision of this agreement to be illegal, invalid or unenforceable, the remaining provisions will remain in full force and effect and the parties will amend the agreement to give effect to the stricken clause to the maximum extent possible.

d. ***Waiver.*** No waiver of any breach of this agreement shall be a waiver of any other breach, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party.

e. ***Force Majeure.*** To the extent that either party's performance is prevented or delayed, either totally or in part, for reasons beyond that party's control, then that party will not be liable, so long as it resumes performance as soon as practicable after the reason preventing or delaying performance no longer exists.

f. ***Limitations on actions.*** Except for any different period required by applicable law, any action arising under a license agreement must be brought within two years from the date that the cause of action arose.

g. ***Survival.*** Provisions regarding product use rights, restrictions on use, evidence of perpetual licenses, transfer of licenses, warranties, limitations of liability, confidentiality, compliance verification and obligations on termination or expiration will survive termination or expiration of this agreement and of any license agreement in which they are incorporated.

h. ***Applicable law; Dispute resolution.*** The terms of this agreement will be governed by the laws of your state, without giving effect to its conflict of laws. Disputes relating to this agreement will be subject to applicable dispute resolution laws of your state.

i. ***Cost or pricing data.*** We will not, under any circumstance, accept any enrollment that would require the submission of cost or pricing data.

DIR VPC-03-011

Microsoft Enterprise Agreement

Microsoft Enterprise **Agreement-** State and Local – NO SERVICES

CUSTOM

Enterprise Agreement number *Microsoft affiliate to complete*	01E61288	Microsoft Business Agreement number *Reseller to complete*	U1063194

This Microsoft Enterprise Agreement is entered into between the following entities as of the effective date identified below. Each party will notify the other in writing if any of the information in the following table changes.

Customer			
Name of Entity	**The State of Texas, acting by and through the Department of Information Resources**		Contact Name **Stephanie Miller** (This person handles access to online information. This person also receives notices unless a different contact for notices is provided in the notices section below.)
Street Address	**300 W. 15th Street** **Suite 1300**		Contact E-mail Address (Required for online access) stephanie.miller@dir.state.tx.us
City **Austin**		State/Province **Texas**	Phone **512-463-6362**
Country **USA**		Postal Code **78701**	Fax **512-475-4759**
			Microsoft Account Manager Name **John Haines & Lue Ann Ray**
Contracting Microsoft Affiliate			
MSLI, GP - 6100 Neil Road, Suite 210 - Reno, Nevada USA 89511-1137 - Dept. 551, Volume Licensing			

If notices should be sent to someone or some place other than above, complete the relevant portions below		
Name of Entity		Contact Name
Street address		Contact E-mail Address
City	State/Province	Phone
Country	Postal Code	Fax

Notices to Microsoft should be sent to:	Copies should be sent to:
MSLI, GP 6100 Neil Road, Suite 210 Reno, Nevada USA 89511-1137 Dept. 551, Volume Licensing	Microsoft Law and Corporate Affairs One Microsoft Way Redmond, WA 98052 USA Volume Licensing Group VLG-USA@Microsoft.com (425) 936-7329 fax

This agreement consists of (1) this cover page, (2) the attached terms and conditions, (3) the terms of the Microsoft Business Agreement identified above (except that the definitions of "you," "we," and "us" in this agreement supersede the definitions for those terms in the Microsoft Business Agreement), (4) the Product List, (5) the product use rights applicable to products licensed under this agreement, and (6) any enrollment entered into under this agreement.

Effective date. If the first enrollment entered into under this agreement is given an effective date that is earlier than the date this agreement is signed by us, the effective date of this agreement will be that earlier date. Otherwise, this agreement will be effective on the date it is signed by us. ***Consulting and Support Services shall not be included in this agreement, but shall instead be covered by separate agreement(s) between the parties.***

By signing below, the parties agree to be bound by the terms of this agreement, and you represent that you are the entity that signed the Microsoft Business Agreement, or an affiliate of that entity, and that the information you have provided on this cover page is accurate.

Customer	***Contracting Microsoft affiliate***
Name of Entity **The State of Texas, acting by and through the Department of Information Resources**	**MSLI, GP**
Signature	Signature
Printed Name Patrick W. Hogan	Printed Name **Erik Stevenson**
Printed Title Director, Business Operations	Printed Title **Contract Administrator**
Signature Date 11-1-02	Signature Date (date Microsoft affiliate countersigns) 11/18/02
10/31/02	Effective Date (may be different than our signature date) 11/1/02

Prepared by David Mills

Terms and Conditions

1. Definitions.

In this agreement, "you" means the entity that has entered into this agreement with us, and "we" or "us" means the Microsoft entity that has entered into this agreement or an enrollment. The terms "affiliate," "ownership," "product," "Product List," "run" and "use" have the meanings given to them in the Microsoft Business Agreement. In addition, the following definitions apply:

"additional product" means any product other than an enterprise product that an enrolled affiliate chooses to license under its enrollment;

"adjustment multiplier" means, with respect to a product family on the second anniversary of the effective date of an enrollment for which it is determined, a number by which the initial annual reference price is multiplied in order to determine the reference price for the third annual installment payment, pursuant to the terms and conditions of Section 13(e);

"aggregate family desktop count" means, with respect to a particular product family as of a particular annual pricing date, the aggregate number of qualified desktops under all unexpired enrollments for which one or more products in such family are chosen as enterprise products as of such date, including both (i) the original qualified desktops ordered under such unexpired enrollments, plus (ii) any additional qualified desktops added pursuant to true up orders;

"annual pricing date" means each of the following:

> *(i) the effective date of this agreement (the "first annual pricing date");*
>
> *(ii) the first day of the eleventh (11th) full calendar month following such first annual pricing date (the "second annual pricing date"); and*
>
> *(iii) the first day of the calendar month that occurs every 12 months following the second annual pricing date, until the last enrollment executed hereunder expires or is otherwise terminated.*
>
> *For example, if the first annual pricing date is October 1, 2002, then the second annual pricing date shall be September 1, 2003, and each subsequent annual pricing date shall occur on September 1 of each successive calendar year until the last enrollment hereunder expires or is otherwise terminated;*

"annual price level" means, with respect to a particular product family as of a particular annual pricing period upon which the determination of such level for such period is made, the volume discount level, determined pursuant to the terms and conditions of Section 13(e), by which each of the following shall be determined, based upon the aggregate family desktop count for such product family as of the annual pricing date upon which the determination of such level for such period is made:

> *(i) the initial annual reference prices of enterprise products in such product family for new enrollments with effective dates which occur in such annual pricing period; and*
>
> *(ii) the adjustment multiplier with respect to enterprise products in such product family for previously-executed enrollments whose second anniversary falls in such annual pricing period;*

"annual pricing period" means each period which:

> *(i) begins on the first annual pricing date, or any anniversary thereof; and*
>
> *(ii) ends twelve (12) full calendar months following the day it begins.*
>
> *For example, if the first annual pricing date is October 1, 2002, then: the first annual pricing period will run from October 1, 2002 to September 30, 2003; the second annual pricing period will run from October 1, 2003 to September 30, 2004; and so forth.*

Note that, with the exception of the first annual pricing period, each annual pricing period begins one month following the annual pricing date upon which the annual price level for such period is determined pursuant to Section 13(e). Such one-month period is necessary for us to calculate the annual price levels and reference prices for the subsequent annual pricing period, and to implement adjustments, if any, to the reference prices of third year installment payments for enrollments whose second anniversary falls in such subsequent period.

"available" means, with respect to a product, that we have made licenses for that product available for ordering under the Enterprise Agreement program;

"CAL family" means any of the following client access license ("CAL") products, when such products are chosen as enterprise products on an enrollment:

(i) Microsoft BackOffice CAL;

(ii) Microsoft Core CAL;

(iii) Microsoft Windows Server CAL;

(iv) Microsoft Exchange Server CAL;

(v) Microsoft SQL Server CAL;

(vi) Microsoft Systems Management Server CAL; or

(vii) Microsoft SharePoint Portal Server CAL;

"component platform product" means any of the following enterprise products:

(i) Microsoft Office Professional;

(ii) Microsoft Office Standard;

(iii) Microsoft Windows XP Professional Operating System Upgrades;

(iv) Microsoft Core CAL; and

(v) Microsoft BackOffice CAL;

"ending price level" means, with respect to an enterprise product ordered pursuant to a particular enrollment, the volume discount level used to determine the adjustment multipliers applied to apply to the third year installments payment, second anniversary true up payment, and third anniversary true up payment, respectively, pursuant to the terms and conditions of Subsection 13(e)(4).

"enrolled affiliate" means an entity, either you or any one of your affiliates, that has entered into an enrollment under this agreement;

"enrollment" means the document that you or your affiliate submits under this agreement to sign up for the Enterprise Agreement program and make an initial selection of products;

"enterprise" means the enrolled affiliate and the affiliates it chooses on its enrollment to include in its enterprise;

"enterprise product" means any product that we designate as an enterprise product and that an enrolled affiliate chooses to license under its enrollment (enterprise products may only be licensed on an enterprise-wide basis under the Enterprise Agreement program);

"Government EA Price List" means the Microsoft State and Local Government Enterprise Agreement Price List that is provided on a monthly basis to each reseller, which contains the reference prices for both enterprise products and additional products.

"initial annual reference price" means, with respect to an enterprise product ordered pursuant to a particular enrollment, the annual per-desktop unit reference price for the first and second annual payments.;

"initial price level" means, with respect to each enterprise product licensed pursuant to an enrollment executed hereunder, the volume discount level used to determine the initial annual reference price for such enterprise product;

"License" means any one of those offerings identified in the Product List (including standard licenses, and upgrades for desktop operating systems) that provides the right to run the version of the product for which it is ordered;

"L&SA" means a License and Software Assurance for any product ordered;

"Microsoft BackOffice Client Access License" and "BackOffice CAL" means each of the following client access license products, when purchased together as a suite:

(i) Windows CAL;

(ii) Exchange CAL;

(iii) SQL CAL; and

(iv) SMS CAL

(note: BackOffice CALs may solely be purchased hereunder pursuant to enrollments that renew previous enrollments under which BackOffice CAL was included as an enterprise product, and may not be purchased pursuant to any non-renewal enrollments executed hereunder);

"Microsoft Core Client Access License" and "Core CAL" means each of the following client access license products, when purchased together as a suite:

(i) Windows CAL;

(ii) Exchange CAL;

(iii) SharePoint CAL; and

(iv) SMS CAL;

"non-renewal enrollment" means any enrollment executed hereunder that is not a renewal enrollment;

"Office family" means either of the following enterprise products: (i) Microsoft Office Professional; or (ii) Microsoft Office Standard;

"order" means an order on a form that is acceptable to the reseller;

"original true up reference price" means, with respect to an enterprise product at the first, second or third anniversaries of an enrollment, respectively, the original per-additional-desktop unit reference price for the true up order due at such anniversary, as determined at the effective date of such enrollment pursuant to Section 13(e);

"platform enrollment" means any enrollment executed hereunder for which each of the following is a chosen enterprise product:

(i) either (a) Office Standard or (b) Office Professional; and

(ii) Microsoft Windows Professional desktop operating system; and

(iii) either (c) BackOffice CAL or (d) Core CAL;

"product family" means any of the following collections of enterprise products, as defined above: (i) Office family; (ii) Windows family; and/or (iii) CAL family;

"qualified desktop" means any personal desktop computer, portable computer, workstation or similar device that is used by or for the benefit of an enrolled affiliate or any affiliate included in its enterprise and that meets the minimum requirements for running any of the enterprise products. Qualified desktops do not include: (i) any computer that is designated as a server and not used as a personal computer, (ii) any system dedicated to run ONLY line-of-business software (e.g., an accounting or bookkeeping program used by an accountant, or a computer-aided design program used by an engineer or architect); or (iii) any

system running an embedded operating system (e.g. Windows 9.x for embedded, Windows XP embedded);

"renewal enrollment" means an enrollment executed hereunder pursuant to which a renewal order for enterprise products is made;

"renewal order" means the order that an enrolled affiliate submits at the beginning of any renewal term to renew Software Assurance coverage for products previously ordered under its enrollment;

"reseller" means a large account reseller authorized by us to resell licenses in an enrolled affiliate's area under the Enterprise Agreement program;

"Select Price List" means the Microsoft Select Agreement Price List that is provided on a monthly basis to each reseller, which contains the estimated retail prices for products made available pursuant to the Microsoft select program;

"Services" means product support or other services that an enrolled affiliate elects to purchase pursuant to a separate Microsoft Services Agreement;

"Software Assurance" means, for any underlying licensed product for which it is ordered, the right to upgrade to, and run, the latest version of that product that we make available during the covered period.

"unexpired enrollment" means, with respect to an annual pricing date, an enterprise enrollment under either (i) this agreement; or (ii) another Microsoft Enterprise Agreement to which either you or one of your affiliates is party, provided that such enrollment shall not have expired or been terminated prior to such annual pricing date; and

"Windows family" means the following enterprise product: Microsoft Windows XP Professional desktop operating system (or its successor).

2. How the Enterprise Agreement program works.

The Enterprise Agreement program gives customers that wish to license one or more of Microsoft's platform products across their enterprise the means to ensure that their entire enterprise will be licensed. You and your affiliates can participate in this program by submitting one or more enrollments under this agreement. On the enrollment, the enrolled affiliate will designate the scope of its enterprise and make the initial selection of enterprise products and any additional products it wishes to license. Each enrollment must include at least one of those products that we make available to license as an enterprise product. We may reasonably refuse to accept an enrollment. Product support is not included with the licenses under this agreement. Notwithstanding any other provision of this agreement, only enrolled affiliates identified in an enrollment will be responsible for complying with the terms of that enrollment, including the terms of this agreement incorporated by reference in that enrollment.

a. ***Establishing price levels.*** *The method by which price levels shall be determined as set forth in Section 13(e).*

b. ***Deriving prices from price levels.*** The enrolled affiliate's reference prices shall be determined as set forth in Section 13(e).

c. ***How your enrolled affiliates acquire licenses.*** Orders under an enrollment will be made out to and submitted to the enrolled affiliate's reseller. We will invoice that reseller according to the terms in the applicable enrollment. While such enrollment will contain reference prices, the reseller and the enrolled affiliate will determine the enrolled affiliate's actual price and payment terms. *We will not invoice your reseller for taxes for which you and your affiliates are tax exempt.*

d. ***Choosing and maintaining a reseller.***

Resellers. *For each enrollment, DIR* must choose and maintain a reseller in the enrolled affiliate's area. *Enrolled affiliates agree (i) to accept DIR's choice of reseller, and (ii) to change resellers, subject to the terms of the following paragraph, upon receipt of written notice from DIR*

instructing them to do so. Resellers are authorized to resell our product licenses, but act independently and have no authority to bind us.

Change of reseller. If *at any time during the term of an enrollment DIR wishes to terminate the relationship with a designated reseller with respect to any enrollment, or* an entity ceases to be a reseller, *DIR* must choose a replacement. If an enrolled affiliate intends to change its reseller, *it must first seek permission from DIR, and DIR must request such change us. Any such* change will only be effected on the next anniversary of the enrollment effective date. To change a reseller, *DIR* must notify us, *the enrolled affiliate*, and the former reseller in writing, on a form that we provide, at least 30 days prior to the anniversary on which the change is to take effect. *DIR agrees that any payments which were due before the end of such 30-day notice period, or which became due during such period, shall be owed to the former reseller. We are not* responsible for *any costs or damages arising out of any change of reseller initiated by DIR or an enrolled affiliate.*

3. How to order enterprise product licenses.

a. *Placing the initial order.* Each enrolled affiliate must submit an initial order for the enterprise products it selects on its enrollment. Except as provided in the following paragraph, the order must be for L&SA for all enterprise products.

When is the enrolled affiliate eligible to order only Software Assurance for an enterprise product? An enrolled affiliate may order Software Assurance for the enterprise products it selects without the need to simultaneously order a License if the enrolled affiliate or any of the affiliates in its enterprise have obtained perpetual licenses for that product on an enterprise-wide basis under a previous "Enterprise Enrollment" (defined below), and the new enrollment becomes effective no later than the day following the date of expiration of that "Enterprise Enrollment." The Software Assurance order must be for the number of qualified desktops covered as of the expiration of that "Enterprise Enrollment." For all other qualified desktops included in an enrollment submitted under this agreement, the enrolled affiliate must order L&SA.

The term "Enterprise Enrollment," as used in this section 3, means (i) a Microsoft Enterprise Select Agreement; (ii) an enterprise enrollment under a separate Microsoft Select Master Agreement or Microsoft Enterprise Agreement; (iii) any enterprise subscription enrollment entered into under a separate Microsoft Enterprise Subscription Agreement; or (iv) any other enrollment submitted under the Microsoft Enterprise Agreement identified on the cover page.

b. *Adding new enterprise products.* An enrolled affiliate may only add new enterprise products by entering into a new enrollment.

c. *Placing annual "true up" orders to account for additional desktops.* Each enrolled affiliate must determine the current number of qualified desktops in its enterprise: (i) at each anniversary of the effective date of its enrollment (including anniversaries during any renewal); and, (ii) at the expiration or early termination of its enrollment.

- **If the desktop count has increased.** If the number of qualified desktops has increased, the enrolled affiliate must submit an order for L&SA covering those additional desktops. The enrolled affiliate must place the order within 15 days following the anniversary of the enrollment effective date, expiration or termination.
- **If the desktop count has not increased.** If the number has not increased, the enrolled affiliate must submit an update statement confirming this fact on the form we provide within that 15-day period.

d. *Reorganizations, Consolidations, and Privatizations.* If the number of qualified desktops in an enterprise changes by more than ten percent as a result of a reorganization, consolidation or privatization of an enrolled affiliate, we will work with the enrolled affiliate in good faith to determine how to accommodate its changed circumstances in the context of this agreement. If an enrolled affiliate consolidates with a customer with an existing "Enterprise

Enrollment," we will work with the enrolled affiliate in good faith to accommodate its changed circumstances in the context of this agreement.

4. How to order additional product licenses.

a. ***Placing the initial order.*** Each enrolled affiliate must submit an initial order for the additional products it has selected, if any, on its enrollment. Except as provided in the following paragraph, the order must be for L&SA for all copies of those additional products.

When is the enrolled affiliate eligible to order only Software Assurance for an additional product? An enrolled affiliate may order Software Assurance for additional products it selects without the need to simultaneously order a License if the enrolled affiliate or any of the affiliates it includes in its enterprise has obtained perpetual licenses for those products with Upgrade Advantage, Software Assurance or any similar upgrade protection, and the new enrollment becomes effective no later than one day following the expiration of that upgrade protection. The order may be for up to the number of copies covered by such upgrade protection. An enrolled affiliate may also order Software Assurance alone in any other circumstances expressly permitted in the Product List. For all other copies included in an enrollment submitted under this agreement, the enrolled affiliate must order L&SA.

b. ***Adding new additional products not previously ordered.*** Each enrolled affiliate may, during the remainder of the applicable initial enrollment or renewal term, run new additional products under its enrollment that were not part of the initial order. To do so, the enrolled affiliate must order L&SA in the month in which the product is first run, covering all copies of that product run as of the date of the order. For any additional copies of that product run after the date of that order, the enrolled affiliate must submit orders as described in subsection 4(c) (Placing annual "true up" orders to account for additional copies) below.

c. ***Placing annual "true up" orders to account for additional copies.*** Each enrolled affiliate may, during the remainder of the applicable initial enrollment or renewal term, run additional copies of those additional products it previously ordered under subsections (a) and (b), provided that the enrolled affiliate places a true up order for L&SA for those additional copies. The enrolled affiliate must submit an order within 15 days after the next anniversary of the effective date of the enrollment (including anniversaries occurring during any renewal) following the date on which those copies were first run. For additional copies first run in the year in which an enrollment expires or is terminated, the enrolled affiliate must submit an order within 15 days following the expiration or termination date.

d. ***Update statements.*** Each enrolled affiliate must submit an update statement within 15 days following each anniversary of the effective date of its enrollment, and after expiration or termination of its enrollment, on a form we provide, unless that enrolled affiliate (i) is running only enterprise products under its enrollment, and (ii) it is not otherwise required to submit an update statement under subsection 3(c) (Placing "true up" orders to account for additional desktops) above.

5. How to confirm orders.

We will publish information about orders placed by each enrolled affiliate, including an electronic confirmation of each order, on a secure site on the World Wide Web at http://licensing.microsoft.com or a successor site that we identify. Upon our acceptance of this agreement and enrollments entered into under this agreement, the contact identified for this purpose on the cover page will be provided access to this site.

6. License grant – what your enrolled affiliates are licensed to run.

Upon our acceptance of the enrollment, the enrolled affiliate has the following rights during the term of its enrollment.

- **For enterprise products.** The enrolled affiliate may run one copy of the latest version (or any prior version) of each enterprise product, on each qualified desktop. By including affiliates in its enterprise, the enrolled affiliate sublicenses this right to each of them subject to the terms of this agreement.
- **For additional products.** The enrolled affiliate may run the number of copies of each additional product ordered in the latest version (or any prior version). If an affiliate included in any enrolled affiliate's enterprise runs any copies of an additional product under this agreement, those copies are sublicensed from that enrolled affiliate subject to the terms of this agreement.

The right to run any product licensed under an enrollment is temporary until:

(i) the enrolled affiliate has paid all installments of the price for that product license and the applicable initial enrollment or renewal term during which that product license was ordered has expired or been renewed, or

(ii) the enrolled affiliate is otherwise entitled to perpetual licenses upon early termination as provided in subsection 12(c) (Termination of an enrollment).

Thereafter, the enrolled affiliate will have perpetual licenses to run the latest version available as of such date of expiration, renewal or termination (or any prior version), of each enterprise product in a number of copies equal to the total number of qualified desktops covered by the enrollment; and each additional product in the number of copies ordered during the applicable initial enrollment term or renewal term. In the case of early termination as provided in subsection 12(c) (Termination of an enrollment), if an enrolled affiliate chooses only to pay amounts due and payable as of the termination date, then the enrolled affiliate will instead have perpetual licenses for the number of copies specified in subsection 12(d) (Effect of termination or expiration).

Any perpetual licenses received through Software Assurance supersede and replace the underlying perpetual licenses for which that Software Assurance coverage was ordered. All perpetual licenses acquired under this agreement remain subject to the terms of this agreement and the applicable product use rights.

This agreement, the applicable enrollment, the enrolled affiliate's order confirmation described in section 5 (How to confirm orders) above, and any documentation evidencing transfers of licenses as described in subsection 11(a) (How to transfer), together with proof of payment, will be the enrolled affiliate's evidence of all licenses obtained under its enrollment.

7. How to know what product use rights apply.

The product use rights applicable to products licensed under each enrollment are as follows.

a. ***For latest versions available as of an enrollment effective date.*** For the latest version of any product available on or before the enrollment effective date, the product use rights in effect on the enrollment effective date for that product and version apply.

b. ***For versions and products that become available after an enrollment effective date.*** For any version of any existing product, or any new product, first made available after the enrollment effective date, the product use rights in effect on the date on which the version or product first becomes available apply (subject to our commitment on use rights below).

c. ***For versions of a product that predate the latest version available as of an enrollment effective date.*** If an enrolled affiliate is using a version of any product licensed under its enrollment that became available prior to the version that was current on the enrollment effective date, the enrolled affiliate's use of the earlier version will be governed by the product use rights that *apply to the most current version of such product available on the day the license was purchased. If such license is also enrolled in Software Assurance, and is later upgraded pursuant to such Software Assurance to a version that is earlier than the most current version that is otherwise available on the day that such upgrade takes place (the "upgrade date"), the newly-*

installed version will be governed by the product use rights that apply to the most current version of such product available as of the upgrade date.

d. Microsoft's commitment on use rights.

For all products – use rights fixed by version. We will not change an enrolled affiliate's product use rights under this agreement for any version of a product after it becomes available to that enrolled affiliate under its enrollment.

For enterprise products – no detrimental use right changes in new versions.

(i) **For new versions made available during the initial enrollment term.** If we make available a new version of any enterprise product during the initial enrollment term and that new version is subject to certain use rights that *you believe to be* more restrictive than those that applied to a prior version under an enrollment that was or became available during the initial enrollment term, the enrolled affiliate may run that new version without being subject to those certain more restrictive use rights.

(ii) **For new versions made available during each renewal term.** Upon each renewal of Software Assurance for an enterprise product, an enrolled affiliate's use of that product will be governed by the use rights that apply to the latest version of that product available as of the date of that renewal, including any terms that are more restrictive than those that applied to a previous version of that product licensed by that enrolled affiliate under its enrollment during the preceding term. However, if during a renewal term we make available a new version of that same enterprise product with certain use rights more restrictive than those use rights that applied to a prior version licensed under an enrollment that was or became available during that same term, the enrolled affiliate may run the new version without being subject to those certain more restrictive use rights.

(iii) **New features or functionality.** The right described in subsections (i) and (ii) above does not apply to product use rights that relate specifically to new features or functionality added to a new version.

In lieu of your obligation to indemnify us under various provisions of the product use rights, you will be responsible for any cost or damages arising from any claim to which your indemnity obligation would otherwise apply *to the extent permitted by applicable law.*

8. No Services.

Notwithstanding any offerings that may exist for our non-government customers, services shall not be offered pursuant to this agreement, but may be obtained pursuant to a separate Microsoft Services Agreement which you may choose to enter into.

9. Software Assurance Membership.

Throughout the term of its enrollment (including any renewal), each enrolled affiliate automatically qualifies as a member of Microsoft's Software Assurance Membership program. Membership may entitle the enrolled affiliates to special benefits. For a description of these benefits, an enrolled affiliate should consult its reseller or Microsoft account manager.

10. Making copies of software.

a. Copies necessary for internal deployment. Each enrolled affiliate may make as many copies of the products licensed under its enrollment as necessary to distribute the products to the users within its enterprise. All copies of any product must be true and complete copies (including copyright and trademark notices) and be made from CD-ROMs, disk sets or a network source, acquired from or made available by a Microsoft approved fulfillment source for that product. Each enrolled affiliate may also have a third party make and distribute copies in its place, but the enrolled affiliate is responsible for third-party actions to the same extent it would be if the third party were its employee. You and your affiliates must make reasonable efforts to make

employees, agents and other individuals running a product aware that the product is licensed from us and may only be run or transferred subject to the terms of this agreement.

b. ***Copies for training, evaluation and back-up.*** During the term of its enrollment (including any renewal), each enrolled affiliate and any affiliate included in its enterprise may (i) run up to 20 complimentary copies of any additional product in a dedicated training facility on their premises; (ii) run up to 10 complimentary copies of any product that we make available to license as an additional product for a 60-day evaluation period; and (iii) make and retain one complimentary copy of any licensed product for back-up or archival purposes for each of their distinct geographic locations.

c. ***Re-imaging rights.*** If an enrolled affiliate or any affiliate included within its enterprise has licensed products from an original equipment manufacturer (OEM), through a retail source or under any Microsoft program other than this Enterprise Agreement program, it may use copies made from the media provided under the enrolled affiliate's enrollment in place of any copies made from the media provided through that separate source, so long as it complies with the following restrictions.

(i) The enrolled affiliate must have obtained a separate license from the separate source for each copy being replaced.

(ii) The product, language, version and all components (in the case of product suites, such as Office) of the copies made from the media provided under an enrollment must be identical to the product, language, version and all components of the copies they replace.

(iii) In the case of copies licensed from an original equipment manufacturer (OEM) or through a retail source, in addition to the other conditions outlined in this subsection 10(c), the product type (e.g. upgrade or full license) of the copies made from the media provided under an enrollment must be identical to the product type of the copies they replace. However, an enrolled affiliate may use copies of a desktop operating system made from the media provided under its enrollment in place of copies of the same desktop operating system obtained from a separate source, even though they may be of different types (i.e. one may be an upgrade and the other a full license), provided that the product, language and version are identical.

The use of any copies made under this subsection 10(c) is subject to the terms and use rights provided with the copies being replaced, and nothing in this section creates or extends any warranty or support obligation.

11. *Transferring licenses.*

a. ***How to transfer.*** An enrolled affiliate may transfer perpetual licenses ordered under an enrollment to an affiliate, or to an unaffiliated third party in connection with a privatization of the enrolled affiliate, as long as the enrolled affiliate provides us with prior written and signed notice, on a form that we provide, that includes: (i) the applicable enrollment number; (ii) the quantity of licenses being transferred by product and version; (iii) the name, address and contact information of the transferee; and (iv) any other information that we may reasonably request.

For all other transfers of licenses, our written consent is required. We will not withhold our consent unreasonably. No license transfer will be valid unless the transferee accepts in writing the applicable product use rights, use restrictions, limitations of liability, and the transfer restrictions in this section 11. Any transfer made in violation of the requirements or restrictions of this section will be void.

b. ***When transfers are not permitted.*** An enrolled affiliate may not transfer (i) licenses on a short-term basis, (ii) temporary rights to use products, (iii) Software Assurance coverage, (iv) perpetual licenses for any version of any product acquired through Software Assurance separately from the underlying perpetual licenses for which that Software Assurance coverage was ordered; or (v) upgrade licenses for a desktop operating system product separately from the

underlying desktop operating system license or from the computer system on which the product is first installed.

12. *Term, termination and renewal.*

a. ***Term.*** This agreement will remain in effect unless it is terminated by either party as described below. Each enrollment will have the term provided in that enrollment.

b. ***Termination of this agreement.*** Either party may terminate this agreement for any reason upon 60 days written notice.

Effect of termination. Such termination will merely terminate either party's and its affiliates' ability to enter into new enrollments under this agreement. Such termination will not affect any enrollment not otherwise terminated, and any terms of this agreement applicable to any enrollment not otherwise terminated will continue in effect with respect to that enrollment.

c. ***Termination of an enrollment - general.*** Either party to an enrollment may terminate it if the other party materially breaches its obligations under this agreement, including any obligation to submit orders or pay amounts owed (even if such non-payment is caused by non-appropriation of funds). If we terminate *three or more* enrollments *for cause*, we may also terminate this agreement and all other enrollments under it, unless the basis for termination of the enrollment is non-appropriation of funds to the enrolled affiliate, in which event we may only terminate the affected enrollment. Except where the breach is by its nature not curable within 30 days, the terminating party must give the other party 30 days notice and opportunity to cure. If we give such notice to an enrolled affiliate, we will give you a copy of that notice as well. If an enrolled affiliate ceases to be your affiliate, you must promptly notify us of this fact, and we may terminate its enrollment.

d. ***Termination of an enrollment – non-appropriation of funds.*** An enrolled affiliate may terminate an enrollment without liability, penalty or further obligation to make payments, but subject to Section 12(e), below (Effect of expiration or termination), if funds to make payments under the enrollment are not appropriated or allocated for such purpose.

e. ***Effect of termination or expiration.*** Upon expiration or termination of any enrollment, the enrolled affiliate must order licenses for all copies of products it or its affiliates have run under its enrollment for which the enrolled affiliate has not previously submitted an order. Except as provided in the next paragraph, in the event of termination, all unpaid installments of the purchase price for any licenses will immediately become due and payable, and the enrolled affiliate will be entitled to perpetual licenses only after all such payments have been made.

If (i) an enrolled affiliate terminates its enrollment as a result of our breach, or (ii) we terminate an enrolled affiliate's enrollment because it has ceased to be your affiliate, or (iii) you terminate an enrollment for non-appropriation of funds, or (iv) we terminate an enrollment for non-payment due to non-appropriation of funds, then the enrolled affiliate will have the following options. It may immediately pay the total remaining amount due, including all installments, in which case the enrolled affiliate will have perpetual licenses for all copies of the products it has ordered. As an alternative, it may pay only amounts due and payable as of the termination date, in which case the enrolled affiliate will have perpetual licenses for (i) all copies of all products for which payment has been made in full, and (ii) the number of copies of products for which payment has been made in installments that is proportional to the amount that has been paid as of the termination date.

f. ***How to renew an enrollment.*** We will provide each enrolled affiliate with 60 days prior written notice of expiration of its enrollment or renewal term advising it of its renewal options. An enrolled affiliate may have the option to renew its enrollment for successive terms of 12 or 36 full calendar months. We and our affiliates will not unreasonably reject any renewal order. However, we may make a change to the Enterprise Agreement program that will make it necessary for you and your enrolled affiliates to enter into new agreements and enrollments.

Placing renewal orders. To renew, the enrolled affiliate must submit a renewal order within 30 days after the previous term expired. The renewal order must be for Software Assurance for (i) all enterprise products previously ordered for all qualified desktops in the enrolled affiliate's enterprise as of the date of that renewal order, and (ii) all copies of additional products for which the enrolled affiliate elects to renew Software Assurance. Each renewal term will start the day following expiration of the prior term. An enrolled affiliate may not add new enterprise products not previously ordered during the initial term as part of its renewal; to license new enterprise products it must submit a new enrollment.

Consequences of non-renewal. If the enrolled affiliate elects not to renew its enrollment or Software Assurance for any additional product under its enrollment, and it otherwise allows Software Assurance for any copies of any products licensed under its enrollment to lapse, then the enrolled affiliate will not be permitted to order Software Assurance for such copies later without first acquiring L&SA.

13. *Miscellaneous.*

a. ***Entire agreement.*** The documents identified on the cover page to this agreement constitute the entire agreement concerning the subject matter and supersede any prior or contemporaneous communications. In the case of a conflict between any of these documents that is not resolved expressly in the documents, their terms will control in the following order: (i) the Microsoft Business Agreement; (ii) these terms and conditions and the accompanying cover page; (iii) the Product List; (iv) the product use rights; and (v) all other enrollments under this agreement. The terms of any purchase order or any general terms and conditions you or your affiliates maintain, other than those mandatory terms required by statute or regulation, do not apply. This agreement (except the product use rights and the Product List) can be changed only by an amendment signed by both parties.

b. ***Survival.*** Provisions regarding product use rights, restrictions on use, evidence of perpetual licenses, transfer of licenses, warranties, limitations of liability, confidentiality, compliance verification and obligations on termination or expiration will survive termination or expiration of this agreement or any enrollment.

c. ***Independent contractors.*** Resellers are independent contractors who act in their own name and for their own account; they have no authority to bind or impose any obligation or liability upon us.

d. ***Copyright Violation.*** Except to the extent you are licensed under this agreement, you will be responsible for your violation of our copyright in the products, including payment of license fees specified in this agreement for unlicensed use.

e. ***Determination of reference prices.*** *Reference prices for additional products and enterprise products shall be determined as follows:*

Determination of pricing for additional products.

During the term of each enrollment executed hereunder, and provided that you are party to a Microsoft Select Agreement (or its successor) during such term, the volume discount level for each additional product ordered pursuant to such enrollment shall be the volume discount level that corresponds to the applicable volume discount level for the product pool in which such product is available pursuant to such Microsoft Select Agreement. For example, if Microsoft Project, which is a member of the Applications pool, is ordered as an additional product, and if, as of the date of such order, the Select volume discount level for the Applications pool is "Level D," then the additional product reference price for such copy of Microsoft Project shall be determined according to the then-current Level D additional product price list.

Should you cease to be party to a Microsoft Select Agreement (or its successor) during the term of this Enterprise Agreement, then the volume discount level for each additional product in each

annual pricing period shall be determined based upon such annual pricing period's aggregate family desktop count for the product family in which such additional product is contained, pursuant to the following table:

Aggregate Family Desktop Count	Additional Product Price Level
Fewer than 2,400	A
2,400 - 5,999	B
6,000 - 14,999	C
15,000 or more	D

Determination of pricing for enterprise products.

(1) Annual price levels. For each product family and for each annual pricing period, we will determine an annual price level, pursuant to Table 1 in Addendum A, by matching the aggregate family desktop count for such family (as of the annual pricing date which immediately precedes such annual pricing period) with the column marked "Annual Price Level Name."

For example, the annual price level for the Office family during an annual pricing period that runs between October 1, 2003 and September 30, 2004, shall be determined according to Table 1 in Addendum A by counting the aggregate number of qualified desktops, in unexpired enrollments which contain Microsoft Office or Microsoft Office Professional as enterprise products, as of September 1, 2003. If such aggregate count is between 15,000 and 39,999 qualified desktops, the annual price level will be "D"; if the count is between 40,000 and 59,999, the annual price level will be the "40K Premium Level"; and so on.

(2) Establishing component product reference prices for new enrollments. The Government EA Price List provided to resellers generally contains reference prices for the following common enterprise products:

- *Microsoft Office Professional;*
- *Microsoft Windows XP Professional Operating System Upgrades;*
- *Microsoft Core CAL; and*
- *Microsoft Desktop Professional (which is a suite composed of the preceding three component products, and the reference price for which is equal to the sum of the three component reference prices less the applicable platform discount).*

For the purposes of the agreement, the Government EA Price List entry for Microsoft Desktop Professional shall not apply, since this section 13(e) provides an alternate and equivalent means by which the three component products thereof shall be priced. Rather, the components of Microsoft Desktop Professional shall be sold as separate line items to the reseller. This is necessary in order that the annual price levels which apply to each of the three product families which contain the components may be adjusted separately, as set forth below.

On each annual pricing date, we will establish a list of initial annual reference prices and original true up reference prices for enterprise products (collectively, "initial prices") for each of the most commonly requested enterprise products, plus any other enterprise products for which you may have requested reference prices. We will provide your reseller(s) with such reference prices, and the corresponding confidential reseller costs, and will also provide you with such reference prices.

Such initial prices shall apply to all new enrollments signed during the annual pricing period which immediately follows such annual pricing date, but not thereafter, unless different initial prices are agreed upon in writing between us and an enrolled affiliate (or you) based upon certain

exceptions to standard terms including (but not limited to) applied credits and/or uplifts for cost of money in deferred payment schedules.

Initial prices for each enterprise product shall be calculated, using the following formulas, using such product's standard license estimated retail price ("L") (except as noted in the following sentence) and one-year Software Assurance estimated retail price ("SA") pursuant to the Select Price List which is in effect as of the annual pricing date upon which the determination is being made. For the purposes of determining the value of "L" solely with respect to the Windows Professional Upgrade, sixty percent (60%) of the Select estimated retail price of such Upgrade shall be used. The Select volume discount level to be used for such L and SA price (level A, B, C, or D) shall be determined pursuant to Table 1 in Addendum A by matching the aggregate family desktop count for the applicable product family (as of the annual pricing date which immediately precedes such annual pricing period) with the column marked "EA / Select Price List Volume Level."

(i) for orders of License & Software Assurance on an initial order made pursuant to a non-renewal enrollment, the initial annual reference price shall be calculated according to the following formula:

{ [L + (3 x SA)] x 0.85, divided by 3 }, less an additional premium level discount (if applicable) and/or platform discount (if applicable) pursuant to the terms and conditions below governing such additional discounts.

(ii) for orders of Software Assurance on an initial order made pursuant to a renewal enrollment, the initial annual reference price shall be calculated according to the following formula:

SA x 0.95, less an additional premium level discount (if applicable) and/or platform discount (if applicable) pursuant to the terms and conditions below governing such additional discounts;

(iii) for orders of License & Software Assurance on the first anniversary true up order made pursuant to either a renewal enrollment or a non-renewal enrollment, the original true up reference price shall be calculated according to the following formula:

{ L + (2.5 x SA) } x 0.85, less an additional premium level discount (if applicable) and/or platform discount (if applicable) pursuant to the terms and conditions below governing such additional discounts;

(iv) for orders of License & Software Assurance on the second anniversary true up order made pursuant to either a renewal enrollment or a non-renewal enrollment, the original true up reference price shall be calculated according to the following formula:

{ L + (1.5 x SA) } x 0.85, less an additional premium level discount (if applicable) and/or platform discount (if applicable) pursuant to the terms and conditions below governing such additional discounts; and

(v) for orders of License & Software Assurance on the third anniversary true up order made pursuant to either a renewal enrollment or a non-renewal enrollment, the original true up reference price shall be calculated according to the following formula:

{ L + (0.5 x SA) } x 0.85, less an additional premium level discount (if applicable) and/or platform discount (if applicable) pursuant to the terms and conditions below governing such additional discounts.

The results of each of the above calculations will be rounded to the nearest penny.

For example, if, at the annual pricing date which immediately precedes an annual pricing period, the standard license estimated retail price (L) for an enterprise product is $100.00 per desktop, and the one-year Software Assurance estimated retail price is $25.00 per desktop, then:

- *The initial annual reference price for License & Software Assurance for a non-renewal enrollment during such annual pricing period will be:*

  { [$100.00 + (3 x $25.00)] x 0.85, divided by 3 } = $49.58 per desktop per year, less platform discount (if any), less premium level discount (if any);

- *The initial annual reference price for Software Assurance for a renewal enrollment during such annual pricing period will be:*

  $25.00 x 0.95 = $23.75 per desktop per year, less platform discount (if any), less premium level discount (if any);

- *The original true up reference price for License & Software Assurance at the first anniversary of the effective date of either a renewal or non-renewal enrollment during such annual pricing period will be:*

  { $100.00 + (2.5 x $25.00) } x 0.85 = $138.13 per desktop, less platform discount (if any), less premium level discount (if any);

- *The original true up reference price for License & Software Assurance at the second anniversary of the effective date of either a renewal or non-renewal enrollment during such annual pricing period will be:*

  { $100.00 + (1.5 x $25.00) } x 0.85 = $116.88 per desktop, less platform discount (if any), less premium level discount (if any);

- *The original true up reference price for License & Software Assurance at the third anniversary of the effective date of either a renewal or non-renewal enrollment during such annual pricing period will be: and*

  { $100.00 + (0.5 x $25.00) } x 0.85 = $95.63 per desktop, less platform discount (if any), less premium level discount (if any).

(3) Additional discounts applied to initial prices for components. After calculating initial prices for each component enterprise product pursuant to the above formulas, the following additional discounts may be applied to such prices, subject to the terms and conditions below:

(A) A "platform discount" will be applied to component platform products (e.g. Microsoft Office Professional) ordered pursuant to platform enrollments, but not to other enterprise products, if any (e.g. Microsoft Project), in such platform enrollments. Such platform discounts are as follows:

(i) 15% for initial orders of License & Software Assurance on non-renewal enrollments;

(ii) 5% for initial orders (but not true up orders) of Software Assurance for renewal enrollments; and

(iii) 15% for true up orders of License & Software Assurance for both renewal enrollments and non-renewal enrollments.

For example, if the initial annual reference price of a component product in a non-renewal platform enrollment, before the platform discount is applied, is $100.00, the platform discount will be $15.00, and the resulting initial annual reference price will be

{ $100.00 - $15.00 } = $85.00.

(B) A "premium level discount" will be applied to an enterprise product, provided that the aggregate family desktop count that applies to such product is equal to or greater than 40,000 qualified desktops. The amount of such premium level

discount shall be determined according to Table 1 in Addendum A, by matching the aggregate family desktop count for the applicable product family (as of the annual pricing date which immediately precedes such annual pricing period) with the applicable column under the heading "Premium Level Discount." Such premium level discount (if any) will be applied before applying a platform discount (if any).

For example, if the initial annual reference price of a component product in a non-renewal platform enrollment, before the platform discount and premium level discount are applied, is $100.00, and the aggregate desktop count for the product family is 60,000 qualified desktops, then a corresponding premium level discount of 4% will be applied (i.e. a discount of $4.00), so the resulting initial annual reference price before the platform discount is applied will be:

{ $100.00 – $4.00 } = $96.00.

The platform discount applied will be 15% of $96.00, which is $14.40, so the resulting annual reference price after the platform discount is applied will be

{ $96.00 – 14.40 } = $81.60.

The results of each of the above discount calculations will be rounded to the nearest penny. Such discounts will be provided so long as they are made generally available to all volume licensing customers. If the amount of either such generally available discount is increased, decreased, or eliminated, such increase, decrease or elimination will apply to the annual pricing period which immediately follows such event.

Table 4 and 5 in Addendum A show the initial annual reference prices and original true up reference prices, respectively, that shall apply during the first annual pricing period. We will provide you with new initial annual reference prices on or before the first day of each subsequent annual pricing period.

(4) Price adjustments for third annual installment and true up payments upon sustained change of annual price level.

The unit reference prices of the following payments (collectively, the "adjustable payments") are subject to change ("adjustment"), provided that the state's annual price level has increased or decreased, relative to the initial price level, as of both the first and second anniversaries of an enrollment:

(i) the third annual installment payment for the qualified desktops ordered pursuant to the initial order;

(ii) additional qualified desktops (if any) ordered pursuant the second anniversary true up order; and

(iii) additional qualified desktops (if any) ordered pursuant the third anniversary true up order.

Such adjustment in unit reference price will be determined separately for each product family, pursuant to Tables 2 and 3 in Addendum A. The adjustment multiplier for each applicable product family on an enrollment is determined in such table by finding the intersection of (i) the column which corresponds to the initial price level, and (ii) the line which corresponds to the ending price level. The adjustment multiplier applicable to each product family will then be multiplied by the initial annual reference price for each applicable enterprise product in such product family, in order to determine the new reference prices for the adjustable payments.

For the purposes of this Subsection 13(e)(4), one annual price level is "higher" than another volume level if the minimum aggregate family desktop count requirement for such level is greater than that for the second level, and one annual price level is "lower" than another volume level if

the minimum aggregate family desktop count requirement for such level is lower than that for the second level. For example, Level D is higher than Level C, and the 40K Premium Level is lower than the 60K Premium Level.

In the event that your annual price level becomes lower in one annual pricing period than in the previous year, we (or the reseller on our behalf) will send a written notice to each enrolled affiliate that executed an enrollment during the previous annual pricing period, advising such enrolled affiliate that a price increase may occur for the third annual installment payment pursuant to its enrollment in the event that the subsequent annual price level has not increased to a level equal to or greater than the initial annual price level. Such notice will be delivered at least 12 months prior to the date upon which such third annual installment payment will become due.

The ending price level shall be determined for each product family on each enrollment according to the relationship between initial price level and the annual price levels for the first and second anniversaries, respectively, according to the following table:

Annual Price Level Criteria:			**Examples with sample price levels:**			
If the first anniversary price level is:	**and the second anniversary price level is:**	**then the ending price level will be:**	**Initial Annual Price level**	**First Anniversary Annual Price Level**	**Second Anniversary Annual Price Level**	**Ending Price Level**
the same as the initial price level	any level	The initial price level	C	C	Any Level	C
Higher than the initial price level	the same or higher than the first anniversary price level	The first anniversary price level	B	C or D	C or D	C
Higher than the initial price level	lower than the first anniversary price level but higher than the initial level	the second anniversary price level	B	D	C	C
Higher than the initial price level	the same as or lower than the initial price level	The initial price level	B	C	A or B	B
Lower than the initial price level	the same or lower than the first anniversary price level	The first anniversary price level	C	B	A or B	B

Lower than the initial price level	higher than the first anniversary price level but lower than the initial level	the second anniversary price level	C	A	B	B
Lower than the initial price level	the same as or higher than the initial price level	The initial price level	C	A or B	C or D	C

(5) Special price level for enrollments executed during the first annual pricing period ("year 1 enrollments").

As an exception to the foregoing, the parties agree that the initial price level for each product family for the first annual pricing period shall be the 60K Premium Level, notwithstanding the fact that the actual aggregate family desktop counts are as follows:

- *Office Family: 59,065*
- *Windows Family: 60,350*
- *CAL Family: 53,726*

This allowance is based upon the parties' good faith estimate that the aggregate family desktop count in all product families will surpass 60,000 qualified desktops as of the second annual pricing date, and will remain above 60,000 beyond the third annual pricing date. For the purposes of calculating an end pricing level for such year 1 enrollments, the first anniversary price level and second anniversary price levels shall be determined pursuant to the normal terms of this Section 13(e) above.

(6) Additional terms and conditions.

You acknowledge, on behalf of your enrolled affiliates, that the reference prices for the third annual payment of certain enrollments, along with true up payments due at their second and third anniversaries, respectively, may increase pursuant to the terms of this Section 13(e). It is recommended that affiliates not enter into enrollments hereunder unless (a) they are aware of such possibility that their price may increase as stated above; and (b) they anticipate that sufficient budget will be approved to cover such increased payment amount.

You acknowledge and agree that there may be certain instances in which the reference prices of certain enterprise products in certain enrollments executed by your affiliates, whether under this Enterprise Agreement or otherwise under a separate Enterprise Agreement or Enterprise Subscription agreement, may be adjusted in ways that vary from the adjustments agreed upon in this Section 13(e), pursuant to separate agreement between the enrolled affiliate and us. Such instances may include, but are not limited to, those enrollments: (i) that were executed prior to this enterprise agreement; (ii) that contain other enterprise products than those in the three product families defined herein; (iii) for which we negotiate a special payment schedule or ramped installment payments upon the condition that the reference price of such enrollment be uplifted to account for the time value of money; and (iv) for which a special price is negotiated to match the equivalent Microsoft Select estimated retail price for sufficient licenses, such as to account for unexpired Upgrade Advantage and/or Software Assurance.

Reference prices are provided only for the purpose of comparison. Actual pricing and payment terms will be determined by agreement between each enrolled affiliate and its chosen reseller.

All adjustments to reference prices defined herein will correspond to a proportional adjustment we will make to the reseller's confidential cost.

You agree to assist us in making eligible affiliates aware of the general terms, conditions, and benefits of entering into an Enrollment, by:

(i) posting such information a website accessible to each such affiliate;

(ii) broadcasting an email announcement of such terms, conditions and benefits to all Information Technology Directors or similar officers within prospective Participating Affiliates; and

(iii) participating, upon our request and as your schedule reasonably permits, in conference calls with such prospective Participating Affiliates, to discuss such terms, conditions, and benefits.

Addendum A

Table 1: Volume Level Determinations

Aggregate Family Desktop Count	Annual Price Level Name	EA / Select Price List Volume Level	Premium Level Discount
250 - 2,399	Level A	Level A	N/A
2,400 - 5,999	Level B	Level B	N/A
6,000 - 14,999	Level C	Level C	N/A
15,000 - 39,999	Level D	Level D	N/A
40,000 - 59,999	40K Premium Level	Level D	2.00%
60,000 - 79,999	60K Premium Level	Level D	4.00%
80,000 - 119,999	80K Premium Level	Level D	6.00%
120,000 - 299,999	120K Premium Level	Level D	7.50%
300,000 - 499,999	300K Premium Level	Level D	9.00%
500,000 or more	500K Premium Level	Level D	10.00%

Table 2: Adjustment Multipliers for 3rd year payments:

		Initial Price Level									
		Level A	Level B	Level C	Level D	40K Premium Level	60K Premium Level	80K Premium Level	120K Premium Level	300K Premium Level	500K Premium Level
Ending Price Level	Level A	1.000	1.070	1.070	1.070	1.070	1.070	1.070	1.070	1.070	1.070
	Level B	0.847	1.000	1.070	1.070	1.070	1.070	1.070	1.070	1.070	1.070
	Level C	0.652	0.819	1.000	1.070	1.070	1.070	1.070	1.070	1.070	1.070
	Level D	0.456	0.637	0.833	1.000	1.040	1.070	1.070	1.070	1.070	1.070
	40K Premium Level	0.404	0.588	0.789	0.959	1.000	1.041	1.070	1.070	1.070	1.070
	60K Premium Level	0.350	0.538	0.743	0.917	0.958	1.000	1.042	1.070	1.070	1.070
	80K Premium Level	0.294	0.486	0.695	0.872	0.915	0.957	1.000	1.032	1.064	1.070
	120K Premium Level	0.250	0.445	0.657	0.838	0.881	0.924	0.968	1.000	1.032	1.054
	300K Premium Level	0.205	0.403	0.619	0.802	0.846	0.890	0.934	0.967	1.000	1.022
	500K Premium Level	0.174	0.374	0.592	0.778	0.822	0.867	0.911	0.944	0.978	1.000

Table 3: Adjustment Multipliers for 2nd and 3rd Year True Up Payments:

		Initial Price Level									
		Level A	Level B	Level C	Level D	40K Premium Level	60K Premium Level	80K Premium Level	120K Premium Level	300K Premium Level	500K Premium Level
Ending Price Level	Level A	1.000	1.070	1.070	1.070	1.070	1.070	1.070	1.070	1.070	1.070
	Level B	0.929	1.000	1.070	1.070	1.070	1.070	1.070	1.070	1.070	1.070
	Level C	0.852	0.917	1.000	1.070	1.070	1.070	1.070	1.070	1.070	1.070
	Level D	0.786	0.846	0.923	1.000	1.020	1.042	1.064	1.070	1.070	1.070
	40K Premium Level	0.771	0.829	0.905	0.980	1.000	1.021	1.043	1.059	1.070	1.070
	60K Premium Level	0.755	0.812	0.886	0.960	0.980	1.000	1.021	1.038	1.055	1.067
	80K Premium Level	0.739	0.795	0.868	0.940	0.959	0.979	1.000	1.016	1.033	1.044
	120K Premium Level	0.727	0.783	0.854	0.925	0.944	0.964	0.984	1.000	1.016	1.028
	300K Premium Level	0.715	0.770	0.840	0.910	0.929	0.948	0.968	0.984	1.000	1.011
	500K Premium Level	0.708	0.762	0.831	0.900	0.918	0.937	0.957	0.973	0.989	1.000

Addendum A (Continued)

Table 4: Initial Annual Reference Prices for Component Enterprise Products in enrollments executed during first annual pricing period:

Enterprise Product	New 3-Year Enterprise Enrollment	Renewal 3-Year Enterprise Enrollment	Family	EA Level for Family
Office Pro	$ 181.44	$ 95.04	Office	60K - 80K
Office Std	$ 150.72	$ 78.72	Office	60K - 80K
Windows Professional	$ 58.56	$ 39.36	Windows	60K - 80K
Windows CAL	$ 11.52	$ 5.76	CAL	60K - 80K
Exchange CAL	$ 24.96	$ 12.48	CAL	60K - 80K
SharePoint CAL	$ 26.88	$ 13.44	CAL	60K - 80K
SMS CAL	$ 15.36	$ 7.68	CAL	60K - 80K
SQL CAL	$ 54.72	$ 26.88	CAL	60K - 80K
Core CAL (Windows, Exchange, Sharepoint, & SMS CALs)	$ 73.92	$ 35.52	CAL	60K - 80K
BackOffice CAL (Windows, Exchange, SQL, & SMS CALs)	$ 100.80	$ 48.00	CAL	60K - 80K

Table 5: Original True Up Reference Prices for component Enterprise Products in enrollments executed during first annual pricing period:

Enterprise Product	1st Anniv. True Up	2nd Anniv. True Up	3rd Anniv. True Up	Family	EA Level for Family
Office Pro	$ 502.08	$ 417.60	$ 333.12	Office	60K - 80K
Office Std	$ 417.60	$ 347.52	$ 277.44	Office	60K - 80K
Windows Professional	$ 158.40	$ 123.84	$ 89.28	Windows	60K - 80K
Windows CAL	$ 30.72	$ 25.92	$ 21.12	CAL	60K - 80K
Exchange CAL	$ 68.16	$ 57.60	$ 47.04	CAL	60K - 80K
SharePoint CAL	$ 72.96	$ 61.44	$ 50.88	CAL	60K - 80K
SMS CAL	$ 41.28	$ 35.52	$ 28.80	CAL	60K - 80K
SQL CAL	$ 151.68	$ 128.64	$ 105.60	CAL	60K - 80K
Core CAL (Windows, Exchange, Sharepoint, & SMS CALs)	$ 203.52	$ 172.80	$ 141.12	CAL	60K - 80K
BackOffice CAL (Windows, Exchange, SQL, & SMS CALs)	$ 279.36	$ 236.16	$ 193.92	CAL	60K - 80K

DIR-VPC-03-011

To be completed by Microsoft

Microsoft Enterprise Agreement Number	U1063194
Microsoft Enterprise Agreement Number	1ES60118

AMENDMENT TO THE MICROSOFT
STATE AND LOCAL GOVERNMENT ENTERPRISE AGREEMENT

This amendment ("amendment") is made and entered into by and between the undersigned for the purpose of amending that certain Microsoft State and Local Government Enterprise Agreement ("agreement") identified above between **the State of Texas, acting by and through the Department of Information Resources ("DIR")** and MICROSOFT LICENSING, GP. All terms used but not defined in this amendment will have the meanings assigned to such terms in the agreement, as amended.

I. Modifications to the Agreement.

1. The definition of "unexpired enrollment" is hereby amended and restated as follows:

   "unexpired enrollment" means, with respect to an annual pricing date, an enterprise enrollment *or enterprise subscription enrollment* under either (i) this agreement; or (ii) another Microsoft Enterprise Agreement *or Microsoft Enterprise Subscription Agreement* to which either you or one of your affiliates is party, provided that such enrollment shall not have expired or been terminated prior to such annual pricing date; and

2. Table 1 in Addendum A is hereby amended as follows:

Aggregate Family Desktop Count	Annual Price Level Name	EA / Select Price List Volume Level	Premium Level Discount
Below 15,000	Level C	Level C	N/A
15,000 - 39,999	Level D	Level D	N/A
40,000 - 59,999	40K Premium Level	Level D	2.00%
60,000 - 79,999	60K Premium Level	Level D	4.00%
80,000 - 119,999	80K Premium Level	Level D	6.00%
120,000 - 299,999	120K Premium Level	Level D	7.50%
300,000 - 499,999	300K Premium Level	Level D	9.00%
500,000 or more	500K Premium Level	Level D	10.00%

II. Effect of Amendment.

Except as specifically amended by this amendment, all provisions of the agreement identified above shall remain unchanged and in full force and effect. This amendment is not legally binding until executed by both parties and shall become effective on the date of signature of the contracting Microsoft affiliate. When this amendment is fully executed, you will receive a confirming copy.

You must execute and return two (2) copies of this amendment to the below address in order for the terms and conditions of this amendment to apply.

MICROSOFT LICENSING, GP
Attn: Dept. 551, Volume Licensing
6100 Neil Road, Suite 210
Reno, NV 89511-1137

Customer: **The State of Texas, acting by and through the Department of Information Resources ("DIR")**	**Contracting Microsoft Affiliate:** **MICROSOFT LICENSING, GP**
Name of Customer	**Name of contracting Microsoft affiliate**
By Patrick W. Hogan	**By**
Name, Title Patrick W. Hogan, Director, Business operations	**Name, Title** Brandon Pickard Contract Administrator
Date 12/12/03	**Date** DEC 29 2003

Prepared by David Mills
12/12/03

City Council Agenda

Approved for Agenda:
thudson
City Manager's Office

MEETING DATE: 7/10/2012

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving the issuance of a request for proposals for Wrecker and Impound Services for the City of Midland for the Police Department.

Purpose:

Approval of a resolution authorizing the release of a Request for Proposal for Wrecker and Impound Service for the City of Midland Police Department.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

No funding required at this time.

Discussion:

Please consider approval of a resolution authorizing the issuance of a request for proposals for wrecker and impound service for the City of Midland. The current contract will expire in October 2012. The current contract requires that the contractor pay the City $30,000.00 annually. Also, the City paid the current contractor $15,363.35 in a 12 month period.

City of Midland

Police Department

Interoffice Memorandum

DATE: **June 27, 2012**

TO: **Regina Stephenson, Purchasing Manager**

FROM: **Price Robinson, Chief of Police**

SUBJECT: RFP for wrecker service

Our current contract with Action Wrecker, to provide wrecker service to the city, expires in October 2012.

I support the issuance of an RFP for future wrecker service.

RESOLUTION NO.

RESOLUTION AUTHORIZING ISSUANCE OF A REQUEST FOR PROPOSALS FOR WRECKER AND IMPOUND SERVICES FOR THE CITY OF MIDLAND POLICE DEPARTMENT

WHEREAS, a request for proposals has been prepared for wrecker and impound services; and

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

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

SECTION ONE. That the request for proposals for wrecker and impound services is hereby approved, said request for proposals being on file with the office of the City Secretary, referenced by the date and number of this Resolution.

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

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

Council members voting "AYE":

Council members voting "NAY":

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Robert Patrick, General Services Director

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

IMPOUND AND WRECKER SERVICE CONTRACT

#5047-12

This contract is entered into on the __day of _____, 2012, between the City of Midland, a home rule municipality hereinafter referred to as the "City", and _____, a wrecker service hereinafter referred to as the "Contractor", for the considerations hereinafter expressed.

1 **Scope of Work:** The Contractor shall perform all work described for the Impound and Wrecker Services for the City in the following documents, attached hereto and incorporated herein by reference for all legal purposes:

EXHIBIT A ..... Request for Proposal
EXHIBIT B ..... Bonding Requirements
EXHIBIT C ..... Fee Schedule

2 **Use of Contractor**: Except as otherwise expressed in this paragraph, the City shall use the Contractor exclusively for all of the City's towing needs. The City of Midland Police Department, hereinafter referred to as MPD, shall summon Contractor for removing vehicles involved in accidents or when the driver of the vehicle is arrested, missing, or unable to operate the vehicle. MPD or other appropriate department shall summon the Contractor to tow junked and abandoned vehicles, to remove cars in anticipation of seal-coating of local streets, and to remove any disabled City vehicle which needs to be towed; provided, however, an owner (other than the City) of a vehicle in need of towing, involved in an accident, shall have the prerogative of designating the towing company to remove the vehicle in question. In cases where the owner or driver designates another wrecker service, the vehicle owner or driver's wishes shall be respected; any other provision of this contract notwithstanding, and the City shall incur no liability to the Contractor for such designation. The City further reserves the right to use other towing companies should the Contractor be unavailable or unwilling to respond to a towing request by the City within (30) minutes of the initial request for service. The Contractor agrees to stand ready to ably, professionally and promptly respond to any towing requests by the City.

3 **Towing Location**: Vehicles towed pursuant to this contract shall ordinarily be removed to the designated and approved impound unless the representative shall give, at the time of the towing, an alternate location for the vehicle to be removed to. Furthermore, if the owner of a vehicle designates at the time of towing an alternate location, and a representative of the City indicates that it is the owner's

prerogative to designate the location; the Contractor shall remove the towed vehicle to the alternate location with the owner or driver being responsible for any towing fees due at the time of service. If the contractor arrives at alternate location and fee is not paid, vehicle will be towed to the City Impound.

4 **Impound Management:** The Contractor shall operate and manage the City Impound at an approved location within the city limits of the City of Midland and shall maintain such Impound in properly fenced and lighted condition. The contractor shall operate and manage the City Auto Impound pursuant to all TDLR regulations for Tow Truck Company and VSF (Vehicle Storage Facility) regulations (see TDLR website http://www.license.state.tx.us/towing/towing.htm). This property shall be owned and operated by the Contractor at the time the proposal is received and opened. This Impound shall be capable of holding a minimum of 800 vehicles and a minimum of 12 acres of usable vehicle storage area at the VSF licensed location. The Contractor shall further manage the receipt of vehicles at the Impound. The Contractor shall collect all monies from persons for the retrieval of vehicles, storage of vehicles, and for towing charges and any other incidental charges related to the towing of a vehicle. The Contractor shall have an attendant available at all times [24 hrs per day, 7 days per week] who shall afford the opportunity for owners of vehicles involved in accidents to remove property from their vehicles and for appraisals and photographs by insurance adjusters and body work specialists. The attendant shall release a vehicle only upon receiving permission from MPD if the vehicle has been placed on hold by a member of MPD or other authorized agency. Vehicles that have been impounded by the City and have been deemed abandoned will be turned over to the Contractor for auction at the Contractors convenience. Contractor will not auction and sell an impounded and/or abandoned vehicle for at least ninety (90) days from date of original impoundment. The Contractor shall be responsible for the upkeep, maintenance, and cleanliness of the Impound including removing all grass, garbage, and weeds. The Contractor shall not dismantle any vehicle impounded for the City. The Contractor shall further notify MPD immediately of any damage to City property or any damage to any vehicle impounded in the Impound. Contractor shall forbid the possession or consumption of alcoholic beverages or controlled substances on the Impound premises. Contractor shall not permit any person under the influence of alcoholic beverages or controlled substances on the premises. If a person comes to the Impound for the purposes of getting a vehicle released and shows obvious signs of intoxication, the Contractor or his employee will immediately notify MPD. The Contractor shall be responsible for

complying with all state regulatory laws and orders regarding vehicle impoundment yards, paying all fees in connection therewith, and paying all taxes due.

5 **Fees**: Fees charged by the Contract shall not exceed those shown in the attached Fee Schedule, Exhibit C.

6 **Invoicing:** The Contractor shall send the City a monthly invoice for charges for towing City vehicles, not excluded by this contract, which invoice shall be paid within 15 days of its receipt. For vehicles seized pursuant to narcotics charges, the City shall reimburse the Contractor for towing only upon sale of the vehicle or its conversion to use by the department. For all other vehicles, the Contractor shall collect all appropriate fees from the owner of the vehicle. The City shall not guarantee the Contractor the collection of those charges, and the City retains the right to waive storage and towing fees in certain individual cases with the authorization of the Lieutenant or Deputy Chief supervising the Traffic Division of the MPD. Storage charges shall be assessed in accordance with the fee schedule in EXHIBIT C. The second day's storage charges shall commence on the midnight following the impoundment of the vehicle and each subsequent midnight will begin a new day of storage, with the portion of the day prior to the first midnight considered a full day's storage and any portion of the day after midnight considered a full day of storage. However, the City may designate other rates on an individual basis with authorization from the MPD and may designate different rates or different manner of calculating storage charges by giving 60 days written notice to the Contractor. The storage fees collected will be retained by the Contractor.

7 **Annual Fee:** The Contractor shall pay an annual fee of $_____ to the City on or before the anniversary / renewal date of the contract.

8 **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 City of any kind whatsoever.

9 **Escalation**: Should the price of fuel vary by more than 20% over the duration of the contract either party may request and implement a fuel surcharge to be added or subtracted to/from the fees for towing in EXHIBIT *C, WRECKER SERVICE, TOWING AND STORAGE FEE SCHEDULE.*

10 **Equipment/Fleet:** The Contractor shall maintain in operating condition at all times during the term of this contract a service ·fleet of at least six (6) light duty wreckers, rated at not less than six (6) ton towing capacity each, and the constant availability of two (2) heavy duty wreckers, rated at not less than fifty(50) tons towing capacity each ton towing capacity. Heavy-duty tractor-trailer with the capacity of handling large debris up to fifty (50) tons. Trash trailer, skid steer, portable light tower, and forklift with a capacity of handling twenty thousand (20,000) plus impounds. All wreckers shall further be equipped with communications equipment that will allow them to communicate with and be contacted by the operator of the Impound. All wreckers must also be equipped with equipment that is required by TDLR incident management capability. All wreckers shall at all times comply with all applicable laws of the State of Texas, and shall be properly licensed, and maintained in safe operating condition.

11 **Record Keeping:** The Contractor shall maintain complete and accurate records of the towing, receipt, storage, release, and disposal of all vehicles. These records shall be kept utilizing an approved computer database compatible with the *Cities* Tracker PD software, that the City has access to as deemed necessary by the City. Upon releasing any vehicle, the Contractor shall issue a receipt to the recipient with triplicate copies, or other documents as required by TDLR regulations. Receipts and other records shall be available to the City upon request. The City reserves the right to audit all records and to conduct inventories and other assessments of the vehicles at the Impound at any time. The Contractor further agrees to give full cooperation with and provide such information as may be needed by the City. The Contractor shall notify the City through the Midland Police Department of all impoundments and releases. Each vehicle admitted to the Impound must be accompanied by an impound card describing the vehicle, any damage to it, property inside it, origin of tow, and the date towed. The card must be signed by a law enforcement officer. The Contractor shall further supply any additional documentation or reporting as is reasonably requested by the City.

12 **Towing Response/Responsibilities:** The Contractor shall tow all vehicles in a safe and secure manner so as to avoid damage to the vehicle towed or danger to any other motorist, pedestrian, or worker. The Contractor shall further respond to all wrecker service requests within thirty minutes of that request except when prevented by weather or all vehicles are on other City towing assignments at the same time. Should the Contractor fail to respond within the time required herein, it shall charge no fee for its services on that occasion. Contractor shall further be responsible for removing all glass and debris and properly disposing of the same from vehicle accident sites when called to tow away vehicles from

such sites. The Contractor's wreckers shall carry at least a five gallon bucket of sand, dirt, or other appropriate material for placing on fluids leaked from vehicles to be towed. If necessary for larger areas, the Contractor's wreckers shall obtain enough material to cover these larger areas.

13 **Auction:** When a vehicle has been impounded over 90 days, and is subsequently turned over to the Contractor for auction, this vehicle must be removed from the area of the Impound where the rest of the City impounds are being stored.

14 **INDEMNITY: THE CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY AND ALL OF THE CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF THE 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 CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.**

14.1 **THE CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY AND ALL OF THE CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES, AND EXPENSES OF ANY CHARACTER WHATSOEVER INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF THE CITY, THE CITY'S OFFICERS, AGENTS AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH THE 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 CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

14.2 **THE CONTRACTOR AGREES THAT HE WILL INDEMNIFY AND SAVE THE CITY HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, ALL SUPPLIES, INCLUDING COMMISSARY INCURRED IN THE FURTHERANCE OF THE PERFORMANCE OF THIS CONTRACT. WHEN CITY SO DESIRES, THE 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 CITY AND ALL OF ITS OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, OR CLAIMS OF ANY CHARACTER WHATSOEVER, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ARISING FROM ANY ACT OF THE 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 CITY OR ANY OF ITS OFFICERS, AGENTS, OR EMPLOYEES INCLUDING ATTORNEY'S FEES.**

15 **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
Garage Keepers Liability:	$100,000.00

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

15.2 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.

15.3 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.

15.4 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.

15.5 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).

15.6 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.

15.7 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.

16 **RELEASE: NOTWITHSTANDING ANY OTHER PROVISIONS, CONTRACTOR 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 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 CITY'S NEGLIGENCE.**

17 **Term:** This Contract shall extend for five years from the date of signing. However, this Contract may be Renewed at City's option for one year extensions on each of its next five anniversary dates, for a total of five additional years upon City providing written 30 day notice of renewal to Contractor.

18 **No 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.

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

20 **Default/Termination**: Contractor's failure to comply with any provision of this Contract shall constitute an event of default herein. Contractor shall cure any event of default not later than ten (10) calendar days following receipt of notice of default from City. In the event Contractor fails to cure the default within the notice period, City may terminate this Contract by delivering written notice of termination, such termination to become effective upon the date set forth in the notice of termination, but in no case earlier than seventy-two (72) hours after delivery of the notice of termination to Contractor.

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

20.1 Upon termination of this Contract either by its own term [par. 17] or pursuant to paragraph 20 or the bonding requirements set forth in EXHIBIT B, Contractor shall immediately deliver to City all records relating to operation of Impound and all monies currently in Contractor's possession related to operation of the Impound. City shall be given reasonable time to have vehicles removed.

21 **City's right to Remedy**: City's failure to strictly enforce the provisions of this Contract through a declaration of default or to invoke any remedies granted to City in this Contract or other available under the law shall not be construed as a waiver of such default or of any other past, present, or future breach of the Contract, and shall not bar or prevent City from invoking its remedies for the same or any similar breach of this Contract.

22 **Severability:** In case anyone or more of the provisions contained in this contract shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this contract shall be considered as if such invalid, illegal or unenforceable provision had never been contained in this contract; provided, however, if severance of the illegal or unenforceable provision materially alters the obligations of the Contractor under the Contract, City may, at its option, terminate this Contract by providing written

notice to Contractor.

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 City; 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 City and Contractor, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City 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 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. 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 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 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 City, 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 City from any liability whatsoever. The City is under no obligation to provide notice to Contractor

that Contractor'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.

24.1 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 City 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.

26 **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.

27 **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 CITY, 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.

27.1 **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 CITY AND THE CONTRACTOR. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF SOVEREIGN IMMUNITY.**

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

28 **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.

Contract No: 5047-12

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.5047-12

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

Request for Proposals

RFP 5047-12

for

Wrecker & Impound Service for the City of Midland

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

Proposals May be Mailed or Delivered to:

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

No Late Proposals Will Be Accepted

NOTICE TO PROPOSERS:

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

2. IF THE SELECTED PROPOSER/CONTRACTOR CANNOT MEET THE REQUIREMENTS OF PARAGRAPH 1, THEN THE CITY RESERVES THE RIGHT TO AWARD THIS PURCHASE TO ANOTHER PROPOSER.

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

See Section 1.9 for Pre-proposal Meeting Information

SCHEDULE OF EVENTS

RFP 5047-12
For
Wrecker & Impound Service for the City of Midland

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

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

NOTE:

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

SPECIAL TERMS AND CONDITIONS

Proposal Requirements /Terms

1. Unless otherwise called for, the number of copies specified in the RFP, shall be submitted typewritten or printed in ink. Many Requests for Proposals are in a word format that can be completed on your computer and will be noted on the cover page if available.

2. Each proposal should be placed in a separate envelope completely and properly identified with the RFP number, due time and date. Proposal must be time stamped at the appointed receipt location before the hour and date specified for the proposal receipt. Responsibility for having the proposal properly marked and to the opening location by the specified date and time is solely the offeror's. All copies of the proposal may be delivered in the same box/package.

3. Any Proposal may be withdrawn in writing prior to the date and time set for receipt of proposals. Any proposals not so withdrawn shall constitute an irrevocable offer, for a minimum period as stated in the RFP following the final acceptance date, to provide the commodity or service set forth in the attached specifications, or until a selection has been made by the City.

4. Late proposals will not be accepted under any circumstances.

5. Proposal should give full firm name and address of Offeror. Failure to manually sign the proposal will disqualify it. The person signing the proposal should show title or authority to bind his/her firm in contract. Insert your Federal Employer's Identification Number _____ or Sole owner should enter SSN _____-____-_____.

6. Purchases made for City use are exempt from State Sales Tax and Federal Excise Tax. Do not include tax in your proposal. Tax exemption certificates will be furnished by the City upon request.

7. Telephone proposals are not acceptable when in response to an RFP.

Conditions

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

1. Offerors electing to respond to this RFP are responsible for all costs of proposal preparation. The City is not liable for any costs incurred by a offeror in response to this RFP.

2. No public disclosures or news releases pertaining to this RFP shall be made without prior written approval from purchasing.

3. In case of a tie between two or more offerors, the award will be made in accordance with preferences as outlined by statute.

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

5. The Offeror hereby assigns to Purchaser, any and all claims for overcharges associated with any contract resulting from this RFP which arise under the antitrust laws of the United States 15 U.S.C.A. Section 1, et seq. 1973 and which arise under the antitrust laws of the State of Texas, Texas Business and Commercial Code Ann. Sec. 15.01, et seq. (1967).

6. No substitutions or cancellation permitted without the written approval of the City Purchasing Agent. Deliveries made pursuant to a resulting contract shall be made during normal working hours only, unless approval for late delivery has been obtained.

7. Contractor shall submit two copies of an itemized invoice to Accounts Payable, The City of Midland, Texas, P.O. Box 1152, Midland Texas 79702. Each copy of the invoice shall reference the P.O. and the RFP numbers.

8. In the event of a conflict between the standard proposal requirements and conditions and the attached detail specification, the detail specifications shall govern.

9. Governing Law & Venue: This agreement shall be governed by and construed in accordance with the laws of the State of Texas. Venue for any disputes or lawsuits arising from the performance of this contract shall be exclusively in Midland County, Texas. The parties agree that all performance under this contract shall take place in Midland, County, Texas. The Contractor and City agree that all payments made under this contract shall take place in Midland County, Texas.

10. This obligation and undertakings of each of the parties to this contract shall be deemed to have been performed in Midland County, Texas.

1. GENERAL INFORMATION

1.1. INTRODUCTION

The City of Midland (hereinafter referred to as "the City") is pleased to invite you to submit a proposal for Wrecker and Impound Service for the City of Midland as specified herein. Proposals submitted in response to the specifications contained herein shall comply with the following instructions and procedures.

Request for Proposal Standard Information

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

1.2. INITIAL EVALUATION

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

1.3. DISCUSSION/NEGOTIATION

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

1.4. BEST AND FINAL OFFER

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

1.5. AWARD

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

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

1.6. TRADE SECRETS

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

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

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

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

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

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

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

1.7. LATE PROPOSALS

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

1.8. PREPARING A RESPONSE

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

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

1.9. PRE-PROPOSAL CONFERENCE:

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

1.10. CLARIFICATION/ INTERPRETATION

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

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

FAX: (432) 685-0523

e-mail: purchasing@midlandtexas.gov

1.11. FORMAT FOR INQUIRIES:

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

1.12. INTERPRETATION:

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

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

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

1.13. PROPOSAL ORGANIZATION AND SUBMISSION

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

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

1.14. OFFER PRICING

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

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

1.15. ALTERNATE PROPOSALS

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

1.16. SUBMITTING A SEALED PROPOSAL

1.16.1. Number of copies and Location:

1.16.1.1. Offerors must submit one original, 2 hard copies and one (1) soft copy (PDF or Word) to the City Secretary. Sealed Proposals must be received by the date before the time stated on the face of the Request for Proposal Cover Page, local time. Sealed Proposals received after this time will not be accepted for consideration. Facsimile copies are not acceptable.

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

1.16.2. Each Offeror who submits a proposal represents that:

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

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

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

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

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

1.17. RIGHTS RESERVED

While the City has every intention to award a contract as a result of this RFP, issuance of the RFP in no way constitutes a commitment by the City of Midland to award a contract. Upon a

determination, such actions would be in its best interests, the City in its sole discretion reserves the right to:

A) waive any formality;

b) cancel or terminate this RFP;

c) reject any or all proposals received in response to this document;

d) waive any undesirable, inconsequential, or inconsistent provisions of this document, which would not have significant impact on any proposal; not award, or if awarded, terminate any contract if the City determines adequate City funds are not available.

1.18. BONDING REQUIREMENTS

See Exhibit B

1.19. OFFEROR INTERVIEW / PRODUCT DEMONSTRATION

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

1.20. SUBCONTRACTING

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

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

1.21. INSURANCE REQUIREMENTS

See Contract

1.22. CONTRACTOR'S RESPONSIBILITIES

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

1.23. OFFEROR COMPETITION

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

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

1.24. CONTRACT PROVISIONS AND TERMS

1.24.1. Contract Execution

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

1.24.2. Terms and Conditions

Contract that will be executed by the successful offeror and the City is attached.

1.24.3. Exceptions to Contract Terms & Conditions

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

1.24.4. The initial contract(s) term is for a period of five (5)years. Renewals of the contract may be made at one (1)year intervals, not to exceed a total of five (5) years, at the City's option.

1.24.5. Contract Extension

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

1.24.6. Escalation

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

2. PROPOSAL WAIVERS:

2.1. WAIVER OF ATTORNEY FEES:

By submitting a proposal, **EACH OFFEROR AGREES TO WAIVE AND DOES HEREBY WAIVE ANY CLAIM THE OFFEROR 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 PROPOSAL; WAIVER OF ANY REQUIREMENTS UNDER THE PROPOSAL DOCUMENTS; OR THE CONTRACT DOCUMENTS; ACCEPTANCE OR REJECTION OF ANY PROPOSALS; AND AWARD OF THE CONTRACT. BY SUBMITTING A PROPOSAL, THE OFFEROR SPECIFICALLY WAIVE 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 offeror agrees that this is the intentional relinquishment of a presently existing known right.

By Execution and submission of this proposal, the offeror hereby represents and warrants to the City of Midland that the offeror has read and understands the Proposal Documents and the Contract Documents and this proposal is made in accordance with the Proposal Documents.

Offeror acknowledges that it understands all terms within the proposal Documents that include the waiver provisions, and that it had the right to consult with counsel regarding all of the above documents.

2.2. WAIVER:

By submitting a proposal, **EACH OFFEROR AGREES TO AND DOES HEREBY WAIVE ANY CLAIM THE OFFEROR 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 PROPOSAL;**

2. **WAIVER OR DELETION OF ANY OF THE REQUIREMENTS UNDER THE PROPOSAL DOCUMENTS OR THE CONTRACT DOCUMENTS;**

3. **ACCEPTANCE OR REJECTION OF ANY PROPOSALS; AND**

4. **AWARD OF THE CONTRACT.**

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

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

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

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

3. SCOPE OF PROJECT

This document encompasses the requirements for Contractor response via sealed proposals for Wrecker Services and Auto Impound Management. Contractors are wholly responsible to ensure that services offered are in strict accordance with the contract document and the City of Midland's requirements. The Contractors shall:

3.1. QUALITY/QUANTITY OF EQUIPMENT

Be responsible for providing wreckers in sufficient quantity and of sufficient quality to fulfill contract requirements as well as providing qualified wrecker operators and insuring said wreckers to the limits provided in the contract.

3.2. PERFORMANCE OF CONTRACT

Use their own wrecker service yard 24 hours per day 7 days per week and complete and submit all paperwork and forms required by the City and State on a timely basis.

4. NARRATIVE

4.1. OPERATIONS PLAN

In narrative form, please describe how you would manage the impound yard if you are the selected contractor. Include your proposed staff, wage scale and corresponding benefit allowances. Discuss record keeping practices you would implement and submit forms (impound card, wrecker dispatch, inventory, etc.) you would anticipate using to keep track of

movement of vehicles into and out of the impound yard. What measures will you take to insure security and cleanliness of the impound yard? Note that this applies regardless of whose yard is used.

5. VENDOR QUALIFICATIONS

5.1. EXPERIENCE

List number of years experience in wrecker service management for owner(s) and all management/supervisor personnel individually.

5.2. PERSONNEL

List number of full time employees currently on your payroll and their job titles.

5.3. INFORMATION VERIFICATION

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

5.4. RIGHT TO REJECT

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

5.5. VENDOR CAPABILITIES

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

5.5.1. References

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

5.5.1.2. These references should include City government and universities where the offeror, preferably within the last five (5) years, has successfully managed and operated a wrecker/impound operation.

5.5.1.3. These references should include detailed explanation of this experience.

5.5.2. Vendor Stability

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

5.5.2.2. Provide financial statements, preferably audited, for the five (5) consecutive years immediately preceding the issuance of this RFP.

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

5.5.2.4. Offerors shall specify how long the company submitting the proposal has been in business under the current name and ownership (doing similar projects) _____ yrs.

5.5.2.5. Disclose all ownership interest in your wrecker service, i.e. if applicable, partners, stockholders, financial institutions (noteholders) or lienholders.

5.5.2.6. Disclose your primary banking relationship and the name and phone number of your bank officer.

5.5.2.7. List any interest which the Offeror holds in any other business in the nature of a wrecker service, salvage yard, body shop or other related enterprise.

5.5.2.8. Reveal the nature of all contracts existing between the Offeror and any other wrecker service, body shop, salvage yard or other related service.

5.5.2.9. Equipment Inventory

5.5.2.9.1. Provide a list of all major equipment you currently own for the performance of this work. List the make, model, description and condition of each wrecker and beside each wrecker disclose whether or not liens or other ownership interests are filed against the wrecker. Declare whether or not these vehicles are licensed, tagged and insured. Contractor submitting the successful proposal will be required to show title

to each wrecker so declared.

5.5.2.9.2. What is the current location of the equipment listed above, i.e. what City.

5.5.2.9.3. Do you own a wrecker of sufficient capacity to qualify as a heavy duty wrecker and if so please list its capacity.

5.5.2.9.4. Do all wreckers have brooms, shovels, air tanks, lights, sand, chains, and dollies. Indicate inventory of each truck.

5.5.3. Contractor Provided Facility

Identify the property you propose using as your own facilities, or leased/rented facilities and provide the following information:

Own facilities ☐ Rented or Leased Facilities ☐

5.5.3.1. Square footage of property available:

5.5.3.2. Is sufficient area available to segregate City towed and stored cars?

5.5.3.3. Location:

5.5.3.4. Is this location in the City limits of Midland?

5.5.3.5. If not, then where?

5.5.3.6. Currently used security methods

5.5.3.7. A copy of your state yard license to your proposal shall be submitted with your proposal.

6. EVALUATION PROCESS

Section 6 needs to be tailored to each project.

6.1. EVALUATION PROCEDURE

6.1.1. Committee Actions

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

6.1.1.2. The evaluation committee will evaluate the remaining proposals and determine whether to award the contract to the best proposal or to seek a best and final offer before awarding a contract. Selection and award will be based on the offeror's proposal and other items outlined in this RFP.

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

6.2. EVALUATION CRITERIA

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

6.2.1.1. Company Service Qualifications

6.2.1.1.1. References
6.2.1.1.2. Years in Business
6.2.1.1.3. Project Manager
6.2.1.1.4. Operations Plan
6.2.1.1.5. Organization
6.2.1.1.6. Experience

6.2.1.2. Cost Analysis

7. CONTRACT FEE

Please note that in the attached contract document that the City of Midland has established and set the rate structure for all towing and storage. The City of Midland is not seeking a differing rate structure for wrecker service from Contractors. You are requested only to offer a fee amount that you are willing to pay the City if you are awarded this contract. In the alternative, if you feel that contract conditions are so stringent as to warrant receiving a fee from the City, you may so propose. Fees may be proposed on a lump sum basis or on a percentage basis of gross receipts:

Annual Fee Paid to City of Midland.....

–OR--

Annual Fee Paid to Wrecker Service.....

8. PROPOSAL CONTENTS

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

8.1. THE RFP

8.2. THE COST SUMMARY OR PROPOSAL FORM

8.3. REQUESTED ATTACHMENTS

8.3.1. References

8.3.2. Business Plan

8.3.3. Financial Information

8.3.4. Signed Execution of Offer

9. TEXAS PUBLIC INFORMATION ACT

Notwithstanding any other provisions, this request for proposals, along with any associated contract, is subject to the Texas Public Information Act.

EXECUTION OF OFFER

Date:

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

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

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

This offer consists of pages number 1 through _____.

Offeror/ COMPANY: _____

SIGNATURE (INK): _____

NAME: (TYPED/PRINTED) _____

TITLE: _____

STREET: _____

CITY/STATE/ZIP: _____

TELEPHONE: _____ FAX: _____

E-MAIL ADDRESS: _____

EXHIBIT B

to the

Contract for Auto Pound and Wrecker Service

Bond Requirements

1. A certified 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 $2,500, 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.

2. The successful bidder shall be required to furnish a Performance & Payment Bond in an amount of $5,000, 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.

   The faithful performance of the Contract shall encompass any liquidated damages called for herein and any agreement to indemnify the City for any reason such that the bond will respond in damages in the event that the Contractor and its insurers are either unable or unwilling to so respond. Collection on the bond shall not preclude the City from exercising any other option it may have to make itself whole.

3. Under the same date as this Contract, or prior to the date of the Contract, Contractor shall provide a Twenty-Five Thousand Dollar ($25,000) Fidelity Bond to protect against theft of property belonging to the City and vehicle owners as a result of acts on the part of the Contractor, its officers, agents, employees, or subcontractors.

   a. Contractor may, in lieu of the Fidelity Bond required, obtain and maintain Public liability insurance with limits of at least Twenty-Five Thousand Dollars ($25,000) per occurrence. Such insurance shall:

      i. Name the City of Midland, as additional insured;

      ii. contain a waiver of subrogation clause in favor of the City of Midland

      iii. contain a standard cross liability clause;

      iv. specifically state that the insurer agrees to compensate City or vehicle owners for any cost, expense or damage incurred by City or the vehicle owner as a result of fraud, dishonesty, negligence, damage or destruction to City's and/or any third party's property (while at the Pound or on Contractor's wrecker) which is the result of any

action of Contractor, its officers, employees, agents or representatives, whether they be acting as individual employees or in collusion with others, and;

v. contain a provision requiring Contractor's insurer to provide City with a written notice of any cancellation or adverse material change in such insurance and that such cancellation or adverse material change shall be effective at the benefit and/or interest of the additional insured for thirty (30) days after written notice of such cancellation or adverse material change is received by City.

4. In the event the Surety or any Performance Bond or Fidelity Bond given by the Contractor becomes insolvent, or is placed in the hands of a receiver, or has its right to do business in the State of Texas revoked, as provided by law, the City may, at its election, terminate the Contract if the Contractor does not provide a satisfactory replacement bond within five (5) calendar days.

EXHIBIT C

WRECKER SERVICE, TOWING AND STORAGE FEE SCHEDULE

The Contractor shall charge no more than the following prices for the associated services:

1. Towing one ton or less rated private vehicles from accidents..... $125.00

2. Towing one ton or less rated vehicles without at least one serviceable axle with both tires free-wheeling, in addition to otherwise applicable fee: $20.00

3. Per hour use of heavy duty wrecker $350.00

4. Mileage fee for outside city limits per mile (Except Airport).....$3.50

5. Towing charges for all City vehicles inside city limits including the Airport (if vehicle is towed outside the city limits the mileage fee for outside city limits, Item 4, will apply). For vehicles that are under warranty and towed to dealerships, the manufacturer will be billed at the dealer rate.

   a. Light Duty wrecker tow charges.....N/C

   b. Heavy Duty wrecker tow charges (per hour).....$150.00

(For vehicles that are under warranty and towed to dealerships, the manufacturer will be billed at the dealer rate.)

6. Junked and abandoned vehicle tow (not sold by Contractor) $125.00

7. Moving vehicles within Midland

   a. International Airport premises -billed to city, first vehicle $65.00

   b. Each additional vehicle on same call $20.00

8. Moving vehicles for Sealcoat purposes-first vehicle $50.00

   a. Each additional vehicle same call $10.00

9. Waiting and extra time for wrecker per 15 minutes, after first 30 minutes $15.00

10. Towing one ton or less rated private vehicles other than from accidents $125.00

11. Fee for required notification services on impounded vehicles $50.00

12. Storage fee, per day, for any vehicle of one ton or less rated capacity $20.00

13. Storage fee, per day, for any vehicle of greater than one ton capacity $35.00

The charges detailed above shall be all inclusive. The Contractor shall not assess any other charges against any vehicle owner or the City for towing such vehicle. All towing charges shall be for moving vehicles within the city limits except for the above indicated per mile charge when travel outside the city limits is necessary, travel to Midland International Airport excluded. The Contractor may commence charging waiting time after the first 30 minutes a wrecker spends at the location of the towing assignment, provided that the Contractor shall have commenced and pursued the towing assignment as diligently as possible.

BID BOND

THE STATE OF TEXAS §

COUNTY OF MIDLAND §

SURETY NO. _____

KNOW ALL MEN BY THESE PRESENTS, THAT _____

_____

_____

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

_____

_____

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

_____ DOLLARS

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

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

_____.

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

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

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

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

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

APPROVED AS TO FORM:

_____

City Attorney

NOTE: ATTACH POWER OF ATTORNEY

PAYMENT BOND

STATE OF TEXAS §
§
COUNTY OF MIDLAND §

SURETY'S NO. _____

KNOW ALL MEN BY THESE PRESENTS, THAT _____,

_____

of the City of_____ County of_____,

and State of_____ as Principal, and _____

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

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

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

_____,

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

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

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

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

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

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

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

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

APPROVED AS TO FORM:

_____

City Attorney

NOTE: ATTACH POWER OF ATTORNEY

PERFORMANCE BOND

STATE OF TEXAS §
§
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: <u>ATTACH POWER OF ATTORNEY</u>

IMPORTANT NOTICE

Conflict Of Interest Reporting Requirements

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

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

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

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

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

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

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

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

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

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

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor or other person doing business with local governmental entity

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

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

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

OFFICE USE ONLY

Date Received

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

_____

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

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

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

_____

_____

_____

_____

_____

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

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

Adopted 11/02/2005

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor or other person doing business with local governmental entity

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

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

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

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

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

D. Describe each affiliation or business relationship.

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

6

_____ Signature of person doing business with the governmental entity

_____ Date

Adopted 11/02/2005

CITY OF MIDLAND

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

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

(1) the lowest bidder; or

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

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

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

Complete all areas below. Incomplete affidavits may be rejected.

Local Business Name: _____

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

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

   Reseller Permit Number: _____

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

   _____

   _____

   _____

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

   _____

   _____

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

   ☐ Yes ☐ No

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

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

Authorized Signature: _____ Date: _____

Printed Name and Title: _____

CERTIFICATE OF INSURANCE:

PRODUCER INSURANCE COMPANY PHONE	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE APPROVED BY THE POLICIES BELOW. COMPANIES AFFORDING COVERAGE
INSURED VENDOR COMPANY	COMPANY LETTER A COMPANY NAME COMPANY LETTER B COMPANY LETTER C COMPANY LETTER D COMPANY LETTER E

>COVERAGES**********

THIS IS TO CERTIFY THAT POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT TERM OR CONDITION OF THE CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL TERMS, EXCLUSIONS, AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFF DATE (MM/DD/YY)	POLICY EXP DATE (MM/DD/YY)	LIMITS	
	GENERAL LIABILITY					
A	[X] COMMERCIAL GEN LIABILITY	ABC123456789	00/00/00	00/00/00	GENERAL AGGREGATE	1000000*
	[ ] CLAIMS MADE [X] OCC.				PROD-COMP/OP AGG.	1000000*
	[ ] OWNER'S & CONTRACTOR'S PROTECTIVE				PERS. & ADV. INJURY	500000*
	PROTECTIVE				EACH OCCURRENCE	500000*
	[ ]				FIRE DAMAGE [ANY ONE FIRE]	50000*
	[ ]				MED. EXPENSE [ANY ONE PERSON]	5000*
	AUTOMOBILE LIAB				COMB. SINGLE LIMIT	250000*
A	[X] ANY AUTO	ABC123456789	00/00/00	00/00/00	BODILY INJURY [EACH PERSON]	
	[ ] ALL OWNED AUTOS					
	[ ] SCHEDULED AUTOS				BODILY INJURY [PER ACCIDENT]	
	[ ] HIRED AUTOS					
	[ ] NON-OWNED AUTOS					
	[ ] GARAGE LIABILITY				PROPERTY DAMAGE	
	EXCESS LIABIL8ITY					
	[ ] UMBRELLA FORM				EACH OCCURRENCE	
	[ ] OTHER THAN UMBRELLA FORM				AGGREGATE	
					{STATUTORY LIMITS}	
A	WORKERS' COMP	ABC123456789		00/00/00	EACH ACCIDENT	100000*
	AND				DISEASE-POL. LIMITS	500000*
A	EMPLOYERS' LIAB	ABC123456789		00/00/00	DISEASE-EACH EMP.	100000*
	OTHER					

DESCRIPTION OF OPERATIONS / LOCATIONS/ VEHICLES/ SPECIAL ITEMS

The City of Midland is included as an additional insured, on a claims occurred basis, on all policies except for Worker's Compensation. The Contractor 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.

> CERTIFICATE HOLDER <**********	> CERTIFICATE HOLDER <**********
City of Midland P.O. BOX 1152 MIDLAND, TX 79702-1152	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES AUTHORIZED REPRESENTATIVE

--------ACORD 25-S (2001/08) *Insurance limits should be adjusted to the amounts required by the attached contract.----------

EXAMPLE

NOTE: The wording under "Description of Operations", must appear exactly as shown above. Otherwise it will be rejected and contract execution will be delayed until a properly worded certificate is received.

City Council Agenda

Approved for Agenda:
thudson
City Manager's Office

MEETING DATE: 7/10/2012

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 painting at the Scharbauer Sports Complex for the Community Services Department. RFB 5088-12

Purpose:

Reject the single bid received to paint the steel structures at the Scharbauer Sports Complex.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

No funding required at this time.

Discussion:

The single bid received from Onyx Contractors Operations, LP to paint the steel structures at the Scharbauer Sports Complex, exceeded the available funds by $553,985.00. Staff is recommending rejecting this bid. 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 of Midland, Texas for painting the steel structures at the Scharbauer Sports Complex.

CITY OF MIDLAND
Community Services Department
Interoffice Memorandum

Date: July 10, 2012
To: Tommy Hudson, Deputy City Manager
From: Tina Jauz, Community Services Director
Subject: Painting Bid at the Scharbauer Sports Complex

Under the City Council's authorization, staff solicited qualified bidders in June 2012 for the labor and materials to paint a portion of the steel structures at the Scharbauer Sports Complex. The bid included painting all the silver and blue structures on the west side of Grande Communications Stadium. In addition, the project included the painting of the structures supporting the video boards at both Grande Stadium and Citibank Ballpark. This project holds an approved budget of $200,000. Onyx Contractors was the only responsive bidder at a price of $753,985.

Following this bid submittal, staff met with the 4B Board on June 20, 2012, to discuss the bid and gather direction on how the Board would prefer to proceed. After reviewing the matter, the Board recommended that staff meet with similarly sized athletic facilities in Texas and research their annual painting costs and methods. Following this research, staff will report back to the Board at their next regular meeting to seek further direction.

At this time, staff is recommending that the City Council reject the bid from Onyx Contractors (noting that the bid exceeded available funds by $553,985), and allow staff to rebid an alternate plan once a recommendation has been made and clear direction has been established by the 4B Board.

RESOLUTION NO.

RESOLUTION REJECTING THE SINGLE BID RECEIVED FOR BID NUMBER 5088-12 FOR PAINTING AT THE SCHARBAUER SPORTS COMPLEX

WHEREAS, the City Manager approved plans and specifications and authorized advertisement for competitive bids for painting at the Scharbauer Sports Complex; and

WHEREAS, the single bid received exceeded available funds for this purchase by approximately $553,985.00; and

WHEREAS, the City Council finds it to be in the public interest to reject the bid on request 5088-12;

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 5088-12 for the painting at the Scharbauer Sports Complex, 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 # 5088-12

OPENED June 6, 2012
Est. Cost: 200,

Onyx Contractors
P O Box 60547
Midland, TX 79705
Maurizio Laquaniello
(432) 561-8900

ITEM	QTY	DESCRIPTION	COST EA.	TOTAL
1	1	Painting at Citibank Ballpark	$22,750.00	$22,750.00
2	1	Painting at Grande Stadium	$731,235.00	$731,235.00
			complete within 105 days	
		Remove signs from video board structure		no bid
		Remove clock from video board structure		no bid
		Replace metal if needed		no bid
		Paint beams on top of entrance to stadium		no bid
		Pressure wash, clean & paint ductwork		no bid
			TOTALS:	$753,985.00
			TOTAL OF LOW BID ITEMS BY VENDOR:	$753,985.00

Bidding Summary:

9 Bid requests were issued.

1 Bids listed above

0 NO BIDS were received.

8 Bidders did not respond.

Campbell Const
Crystal Clear
J C Roberts Const
Master Builders
Mid-Tex of Midland
Onyx Contractors
RRC
White Construction

City Council Agenda

Approved for Agenda:
csharp
City Manager's Office

MEETING DATE: 7/10/2012

TO: City Council / City Manager

FROM: Tommy T. Hudson, Deputy City Manager

SUBJECT: Appropriate Reimbursed Fees to Project

Purpose:

Consider a Resolution appropriating funds to Atmos RRM (Rate Review Mechanism) Project 8923

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Appropriate $100,000 to Project 8923

These funds represent reimbursement from Atmos for consulting/legal fees associated with analysis of various Atmos GRIP and Rate Review Mechanism costs. Funds will be appropriated from the General Liability Self-Insurance Fund. There is no impact to General Fund.

We have received a total reimbursement of $110,917 from Atmos over 2011-2012.

Discussion:

The City is a member of the Steering Committee of Cities Served by Atmos West Texas ("Steering Committee"). Steering Committee membership includes almost all cities north of Midland-Odessa (except Lubbock and Amarillo, which have separate rates and services) served by the West Texas Division of Atmos Energy ("Atmos" or "Company").

The original project was funded by a $0.12 per capita fee assessed to the West Texas member cities. Those funds have been used to pay on-going legal fees associated with the various GRIP and RRM challenges. Funds being appropriated today are reimbursement of those fees and should be placed back into the project.

RESOLUTION NO.

RESOLUTION APPROPRIATING FUNDS FROM THE GENERAL LIABILITY SELF-INSURANCE FUND TO THE ATMOS RATE REVIEW MECHANISM PROJECT (8923) IN THE AMOUNT OF $100,000.00; SAID FUNDS REPRESENT REIMBURSEMENT FROM ATMOS FOR CONSULTING/LEGAL FEES ASSOCIATED WITH THE STEERING COMMITTEE'S ANALYSIS OF THEIR RATE REVIEW MECHANISM COSTS; THERE IS NO IMPACT TO THE GENERAL FUND

WHEREAS, the City is a member of the Steering Committee of Cities served by Atmos West Texas; and

WHEREAS, the Atmos Rate Review Mechanism (RRM) Project (8923) funds have been used to pay on-going consulting/legal fees associated with the various GRIP and RRM challenges; and

WHEREAS, the City Council finds it to be in the public interest to appropriate $100,000.00 to the Atmos RRM Project (8923) as reimbursement of consulting/legal fees;

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

SECTION ONE. That the sum of $100,000.00 is hereby appropriated from the General Liability Self-Insurance Fund (702) Unappropriated Fund Balance (5650) to the Atmos RRM Project (8923).

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

City Council Agenda

Approved for Agenda:
thudson
City Manager's Office

MEETING DATE: 7/10/2012

TO: City Council / City Manager

FROM: Celestino Garcia / Health and Senior Services Manager

SUBJECT: **Consider a resolution authorizing the acceptance of additional grant funds from the Texas Department of State Health Services in the amount of $13,092.33 to assist the Health and Senior Services Division with the delivery of Local Public Health Services; and authorizing the execution of acceptance documents**

Purpose:

Consider a resolution accepting reimbursement funds from Texas Department of State Health Services.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

$ 13,092.33 from the Texas Department of Health Services to reimburse the operating budget of Health & Senior Services Division.

Discussion:

Midland Health & Senior Services receives annual reimbursement from Texas Department of Health Services to assist with Local Public Health Services. The reimbursement to the operating budget will be used for personnel, $11,118.00, and supplies, $1,974.00.

RESOLUTION NO.

RESOLUTION AUTHORIZING THE ACCEPTANCE OF ADDITIONAL GRANT FUNDS FROM THE TEXAS DEPARTMENT OF STATE HEALTH SERVICES IN THE AMOUNT OF $13,092.33 TO ASSIST THE HEALTH AND SENIOR SERVICE DIVISION WITH THE DELIVERY OF LOCAL PUBLIC HEALTH SERVICES; AND AUTHORIZING THE EXECUTION OF ACCEPTANCE DOCUMENTS

WHEREAS, the City of Midland Health and Senior Services Division will be awarded $13,092.33 in additional grant funds from the Texas Department of State Health Services to assist the Health and Senior Service Division with the delivery of local public health services; and

WHEREAS, the City Council finds it to be in the public interest to accept $13,092.33 in additional grant funds from the Texas Department of State Health Services to assist the Health and Senior Service Division with the delivery of local public health services;

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

SECTION ONE. That the City of Midland Health and Senior Services Division is authorized to receive $13,092.33 in additional grant funds from the Texas Department of State Health Services to assist the Health and Senior Service Division with the delivery of local public health services.

SECTION TWO. That the City Manager is hereby authorized and directed to execute all documents necessary to accept said funds from the Texas Department of State Health Services to assist the Health and Senior Service Division with the delivery of local public health services; and that said funds are directed to be deposited into the General Fund of the City of Midland.

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:

_____
Tina Jauz, Director of Community Services

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

City Council Agenda

Approved for Agenda:
thudson
City Manager's Office

MEETING DATE: 7/10/2012

TO: City Council / City Manager

FROM: Tina Jauz / Community Services Director

SUBJECT: Consider a resolution establishing Project Number 8998 "I-20 Wildlife Preserve Pavilion and Restrooms" for the future construction of a pavilion and restrooms; and appropriating funds in the amount of $250,000.

Purpose:

To appropriate Certificate of Obligation Funds to a project for the future construction of a pavilion and restrooms at the site of the I-20 Wildlife Preserve and Jenna Welch Nature Study Center.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

$250,000 from 2009 Certificate of Obligation Funds

Discussion:

As the final touches are being placed on the $2 million dollar I-20 Wildlife Preserve Project, those spearheading the fundraising and operations are looking to the future. In 2009, the City Council earmarked $250,000 for the Jenna Welch Nature Study Center. Elaine Magruder, President of the I-20 Wildlife Preserve and Jenna Welch Nature Study Center, is requesting to utilized the CO funds to construct a pavilion with a parking lot and restrooms. (see her attached letter) Appropriating the funds would allow the city to further examine the possibility of moving forward with securing a contract for the construction.

RESOLUTION NO.

RESOLUTION ESTABLISHING PROJECT NUMBER 8998 FOR FUTURE CONSTRUCTION OF AN "I-20 WILDLIFE PRESERVE PAVILION AND RESTROOMS," AND APPROPRIATING FUNDS IN THE AMOUNT OF $250,000.00

WHEREAS, the Council finds it to be in the public interest to establish Project Number 8998 for future construction of an "I-20 Wildlife Preserve Pavilion and Restrooms," and appropriating funds in the amount of $250,000.00;

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

SECTION ONE. That Project Number 8998 "I-20 Wildlife Preserve Pavilion and Restrooms" is hereby established.

SECTION TWO. That the sum of $250,000 is hereby appropriated from the 2009 G.P.C.O. Park Improvements Bond Fund (194) Unappropriated Fund Balance (5650) to the 2009 G.P.C.O. Park Improvements Bond Fund (194) Community Services (090) I-20 Wildlife Preserve Pavilion and Restrooms Project (8998).

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:

_____
Tina Jauz, Director of Community Services

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

I-20 Wildlife Preserve
and
Jenna Welch Nature Study Center
Midland's Wetland

June 25, 2012

City of Midland
Mayor Wes Perry
And City Council
City of Midland
300 N. Loraine
Midland, Texas 79701

RE: I-20 Wildlife Preserve
Completion Phase II

Board of Directors:
Elaine Magruder
President

Paul Davis, Jr.
Vice President

Terry Wilkinson
Secretary/Treasurer

Eram Ali

Duncan Kennedy

Bill Lupardus

Jon Morgan

Clayton Williams, Jr.

Staff:
Nathan Knowles
Preserve Land Manager

Dear Wes,

In reference to completion of Phase II of the I-20 Wildlife Preserve, I am writing to request funds from the City of Midland to build the parking lot and pavilion with restrooms. One consideration the council members pointed out on a recent tour is to secure the area. The I-20 Wildlife Preserve raised the funds to have a wildlife fence built around the preserve. The pavilion and parking lot will provide a safe entrance to the preserve.

The City of Midland set aside $250K for the Jenna Welch Nature Study Center. The funds would actually be more appropriate for the I-20 Wildlife Preserve because the land is owned by the City of Midland and the Jenna Welch Nature Study Center will be built on private land. The original master plan approved by the City Council is a three Phase plan. The final piece to complete Phase II, the parking lot and pavilion with restrooms, was included in the contract with JC Roberts Construction as alternates. The bid for these alternates is $260K which the I-20 Wildlife Preserve will make up the $10K difference. JC Roberts Construction will complete the current construction in mid-July and if possible not have to move off the property prior to constructing the two alternates. Our fear is if JC Roberts Construction moves off site we may have to go back through the bid process and the construction cost will be considerably higher.

Please contact me to answer any questions, 432 889 7996.

Kind Regards,

Elaine

Elaine Magruder, President
I-20 Wildlife Preserve and
Jenna Welch Nature Study Center, Inc.

Cc: Tina Juaz, Community Development
Attachment: Alternate Bid

P.O. Box 2906 • Midland, Texas 79702 • www.120wildlifepreserve.org • 1-866-97PLAYA

City Council Agenda

Approved for Agenda:

City Manager's Office

MEETING DATE: 7/10/2012

TO: City Council / City Manager

FROM: David D. Beard, P.E.

SUBJECT: Consider a resolution authorizing staff to advertise for bids, the Water and Wastewater Tap project.

Purpose:

Authorize staff to advertise for bids, the Water and Wastewater Tap project.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

To be determined. Once bids are received and evaluated, Staff will make a recommendation and request funds to be allocated.

Discussion:

Due to the low staffing levels and the number of water and wastewater tap requests, the current waiting time for the City to install water or wastewater taps is 60-90 days. In an effort to reduce the response time, staff is requesting authorization to contract this work item.

RESOLUTION NO.

RESOLUTION APPROVING PLANS AND SPECIFICATIONS AND AUTHORIZING ADVERTISEMENT FOR BIDS FOR THE WATER AND WASTEWATER TAP PROJECT; SAID PROJECT WILL BE FOR THE INSTALLATION OF WATER AND WASTEWATER TAPS

WHEREAS, plans and specifications have been prepared by the City of Midland for the Water and Wastewater Tap Project; and

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

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

SECTION ONE. That the plans and specifications as prepared by the City of Midland for the Water and Wastewater Tap Project are hereby approved, those plans and specifications to be on file in the City Secretary's office referenced by the number and date of this resolution.

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

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

Council members voting "AYE":

Council members voting "NAY":

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
David Beard, City Engineer

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

City Council Agenda

Approved for Agenda:

City Manager's Office

MEETING DATE: 7/10/2012

TO: City Council / City Manager

FROM: David D. Beard, P.E.

SUBJECT: Consider a resolution authorizing staff to execute a change order to the Lamesa Rd. Water Main Replacement project with TEC, Inc. in the amount of $140,000. (District #2 – Hailey)

Purpose:

Consider a resolution authorizing staff to execute a change order to the Lamesa Rd. Water Main Replacement project with TEC, Inc. in the amount of $140,000.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

That the sum of $140,000 is hereby appropriated from the Water and Sewer Fund (300) Unappropriated Fund Balance (5650) to the Lamesa Road Water and Sewer Reconstruction Project (8947).

Discussion:

Evaluation of the City's distribution system indicates the need to install a 12" water main from the intersection of Lamesa Rd and Golf Course Rd to an existing 12" main in Carver St. north of the Scharbauer Draw. Installation of this main will improve fire protection, increase circulation, and open up areas for further development.

To accomplish this task, staff recommends negotiating a change order with TEC, Inc. (Lamesa Rd. Water Main Replacement contractor) to complete the work. The contractor is agreeable to performing the work and can begin construction immediately.

Attached is a location map showing the proposed work and draft change order.

RESOLUTION NO.

RESOLUTION AUTHORIZING THE EXECUTION OF CHANGE ORDER NUMBER ONE WITH TEC EXCAVATION, INC. REGARDING THE LAMESA ROAD WATER AND SEWER RECONSTRUCTION PROJECT; SAID CHANGE ORDER TO PROVIDE FOR THE EXTENSION OF A WATER MAIN FROM THE INTERSECTION OF LAMESA ROAD AND GOLF COURSE ROAD TO AN EXISTING WATER MAIN IN CARVER STREET, NORTH OF SCHARBAUER DRAW; APPROPRIATING FUNDS; AND AUTHORIZING PAYMENT IN THE AMOUNT OF $361,030.00

WHEREAS, the City Council by Resolution No. 2011-231, passed on October 11, 2011, authorized the execution of a contract with TEC Excavation, Inc. regarding the Lamesa Road and Water and Sewer Reconstruction Project; and

WHEREAS, the City Council finds it to be in the public interest to authorize the execution of Change Order No. 1 to the contract with TEC Excavation, Inc. to provide for the extension of a water main from the intersection of Lamesa Road and Golf Course Road to an existing water main in Carver Street, north of Scharbauer Draw;

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

SECTION ONE. That the City Manager, or his designee, and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, Change Order No. 1 to the contract with TEC Excavation, Inc. regarding said project. A copy of said change order is attached hereto as Exhibit "A" and incorporated herein for all purposes.

SECTION TWO. That the sum of $140,000.00 is hereby appropriated from the Water and Sewer Fund (300) Unappropriated Fund Balance (5650) to the Lamesa Road Water and Sewer Reconstruction Project (8947).

SECTION TWO. That the City Treasurer is hereby authorized and directed to pay TEC Excavation, Inc., in an amount not to exceed $361,030.00, for services pursuant to said change order out of funds available in the Lamesa Road Water and Sewer Reconstruction

Project (8947) budget account upon receipt of proper invoice or statement therefor approved by the City Manager.

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

City Council Agenda

Approved for Agenda:

City Manager's Office

MEETING DATE: 7/10/2012

TO: City Council / City Manager

FROM: David D. Beard, P.E.

SUBJECT: Consider a resolution to award the Hicks Ave. & Gist Ave. CDBG Sidewalk Improvements to Onyx Contractors in the amount of $234,756. (District #2 – Hailey)

Purpose:

Consider a resolution to award the Hicks Ave. & Gist Ave. CDBG Sidewalk Improvements to Onyx Contractors in the amount of $234,756.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

That the sum of $99,800 is hereby appropriated from the 2012 GPCO Street Improvements Bond Fund (163) Unappropriated Fund Balance (5650) to the Hicks and Gist Ave. Street Improvements Project (8997)

Discussion:

The bids for the Hicks Ave & Gist Ave CDBG Sidewalk Improvements project were opened on June 20, 2012. Onyx Contractors was the low (only) bidder. CDBG funds in the amount of $135,000 were allocated for this project. The bid price is $99,800 over the allocated amount.

Although the bid price is higher than the allocated amount, it is unlikely that the City would realize any significant savings by re-bidding the project. In addition, current work loads will not allow City forces to effectively construct the paving portions of the project.

Onyx Contractors has a track record of successfully completing work in Midland and the surrounding area. Therefore, staff recommends awarding the project to Onyx Contractors in the amount of $234,756.

Attached is a project location map and bid tabulation.

RESOLUTION NO.

RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT WITH ONYX CONTRACTORS FOR THE HICKS AVENUE AND GIST AVENUE COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) SIDEWALK IMPROVEMENTS PROJECT AT A COST OF $234,756; AND APPROPRIATING FUNDS

WHEREAS, the City Council previously approved plans and specifications and authorized the advertisement for bids for the construction of the Hicks Avenue and Gist Avenue CDBG Sidewalk Improvements Project; and

WHEREAS, Onyx Contractors submitted the lowest and most responsible bid for said construction in the total amount of $234,756, as shown on the bid tabulation attached hereto as Exhibit "A" and incorporated herein for all legal purposes; and

WHEREAS, the City Council finds it to be in the public interest to execute a contract with Onyx Contractors for said project;

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

SECTION ONE. That the Mayor and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a contract with Onyx Contractors, for said project at a cost not to exceed $234,756.00. Said contract shall be on file in the office of the City Secretary, referenced by the date and number of this resolution.

SECTION TWO. That the sum of $99,800.00 is hereby appropriated from the 2012 GPCO Street Improvements Bond Fund (163) Unappropriated Fund Balance (5650) to the to the Hicks Avenue and Gist Avenue Street Improvements Project (8997).

SECTION THREE. That the sum of $99,800.00 is hereby appropriated from the 2012 Street Improvements Bond Fund (163) Unappropriated Fund Balance (5650) to the Hicks Avenue and Gist Avenue Street Improvements Project (8997).

SECTION FOUR. That the City Treasurer is hereby authorized and directed to pay Onyx Contractors, pursuant to the terms of said contract, for all street paving costs, not to exceed $99,800.00, from funds available in the Hicks Avenue and Gist Avenue Street

Improvements Project (8997) budget account upon receipt of proper invoices or statements approved by the City Manager; and that the City Treasurer is hereby authorized and directed to pay Onyx Contractors, pursuant to the terms of said contract, for all sidewalk improvement costs, not to exceed $135,000.00, from funds available in the CDBG Sidewalk Improvements 2011 Project (7075) budget account 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., 2011, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
David Beard, City Engineer

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

City of Midland - Bid Tabulation

BID # 5126-12

CDBG Sidewalk Improvements

OPENED June 20, 2012
Est. Cost: $135,000.00

Onyx Contractors
1010 FM 1788
Midland, TX 79711
John Darnell
(432) 561-8900

ITEM	QTY	DESCRIPTION	COST EA.	TOTAL
1	408	LF - Removal & Replacement of 6" curb and gutter 24" wide	$27.50	$11,220.00
2	42	Ton - Flexible Base Material (Crushed Caliche)	$24.00	$1,008.00
3	200	SY - Construct Concrete Valley Gutter & Fillets 6" Thick	$138.00	$27,600.00
4	235	SY - Construct 6" Thick Concrete Driveways & Alleys	$92.00	$21,620.00
5	1279	SY - Construct Concrete Sidewalks 4" Thick	$74.00	$94,646.00
6	4	Adjust to Grade of Water Valve Boxes	$250.00	$1,000.00
7	281	Construct Asphalt Transition Abutting Valley Gutters	$52.00	$14,612.00
8	793	SY - Pavement Patch & Repair of Existing Pavement Abutting	$42.00	$33,306.00
9	836	SF - Construct Concrete Handicap Access Ramps	$29.00	$24,244.00
10	1	LS - Saw-Cut, Removal of Existing Concrete in the Right of Way	$1,000.00	$1,000.00
11	1	LS - Implement Jobsite Safety & Traffic Control	$4,000.00	$4,000.00
12	1	LS - Implement the Erosion Control Plan	$500.00	$500.00
			TOTALS:	$234,756.00
			TOTAL OF LOW BID ITEMS BY VENDOR:	$234,756.00

Bidding Summary:

4 Bid requests were issued.

1 Bids listed above

0 NO BIDS were received.

3 Bidders did not respond.
Spear, H & D Construction, JFA Construction

City Council Agenda

Approved for Agenda:
csharp
City Manager's Office

MEETING DATE: 7/10/2012

TO: City Council / City Manager

FROM: Robert Isbell, Fire Chief

SUBJECT: Re-Authorization of Assistance to Firefighters Grant EMW-2008-FO-06364

Purpose:

Consider a resolution allowing the Midland Fire Department to apply for re-authorization of a grant, through the U.S. Department of Homeland Security, in the amount of $18,502.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Midland has met the original financial obligation and will not incur any impact.

Discussion:

In 2008 MFD was awarded a grant for wildland firefighting gear. The grant was exercised and notification was sent to FEMA to close the award with a balance. FEMA advises they were unable to close the grant under their system and is now offering the balance to be re-authorized for the scope intended if there is still a need. The MFD has grown in size and scope since 2008 and can exercise the remaining balance in the intended scope.

RESOLUTION NO.

RESOLUTION AUTHORIZING THE FILING OF AN APPLICATION WITH THE UNITED STATES GOVERNMENT FOR THE RE-AUTHORIZATION OF THE 2008 ASSISTANCE TO FIREFIGHTERS GRANT; SAID FUNDS TO BE USED TO ASSIST IN PURCHASING WILD LAND FIREFIGHTING GEAR; THE CITY OF MIDLAND HAS ALREADY MET THE ORIGINAL FINANCIAL OBLIGATIONS

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 exercised the grant and sent notification to close the grant award with a remaining balance of $18,502.00; and

WHEREAS, the United States Government had advised that they were unable to close the grant and is now offering the balance to be re-authorized in the amount of $18,502.00 for the original scope intended; and

WHEREAS, the Midland Fire Department wishes to apply for the re-authorization of said grant funds in the amount of $18,502.00 for the original scope intended; and

WHEREAS, the City of Midland has met the original financial obligations of the grant; and

WHEREAS, the City Council finds it to be in the public interest to re-authorize the Fire Department to apply for the remaining 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 wild land firefighting gear.

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 Isbell, Fire Chief

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: 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

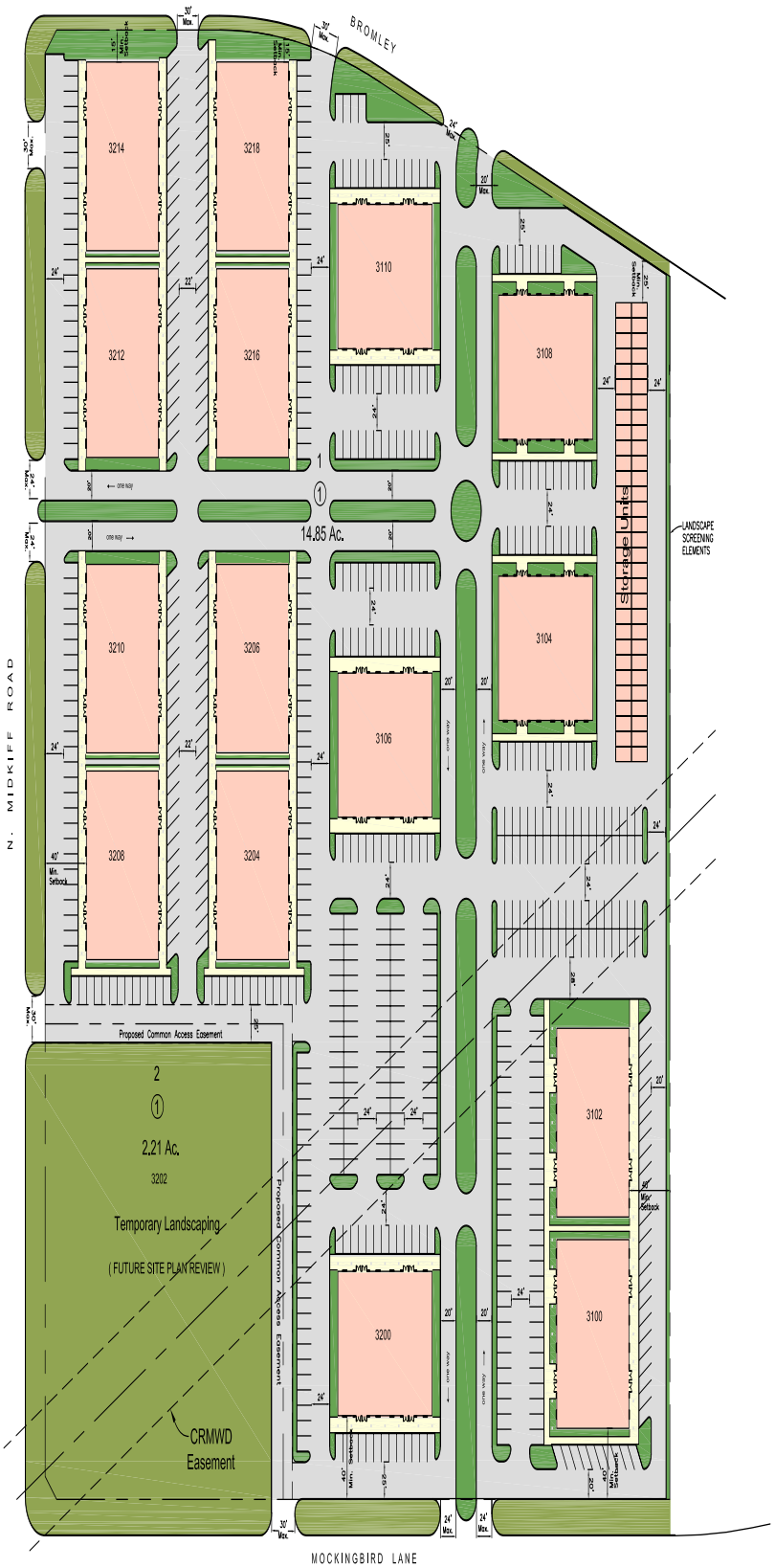
APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

PLANNED DISTRICT SITE PLAN

MADERA VISTA

A DEVELOPMENT
IN THE
MAYFIELD PLACE ADDITION



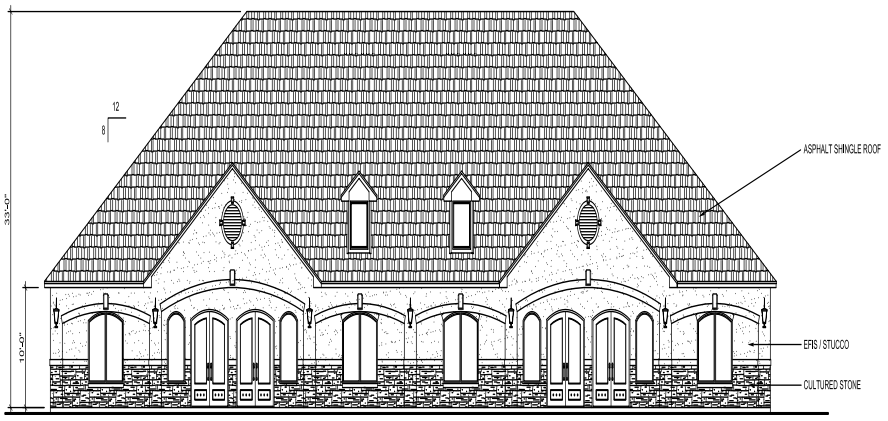
NOTES:

- 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 R.O.W.S) 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

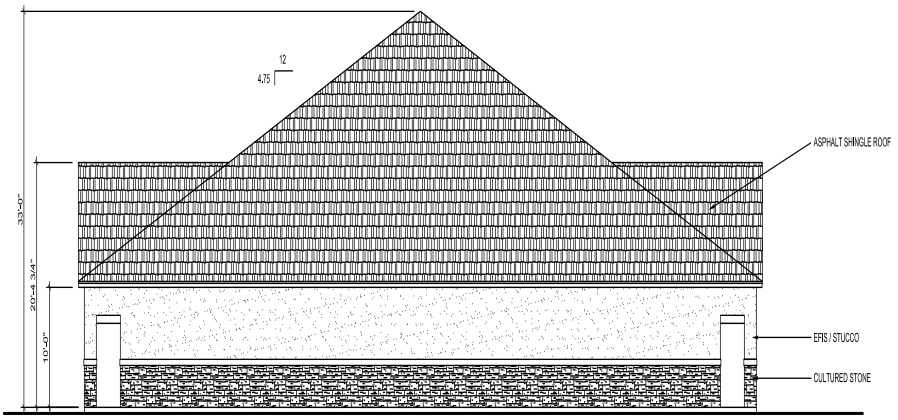
SITE DATA (not Including 3202)	
SITE AREA	646920 SF±
BUILDING AREA (Foot Print)	192,951 SF ±
LANDSCAPE AREA REQUIRED	45,397 SF ±
LANDSCAPED AREA SHOWN	70,350 SF ±
PARKING SPACES REQUIRED (45% Retail / 55% Office)	653
PARKING SPACES PLANNED	653

MADERA VISTA

PARKHILLSMITH&COOPER



C2 FRONT AND REAR ELEVATIONS
1/8" = 1'-0"



A2 SIDE ELEVATIONS
1/8" = 1'-0"

PSC PARKHILL SMITH & COOPER

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

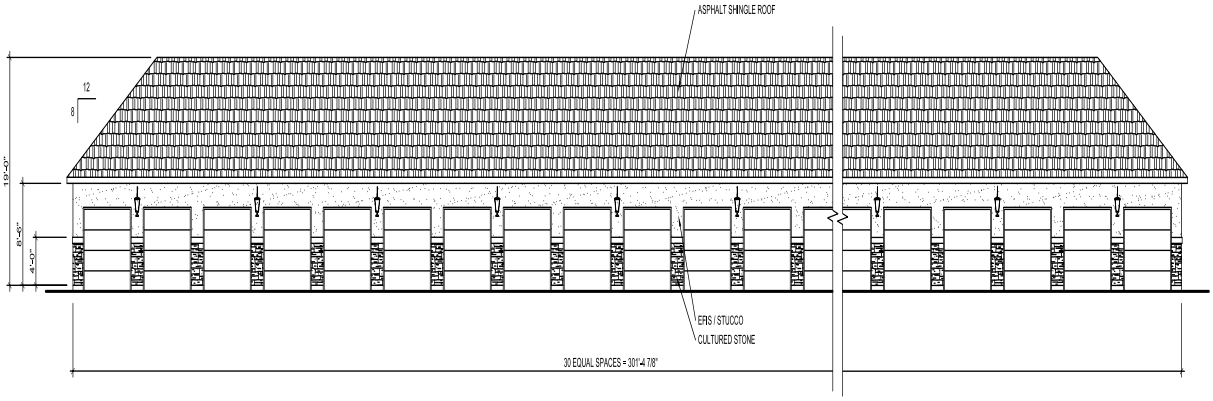
NO	DATE	DESCRIPTION

ISSUING OFFICE: Lubbock PROJECT NO: 8616.11

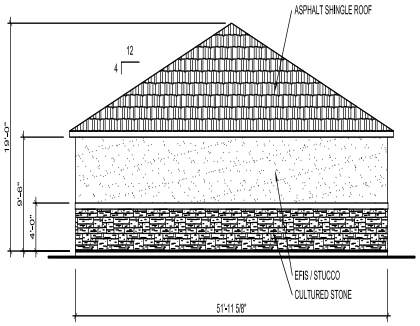
Planned District Submittal:

Exterior Elevations

A-16.7



C2 FRONT AND REAR ELEVATIONS
1/8" = 1'-0"



A1 SIDE ELEVATIONS
1/8" = 1'-0"

PSC PARKHILL SMITH & COOPER

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Madera Vista Development

(Mayfield Place Addition)

A New
Office/ Retail Development

Midland, Texas

KEY PLAN

NO	DATE	DESCRIPTION

ISSUING OFFICE: Lubbock PROJECT NO: 8616.11

Planned District Submittal:

Exterior Elevations
Storage Units

A-16.8

PD-SC Zoning

RECEIVED
MAY 10 2012
CITY OF MIDLAND
PLANNING DIVISION OFFICE

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

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

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

16.14

Case Number: ~~2001-~~ Z-12-014

CITY OF MIDLAND
Planning Division

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

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 x No

APPLICATION FEES:

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

SITE PLAN SUBMITTALS *(if applicable)*:

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

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

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

Property Owner (signature): _____ Date: _____

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

STATE of TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared Eric L. West, P.E. who, being by me duly sworn, upon oath says: That (s)he is authorized by 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. West

Authorized Agent (signature)

Subscribed and sworn to before me, this 23rd day of March, 2012, to certify which witness my hand and seal of office.

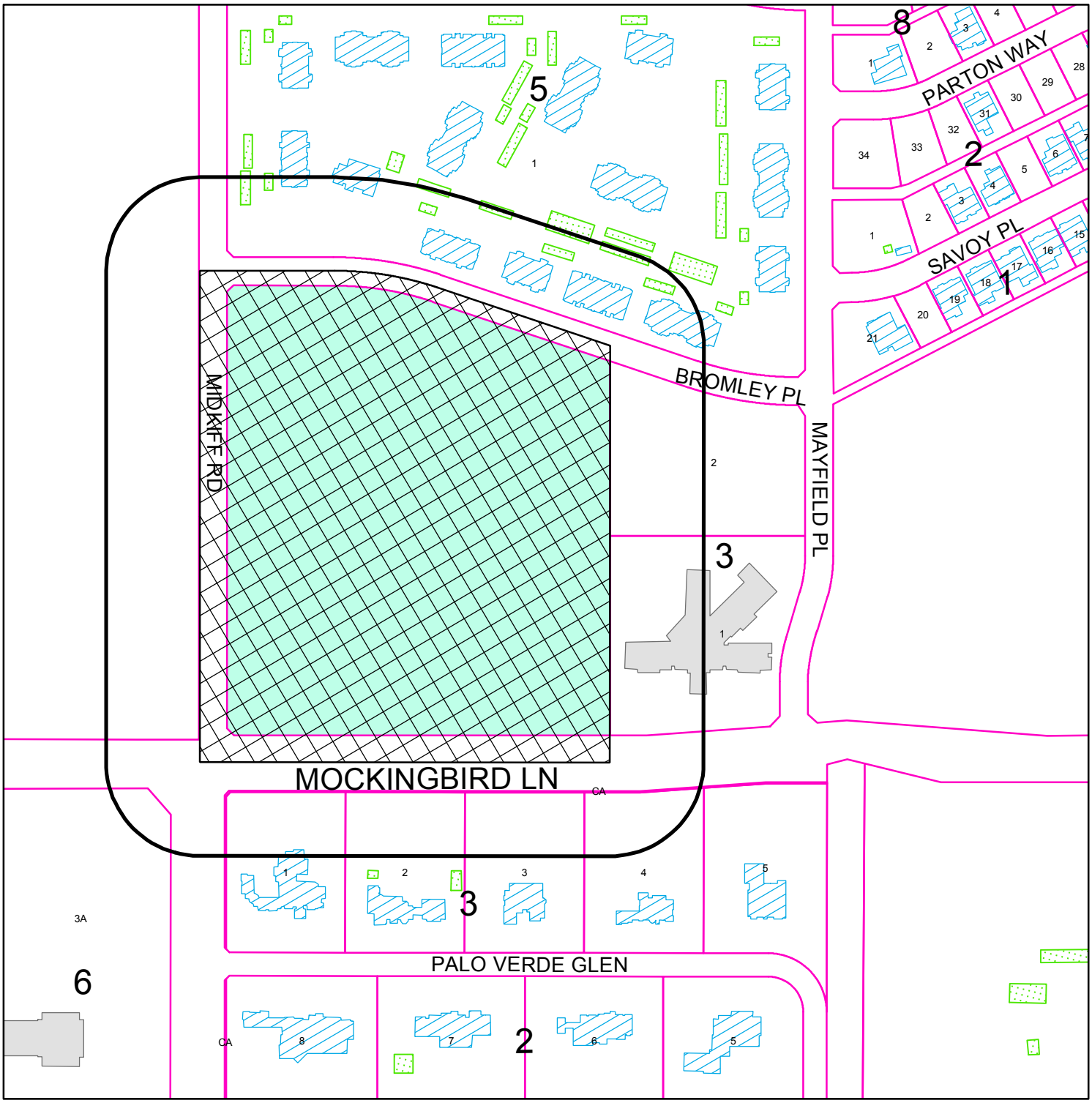
Darcy Y. Knight

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: CW	Date: 3/28/12
Assigned: JRC	
For: P+Z	On: 4-30-12

NOTARY PUBLIC STATE OF TEXAS
DARCY Y. KNIGHT
Notary Public, State of Texas
My Commission Expires
JUNE 14, 2015

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



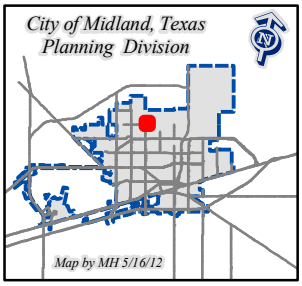
PROPERTY OWNER NOTIFICATION MAP

Z - 12 - 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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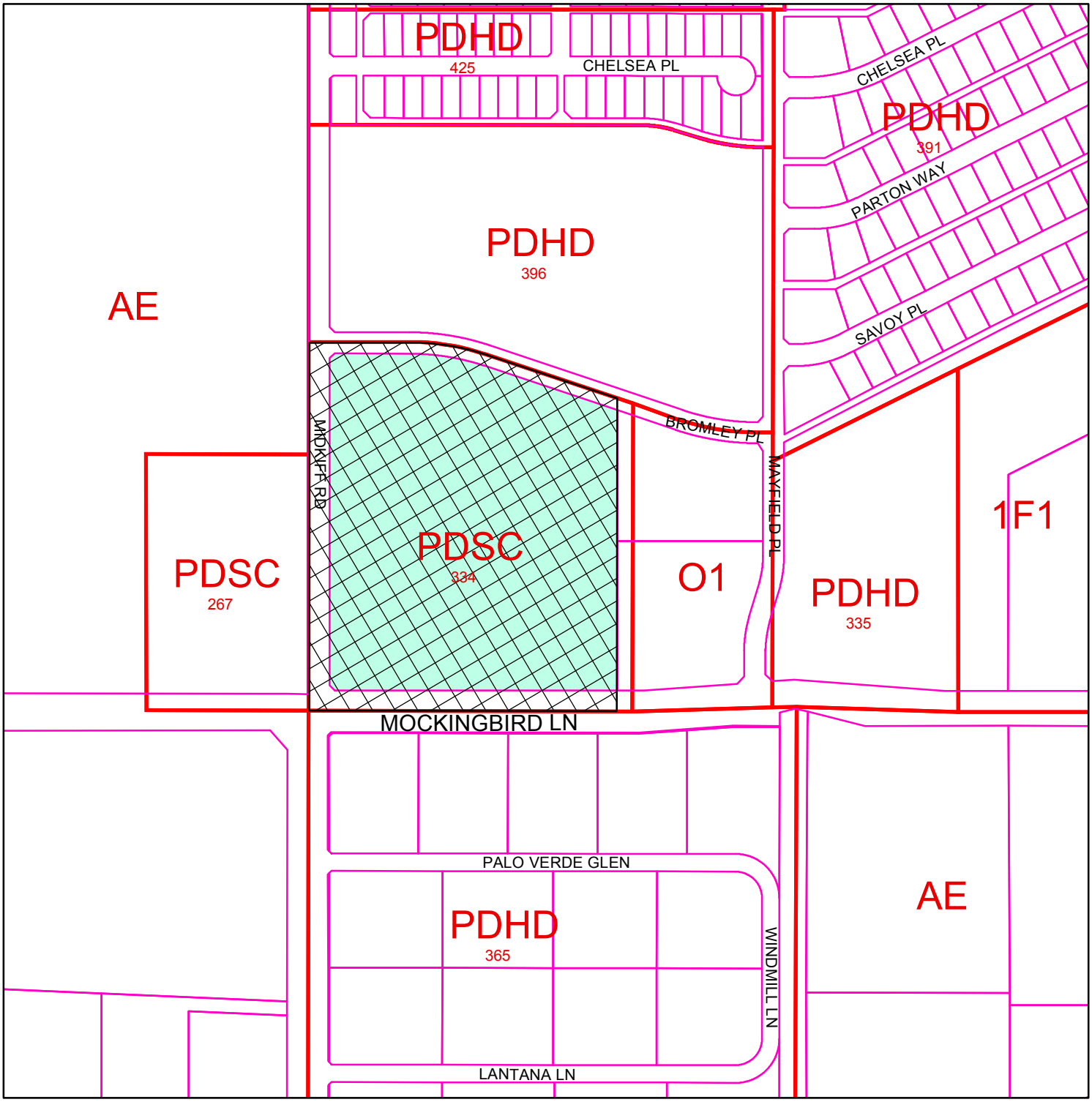

ZONING MAP

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	01, O2	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2 ,LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP ,IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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City Council Agenda

Approved for Agenda:
jnichols
City Manager's Office

MEETING DATE: 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:

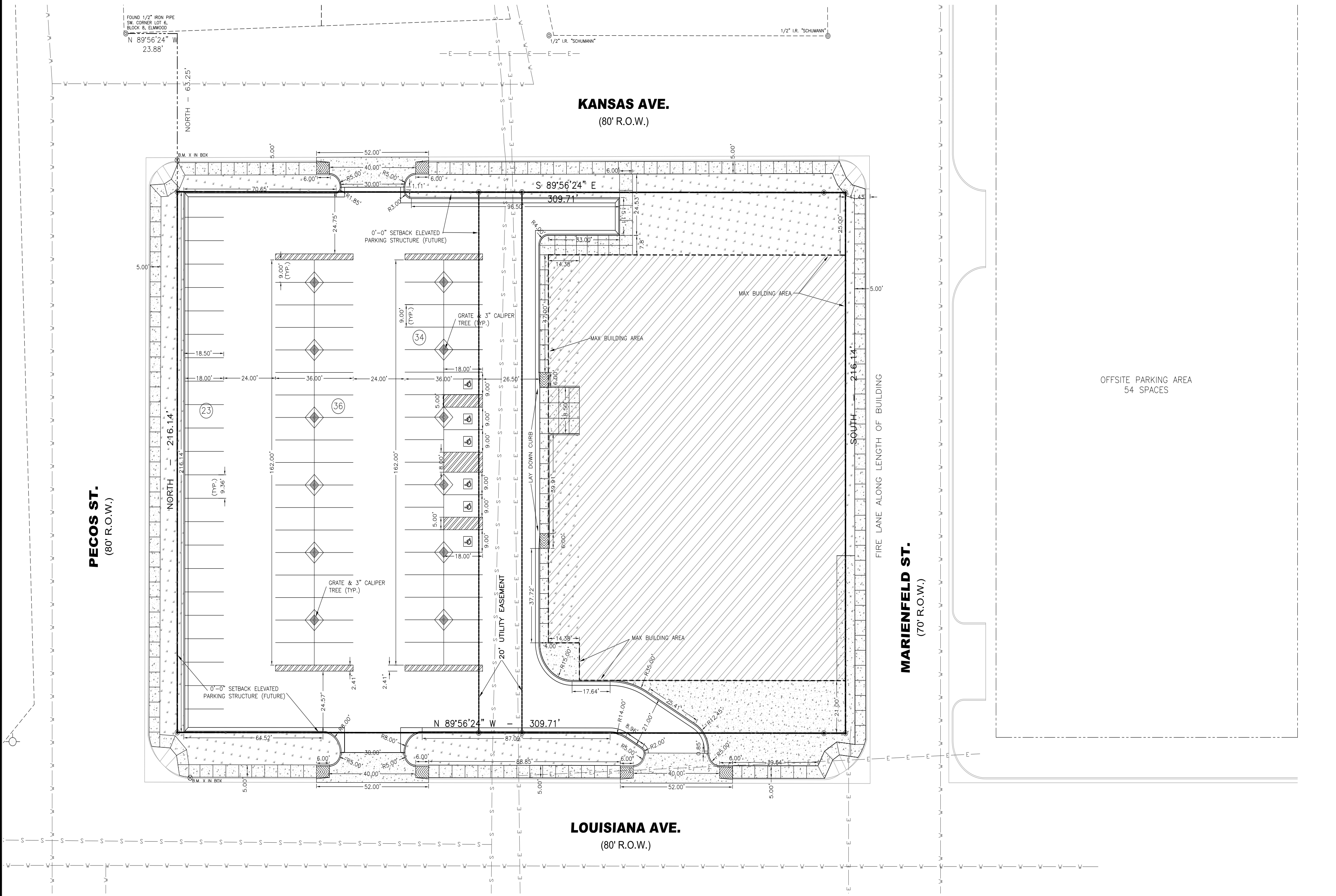
_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Jim Nichols, Assistant City Manager

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney



0FT 20FT 40FT 60FT

SCALE: 1" = 20'

LEGEND

- DENOTES SET 1/2-INCH IRON ROD W/RED PLASTIC CAP MARKED "WEST CO. MIDLAND"
- DENOTES FOUND MONUMENT AS NOTED
- DENOTES SAW CUT "X" IN CONCRETE
- DENOTES FIRE HYDRANT
- DENOTES OVERHEAD ELECTRIC LINE
- DENOTES SANITARY SEWER
- DENOTES WATER MAIN
- DENOTES PROPERTY BOUNDARY
- DENOTES EASEMENT LINE
- DENOTES MAXIMUM BUILDING AREA

BUILDING SUMMARY

PROPOSED ZONE: PD, OFFICE CENTER, 4 STORY. C-1 USE REGULATIONS

LOT AREA:	66,941 FT^2
MAX BLDG FOOTPRINT:	23,949 FT^2
MAX BLDG FLOOR AREA:	95,796 FT^2
ALLOWED HEIGHT:	75 FT
BLDG HEIGHT:	75 FT

SETBACK, KANSAS AVE.	25'
SETBACK, LOUISIANA AVE.	21'
SETBACK, MARIENFELD ST.	0'

PARKING REQUIREMENTS

REQUIRED:
- 1 SPACE PER EACH 500 SQUARE FEET OF GROSS FLOOR AREA OR 1 SPACE PER EACH 2 EMPLOYEES ON THE MAXIMUM SHIFT, WHICHEVER IS GREATER.

PROVIDED;
- 93 ONSITE PARKING SPACES (INCL. 6 HANDICAP PARKING SPACES)
- 54 OFFSITE PARKING SPACES
- 147 TOTAL PARKING

LANDSCAPE REQUIREMENTS

- 10% OF LOT AREA LESS STRUCTURE
- LOT AREA = 66,941 ft^2
- MAX STRUCTURE FOOTPRINT: 23,949 ft^2
- REQUIRED LANDSCAPE AREA 4,300 ft^2
- PROVIDED LANDSCAPE AREA 5,039 ft^2 (12%)

NOTE: LANDSCAPE CALCULATIONS ARE PRELIMINARY. FINAL LANDSCAPE AREA WILL DEPENDENT ON ULTIMATE BUILDING DESIGN.

ALL SUBMITTED LANDSCAPE PLANS SHOULD ACHIEVE A SCORE OF AT LEAST 20 POINTS.

- 2 PTS. PERMEABLE WEED BARRIER
- 10 PTS.DRIP IRRIGATION IN AREAS 15' OR LESS THAN IN WIDTH.
- 5 PTS. DROUGHT TOLERANT SOD IS PRIMARY VARIETY OF TURF GRASS
- 2 PTS. 50% OF ALL PLANT MATERIAL IS WATER EFFICIENT.
- 2 PTS. LANDSCAPE AREAS EXCEEDS REQUIREMENT BY AN ADDITIONAL 10% OF SETBACK AREA.

TREE REQUIREMENTS

- 1 TREE FOR EVERY 30 FEET STREET FRONTAGE
- 1 TREE FOR EVERY 15 PARKING SPACES
- 1,052 FT STREET FRONTAGE: 35.1 TREES
- 93 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 ENDOWMENT FUND AN AMOUNT EQUAL TO THE COST OF INSTALLATION PLUS THE CURRENT MARKET RATE PER CALIPER INCH, OR BY THE INSTALLATION OF CIVIC ART AND/OR SIMILAR STREET STREETSCAPE ENHANCEMENT COMPONENTS AS APPROVED BY THE P&Z COMMITTEE OR CITY COUNCIL.

ACCESSIBLE ROUTE REQ'S

A. ACCESSIBLE PARKING SPACES AND UNLOADING ZONES SHALL NOT SLOPE MORE THAN 1:50 (2%) IN ANY DIRECTION.
B. ACCESSIBLE ROUTES SHALL NOT SLOPE MORE THAN 1:20 (5%) IN THE DIRECTION OF TRAVEL OR 1:50 (2%) PERPENDICULAR TO THE DIRECTION OF TRAVEL.
C. WHERE ACCESSIBLE ROUTES CHANGE DIRECTION, THE LANDING AREA SHALL NOT SLOPE MORE THAN 1:50 (2%) IN ANY DIRECTION.
D. ACCESSIBLE ROUTES SHALL NOT BE LESS THAN 3'-0" WIDE PERPENDICULAR TO THE DIRECTION OF TRAVEL.
E. SURFACES ALONG THE ACCESSIBLE ROUTE SHALL BE SMOOTH WITH NO CHANGES IN LEVEL EXCEEDING ¼". TRANSITIONS BETWEEN MATERIALS ALONG AN ACCESSIBLE ROUTE SHALL BE FLUSH.
F. REFER TO SECTION 4.3 IN THE LATEST EDITION OF THE TEXAS ACCESSIBILITY STANDARDS FOR FURTHER REQUIREMENTS FOR ACCESSIBLE ROUTES.

SITE PLAN

LOT 1A, BLOCK 31A, HOMESTEAD ADD'N MIDLAND, TEXAS

STATE OF TEXAS — ANDREW L. MELLEN — 106572 — REGISTERED PROFESSIONAL ENGINEER

Feb 27, 2012

PROJECT NUMBER: 2012-0257

SHEET C-1 OF 1

DRAWN BY:	DAH
CHECKED BY:	
APPROVED BY:	ALM
DATE:	FEBRUARY 27, 2012
DWG. NO.:	2012-0257

NO.	REVISIONS	BY	APPR.	DATE

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/2012/2011-0257/Preliminary Plans/2011-0257.DWG

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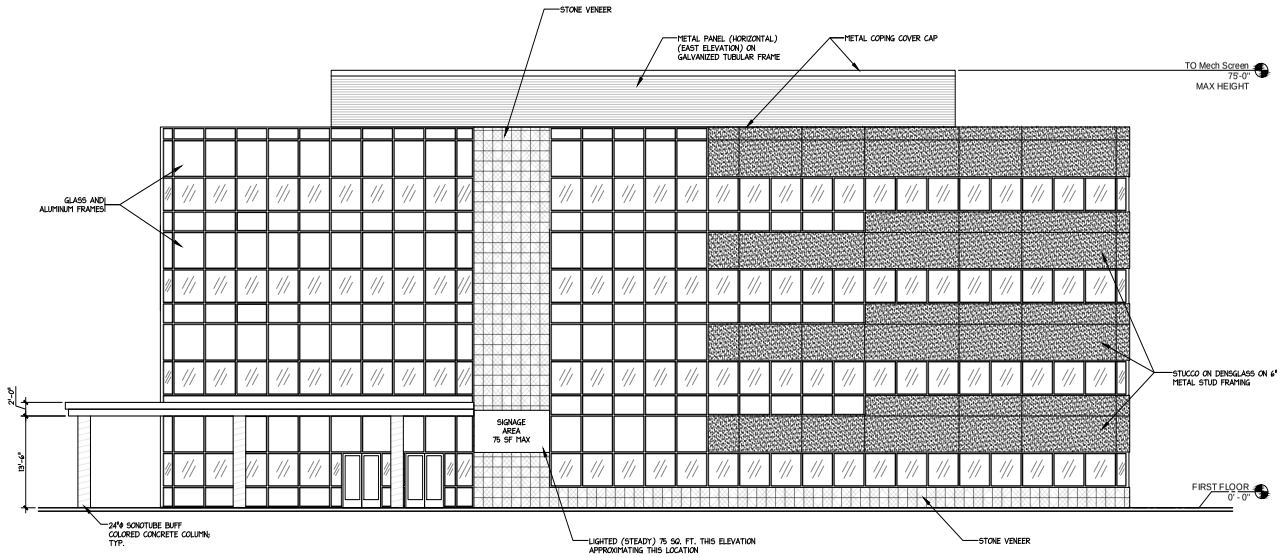
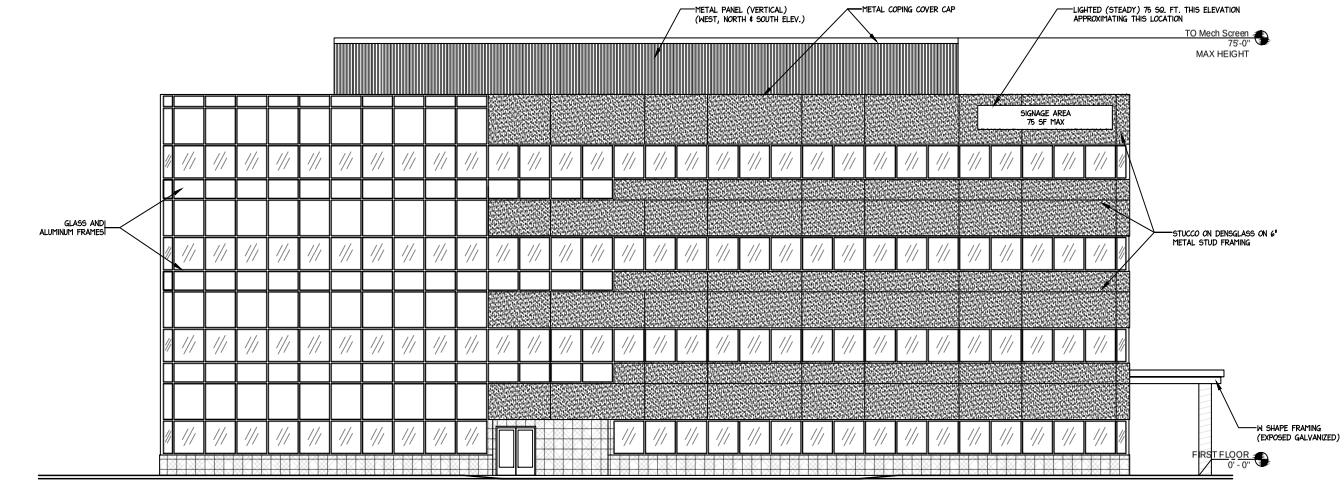


1 A-701 ELEVATION
EAST - MARIENFELD ST.

SCALE: 1/8" = 1'-0"



2 A-701 ELEVATION
WEST - PARKING

SCALE: 1/8" = 1'-0"

KEY:

VISION GLASS PANELS

*NOTE: ALL OTHER UNITS ARE SPANDREL UNITS.

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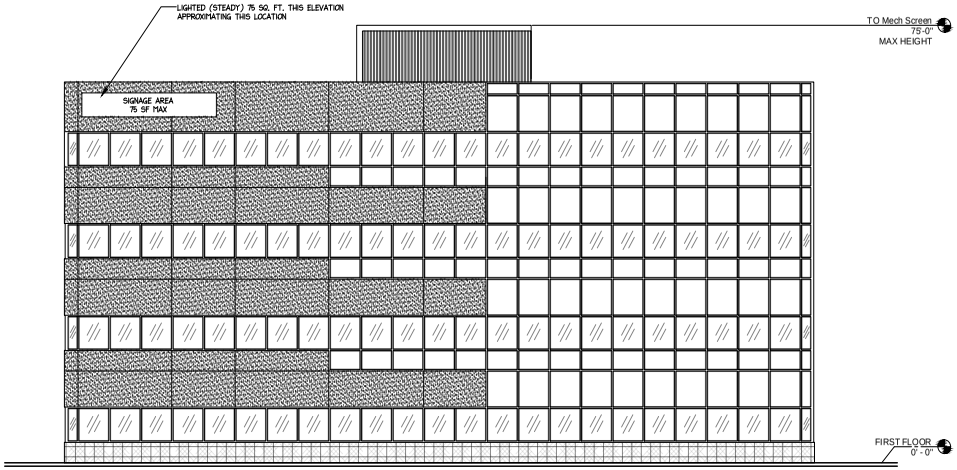
DATE: 02/17/2012
REVISED:

17.8

EXTERIOR ELEVATIONS
LOT 1A, BLOCK 31A, HOMESTEAD ADD'N
PLANNED DISTRICT PROPOSAL

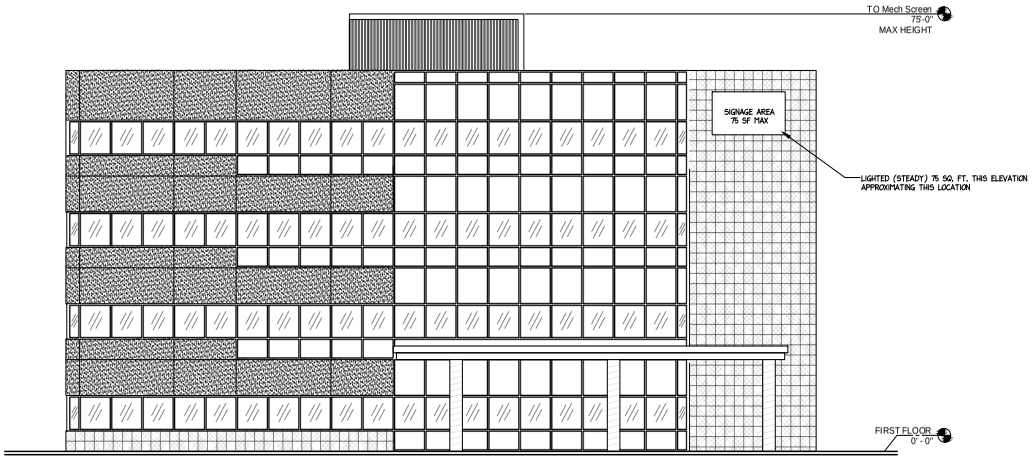
VANDERGRIFF GROUP
ARCHITECTS • PC
813 N. [illegible] BRANCH, SUITE 100 [illegible] TEXAS [illegible]

SHEET:
A-701
OF --A



1 A-702 **ELEVATION**
NORTH - KANSAS AVE.

SCALE: 1/8" = 1'-0"



2 A-702 **ELEVATION**
SOUTH - LOUISIANA AVE.

SCALE: 1/8" = 1'-0"

KEY:

VISION GLASS PANELS

*NOTE: ALL OTHER UNITS ARE SPANDREL UNITS.

DATE: 02/17/2012
REVISED:
17.9

EXTERIOR ELEVATIONS
LOT 1A, BLOCK 31A, HOMESTEAD ADD'N
PLANNED DISTRICT PROPOSAL

VANDERGRIFF GROUP
ARCHITECTS • PC
913 N. BIRD BOULEVARD, SUITE 100 HOUSTON, TEXAS 77090 (713) 957-0791

SHEET:
A-702
OF **--A**

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PERSPECTIVE VIEW 1

LOT 1A, BLOCK 31A, HOMESTEAD ADD'N

VANDERGRIFF GROUP
ARCHITECTS • PC
312 N. BIG SPRING, SUITE 100 MIDLAND, TEXAS
(432) 687-0781 FAX (432) 687-5205

17.10

PLANNED DISTRICT PROPOSAL

February 17, 2012

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PERSPECTIVE VIEW 2

LOT 1A, BLOCK 31A, HOMESTEAD ADD'N

VANDERGRIFF GROUP
ARCHITECTS • PC
312 N. BIG SPRING, SUITE 100 MIDLAND, TEXAS
(432) 687-0781 FAX (432) 687-5205

17.11

PLANNED DISTRICT PROPOSAL

February 17, 2012

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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: ~~Z-12-008~~ Z-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 Marienfeld St. right-of-way.
205 N. Marienfeld St.

PRESENT ZONE: O2 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 X 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. Mellen 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. Mellen Jr.
Authorized Agent (signature)

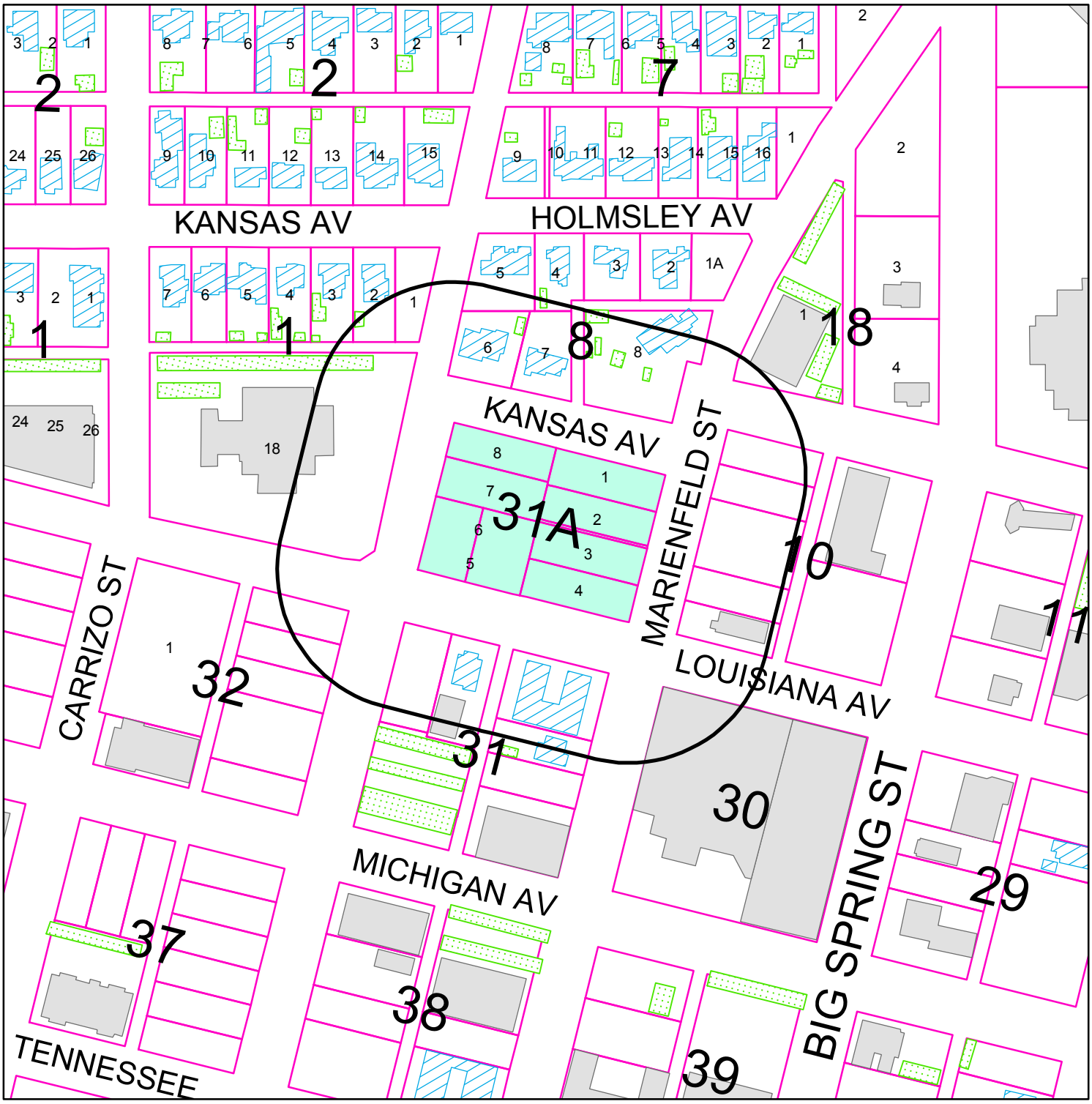
Subscribed and sworn to before me, this 28th day of February, 20 12, to certify which witness my hand and seal of office.

Debbie Brown
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY
Rec'd By: RS Date: 2/29/12
Assigned: _____
For: _____ On: _____

NOTARY PUBLIC STATE OF TEXAS
DEBBIE BROWN
Notary Public
STATE OF TEXAS
My Comm. Exp. 02/22/2013

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



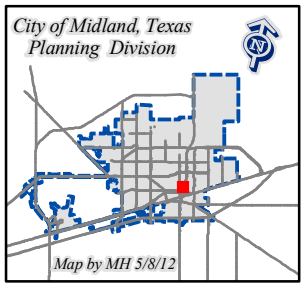
PROPERTY OWNER NOTIFICATION MAP

Z - 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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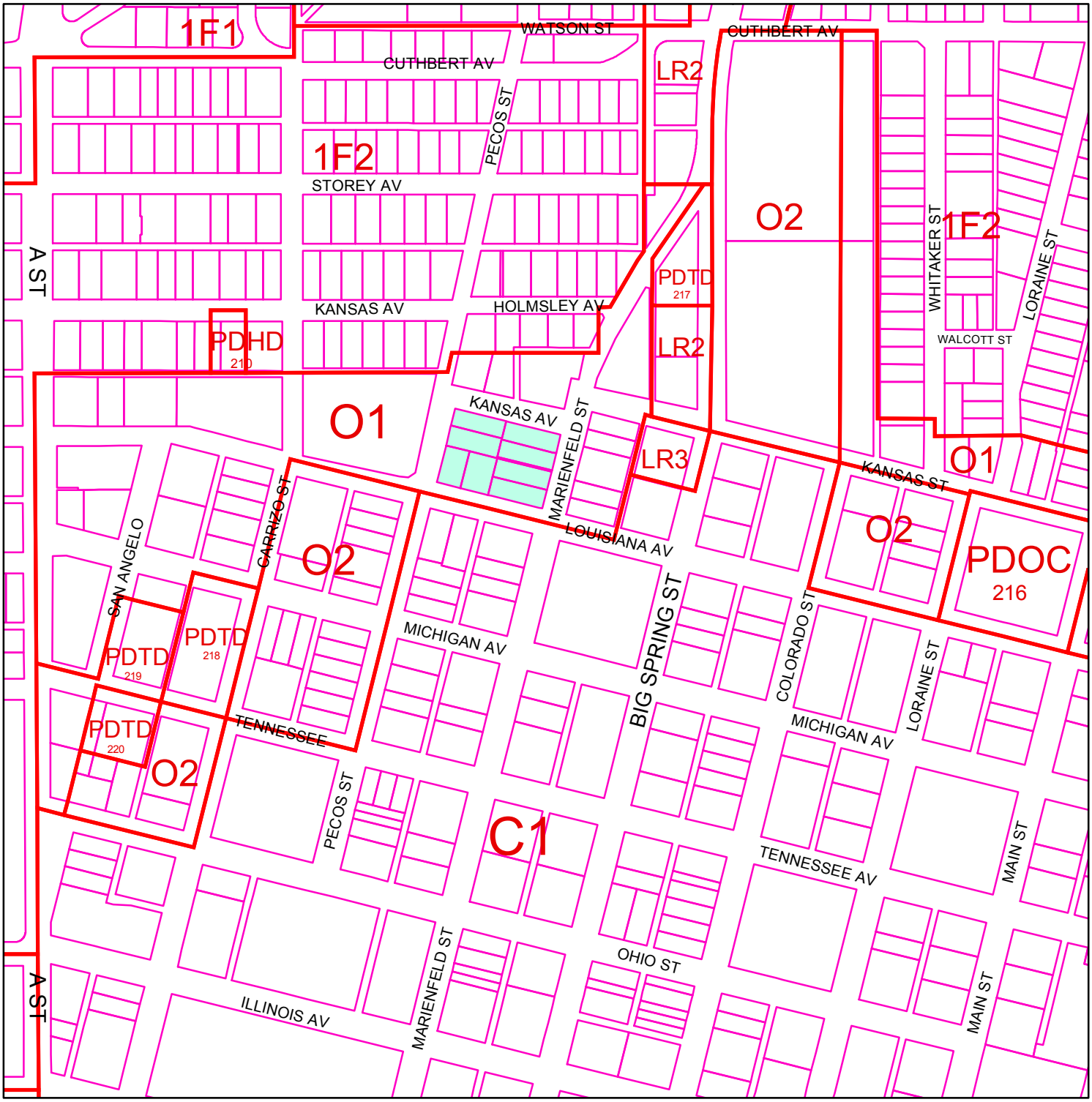
THIS DATA IS NOT DESIGNED TO BE USED AS A PRI
TOOL IN PERMITTING, CITING, OR OTHER DECISION
SOLELY ON THE INFORMATION CONTAINED HER



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

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ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, O2	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2 ,LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP ,IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

City Council Agenda

Approved for Agenda:
jnichols
City Manager's Office

MEETING DATE: 7/10/2012

TO: City Council / City Manager

FROM: Cameron Walker, Planning Division Manager

SUBJECT: At approximately 10:30 A.M. hold a public hearing and consider a resolution on a request by Rick Shirley to establish a storm water detention basin on a 3.19-acre portion of Beal Park.

Purpose:

At approximately 10:30 A.M. hold a public hearing and consider a resolution on a request by Rick Shirley to establish a storm water detention basin on a 3.19-acre portion of Beal Park.

Recommended City Council Action

☐ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

There is no cost to the City associated with approving this request.

Discussion:

Rick Shirley is developing a 12.63-acre residential subdivision along the east side of Loop 250 and west of Beal Park. As this vacant land is converted into a neighborhood, there will be an increase in storm water run-off. City regulations require developers to detain increases in storm water run-off to prevent downstream flooding. As noted in the attached letter from Andrew Mellon of West Company of Midland, Mr. Shirley is requesting permission to store this extra run-off on a portion of Beal Park. The attached Exhibit A illustrates the general location of the proposed basin.

The Texas Parks and Wildlife Code, Chapter 26, states that the City Council must approve

requests that require the use or taking of public park land. This statute requires that the City Council must make the following findings before approving such requests:

1. There is no feasible and prudent alternative to the use or taking of such land;

2. The program or project includes all reasonable planning to minimize harm to the land as a park that results from the use or taking.

The statute states that these regulations do not constitute a mandatory prohibition against the use of the area if the findings are made that justify the approval of a project. The statute requires the advertising of this public hearing by advertising it for three consecutive weeks in a local newspaper, and then holding the hearing at least one week, but not more than two weeks, following the final advertising. The required notices have been advertised as required. Finally, should the City Council approve this request the Statute provides a 30 day period during which a petition for judicial review can be filed.

Mr. Mellon's letter states that this basin will also benefit the public by accommodating storm water from Beal Park. In developing the basin, the developer will be required to grub the existing mesquite, excavate and grade the basin and seed it in buffalo grass. In discussions with City staff, the developer has agreed to construct 1,835 linear feet of sidewalk along the east side of Beal Parkway, as well as an eight-foot wide sidewalk around the detention basin. As noted in Mr. Mellon's calculations on page two of his letter, the estimated sidewalk cost is $95,620.

Attachments:

Letter from West Company of Midland
Exhibit A, Site Plan
Proposed Resolution

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF MIDLAND, TEXAS MAKING A FINDING, PURSUANT TO CHAPTER 26 OF THE TEXAS PARKS AND WILDLIFE CODE, THAT THERE IS NO FEASIBLE AND PRUDENT ALTERNATIVE TO THE CHANGE IN USE OF APPROXIMATELY 3.19 ACRES LOCATED IN THE SOUTHWEST CORNER OF BEAL PARK FROM PUBLIC PARK USE TO A DETENTION BASIN FOR STORM WATER IN CONNECTION WITH THE FLOYD ACRES HOUSING DEVELOPMENT; SAID HOUSING DEVELOPMENT IS TO BE LOCATED ON A 12.63-ACRE TRACT OF LAND OUT OF THE NORTHWEST QUARTER OF SECTION 6, BLOCK 39, T-2-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF LOOP 250, APPROXIMATELY 1/4 OF A MILE NORTH OF WALL STREET); AND AUTHORIZING THE NEGOTIATION OF A DEVELOPMENT AGREEMENT REGARDING SAID USE WHICH SHALL BE APPROVED BY THE CITY COUNCIL

WHEREAS, the City of Midland has received a request from the developer of the Floyd Acres housing development to use approximately 3.19 acres located in the southwest corner of Beal Park as a detention basin, as shown on Exhibit "A" which is attached hereto and incorporated herein; and

WHEREAS, said housing development is to be located a 12.63-acre tract of land out of the northwest quarter of Section 6, Block 39, T-2-S, T&P RR Co. Survey, City and County of Midland, Texas; and

WHEREAS, Chapter 26 of the Texas Parks and Wildlife Code requires that anytime a public park is put to a use other than public park use, the governing body must make a finding, after notice and a hearing, that there is no feasible and prudent alternative to the proposed change in use; and

WHEREAS, a public hearing before the City Council was held on this matter in the City Council Chambers on July 10, 2012 at 10:30 a.m. in accordance with Chapter 26 of the Texas Parks and Wildlife Code; and

WHEREAS, notice of such public hearing was published in a newspaper having general circulation in the City of Midland, Texas on June 15, 2012, June 22, 2012 and June

29, 2012 in accordance with Chapter 26 of the Texas Parks and Wildlife Code; and

WHEREAS, notice of the project and the date and place of the public hearing was given in writing to the person, organization, department, or agency that has supervision of Beal Park at least thirty (30) days before the date of the public hearing in accordance with Chapter 26 of the Texas Parks and Wildlife Code, as evidenced by the letter attached hereto and incorporated herein as Exhibit "B"; and

WHEREAS, the City Council finds that there is no feasible and prudent alternative to said change in use of said portion of Beal Park; and

WHEREAS, the City Council finds that said change in use includes all reasonable planning to minimize harm to Beal Park and its use as a park;

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

SECTION ONE. That the above recitals are hereby approved and adopted by the City Council of the City of Midland, Texas.

SECTION TWO. That in accordance with Chapter 26 of the Texas Parks and Wildlife Code, the City Council finds that there is no feasible and prudent alternative to the change in use of approximately 3.19 acres located in the southwest corner of Beal Park from public park use to a detention basin for storm water in connection with the Floyd Acres housing development; and that said change in use includes all reasonable planning to minimize harm to the land, as a park, resulting from the storm water retention use.

SECTION THREE. That the City Manager, or his designee, is hereby authorized and directed to negotiate a development agreement with the developer of the Floyd Acres housing development regarding said change in use of said portion of Beal Park. Provided, however, that no such agreement shall become effective until approved by the City Council.

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

the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Jim Nichols, Assistant City Manager

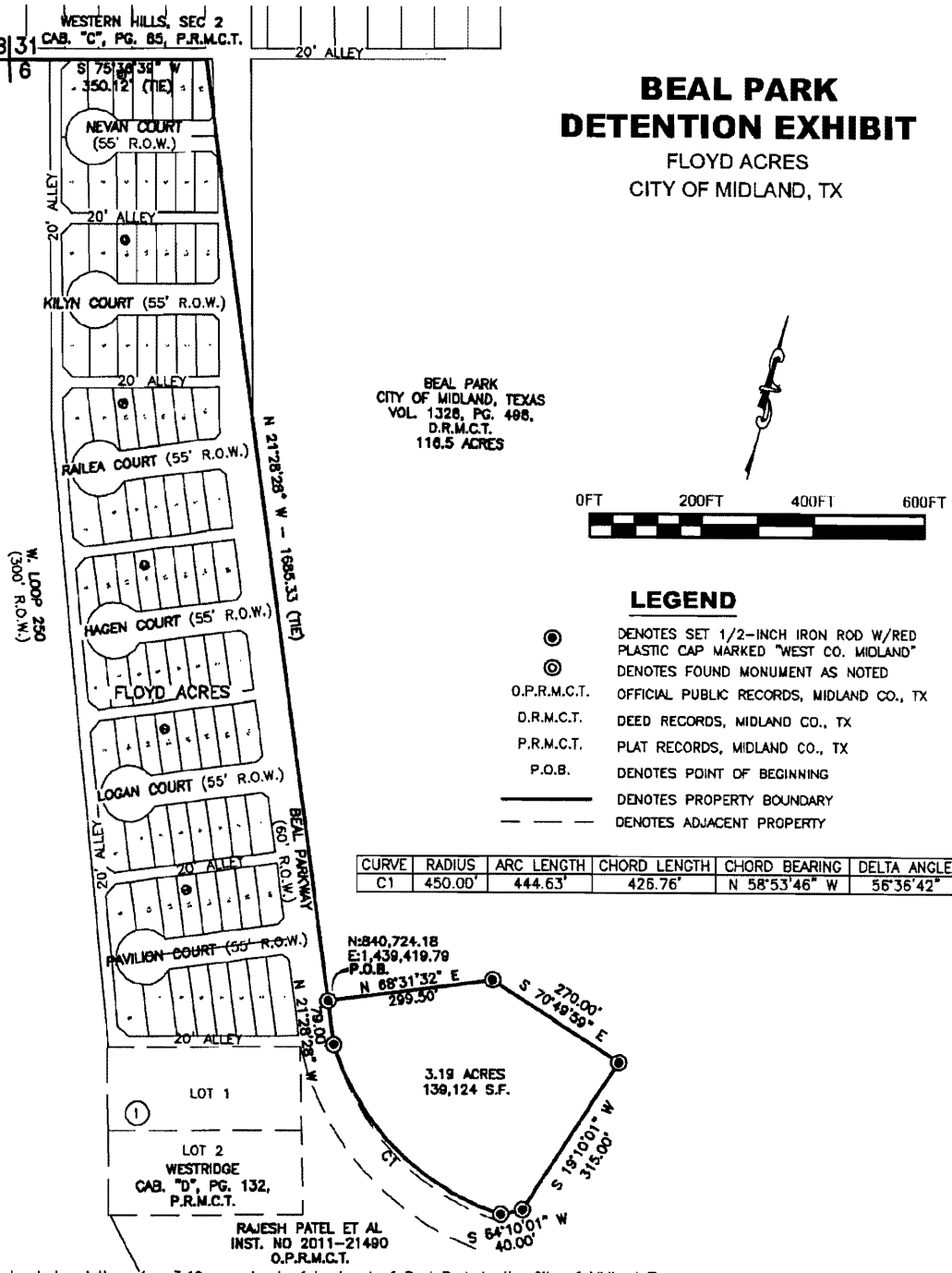
APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

BEAL PARK DETENTION EXHIBIT

FLOYD ACRES

CITY OF MIDLAND, TX



LEGEND

◉	DENOTES SET 1/2-INCH IRON ROD W/RED PLASTIC CAP MARKED "WEST CO. MIDLAND"
◎	DENOTES FOUND MONUMENT AS NOTED
O.P.R.M.C.T.	OFFICIAL PUBLIC RECORDS, MIDLAND CO., TX
D.R.M.C.T.	DEED RECORDS, MIDLAND CO., TX
P.R.M.C.T.	PLAT RECORDS, MIDLAND CO., TX
P.O.B.	DENOTES POINT OF BEGINNING
———	DENOTES PROPERTY BOUNDARY
— — —	DENOTES ADJACENT PROPERTY

CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C1	450.00'	444.63'	426.76'	N 58°53'46" W	56°36'42"

BEING the legal description of a 3.19 acre tract of land out of Beal Park to the City of Midland Texas as recorded in Volume 1328, Page 498 of the Deed Records of Midland County, Texas, said tract being in the Northwest Quarter of Section 6, Block 39, Township-2-South, Texas & Pacific Railroad Company Survey, Midland County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at (N: 840,724.18, E: 1,439,419.79) a set ½ inch iron rod with red plastic cap marked "West Co. Midland" for the Northwest corner of this tract in the East line of Beal Parkway, a 60 foot right of way public street, from which the calculated Northwest Corner of said Section 6, Block 39, T-2-S bears N 21°28'28" W a distance of 1,685.33 feet and S 75°36'39" W with the North line of said Section 6 a distance of 350.12 feet;

THENCE N 68°31'32" E in and across said Beal Park tract a distance of 299.50 feet a to set ½ inch iron rod with red plastic cap marked "West Co. Midland" for an exterior corner of this tract;

THENCE S 70°49'59" E in and across said Beal Park tract a distance of 270.00 feet to a set ½ inch iron rod with red plastic cap marked "West Co. Midland" for the Northeast corner of this tract;

THENCE S 19°10'01" W in and across said Beal Park tract a distance of 315.00 feet to a set ½ inch iron rod with red plastic cap marked "West Co. Midland" for the most Easterly Southeast corner of this tract;

THENCE S 64°10'01" W in and across said Beal Park tract a distance of 40.00 feet to a set ½ inch iron rod with red plastic cap marked "West Co. Midland" for the most Southerly Southeast corner of this tract and the Point of Curvature of a curve to the Right;

THENCE Westerly with said curve through an Arc Length of 444.63 feet, a Radius of 450.00 feet, a Chord Length of 426.76 feet, a Chord Bearing of N 58°53'46" W, and a Central Angle of 56°36'42" to the Point of Tangency a set ½ inch iron rod with red plastic cap marked "West Co. Midland" in the Easterly right of way line of said Beal Parkway for a reflection point to the right.

THENCE N 21°28'28" W with the Easterly line of said Beal Parkway a distance of 79.00 feet to the POINT OF BEGINNING;

Subject Tract containing a total of 3.19 acres (139,124 ft²).

Note: All Bearings, Distances and Coordinates Shown Hereon are Relative to the Texas State Plane Coordinate System, Texas Central Zone, North American Datum of 1927.

STATE OF TEXAS REGISTERED MACON McDONALD 4308 PROFESSIONAL LAND SURVEYOR

WEST COMPANY OF MIDLAND, INC.
ENGINEERS - PLANNERS - SURVEYORS
REGISTRATION: FIRM 2164
110 W. LOUISIANA AVE., SUITE 110
MIDLAND, TEXAS 79701
(432) 687-0865 - FAX (432)687-0868

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/CIVIL DRAWINGS/2011-2118/EXHIBITS/2011-2118 DETENTION AGREEMENT EXHIBIT.DWG

Exhibit "A"

MIDLAND
Planning Division

CITY MANAGER'S OFFICE
RECEIVED

JUN 06 2012

CITY of MIDLAND, TEXAS

June 6, 2012

Courtney Sharp, City Manager
300 N. Loraine Street
Midland, Texas 70701

Re: Storm water storage on Beal Park

Dear Mr. Sharp:

The Planning Division is reviewing a proposed residential subdivision located on the east side of Loop 250, south of Anetta Drive. Rather than storing the increase in storm water run-off within this subdivision, the developer is proposing to store this water within Beal Park. The Texas Parks and Wildlife Code, Section 26 requires that the City Council call a public hearing and approve this request, as public land is involved. Notice of this hearing must be by two means. The first is by publication in the Legal section of the local newspaper on three separate occasions. The second means is written notification to the person, organization, department or agency that has supervision of the land proposed to be used. The Legal office advises that this person is you.

Please consider this letter to be the formal notification required by State law that a public hearing will be scheduled before the Midland City Council at 10:30 a.m. on Tuesday, July 10, 2012 in the Council Chamber, 300 N. Loraine Street, Midland, Texas to consider this request to store storm water within a 3.19-acre portion of Beal Park.

Sincerely,

Cameron Walker, Planning Division Manager

xc: Tina Jauz, David Beard

Exhibit "B"

Case Number: V-12-002

CITY OF MIDLAND
Transportation 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:
Area #1 0.1445 Acres Parcel of Land out of Elm Avenue.
Area #2 0.3863 Acres Parcel of Land out of Elm Avenue.

II. Reason for Request: Area #1 to be added to Lots 11 through 13, Block 7 and Area #2 to be added to Lots 1 through 12, Block 8, Lynside Neighborhood, to enlarge lots.
Lots.

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:
Will have no affect on public welfare.

IV. REQUIRED ITEMS:

1. Applicant(s) Information: (Attach extra sheets as necessary.)
   Name: Midland Community Development Corporation / David Diaz
   Address: 208 S. Marienfeld (Street) Phone: 432-682-2520
   Midland (City) TX (State) 79701 (Zip Code)
2. Metes and bounds description of property to be vacated including total square feet of vacation.
3. Map showing:
   - Property to be vacated and its relationship to the applicant's property
   - Lot and block numbers of all adjacent tracts
   - Current zoning of all adjacent tracts
4. Letter(s) of Concurrence signed by adjacent property owner(s). (See attached)
5. Application Fee: **$300.00**

Required items attached? Date Received: 1. _____ 2. _____ 3. _____ 4. _____ 5. _____

The City of Midland will take no action on this request, until items 1-5 are received.

V. Clearance is needed from the following utility companies: City of Midland / Atmos Energy

Caprock Energy / Oncor 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 Transportation Division, must first agree to the proposed vacation. It is the applicant's responsibility to obtain a letter of concurrence signed by the affected landowners.

   b. If all letters are received indicating that the affected landowners agree to the request, then a public hearing before the City Council will be scheduled. The Transportation Division will mail public notice of the hearing to landowners 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 landowner.

Signature of applicant: David Daz Date: 2/8/2012

****Application will not be considered for scheduling until all required items are reviewed by City Staff.****

FOR OFFICE USE ONLY	
Rec'd. By: _____	Date: _____
Assigned: _____	
For: _____	On: _____

WEST COMPANY

110 West Louisiana Avenue
Suite 110
Midland, Texas 79701
T: 432.687.0865
F: 432.687.0868
www.team-west.com

CITY MANAGER'S OFFICE
RECEIVED

APR 26 2012

CITY of MIDLAND, TEXAS

April 25, 2012

Ms. Courtney Sharp
City of Midland City Manager
300 N. Loraine
Midland, Texas 79702

Re: Beal Park Agreement for the North Portion of Floyd Acres

Dear Mr. Sharp:

Floyd Acres is a proposed 12.63 acre housing development located in Southwest Midland between Loop 250 West and Beal Parkway, a proposed street. The property is located the Northwest/4 of Section 6, Block 39, T-2-S, T&P RR Co. Survey, Midland County, Texas owned by Rick Shirley.

West Company of Midland, Inc., on behalf of Mr. Shirley, has proposed that a retention basin be built on the southern portion of Beal Park, located on the Northwest corner of the proposed Beal Parkway and the existing park road (see Exhibit A for visual). This retention basin is designed to encapsulate the watershed of Floyd Acres as well as the watersheds of the western half of Beal Park and a section of West Loop 250's east service road. This retention basin is necessary in order to protect any areas downstream of said Floyd Acres from water runoff and to accommodate the Master Drainage Plan Requirements for the City of Midland.

Installing this retention basin will not only be beneficial to Floyd Acres, but also to Beal Park and its surrounding community. The park is currently poorly graded and covered in Mesquite, which is not conducive to human recreation. The proposed retention basin will rectify this as it will be gently sloped and seeded with Buffalo Grass. This will allow for a more favorable area for children to play. Furthermore, Mr. Shirley will install trails along the retention basin, as detailed below, which will in turn also make the park a more favorable location for human recreation.

West Company of Midland, Inc., on behalf of Mr. Shirley, has drawn up a proposed agreement between the City of Midland, Texas and Mr. Shirley regarding the payment for sidewalk installed on the east side of the proposed Beal parkway, which runs along the west boundary of Beal Park.

Mr. Shirley has agreed to install 1,835 linear feet of four (4) foot wide sidewalk along the east side of Beal Parkway, in addition to the City of Midland's four (4) feet of sidewalk. This comes to a total of 1,835 linear feet of eight (8) foot sidewalk, as is illustrated by the purple area on Exhibit A.

Mr. Shirley has also agreed to install 8 foot wide sidewalk around a proposed retention basin located in the south of Beal Park. This includes two (2) trails; the first of which is 908 linear feet long and wraps around the south side of the retention basin as depicted by the blue area on Exhibit A. The second trail is 565

linear feet long and is located on the north side of the retention basin as shown by the red area on Exhibit A.

Also, the retention basin has been graded in such a way to allow for an entrance to Beal Park as was requested. The retention basin will be seeded with City of Midland approved Buffalo Grass, totaling in all 2.79 Acres and is shown as a light green area on Exhibit A. 200 square feet of land has been allocated on the south side of the retention basin for landscaping and a park sign to be installed; the nomenclature of the sign can be agreed upon by the city and Mr. Shirley. The 200 square feet of landscaping is illustrated as a dark green area on Exhibit A.

A cost estimate for Mr. Shirley's portion of the sidewalk is shown in Table 1 below. This cost estimate can also be found on Exhibit A.

Table 1

Cost Estimate				
Trail	Area	Unit Cost	Cost	Color
1	7340 ft^2	$5/$ft^2$	$36,700	Purple
2	7264 ft^2	$5/$ft^2$	$36,320	Blue
3	4520 ft^2	$5/$ft^2$	$22,600	Red
		Total Cost:	**$95,620**	

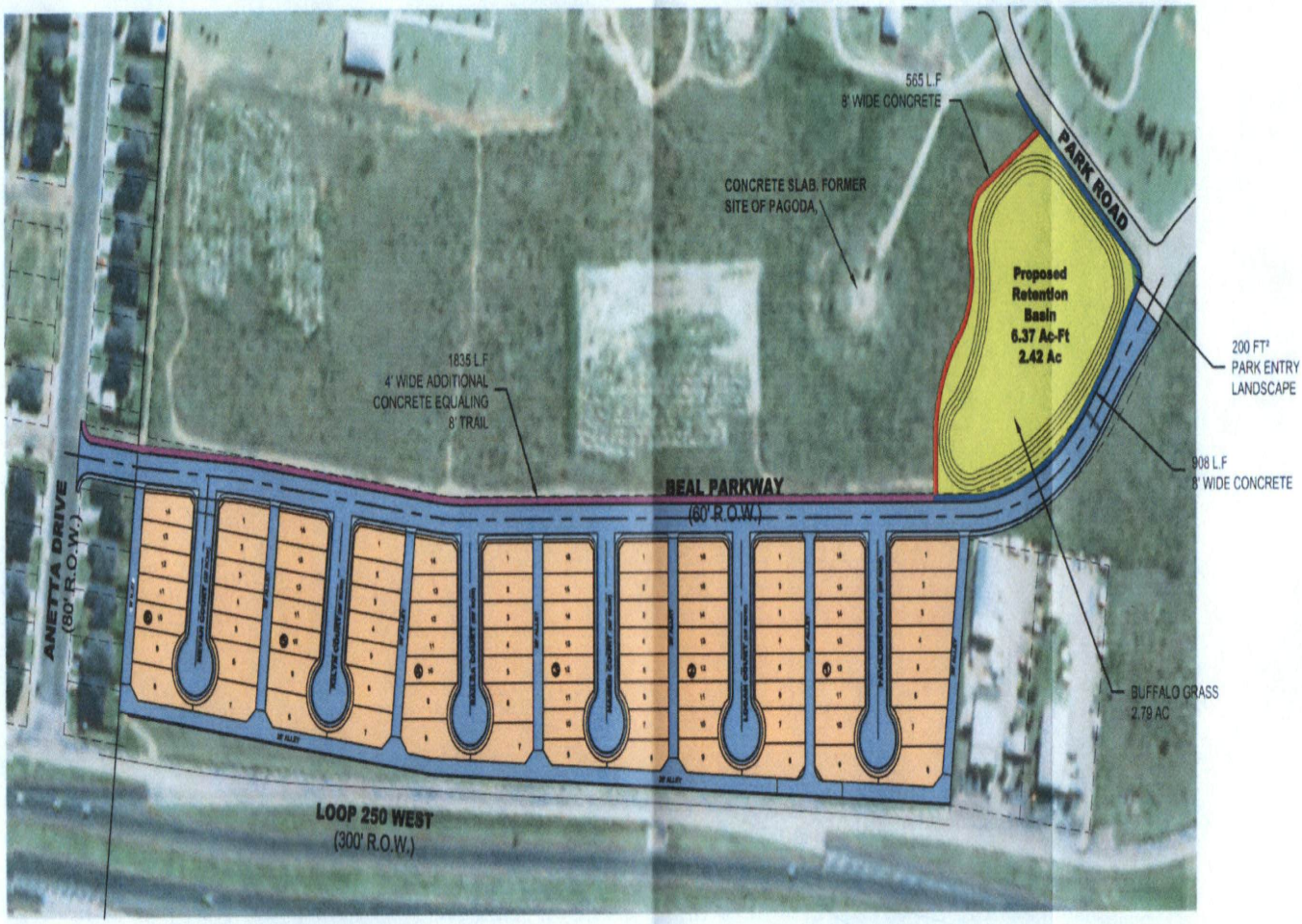
Table 1 above shows the cost estimate for the sidewalk installed by Mr. Shirley. The area for each trail was calculated by multiplying the linear feet of each individual trail by its respective width; Mr. Shirley's portion of Trail 1 is four (4) feet wide and Trails 2 & 3 are each eight (8) feet wide as described in the attached letter. We then multiplied the areas of each trail by $5/ft² (the cost of concrete per square foot) to come up with the individual costs for each trail, then summed them to find the total cost for Mr. Shirley, $95,620.

Sincerely,

Andrew L. Mellen, P.E.
Civil Engineering Manager
West Company of Midland, Inc.

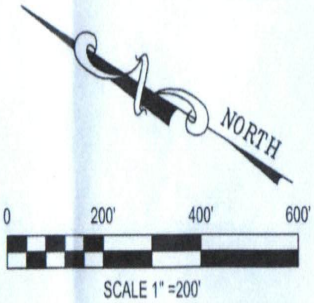
CC: Tina Jauz
Rick Crownover

PARK AND TRAIL EXHIBIT A



COST ESTIMATE

TRAIL 1:	7340 FT² @ $5/FT²	$36,700
TRAIL 2:	7264 FT² @ $5/FT²	$36,320
TRAIL 3:	4520 FT² @ $5/FT²	$22,600
TOTAL COST		$95,620



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

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T:/CIVIL DRAWINGS/2011-2011-2118/EXHIBITS/2011-2118 TRAIL COST EXHIBIT.DWG

SITE PLAN

CASE NO. M-12-010

City Council Agenda

Approved for Agenda:
jnichols
City Manager's Office

MEETING DATE: 7/10/2012

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 Babuhai A. Patel for a zone change from LR-2, Local Retail District, to PD, Planned District for a Shopping Center.

Purpose:

Hold a public hearing at approximately 10:33 a.m. and consider an ordinance on a request by Babuhai A. Patel for a zone change from LR-2, Local Retail District, to PD, Planned District for a Shopping Center in order to develop a 61-unit, 4-story hotel.

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 a 61-unit, 4-story hotel, at the northwest corner of Camp Drive and the I-20 service drive. The proposed hotel height of 58'3" would exceed the 2 ½ stories permitted with the current zoning, therefore this request is to rezone the property as a Planned District for a Shopping Center and adopt the associated building elevations to provide for the height. The site plan provides adequate parking, ingress/egress, and permeable ground cover. The developer may offset the total tree requirement by contributing to the Parks & Rec Endowment Fund in order to accommodate the required parking on this one-acre lot. The building materials will be consistent with Comfort Inn's earth tones stucco and brick. This 4-story hotel located on one acre would look out of place if it were a stand-alone unit; however, its height should provide a central visibility to I-20 traffic for four hotels grouped in a ¼-mile stretch that lead toward the Petroleum Museum

and the Horseshoe Arena. Staff concurs with the Planning & Zoning Commission and recommends approval of this rezoning for a complementary use with neighboring hotels and visitor attractions, subject to Exhibits A – D.

Attachments:

Application
Maps
Exhibit A – Site Plan
Exhibit B & C – Building Elevations
Exhibit D – Sample Building Materials & Colors
Proposed Ordinance
June 18, 2012 Planning & Zoning Commission Staff Report

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING THE REMAINDER OF LOT 4, BLOCK 1, AMARON ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED LR-2, LOCAL RETAIL DISTRICT, TO BE USED AS A PD, PLANNED DISTRICT FOR A SHOPPING CENTER (GENERALLY LOCATED NEAR THE SOUTHWEST CORNER OF THE INTERSECTION OF WEST INTERSTATE HIGHWAY 20 AND CAMP STREET); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

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

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

SECTION ONE. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned LR-2, Local Retail District, and it shall be used as a Planned District for a Shopping Center, subject to the special conditions and restrictions hereinafter set out, said property being described as follows:

The remainder of Lot 4, Block 1, Amaron Addition, City and County of Midland, Texas.

SECTION TWO. That said property shall be subject to the following special conditions and restrictions:

1. That the development of said property shall conform to the regulations of the LR-2, Local Retail District, except where otherwise stated herein.

2. That the development shall be consistent with the Site Plan (Exhibit "A"), the Building Elevations (Exhibits "B" and "C"), and the Building Materials and Colors (Exhibit "D"). Said Exhibits are attached hereto and incorporated herein.

3. That the maximum height of the hotel shall not exceed 59 feet.

4. That the landscaping shall conform to City of Midland regulations in place at the time of development.

5. That the placement of driveways accessing public streets shall be approved by the City Engineer or his designee.

6. That the air conditioners and dumpsters shall be appropriately screened.

7. That sidewalks shall be constructed to the required standards.

8. That all signage shall be in compliance with the City of Midland sign code.

9. That dumpsters shall be properly located and a blanket refuse easement shall be granted to the City of Midland.

10. That all applicable City of Midland Building Code and City of Midland Fire Code requirements must be met.

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:

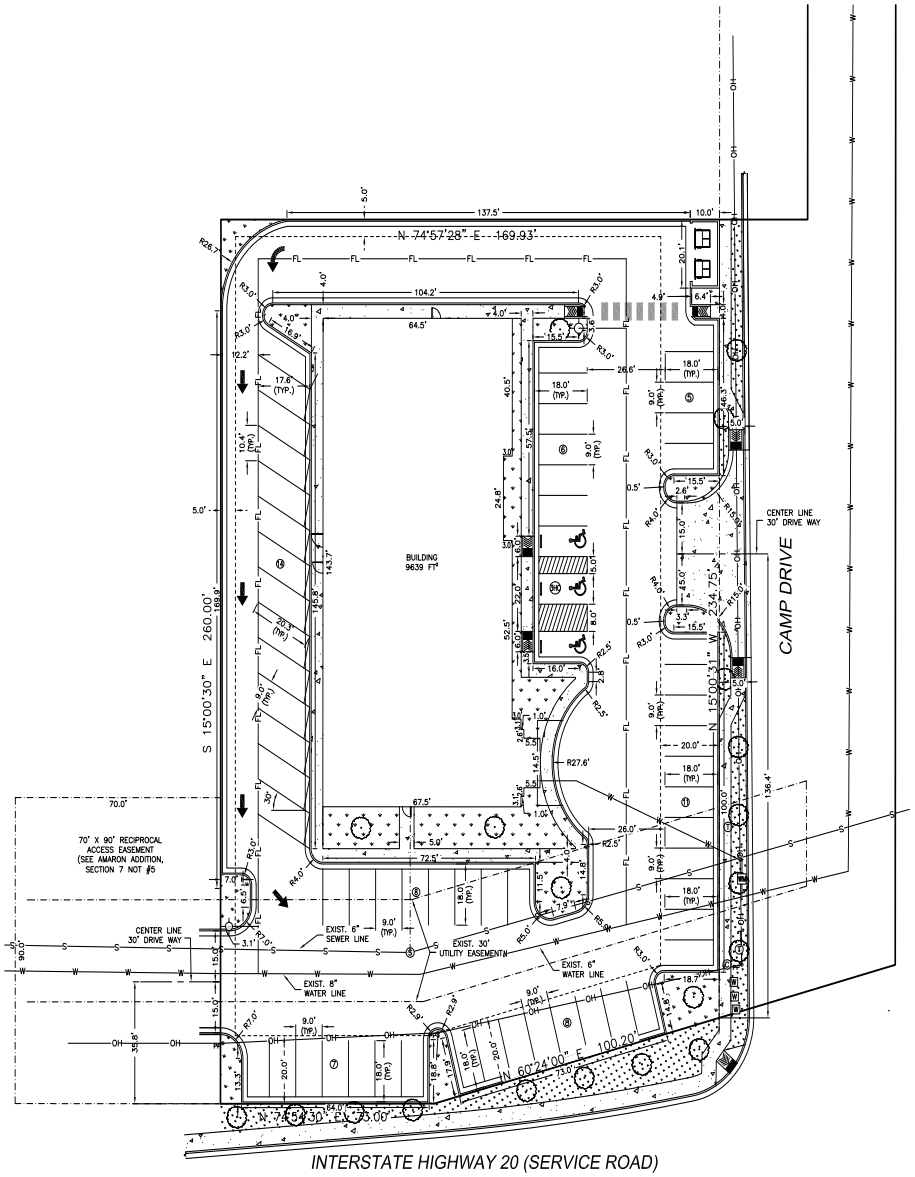
_____
Amy M. Turner, City Secretary

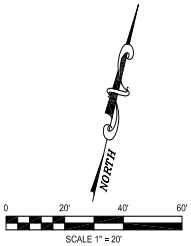
APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Jim Nichols, Assistant City Manager

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney





LEGEND

- DENOTES WATER METER
- DENOTES FIRE HYDRANT
- DENOTES SEWER MANHOLE
- DENOTES BURIED CABLE MARKER
- DENOTES POWER POLE
- DENOTES PARKING BOLLARD
- DENOTES TELEPHONE JUNCTION BOX
- DENOTES EASEMENT LINE
- DENOTES BOUNDARY LINE
- DENOTES OVERHEAD ELECTRIC LINE
- DENOTES WATER LINE
- DENOTES SEWER LINE
- DENOTES DUMPSTER
- DENOTES CONCRETE
- DENOTES ONSITE LANDSCAPING
- DENOTES OFFSITE LANDSCAPING
- DENOTES PROPOSED TREE
- DENOTES PROPOSED WATER METER
- DENOTES PROPOSED WATER LINE
- DENOTES PROPOSED FIRE LINE
- DENOTES PROPOSED SEWER SERVICE LINE

LANDSCAPE REQUIREMENTS

- 10% OF LOT AREA LESS STRUCTURE
- LOT AREA = 42,962.8 ft²
- TOTAL STRUCTURE FOOTPRINT: 9,369.1 ft²
- REQUIRED LANDSCAPE AREA: 3,359.4 ft²
- PROVIDED LANDSCAPE AREA 3,373.4 ft²

TREE REQUIREMENTS

- 1 TREE FOR EVERY 30 LINEAR FOOT STREET
- 1 TREE FOR EVERY 15 PARKING SPACES
- 235 LINEAR FOOT OF CAMP DRIVE: 8 TREES
- 235 LINEAR FOOT OF INTERSTATE HIGHWAY 20: 8 TREES
- 62 PARKING SPACES: 5 TREES
- TOTAL REQUIRED: 21 TREES
- PROVIDED: 11 TREES
- 10 TREES WILL BE PAID INTO PARK ENDOWMENT FUND

SIDEWALKS

- 5' SIDEWALKS TO BE PLACED ADJACENT TO THE BACK OF CURB ALONG INTERSTATE HIGHWAY 20 (SERVICE ROAD)
- 4' SIDEWALKS TO BE PLACED ADJACENT TO THE PROPERTY LINE ALONG CAMP DRIVE

PARKING SPACES

59	REGULAR PARKING
3	HANDICAP PARKING
62	TOTAL PARKING
61	TOTAL ROOMS

DRIVES

SITE DRIVEWAYS WILL BE LOCATED ON CAMP DRIVE AS WELL AS A MUTUAL ACCESS EASMENT ON THE WEST SIDE OF THE PROPERTY

FEMA FIRM INFORMATION

COMMUNITY NUMBER	PANEL NUMBER	SUFFIX	DATE OF FIRM	FIRM ZONE	BASE FLOOD ELEVATION
480477	202	F	9/16/2005	X	n/a
CURRENTLY, FEMA MAP 48329C0202F DOES NOT INCLUDE BASE FLOOD ELEVATIONS FOR THIS AREA.					

UTILITIES

A SIX INCH WATER LINE IS CURRENTLY PLACED ALONG CAMP DRIVE AND A SIX INCH WATER LINE AND EIGHT INCH WATER LINE RUN ALONG THE SOUTH SIDE OF THE SITE IN A 30 FOOT UTILITY EASEMENT.

A SIX INCH SEWER LINE IS CURRENTLY RUNNING ALONG THE SOUTH SIDE OF THE SITE IN A 30 FOOT UTILITY EASEMENT.

WATER WILL TIE INTO THE SIX INCH WATER LINE LOCATED TO THE SOUTH OF THE BUILDING.

SEWER WILL TIE INTO A MANHOLE LOCATED SOUTH OF THE BUILDING

THE FIRE LINE WILL TIE INTO THE EIGHT INCH WATER LINE, LOOP AROUND THE BUILDING, AND TIE INTO THE SIX INCH WATER LINE

INGRESS & EGRESS

- TO THE SOUTH IGRESS & EGRESS WILL BE VIA INTERSTATE HIGHWAY 20 (SERVICE ROAD)
- TO THE EAST INGRESS & EGRESS WILL BE VIA CAMP DRIVE

BUILDING HEIGHT

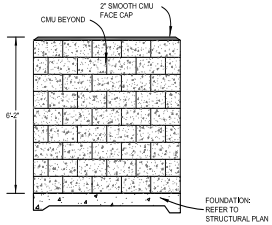
- THE BUILDING HEIGHT IS 58'-3" TALL

SETBACK DISTANCES

- FRONT SETBACK DISTANCES OF 20 FEET WILL BE OBSREVED FROM CAMP DRIVE
- REAR SETBACK DISTANCES OF AT LEAST 5 FEET WILL BE OBSERVED.
- BUILDING SETBACK DISTANCES OF 20 FEET WILL BE OBSERVED AT THE SIDE OF THE SITE FROM INTERSTATE HIGHWAY 20 (SERVICE ROAD).
- SIDE SETBACK DISTANCE OF 5 FEET WILL BE OBSERVED ON THE NORTH SIDE OF THE BUILDING.

SCREENING WALL

A SCREENING WALL ENCASING THE DUMPSTERS IS TO BE BUILT ALONG CAMP DRIVE. THE WALL WILL BE CONSTRUCTED OF CONCRETE MASONRY UNITS (CMU), EITHER COLORED OR STUCCOED A NEUTRAL EARTH TONE TO MATCH THE PREDOMINANT DESIGN OF THE SUBDIVISION.



CMU WALL DETAIL

NO SCALE

WEST COMPANY
OF MIDLAND, INC.
ENGINEERS - PLANNERS - SURVEYORS
REGISTRATION FIRM 2184
110 N. MARIENFELD, SUITE 110
MIDLAND, TEXAS 79701
(432) 682-6865 - FAX (432) 682-2888

NO.	REVISIONS	BY	APPR.	DATE

DRAWN BY: PMH
CHECKED BY:
APPROVED BY: ALM
DATE: APRIL, 2012
DWG. NO.: 2012-0785

COMFORT INN

LOT 4, BLOCK 1, AMARON
MIDLAND, TEXAS

STATE OF TEXAS
ANDREW L. MELLEN
106572
REGISTERED
PROFESSIONAL ENGINEER
May 14, 2012
PRELIMINARY NOT APPROVED FOR CONSTRUCTION

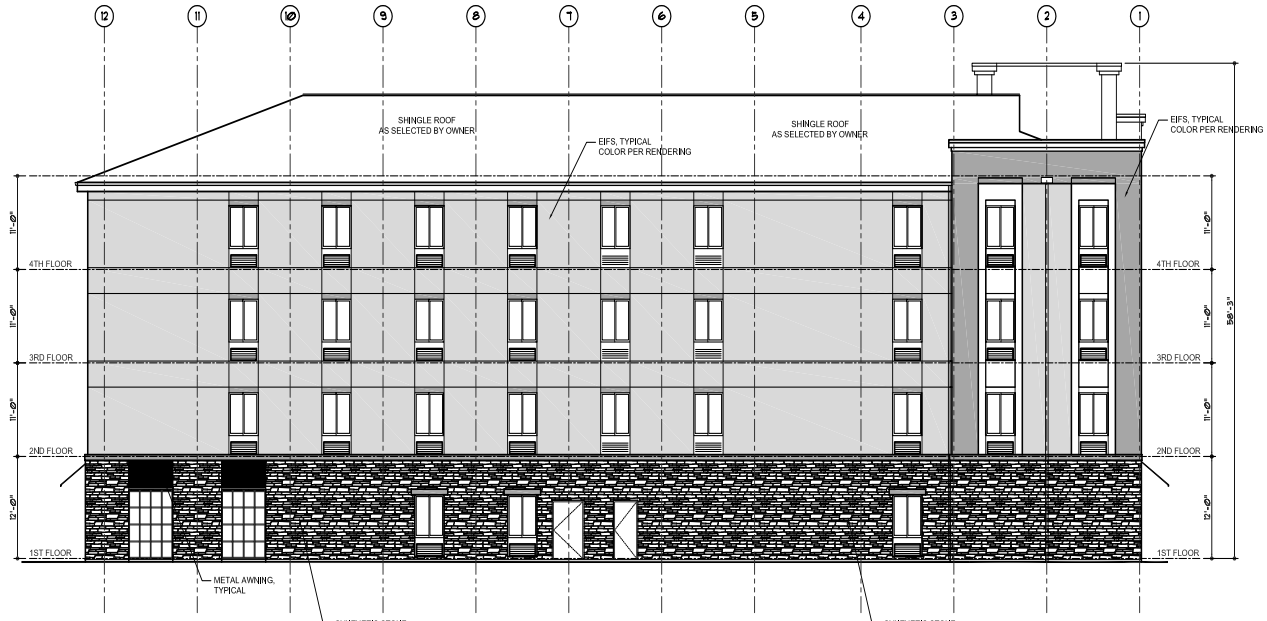
PROJECT NUMBER: 2012-0785

SHEET C-1 OF 1

12 ALL RIGHTS RESERVED

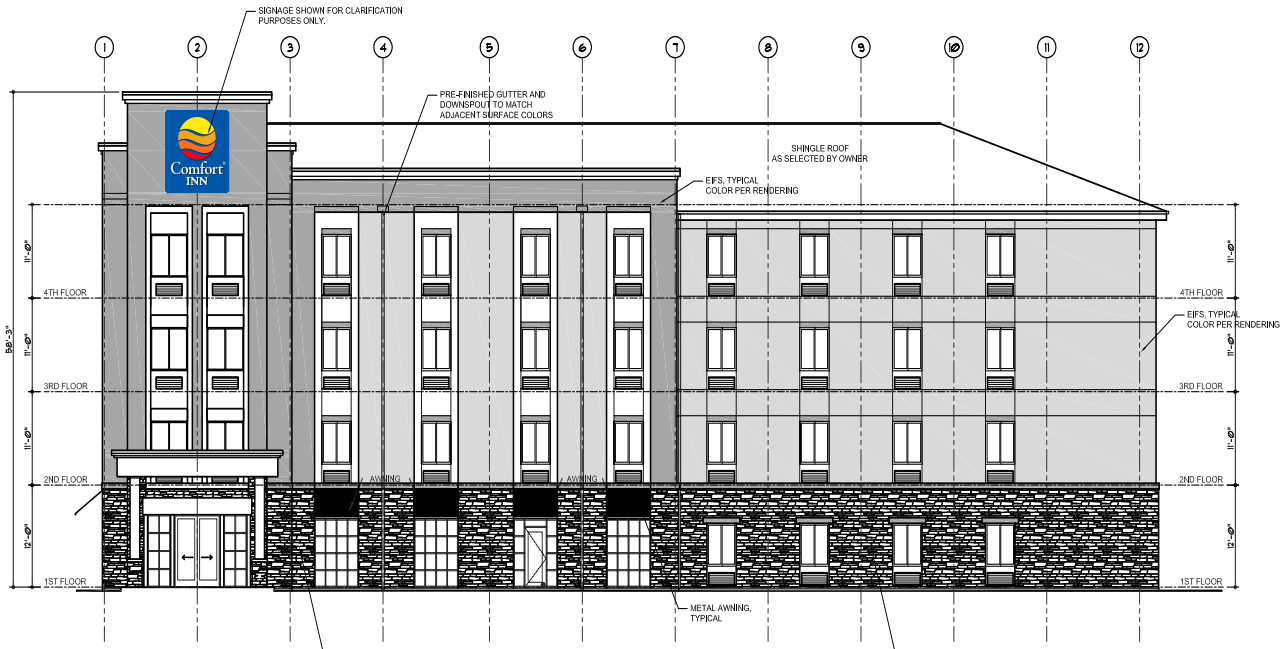
T:/CIVIL DRAWINGS/2012/2012-0785/PRELIMINARY PLANS/2012-0785.DWG

PRELIMINARY - FOR REVIEW ONLY



2 PRELIMINARY REAR ELEVATION (WEST)

SCALE: 1/8" = 1'-0"



1 PRELIMINARY FRONT ELEVATION (EAST)

SCALE: 1/8" = 1'-0"

NOTE:
ELEVATIONS ARE PRELIMINARY AND CONCEPTUAL IN NATURE. CHANGES MAY BE MADE, BUT THE DESIGN INTENT (MATERIALS, HEIGHTS, ETC...) WILL NOT CHANGE.

REVISION	NO.

COMFORT INN

INTERSTATE HIGHWAY 20 AT CAMP DRIVE
MIDLAND, TEXAS

Comfort INN

PRELIMINARY
NOT FOR CONSTRUCTION OR PERMIT
05-11-12

R S S ARCHITECTS LLC
2201 LOCUST LYNN PKWY.K-SUITE 145
FORT WORTH, TEXAS 76120
PH: 817-249-8003 FAX: 817-249-8140

Date 5-11-12

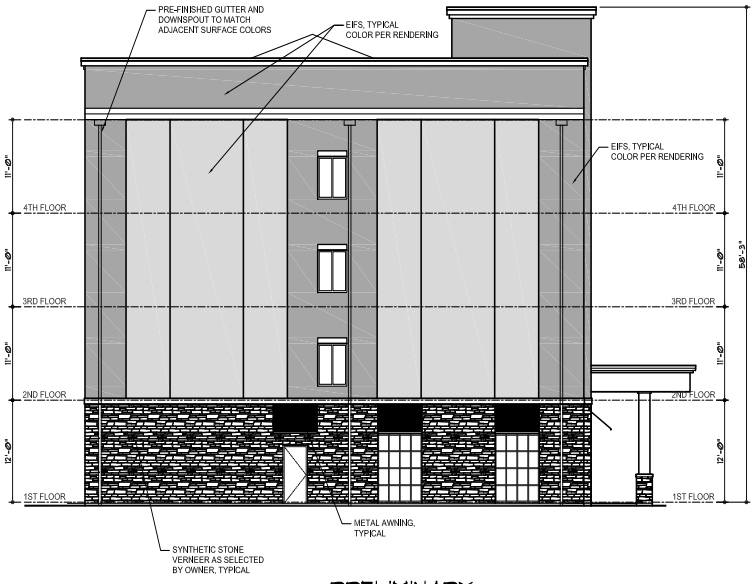
Job 12011

Sheet

Of Sheets

PRELIMINARY - FOR REVIEW ONLY

PRELIMINARY
2 RIGHT SIDE ELEVATION (NORTH)
SCALE: 1/8" = 1'-0"



PRELIMINARY
1 LEFT SIDE ELEVATION (SOUTH)
SCALE: 1/8" = 1'-0"

NOTE:
ELEVATIONS ARE PRELIMINARY AND CONCEPTUAL IN NATURE. CHANGES MAY BE MADE, BUT THE DESIGN INTENT (MATERIALS, HEIGHTS, ETC...) WILL NOT CHANGE.

REVISION	NO.

COMFORT INN
INTERSTATE HIGHWAY 20 AT CAMP DRIVE
MIDLAND, TEXAS

Comfort INN

PRELIMINARY
NOT FOR CONSTRUCTION OR PERMITTING
REGISTERED ARCHITECT
STATE OF TEXAS
05-11-12

R S S ARCHITECTS L.L.C.
2201 LAKE LYNN PKWY.K-SUITE 145
FORT WORTH, TEXAS 76120
PH: 817/249-8003 FAX: 817/249-8410

Date 5-11-12

Job 12011

Sheet

Of Sheets

COMFORT INN®

Reimagined. Redesigned. Redefined.

We've reimagined, redesigned and redefined the entire Comfort Inn brand to make it stronger and more inviting. Now with our Truly Yours™ new prototype, our flagship midscale brand offers a whole new level of accommodations that will enhance guest loyalty and contribute to a return on investment.

Our stunning redesign caters to the three key stages of the guest experience. Our warm exterior and lobby send immediate visual cues that guests can **RELAX**, confident they're in for a wonderful, worry-free stay. Our new guest rooms are tranquil retreats in which guests can kick back and **RESTORE**. In the morning, guests **RENEW** for the day ahead in our enhanced breakfast area.

10108_V1_Comfort_Inn_Txt.indd 1 12/20/11 8:03 PM

Planning and Zoning Commission
Minutes
June 18, 2012

Z-12-019 - Hold a public hearing and consider a request by **Babuhai A. Patel** for a zone change from LR-2, Local Retail District, to PD, Planned District for a Shopping Center on the remainder of Lot 4, Block 1, Amaron Addition, City and County of Midland, Texas. (Generally located near the southwest corner of the intersection of W. Interstate Hwy 20 and Camp Street.)

With no applicant present, Ken VanDyne gave an overview of the request. He stated parking, landscaping and ingress and egress were adequate. Disposal sites would need to be re-located but that proposed hotel would be a complementary use with adjacent hotels and nearby attractions being the Petroleum Museum and Horseshoe Arena, in the high-traffic area. Staff recommended approval of the request for zone change subject to conditions A through K.

There being no one wishing to speak in favor or in opposition of the request Chairman Ferguson closed the public hearing.

A motion for approval subject to conditions A through K was made by Commissioner Gatten; seconded by Commissioner Carrillo. The motion carried by the following vote: AYE: Ferguson, Gatten, Wolf, Norris, Lanning and Carrillo. NAY: None. ABSTAIN: None. ABSENT: York, Watkins, Wilton and Woodruff.

PLANNING AND ZONING COMMISSION

June 18, 2012

CASE: Z-12-019, Babuhai A. Patel.

REQUEST: Hold a public hearing and consider a request for a zone change from LR-2, Local Retail District, to PD, Planned District for a Shopping Center.

APPLICANT/OWNER: Babuhai A. Patel/Hyang-Sook Ko.

LEGAL DESCRIPTION: The remainder of Lot 4, Block 1, Amaron Addition, City and County of Midland, Texas.

LOCATION: Generally located near the southwest corner of the intersection of W. Interstate Hwy 20 and Camp Street.

CURRENT ZONING: LR-2, Local Retail District.

DETAILS OF REQUEST:

1. The applicant plans to construct a 4-story hotel at this location which is currently zoned LR-2, Local Retail District. While a hotel is permitted in the LR-2 District, the maximum permitted height is two and one-half stories. To proceed with this development the owner has requested to rezone this site as a PD, Planned District for a Shopping Center and adopt the associated site plan (Exhibit – A) and provide for a maximum building height of 58'3" in accordance with the building elevations (Exhibits – B & C).

SURROUNDING ZONING AND LAND USE:

2. This property is bounded on the north by the Country Inn & Suites which is a 3-story hotel zoned as a PD, Planned District for a Shopping Center. To the west is another hotel, the West Texas Inn & Suites, a 2-story hotel zoned LR-2, Local Retail District. South is Interstate 20 with the area east, across Camp Drive, being a number of smaller LR-2 lots which are a mix of vacant land and single-family residences.

ANALYSIS:

3. The building is shown to have a ground floor footprint of 9,639 square feet and a total of 61 guest rooms. The area provided for landscaping and the number of parking spaces provided is adequate for the lot size, with the developer intending to offset the total tree requirement to the Park Endowment Fund in order to accommodate the required parking. This 4-story hotel located on one acre would look out of place if it were a stand-alone unit; however, its height should provide a central visibility to I-20 traffic for four hotels grouped in a ¼-mile stretch that lead toward the Petroleum Museum and the Horseshoe Arena. The height of the building is 14' higher than the adjacent 3-story, 44-foot high, Country Inn & Suites that will share a common driveway. The site provides adequate driveways for ingress and egress as shown. The current location of the trash dumpsters is incompatible with the City's side-loading vehicles and will need to be relocated. Building materials are consistent with Comfort Inn's earth tones stucco and brick. Staff finds the proposed hotel to be a complementary use with the other hotels and visitor attractions in this high-traffic area.

STAFF RECOMMENDATION:

Staff recommends approval of this request for a zone change from LR-2, Local Retail District, to PD, Planned District for a Shopping Center, subject to the following conditions:

A. That the development of this planned district, except where expressly noted otherwise, shall comply with LR-2, Local Retail District zoning regulations;

B. That the development is consistent with the Site Plan (Exhibit – A) and Building Elevations (Exhibits B & C);

C. That the maximum height of the hotel shall not exceed 59 feet;

D. That the landscaping shall conform to City regulations in place at the time of development;

E. That the placement of driveways accessing public streets shall be approved by the City;

F. That the air conditioners and dumpsters shall be appropriately screened;

G. That the site plan has adequate fire protection coverage (may require one additional fire hydrant in this area);

H. That sidewalks are paved to the required standards;

I. **All signage to meet the City Sign Code;**

J. **That dumpsters shall be properly located and a blanket refuse easement is granted to the city;**

K. **That all Building Code requirements must be met.**

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
Rendering – Exhibit D
Maps

Case Number: Z-12-019

CITY OF MIDLAND
Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

Babuhai A. Patel — (417)-234-7844
Applicant Name — (Phone/e-mail)
3950 Bridle Pass, Ann Arbor, MI — 48108
Address — Zip Code

Hyang-Sook Ko
Property Owner Name — (Phone/e-mail)

Address — Zip Code

Andrew L. Mellen, P.E. — (432)-687-0865
Representative Name — (Phone/e-mail)
110 W. Louisiana, Midland, TX — 79701
Address — Zip Code

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

PRESENT ZONE: LR-2 REQUESTED ZONE: PDSC
(List by tracts if more than one district is requested)

Reason for Zone Change Request: Hotel Accomodation

Present Use of Property: Vacant lot

Proposed Use of Property: Hotel Accomodation

How will zone change affect the public health, safety and welfare? It will help reduce the demand for living area in the Midland area.

Describe how conditions affecting the property have changed since present zoning designation:
There has been no change, since it is a vacant lot

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

APPLICATION FEES:

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

SITE PLAN SUBMITTALS *(if applicable)*:

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

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

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

Property Owner (signature): _____ Date: _____

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

STATE of TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared Andrew L. Mellen Jr. who, being by me duly sworn, upon oath says: That (s)he is authorized by Hyang-Sook Ko, 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)

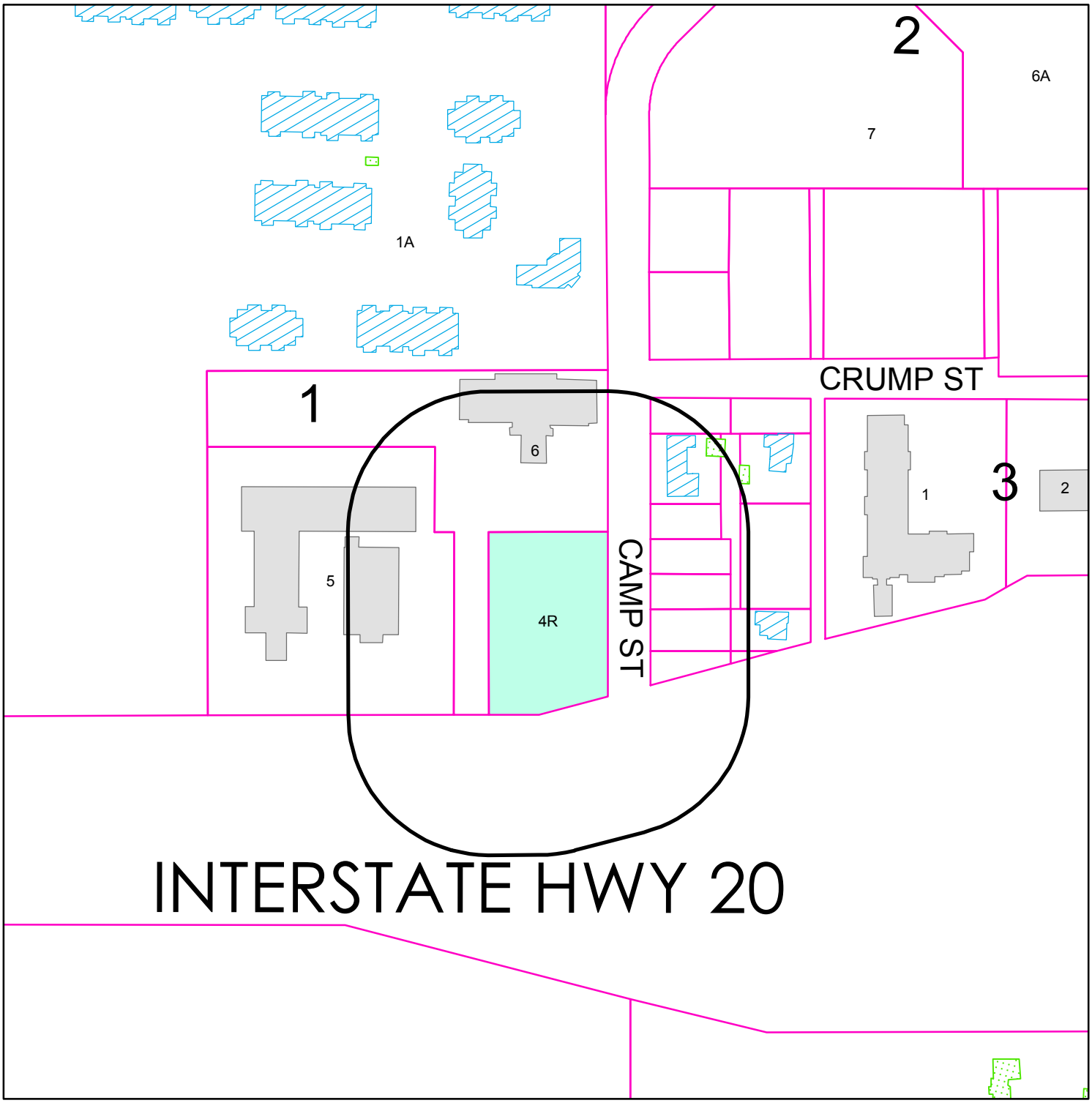
Subscribed and sworn to before me, this 15th day of May, 2012, to certify which witness my hand and seal of office.

Debbie Brown
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY
Rec'd By: SO Date: 5-15-12
Assigned: _____
For: _____ On: _____

NOTARY PUBLIC STATE OF TEXAS
DEBBIE BROWN
Notary Public
STATE OF TEXAS
My Comm. Exp. 02/22/2013

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



PROPERTY OWNER NOTIFICATION MAP

Z - 12 - 019 **Scale: 1" = 200'**

Consider a request for a zone change from LR-2, Local Retail District, to PD, Planned District for a Shopping Center on the remainder of Lot 4, Block 1, Amaron Addition, 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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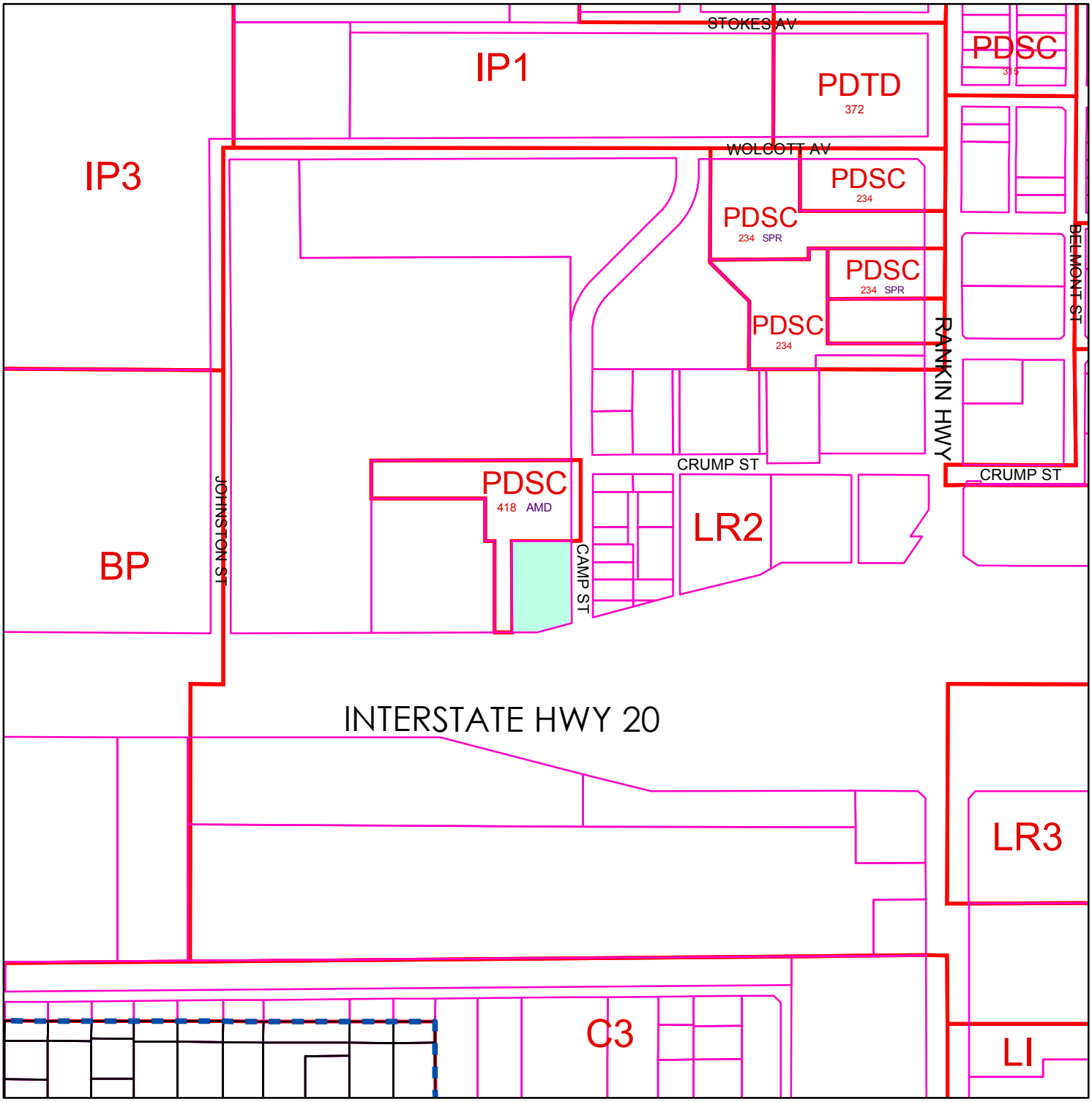

ZONING MAP

Z - 12 - 019 **Scale: 1" = 400'**

Consider a request for a zone change from LR-2, Local Retail District, to PD, Planned District for a Shopping Center on the remainder of Lot 4, Block 1, Amaron Addition, City and County of Midland, Texas.

LEGEND

ZONING — CITY PARCELS
CITY LIMITS — COUNTY PARCELS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, O2	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2 ,LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP ,IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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City Council Agenda

Approved for Agenda:
jnichols
City Manager's Office

MEETING DATE: 7/10/2012

TO: City Council / City Manager

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Hold a public hearing at approximately 10:36 a.m. and consider an ordinance on a request by Brownstones Midland, L.P. for a zone change from C-3, Commercial District to PD, Planned District for Housing Development. (Generally located between S. Pecos Street and S. Marienfeld Street north of W. Front Street. – District 2)

Purpose:

Hold a public hearing at approximately 10:36 a.m. and consider an ordinance on a request by Brownstones Midland, L.P. for a zone change from C-3, Commercial District to PD, Planned District for Housing Development.

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 a 4-story, 70-unit, multi-family development, at the northwest corner of Front Street and Marienfeld. The request with this rezoning is to establish this PD, Planned District for a Housing Development to permit a more urban density of 34.5 dwelling units per acre in the downtown core with a parking ratio of 1.65 parking spaces per dwelling unit. City Code requirements permit 16 dwelling units per acre for multi-family developments and two parking spaces per unit as the maximum density/minimum parking requirements respectively. Therefore a Planned District for a

Housing Development will need to be established in order to permit this increased density and site plan as accommodated on this 2-acre lot (Exhibit – A).

The maximum height of the proposed building is 55 feet. With the Planned District for a Housing Development being subject to MF-2, Multi-Family Dwelling District regulations the building height and building setbacks of 20' are acceptable. The building design is ring-shaped with a 2-story clubhouse that cuts into an open courtyard at the center featuring playground and pool amenities for tenants. The site plan shows the area around the apartment will have a decorative 4' wrought iron fence for children's safety from neighboring street traffic. The area provided for landscaping is adequate for the lot size with the developer possibly offsetting the total tree requirement to the Park & Rec Endowment Fund. Ingress and egress for the property will be off of Marienfeld Street and be via a controlled gate access/call box system.

The building exterior is brick veneer and stucco board with metal railings as shown in the building rendering. The 70 units will be a mix of 1, 2, and 3 bedroom apartments. Staff feels that parking for this project will not be an issue given that 26 of the apartment units are proposed to be one bedroom and may not have two drivers/vehicles. A second consideration is that this block is located within a downtown core where densities are typically higher. Also, the surrounding land is currently underdeveloped. Therefore there is little competition for the abundant on-street parking. Given the great need for affordable workforce housing and the opportunity to spur development in this empty area on the edge of downtown and the TIRZ District, staff concurs with the Planning and Zoning Commission and recommends approval of this rezoning, subject to Exhibits A – D.

Attachments:

Application
Maps
Site Plan – Exhibit A
Elevations – Exhibits B & C
Rendering – Exhibit D
Proposed Ordinance
June 18, 2012 Planning & Zoning Commission Staff Report

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOTS 1-5, THE REMAINDER OF LOT 6, AND LOTS 7-12, BLOCK 110, ORIGINAL TOWN, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED C-3, COMMERCIAL DISTRICT, TO BE USED AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT (GENERALLY LOCATED BETWEEN SOUTH PECOS STREET AND SOUTH MARIENFELD STREET, NORTH OF WEST FRONT STREET); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

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

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

SECTION ONE. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned C-3, Commercial District, and it shall be used as a Planned District for a Housing Development, subject to the special conditions and restrictions hereinafter set out, said property being described as follows:

Lots 1-5, the remainder of Lot 6, and Lots 7-12, Block 110, Original Town, City and County of Midland, Texas.

SECTION TWO. That said property shall be subject to the following special conditions and restrictions:

1. That the development of this planned district, except where otherwise stated herein, shall comply with MF-2, Multi-Family District zoning regulations.

2. That the development shall be consistent with the Site Plan (Exhibit "A"); the Building Elevations (Exhibits "B" and "C"); and the Rendering (Exhibits "D"). Said exhibits are attached hereto and incorporated herein.

3. That the maximum height of the apartment building shall not exceed 55 feet.

4. That the landscaping shall conform to City of Midland regulations in place at the time of development.

5. That five, three-cubic-yard, waste containers shall be adequately placed on the site in accordance with the Midland City Code.

6. That a blanket refuse easement shall be granted to the City of Midland.

7. That the air conditioners, dumpsters and any ground-based utility equipment shall be appropriately screened.

8. That the total number of dwelling units shall not exceed 70 units.

9. That the parking ratio (space per dwelling unit) shall not be reduced by the developer below 1.65 spaces per unit, but may be reduced to 1.55 spaces per unit by City staff in an administrative review process.

10. That all sidewalks shall be constructed to City of Midland standards.

11. That all signage shall comply with the City of Midland sign code.

12. That City of Midland Building Code requirements shall be met.

13. That the developer shall make provision for appropriate fire department access such as turning radii, adequate fire lane width, Knox box, etc., as approved by the Fire Marshal.

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

SITE DATA SUMMARY

SITE AREA:	2.04 ACRES
EXISTING ZONING:	C3 (COMMERCIAL DITSTRICT)
EXISTING USE:	UNDEVELOPED/COMMERCIAL
PROPOSED ZONING:	PD (PLANNED DEVELOPMENT)
PROPOSED USE:	MULTI-FAMILY
UNIT COUNT:	70 UNITS
PROPOSED UNIT DENSITY:	34.3 UNITS PER ACRE
PROPOSED PARKING COUNT:	116 PARKING STALLS

PARKING

UNCOVERED PARKING	110 PARKING SPOTS
CLUBHOUSE PARKING	7 PARKING SPOTS
TOTAL	117 PARKING SPOTS

UNIT TABULATION

UNIT TYPE	# UNITS	UNIT S.F.	TOTAL S.F.
A1 - ONE BEDROOM, ONE BATH	13	740 S.F.	9,620 S.F.
A2 - ONE BEDROOM, ONE BATH	13	740 S.F.	9,620 S.F.
B1 - TWO BEDROOM, TWO BATH	40	1,080 S.F.	43,200 S.F.
C1 - THREE BEDROOM, TWO BATH	4	1,180 S.F.	4,720 S.F.
TOTAL	70		67,160 S.F.

BUILDING TABULATION

TYPE	# OF BLDGS.	# OF UNITS /BLDG.	UNIT TYPES
A	1	70	A1-13; A2-13; B1-40; C1-4
TOTAL	1		

BUILDING KEY

1 — BULDING NUMBER
A — BULDING TYPE

PARKING SPACES

TOTAL PARKING SPACE	9'-0" X 18'-0"	18' 9'
HANDICAP SPACE AISLE	9'-0" X 18'-0" 5'-0" X 18'-0"	18' 9' 5' 9'
VAN HANDICAP SPACE AISLE	9'-0" X 18'-0" 8'-0" X 18'-0"	18' 9' 8' 9'
PARALLEL PARKING SPACE	9'-0" X 22'-0"	22' 9'

SITE AMENITIES:

- SWIMMING POOL
- FULL PERIMETER FENCING
- CONTROLLED GATE ACCESS
- BUSINESS CENTER
- COMMON AREA WI-FI

(*) NOTES:

1. ALL DIMENSIONS ARE TO FACE OF CURB, BUILDING FACE, OR PROPERTY LINE UNLESS OTHERWISE NOTED.
2. REFER TO ARCHITECTURAL PLANS FOR EXACT BUILDING DIMENSIONS, UNIT TYPES AND SQUARE FOOTAGES.
3. EXISTING AND PROPOSED CONTOURS SHOWN ARE PROVIDED AT 0.5' INCREMENTS.
4. ALLEY TO BE ABANDONED BY CITY OF MIDLAND
5. ALL LIGHTING TO BE SHIELDED, "DARK SKY" COMPLIANT

SITE LEGEND:

- PROPERTY BOUNDARY
- BULDING SETBACK
- ABANDONED ALLEY
- 4' WROUGHT IRON PERIMETER FENCE
- BULDING ACCENT LIGHTING
- BULDING LIGHTING
- (2 LIGHT) 15' POLE LIGHT
- (3 LIGHT) 15' POLE LIGHT
- 10' DECORATIVE POLE LIGHT (8' IN COURTYARD)

LANDSCAPE POINTS PROVIDED = 21

- PERMEABLE GROUND COVER
- DROUGHT TOLERANT TURF GRASS

1. PERMEABLE WEED BARRIER INSTALLED = 2 POINTS
2. DRIP IRRIGATION SYSTEM IN ALL AREAS 15 FEET OR LESS IN WIDTH = 10 POINTS
3. TREE QUANTITY EXCEEDS REQUIRED QUANTITY (PER TREE) = 2 POINTS
   2 ADDITIONAL TREES ADDED
4. DROUGHT TOLERANT SOD IS PRIMARY VARIETY OF TURF GRASS = 5 POINTS

STORM DRAINAGE AND DETENTION SUMMARY

STORM DRAINAGE WILL BE CONVEYED TO THE PUBLIC RIGHTS-OF-WAY VIA SURFACE FLOW.

DETENTION REQUIREMENTS:
PER THE MULBERRY CHANNEL MASTER DRAINAGE PLAN, THE PROPOSED SITE IS LOCATED WITHIN SUB-BASIN M1, WHICH UTILIZES A CN VALUE OF 90 FOR BOTH EXISTING AND PROPOSED CONDITION. THE CN OF 90 WILL GOVERN THE ALLOWABLE PEAK RUNOFF RATE DURING A 100-YEAR STORM EVENT. PROPOSED DETENTION WILL CONSIST OF SURFACE DETENTION WITHIN THE PARKING LOT TO A DEPTH OF 8", WHICH IS ALLOWED PER THE CITY OF MIDLAND STORM DRAINAGE DESIGN MANUAL. THE FOLLOWING VALUES WERE USED IN THE DETERMINATION OF THE REQUIRED DETENTION VOLUME. THE NRCS TR-55 MODEL WAS USED IN CALCULATING THESE VOLUMES.

PROPOSED CN VALUE: 94
EXISTING CN VALUE: 90
SITE AREA: 2.04 ACRES
DESIGN STORM: 100-YEAR STORM EVENT

CALCULATED PROPOSED 100-YEAR RUNOFF AMOUNT: 6.07 INCHES

CALCULATED EXISTING 100-YEAR RUNOFF AMOUNT: 5.61 INCHES

REQUIRED DETENTION VOLUME: 3,406 CU. FT. (0.078 ACRE-FT)

REQUIRED DETENTION SURFACE AREA AT 8" OF PONDING:
5,109 SQ. FT. (0.12 ACRES)

APPROXIMATE PARKING LOT DETENTION AREA PROVIDED: 11,000 S.F

FLOODPLAIN STATEMENT

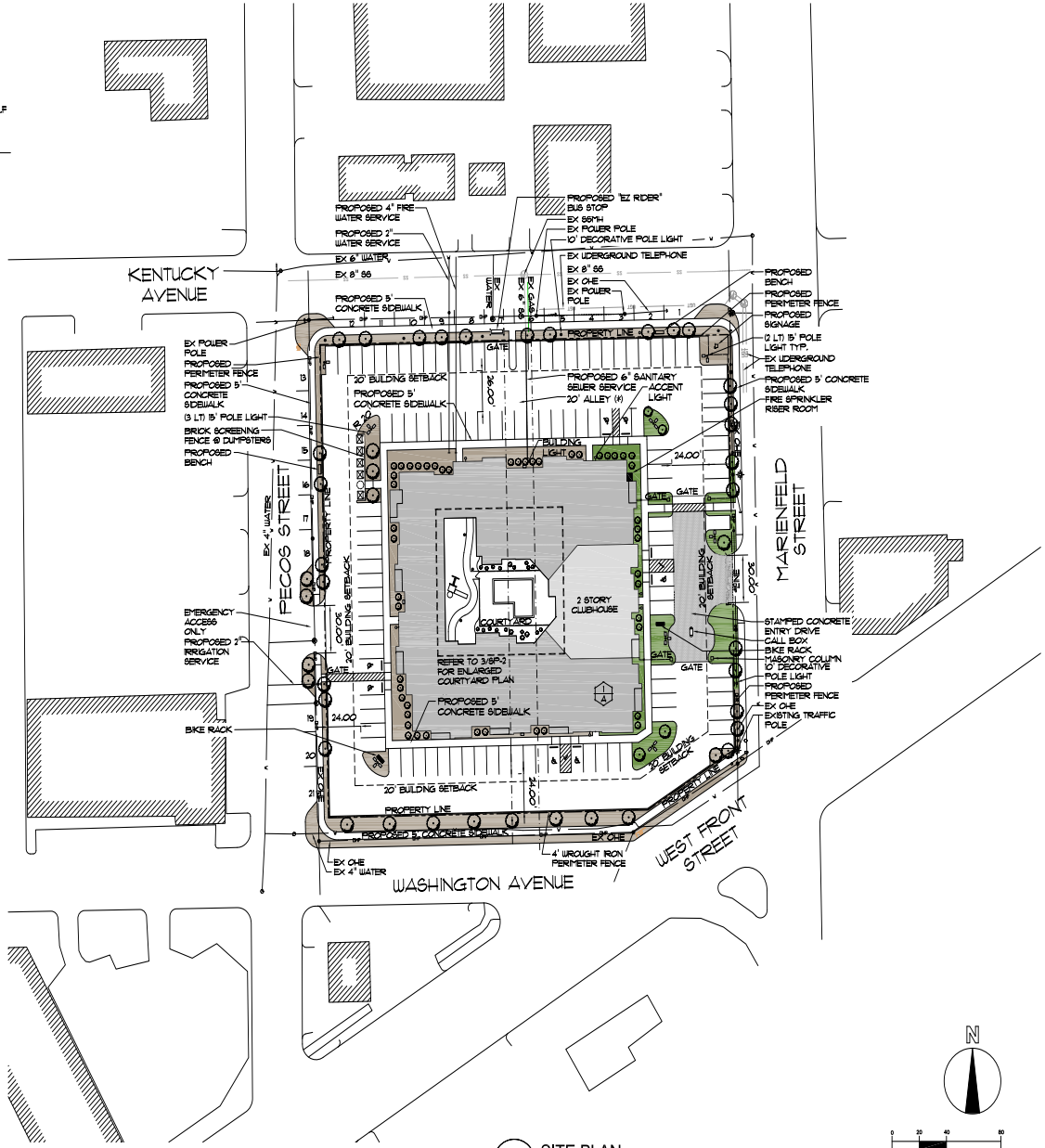
THE SITE IS LOCATED WITHIN THE FEMA FLOODPLAIN DESIGNATION ZONE X, WHICH IS DESCRIBED AS NOT BEING LOCATED WITHIN THE 100-YEAR FLOODPLAIN ACCORDING FEMA FLOODPLAIN MAP PANEL 48329C0202 E.

VICINITY MAP
(NOT TO SCALE)

LANDSCAPING TREE COUNT

PECOS STREET	300' / 30'	=	10
WASHINGTON AVENUE	235' / 30'	=	8
WEST FRONT STREET	55' / 30'	=	2
MARIENFELD STREET	260' / 30'	=	9
KENTUCKY AVENUE	300' / 30'	=	10
TOTAL R.O.W. TREES			39
INTERIOR PARKING SPACE		=	9
TOTAL TREES			48

(ALL TREES TO BE 3" MIN. CALIPER SIZE OR GREATER)



1 SITE PLAN
SCALE: 1" = 20'

(IN FEET)
1 inch = 40 ft.

20.7

ARCHITECT:
CROSS ARCHITECTS, PLLC.
1255 W. 15TH. ST., SUITE 125
PLANO, TEXAS 75075
PH: 972.398.6644
FAX: 972.312.8666
brumsey@crossarchitects.com
Cross ARCHITECTS

BROWNSTONES MIDLAND
MIDLAND, TEXAS

PROJECT:
BROWNSTONES MIDLAND
MIDLAND, TEXAS

70 UNITS

REVISIONS

NO	DATE

DRAWINGS ISSUED FOR:

DATE: 5.18.12

PROJ. NO.: 12018

SHEET NUMBER

SP-1

SITE PLAN

Copyright 2012

2 BUILDING ELEVATION - WEST
3/32" = 1'-0"

1 BUILDING ELEVATION - EAST
3/32" = 1'-0"

20.8

ARCHITECT:
CROSS ARCHITECTS, PLLC.
1255 W. 15TH. ST., SUITE 125
PLANO, TEXAS 75075
PH: 972.398.6644
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brumsey@crossarchitects.com

Cross ARCHITECTS

BROWNSTONES MIDLAND
MIDLAND, TEXAS

PROJECT:
BROWNSTONES MIDLAND
MIDLAND, TEXAS

70 UNITS

REVISIONS

NO	DATE

DRAWINGS ISSUED FOR:

DATE: 5.18.12

PROJ. NO.: 12018

SHEET NUMBER

E-1

ELEVATION

Copyright 2012

2 BUILDING ELEVATION - SOUTH
3/32" = 1'-0"

1 BUILDING ELEVATION - NORTH
3/32" = 1'-0"

20.9

ARCHITECT:
CROSS ARCHITECTS, PLLC.
1255 W. 15TH. ST., SUITE 125
PLANO, TEXAS 75075
PH: 972.398.6644
FAX: 972.312.8666
brumsey@crossarchitects.com

Cross ARCHITECTS

BROWNSTONES MIDLAND
MIDLAND, TEXAS

PROJECT:
BROWNSTONES MIDLAND
MIDLAND, TEXAS

70 UNITS

REVISIONS

NO	DATE

DRAWINGS ISSUED FOR:

DATE:
5.18.12

PROJ. NO.:
12018

SHEET NUMBER

E-2

ELEVATION

Copyright 2012

KOLT DEVELOPMENT

BROWNSTONES MIDLAND

Cross ARCHITECTS

Planning and Zoning Commission
Minutes
June 18, 2012

Z-12-006 - Hold a public hearing and consider a request by **Brownstones Midland, L.P.** for a zone change from C-3, Commercial District to PD, Planned District for Housing Development on Lots 1 through 5, the remainder of Lot 6 and Lots 7 through 12, Block 110, Original Town, City and County of Midland, Texas. (Generally located between S. Pecos Street and S. Marienfeld Street north of W. Front Street.)

C.W. Fields, 3426 Fitsview, Dallas TX, representing Kolt Development gave an overview of the housing units and the amenities. He expressed the interest in becoming a partner in building the success of downtown Midland and that the residents will need to pass credit and criminal check and will be screened for proof of employment.

Mr. Fields stated they were asking for two key waivers for the 70-unit multi family development that included 34 units per acre and 1.65 parking spaces per unit.

Commissioner Carrillo asked if there would be an income limitation and if any government assistance was being received. Mr. Fields stated there was a $40,000 a year limitation and that they would be receiving tax assistant.

Commissioner Lanning asked how they would monitor the income limitation and Mr. Fields stated tenants would have to renew their lease yearly.

Senior Planner Ken VanDyne gave an overview of the request for a zone change and that the building setback does fall within zoning guidelines as a planned district subject to MF-2 regulations. He stated the waste containers would need to increase to five and that the 116 parking spaces were not too much of an issue due to 26 of the apartments being single room units. Staff received no letters of opposition and recommended approval of the request for zone change subject to conditions A through M.

Commisioner Carrillo expressed his concern about the density. Senior Planner Ken VanDyne stated that with the current zoning there could be potential for the allowance of a building of unlimited height and downtown urban densities are typically higher. Commissioner Carrillo also expressed concern regarding single parent tenants who seem to move frequently. Commissioner Lanning stated she thought there might be a greater risk for not providing housing for single parent tenants.

Chairman Ferguson opened the public hearing for those wishing to speak in favor of the request.

Angela Manning, 410 S. Pecos, Midland stated she felt the property there was not valuable and that this was a great opportunity to improve the area and bring more life to downtown. She stated the area was a dead zone and it would be a great advantage to those who could just walk downtown to work. She is totally in favor of the project.

Chairman Ferguson opened the public hearing for those wishing to speak in opposition of the request.

There being no one else wishing to speak in favor or in opposition of the request, Chairman Ferguson offered the floor to Mr. Fields.

Mr. Fields stated they had already planned in five dumpsters and incorporated those changes. The Brownstones would generate one tenth of the traffic in that area and that the city ordinances in place would monitor growth. He stated the smart downtown plan specifically calls for higher density and that The Brownstones fit into that specific plan.

There being no one else wishing to speak in favor or in opposition of the request, Chairman Ferguson closed the public hearing.

Discussion ensured regarding concern for higher density and the need for housing.

Chairman Ferguson re-opened the public hearing.

David Dias, 5101 Sherwood, Midland, expressed there was competition in region 12 for the same project and that this was not a do or die situation. He stated he was not for or against the program but wanted the commission to be aware that there were other options still pending and that this was technically a low income project.

Mr. Fields stated they were committed for 30 years because if the unit sold they would not be able to manage what other folks would do. He stated their commitment was to change the perception of what affordable housing can be.

After further discussion a motion for approval subject to conditions A through M was made by Commissioner Lanning; seconded by Commissioner Norris. The motion carried by the following vote: AYE: Ferguson, Gatten, Norris, Lanning. NAY: Wolf and Carrillo. ABSTAIN: None. ABSENT: York, Watkins, Wilton and Woodruff

PLANNING AND ZONING COMMISSION

June 18, 2012

CASE: Z-12-006, Brownstones Midland, LP.

REQUEST: Hold a public hearing and consider a request by Brownstones Midland, L.P. for a zone change from C-3, Commercial District to PD, Planned District for Housing Development.

APPLICANT/OWNER: Brownstones Midland, LP.

LEGAL DESCRIPTION: Lots 1 through 5, the remainder of Lot 6 and Lots 7 through 12, Block 110, Original Town, City and County of Midland, Texas.

LOCATION: Generally located between S. Pecos Street and S. Marienfeld Street north of W. Front Street.

CURRENT ZONING: C-3, Commercial District.

DETAILS OF REQUEST:

1. The applicant plans to develop this property with a 70-unit, multi-family development. The primary request with this rezoning is to establish this PD, Planned District for a Housing Development to permit a greater density of 34.5 dwelling units per acre rather than the maximum permitted 16 units per acre. The increased density also makes it necessary on this 2-acre area to reduce parking requirements from 2 spaces per dwelling unit to 1.65 spaces per dwelling unit that the site plan can accommodate (Exhibit – A). If the rezoning and site plan are approved, the platting process will begin with the combined lots and (to-be-vacated) alley brought before the Planning and Zoning Commission for consideration as a replatted single lot for the development process.

SURROUNDING ZONING AND LAND USE:

2. This property is bounded on the east by vacant property from Marienfeld to Big Spring Street with the exception of one small commercial building along Front Street. To the north is a communications tower, a small church-owned building and a large, vacant parking structure. Land to the north and east is zoned C-1, Central Area District. West and south is zoned C-3, Commercial District with some lightly trafficked or vacant commercial buildings and some vacant properties. Front Street (Business I-20) is also just to the south. The property itself is vacant with the exception of two small commercial buildings that would have to be torn down.

ANALYSIS:

3. The proposed apartment development is 67,160 square feet with the maximum height of the 4-story building to be 55 feet. With the Planned District for a Housing Development being subject to MF-2, Multi-Family Dwelling District regulations the building height and building setbacks of

20' are acceptable as provided in the plans. The site plan indicates three dumpsters for solid waste collection. According to City Code the requirement is one refuse container for each 15 apartment units, therefore the complex will require five waste containers. The building design is ring-shaped with a 2-story clubhouse that cuts into an open courtyard at the center featuring playground and pool amenities for tenants. The site plan shows the area around the apartment will have a decorative 4' wrought iron fence for children's safety from neighboring street traffic. The area provided for landscaping is adequate for the lot size with the developer possibly offsetting the total tree requirement to the Park Endowment Fund in order to add some parking. The building itself is an attractive brick veneer and stucco board with metal railings as shown in the building rendering. The site will be adequately illuminated with attractive lighting and shielded where required to reduce glare. Ingress and egress for the property will be off of Marienfeld Street and be via a controlled gate access/call box system. An emergency access drive is also on Pecos Street. The 70 units will be a mix of 1, 2, and 3 bedroom apartments. Multi-family zoning does require 2 parking spaces per dwelling unit whereas the site plan indicates a proposed parking count of 116 spaces (1.65 spaces per dwelling unit) including the adjacent on-street parking. Staff feels that parking for this project will not be an issue given that 26 of the apartment units are proposed to be one bedroom and may not have two drivers/vehicles. A second consideration is that this block is located within a downtown core where densities are typically higher. Also, the surrounding land is currently underdeveloped. Therefore there is little competition for the abundant on-street parking. Given the great need for affordable workforce housing and the opportunity to spur development in this empty area on the edge of downtown and the TIRZ District, staff recommends approval of this zone change.

STAFF RECOMMENDATION:

Staff concurs with the approval of this request for a zone change from C-3, Commercial District to PD, Planned District for Housing Development, subject to the following conditions:

A. **That the development of this planned district, except where expressly noted, shall comply with MF-2, Multi-Family Dwelling District zoning regulations;**

B. **That the development is consistent with the Site Plan (Exhibit – A) and the Building Elevations & Rendering (Exhibits B & C);**

C. **That the maximum height of the apartment building shall not exceed 55 feet;**

D. **That the landscaping shall conform to City regulations in place at the time of development;**

E. **That five, 3 cubic yard, waste containers are adequately placed on the site in accordance with City Code;**

F. **That a blanket refuse easement be granted to the City of Midland;**

G. **That the air conditioners, dumpsters, and any ground-based utility equipment shall be appropriately screened;**

H. That the total number of dwelling units shall not exceed 70 units;

I. That the parking ratio (spaces per dwelling unit) shall not be reduced below 1.65 by the developer, but may be reduced to 1.55 by City staff in an administrative review process;

J. That sidewalks are paved to the required standards;

K. All signage to meet the City Sign Code;

L. That all Building Code requirements must be met.

M. The developer will have to make provisions for fire department access (turning radii, adequate fire lane width, Knox box, etc.).

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
Rendering – Exhibit D
Maps

Case Number: Z-12-006

CITY OF MIDLAND
Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

TCDP Brownstones Midland, LP — 214.543.7146 cwfields@koltdevelopment.com
Applicant Name — (Phone/e-mail)

5646 Milton St, Suite 810, Dallas, Texas 75206
Address — Zip Code

Kent C. Vanderheiden — 432.528.6953 kentvander@yahoo.com
Property Owner Name — (Phone/e-mail)

302 South I St, Midland Texas, 79701
Address — Zip Code

C.W. Fields
Representative Name — (Phone/e-mail)

Address — Zip Code

Street address and Legal Description of property (complete Lot, Block, and Subdivision Name or if unplatted, attach a Metes and Bounds description with surveyor's seal). Each district must be described separately. Block 110 Lots 1-12 Old Town Addition site includes alley

PRESENT ZONE: C3 REQUESTED ZONE: PDHD
(List by tracts if more than one district is requested)

Reason for Zone Change Request: To allow for the construction of a 70 unit multifamily development named the Brownstones Midland

Present Use of Property: Couple small retail buildings & rest of site is vacant

Proposed Use of Property: Multifamily

How will zone change affect the public health, safety and welfare? It will provide high quality affordable housing in the downtown area & be a catalyst for growth

Describe how conditions affecting the property have changed since present zoning designation: Not aware

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

APPLICATION FEES:

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

SITE PLAN SUBMITTALS *(if applicable)*:

16 copies (FOLDED) of the PD site plan: 5-15-12 SO

Site Plan in digital format .pdf and .jpg: 5-16-12 SO

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

Property Owner (signature): Kent C Vandeveiden Date: 2/2/2012

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

STATE of TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared C.W. Fields who, being by me duly sworn, upon oath says: That (s)he is authorized by Kent C Vandeveiden, 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.

C.W. Fields
Authorized Agent (signature)

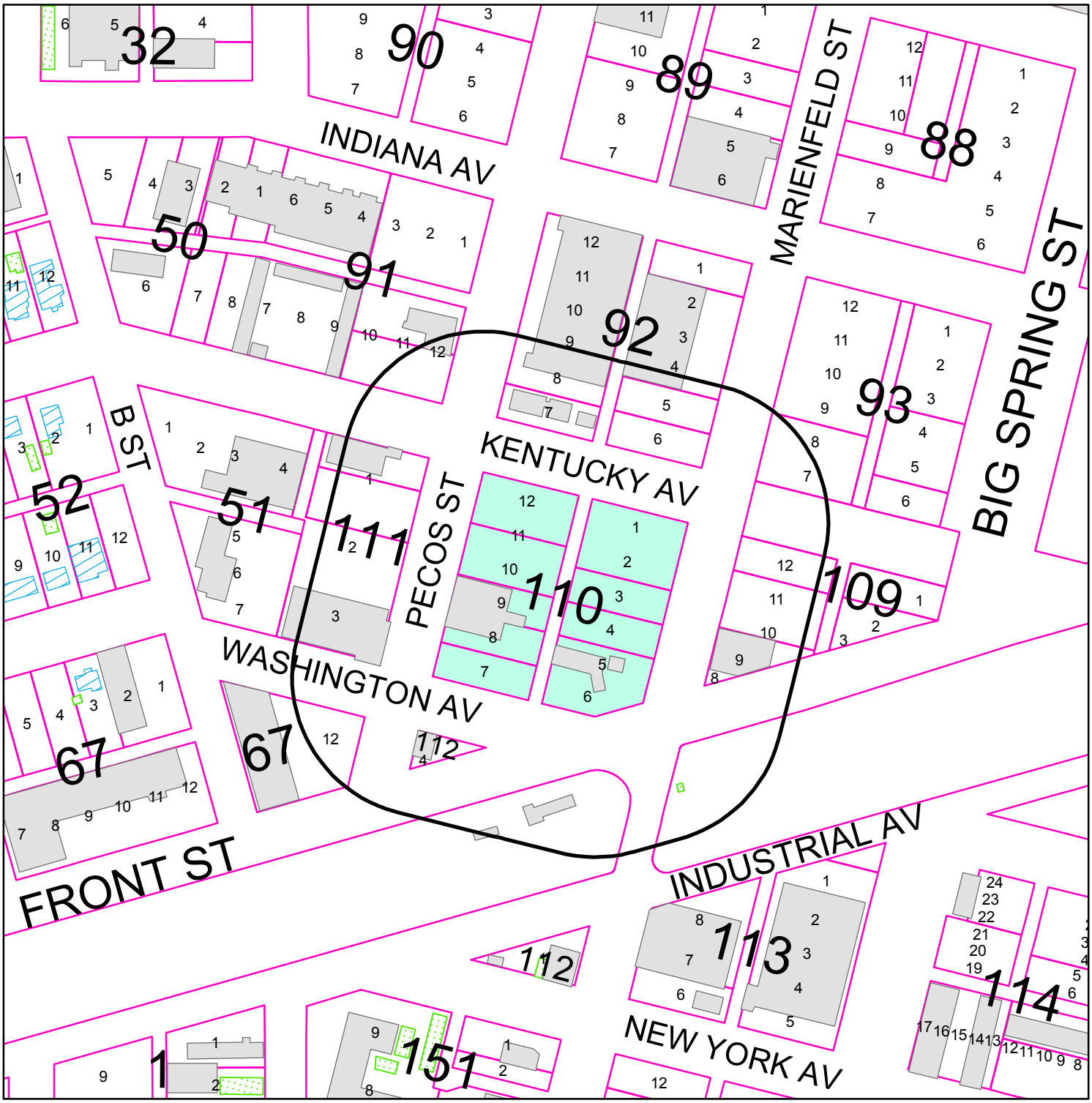
Subscribed and sworn to before me, this 10 day of February, 20 12, to certify which witness my hand and seal of office.

Tammy Belman
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY
Rec'd By: CV Date: 3/5/12
Assigned: KV
For: P+Z On: 3/5/12

TAMMY BELMAN
Notary Public, State of Texas
My Commission Expires
July 05, 2015

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



PROPERTY OWNER NOTIFICATION MAP

Z - 12 - 006 **Scale: 1" = 200'**

Consider a request for a zone change from C3, Commerial District to PD, Planned District for Housing Development on Lots 1 – 5, the remainder of Lot 6 and Lots 7 - 12, Block 110, 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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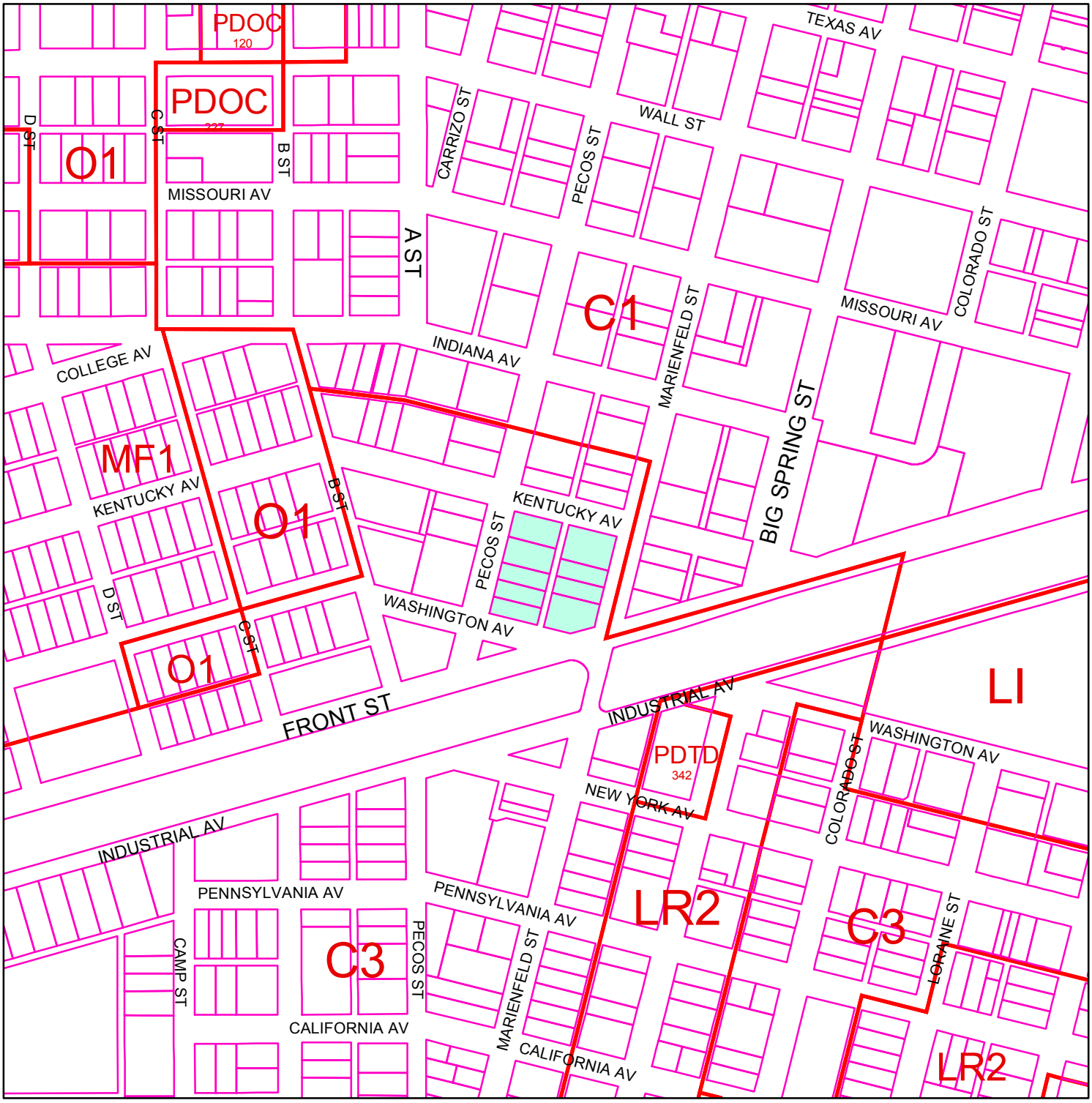

ZONING MAP

Z - 11 - 006 **Scale: 1" = 400'**

Consider a request for a zone change from C3, Commerial District to PD, Planned District for Housing Development on Lots 1 – 5, the remainder of Lot 6 and Lots 7 - 12, Block 110, Original Town, City and County of Midland, Texas.

LEGEND

ZONING PARCELS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, O2	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2 ,LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP ,IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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City Council Agenda

Approved for Agenda:
jnichols
City Manager's Office

MEETING DATE: 7/10/2012

TO: City Council / City Manager

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Hold a public hearing at approximately 10:39 a.m. and consider an ordinance on a request by Lamar Outdoor Advertising for a Specific Use Permit with Term for an Electronic Billboard/Billboard Sign. (Generally located on the northeast corner of the intersection of N. Big Spring Street and W. Dakota Avenue. - District 2)

Purpose:

Hold a public hearing at approximately 10:39 a.m. and consider an ordinance on a request by Lamar Outdoor Advertising for a Specific Use Permit with Term for an Electronic Billboard/Billboard Sign.

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 construct an electronic billboard / billboard sign in a parking lot at the north end of the Casa Madrid restaurant located at N. Big Spring Street and W. Dakota Avenue. The property is located in an LR-2, Local Retail District, therefore requires approval of a specific use permit for a billboard prior to issuing a building permit. The billboard will have a maximum height of 30 feet and consist of two faces totaling 494.5 square feet (below the permitted 672 square feet). The north-facing sign is requested to be an electronic billboard while the equally sized, south-facing sign, will be a static billboard.

Any future billboard requests will be bound by the more restrictive electronic billboard standard of maintaining a 1,500 feet distance on the same side of the street from this proposed billboard if approved.

The only concern staff noted is potential future development of the vacant lot immediately north of the illuminated side of the proposed billboard. If at any such time in the future that adjacent lot is developed, the City Council may determine not to renew this specific use permit for an electronic billboard with term based upon glare into the adjacent property [in accordance with 11-1-10 (J)], unless otherwise agreed upon with the affected property owner. Staff concurs with the Planning and Zoning Commission and recommends approval of this Specific Use Permit with Term for a Billboard.

Attachments:

Application
Maps
Site Plan (Exhibit – A)
Sign Diagram (Exhibit – B)
Proposed Ordinance
June 18, 2012 Planning & Zoning Commission Staff Report

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF THE PROPERTY DESCRIBED AS LOT 9, BLOCK 183, SOUTHERN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTHEAST CORNER OF THE INTERSECTION OF NORTH BIG SPRING STREET AND WEST DAKOTA AVENUE), WHICH IS PRESENTLY ZONED LR-2, LOCAL RETAIL DISTRICT, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT WITH TERM FOR A BILLBOARD; MAKING SAID PERMIT SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, Texas, in compliance with the City Charter and the State law with reference to the granting of specific use permits under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after holding due hearings affording a full and fair hearing to all of the property owners generally, and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body of the City of Midland finds that the public convenience will be best served by the granting of a Specific Use Permit With Term, set out hereinafter, on the property described in Section One hereof;

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

SECTION ONE. That the zoning use classification of the following described property, which is presently zoned LR-2, Local Retail District, to-wit:

Lot 9, Block 183, Southern Addition, City and County of Midland, Texas;

is hereby changed to permit said property to be used under a Specific Use Permit With Term for a day care center, together with the uses permitted in the present LR-2, Local Retail District.

SECTION TWO. That said property shall be subject to the following conditions and restrictions:

1. That the location of billboard shall conform to the site plan, which is attached hereto as Exhibit "A" and incorporated herein for all purposes.

2. That the maximum height of the billboard shall not exceed 30 feet.

3. That the billboard shall conform with the sign diagram, which is attached hereto and incorporated herein as Exhibit "B", and shall not exceed 256 square feet in area per sign face.

4. That the billboard shall conform to the City of Midland sign code.

5. That the applicant, Lamar Outdoor Advertising, shall obtain a Certificate of Occupancy prior to using this billboard for advertising to ensure the conditions of this permit are satisfied.

6. That this permit for an electronic billboard is governed by Section 11-1-10(J) of the Midland City Code with respect to the rights of adjacent property owners concerning glare and, therefore, may be subject to non-renewal.

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

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

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

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

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

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2012; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2012.

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

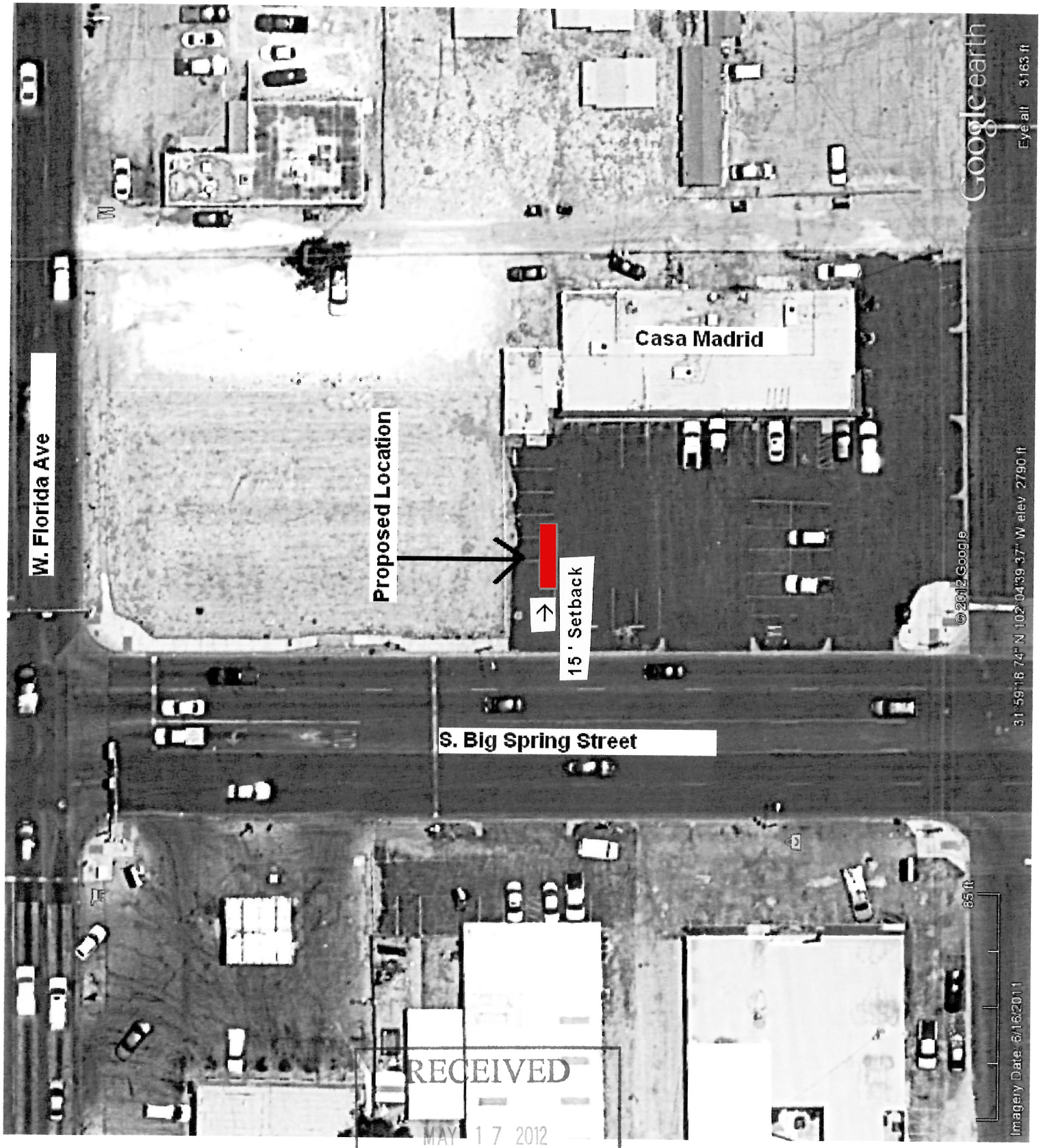
APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Jim Nichols, Assistant City Manager

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

N & S
E
3



RECEIVED
MAY 17 2012
CITY OF MIDLAND
PLANNING DIVISION OFFICE

CASE NO. S-12-008

EXHIBIT A

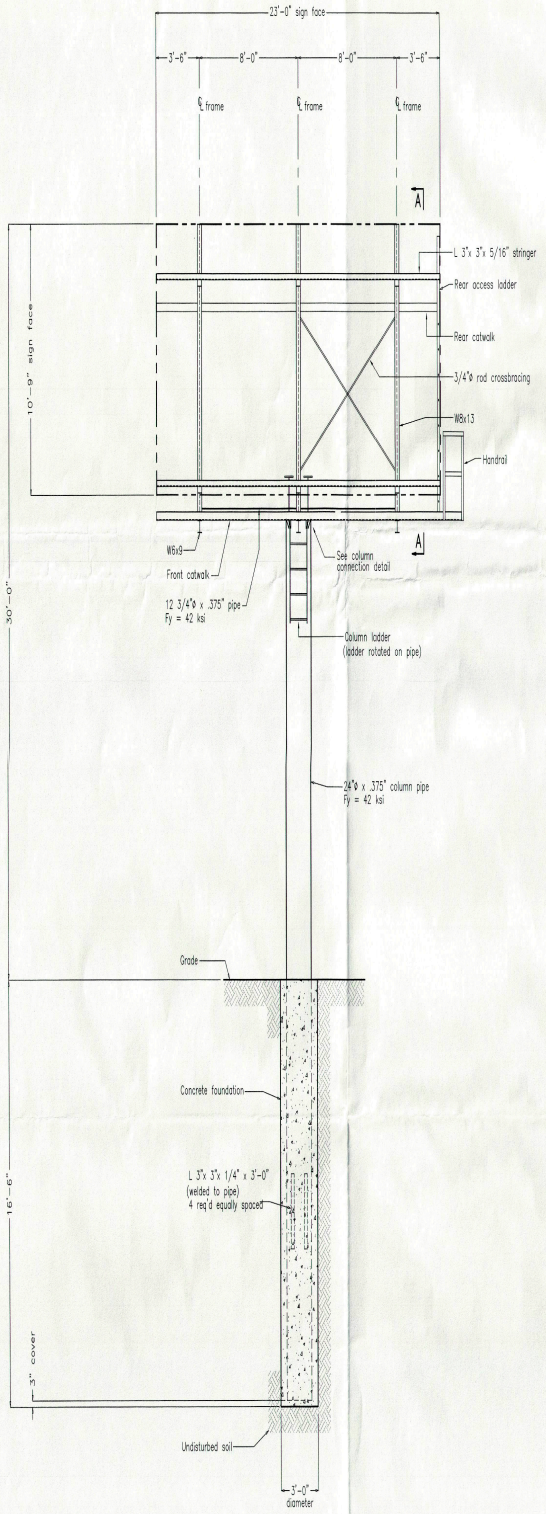
SITE PLAN

grc no. 10-006-101

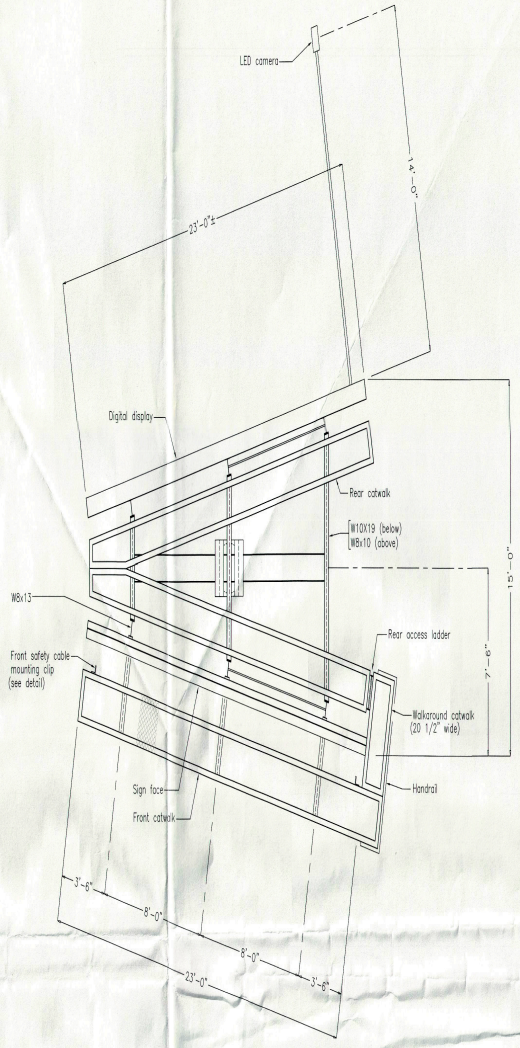
GRC Engineering, Inc.
Texas Registered
Engineering Firm
F-11994

STATE OF TEXAS
GERALD R. CARSTENS
36220
LICENSED
PROFESSIONAL ENGINEER

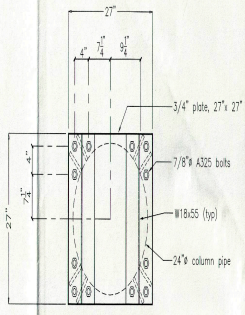
6-24-12



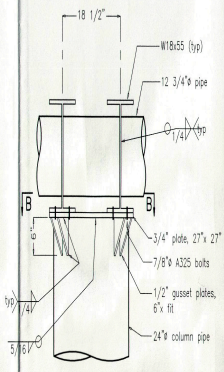
SIGN FACE ELEVATION



PLAN VIEW
SIGN STRUCTURE



SECTION B-B



COLUMN CONNECTION DETAIL

GRC
ENGINEERING, INC.
5544 W. 147TH STREET
OAK FOREST, ILLINOIS 60452
(708) 489-0400

Exhibit - B

RECEIVED
MAY 25 2012
CITY OF MIDLAND
PLANNING DIVISION OFFICE

Seismic Design Criteria

- Seismic importance factor $I_E = 1.0$
  Seismic occupancy category I
- Mapped spectral response accelerations
  $S_S = 0.080$ g
  $S_1 = 0.040$ g
- Site class D
- Seismic design category A
- Basic seismic force resisting system:
  Non-building structure not similar to building - signs & billboards
- Design base shear: 0.73 kips
- Seismic response coefficient = $C_S = 0.03$
- Response modification factor R = 3
- Analysis procedure used: Equivalent lateral force method

CASE NO. S12-008

NOTES

- Design conforms to the 2009 International Building Code.
- Design winds - 90 mph. (3-sec gust), Exp. C, per ASCE 7-05.
- Wind importance factor - Iw = 0.87
- Pipe shall conform to ASTM A252 or API 5L of appropriate grade to obtain specified minimum yield stress, Fy.
- Structural steel shall conform to ASTM A36 except wide flange beams which shall conform to ASTM A992.
- Welding shall be in accordance with AWS standards.
- Concrete shall attain a 28 day compressive strength of f'c = 2500 psi.
- Structural steel shall be fabricated and erected according to the latest AISC specifications and standard practices.
- The contractor shall verify all dimensions and conditions in the field and notify the engineer of any discrepancies.
- GRC Engineering Inc. will not be supervising or monitoring the erection/installation of this structure.

THIS IS AN ORIGINAL UNPUBLISHED DRAWING. IT IS NOT TO BE REPRODUCED, COPIED OR EXHIBITED IN ANY FASHION WITHOUT WRITTEN PERMISSION OF ALANC OUTDOOR SIGNS.

10'-9" x 23'-9"
MONOPOLE SIGN

CENTERMOUNT 15' V
30'-0" TO TOP

TEXAS

ENG. fm CAD mc
DATE 21.8 2
DRAWING NUMBER 10003-S
sheet 1 of 2

Planning and Zoning Commission
Minutes
June 18, 2012

S-12 008 - Hold a public hearing and consider a request by **Lamar Outdoor Advertising** for a Specific Use Permit with Term for a Billboard on Lot 9, Block 183, Southern Addition, City and County of Midland, Texas. (Generally located on the northeast corner of the intersection of N. Big Spring Street and W. Dakota Avenue.)

Applicant yielded to staff. Senior Planner Ken VanDyne gave an overview of the request for a specific use permit with term. Request has met all City sign ordinances and there are no other specific use permits in the area. This will be the first one along the entire section of Big Spring Street Staff recognized concern for potential development of the adjacent lot and that the City Council may determine not to renew the specific use permit based upon glare into the lot should that owner come forth to develop property. Staff recommended approval subject to conditions A-F.

Guy Speck, 4113 Baybrook, Midland, representing Lamar Outdoor Advertising stated the signs run at 50% during the day and they automatically have a sensor that draws them down so they are not so bright. At night only 5 to 10% of their energy is used. He expressed the signs are up to City Code and that they are not pointed at the vacant lots. He also stated all Amber Alerts be displayed on the signs.

There being no one wishing to speak in favor or in opposition Chairman Ferguson closed the public hearing.

After brief discussion a motion for approval subject to conditions A through F was made by Commissioner Gatten; seconded by Commissioner Carrillo. The motion carried by the following vote: AYE: Ferguson, Gatten, Wolf, Norris and Carrillo. NAY: Lanning. ABSTAIN: None. ABSENT: York, Watkins, Wilton and Woodruff.

PLANNING AND ZONING COMMISSION

June 18, 2012

CASE: S-12-008; Lamar Outdoor Advertising.

REQUEST: Hold a public hearing and consider a request for a Specific Use Permit with Term for a Billboard.

APPLICANT: Lamar Outdoor Advertising.

OWNER: Martha Ramirez.

LEGAL DESCRIPTION: Lot 9, Block 183, Southern Addition, City and County of Midland, Texas.

LOCATION: Generally located on the northeast corner of the intersection of N. Big Spring Street and W. Dakota Avenue.

CURRENT ZONING: LR-2, Local Retail District.

DETAILS OF REQUEST:

1. The applicant requests to construct a billboard in a parking lot at the north end of a restaurant parking lot located at N. Big Spring Street and W. Dakota Avenue. The property is located in an LR-2, Local Retail District, therefore requires approval of a specific use permit for a billboard prior to issuing a building permit. The billboard will have a maximum height of 30 feet and consist of two faces totaling 494.5 square feet. The north-facing sign would measure 10'9' x 23' and is requested to be an electronic billboard while the equally sized, south-facing sign, will be a static billboard.

SURROUNDING ZONING AND LAND USE:

2. This property is located near the middle of an LR-2, Local Retail District, corridor that runs along both sides of Big Spring for over a half-mile. The proposed location of the sign is at the north end of the Case Madrid restaurant. The majority of the surrounding area beyond is a mix of commercial and retail zoning with gas stations, restaurants, some vacant properties; including three vacant lots immediately north of the proposed illuminated side of the sign. There are two residential houses to the east

on Colorado Street with the next nearest housing being nearly 500' away from the requested billboard.

ANALYSIS:

3. Under the City Sign Code, billboards are allowed by specific use permit in the LR-2, LR-3, C-1, and BP Districts provided a number of requirements are met:

    - These requirements include minimum proximity to an existing billboard on the same side of the street (1,000 feet for a standard billboard and 1,500 feet for an electronic billboard) or property zoned for such with a specific use permit with term. As this sign is a combination of the two types (standard and electronic), any future billboard requests will be bound by the more restrictive standard of maintaining a 1,500 feet distance on the same side of the street from this proposed billboard if approved.
    - Maximum height in an LR-2 District is 30' for the billboard.
    - Setbacks are equal to minimum building setbacks for the zoning district; therefore a front setback must be a minimum of 15'.
    - The billboard may not consist of more than two sign faces exceeding a total of 672 square feet.

4. The location and design of the proposed billboard complies with City Code on all of the above points. It also is an appropriate location given the high volume traffic route, auto related and commuter businesses that exist along this corridor. Staff recognizes that billboards can become a problem in concentration has determined that there are currently no specific use permits for billboards on S. Big Spring Street. With the 1,500 foot minimum required distance mentioned above, approval of this specific use permit with term for an electronic billboard safeguards 3,000 feet on the eastern side of Big Spring Street from any proliferation of billboards. The only concern staff noted is potential future development of the vacant lot immediately north of the illuminated side of the proposed billboard. If at any such time in the future that adjacent lot is developed, the City Council may determine not to renew this specific use permit for an electronic billboard with term based upon glare into the adjacent property [in accordance with 11-1-10 (J)], unless otherwise agreed upon with the affected property owner.

STAFF RECOMMENDATION:

Staff recommends approval of this request for a Specific Use Permit with Term for a Billboard, subject to the following conditions:

A. **That the location of the billboard shall conform to the Site Plan (Exhibit – A);**

B. **That the maximum height of the billboard shall not exceed 30 feet;**

C. **That the billboard shall significantly conform with the Sign Diagram (Exhibit – B) and not exceed 256 square feet in area per sign face;**

D. **That this billboard shall conform to all conditions of the current Midland Sign Code;**

E. **That the applicant, Lamar Outdoor Advertising, shall obtain a Certificate of Occupancy prior to using this billboard for advertising to ensure the conditions of this permit are satisfied;**

F. **That this Specific Use Permit with Term for an Electronic Billboard is governed by City Code with respect to adjacent property owner rights concerning glare [in accordance with 11-1-10 (J)] and may be subject to non-renewal by City Council.**

Cameron Walker, AICP
Planning Division Manager
Department of Development Services

Ken Van Dyne, Senior Planner
Department of Development Services

Attachments:

Application
Maps
Site Plan (Exhibit – A)
Sign Diagram (Exhibit – B)

Case Number: S-12-008

CITY OF MIDLAND
Planning Division

SPECIFIC USE PERMIT APPLICATION

Lamar Outdoor Advertising — 432-683-8571
Applicant Name — **Contact Phone #s**

1011 S. Garfield — 79701
Address — Zip Code

E-Mail address: gwalker@lamar.com

Martha Ramirez — 432-685-1350
Property Owner Name — **Contact Phone #s**

911 S. Big Spring street — 79701
Address — Zip Code

E-Mail address:

Operator (if different from Applicant or Property Owner) — **Contact Phone #s**

Address — Zip Code

Type of Permit: Special use permit for electronil billboard

SUP with Term: ____Yes ____No
(For Office Use)

Street address and Legal Description of property on which SUP is desired (complete Lot, Block, and Subdivision, or if unplatted, attach a Metes and Bounds description with surveyor's seal.)

911 S. Big Spring St Midland, Tx 79701

Acres: 0.321, BLK 183, LOTS 7 + 8, ADDN: Southern

Current Zoning: LR2

Maximum Floor Area: _____ Max. Occupancy: _____

Proposed hours and days of use or operation: _____

Reason for request: Installation of electronic billboard

Applicant's opinion as to why the request will not adversely affect the public safety, health, morals, general welfare, and convenience: _____

REQUIRED SUBMITTALS

1. Application fee: **$300.** (80% of fee will be refunded if no P&Z public hearing is called; if no City Council public hearing is called, then 30% of fee will be refunded.)
2. Site plan -- 16 copies (FOLDED)
3. On a CD in .pdf and .jpg format.

SIGNATURES:

Applicant: _____ Date: 5/16/12

Property Owner: _____ Date: 5/16/12

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

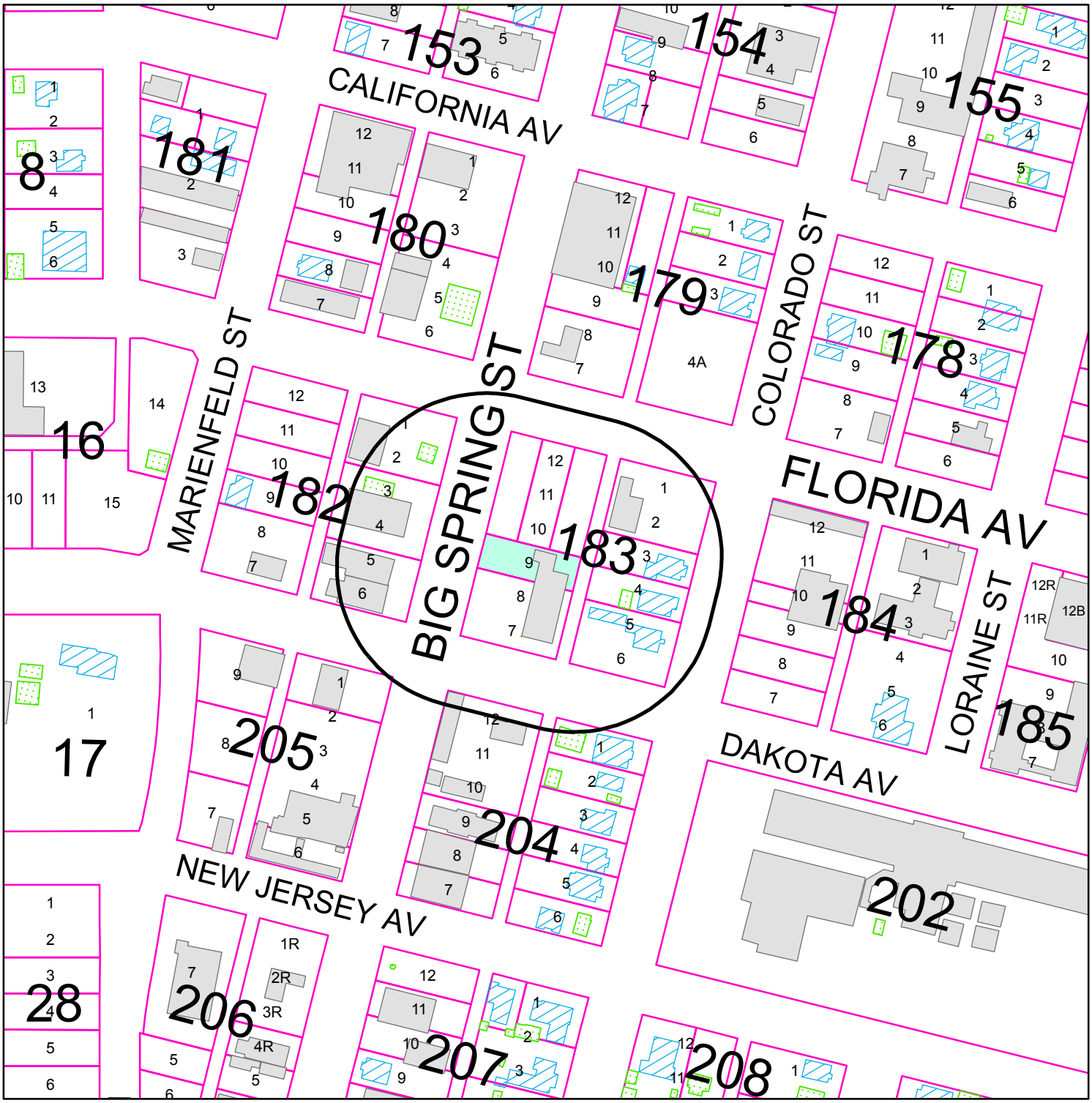
Subscribed and sworn to before me, this 16th day of May, 20 12, to certify which witness my hand and seal of office.

Carol A. Kreidel
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: SO	Date: 5-17-12
Assigned:	
For:	On:

NOTARY PUBLIC STATE OF TEXAS
CAROL A. KREIDEL
Notary Public
STATE OF TEXAS
My Comm. Exp. 11/30/2012

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



PROPERTY OWNER NOTIFICATION MAP

S - 12 - 008 **Scale: 1" = 200'**

Consider a request for a Specific Use Permit with Term for an Electronic Billboard/ Billboard Sign, on Lot 9, Block 183, Southern Addition, 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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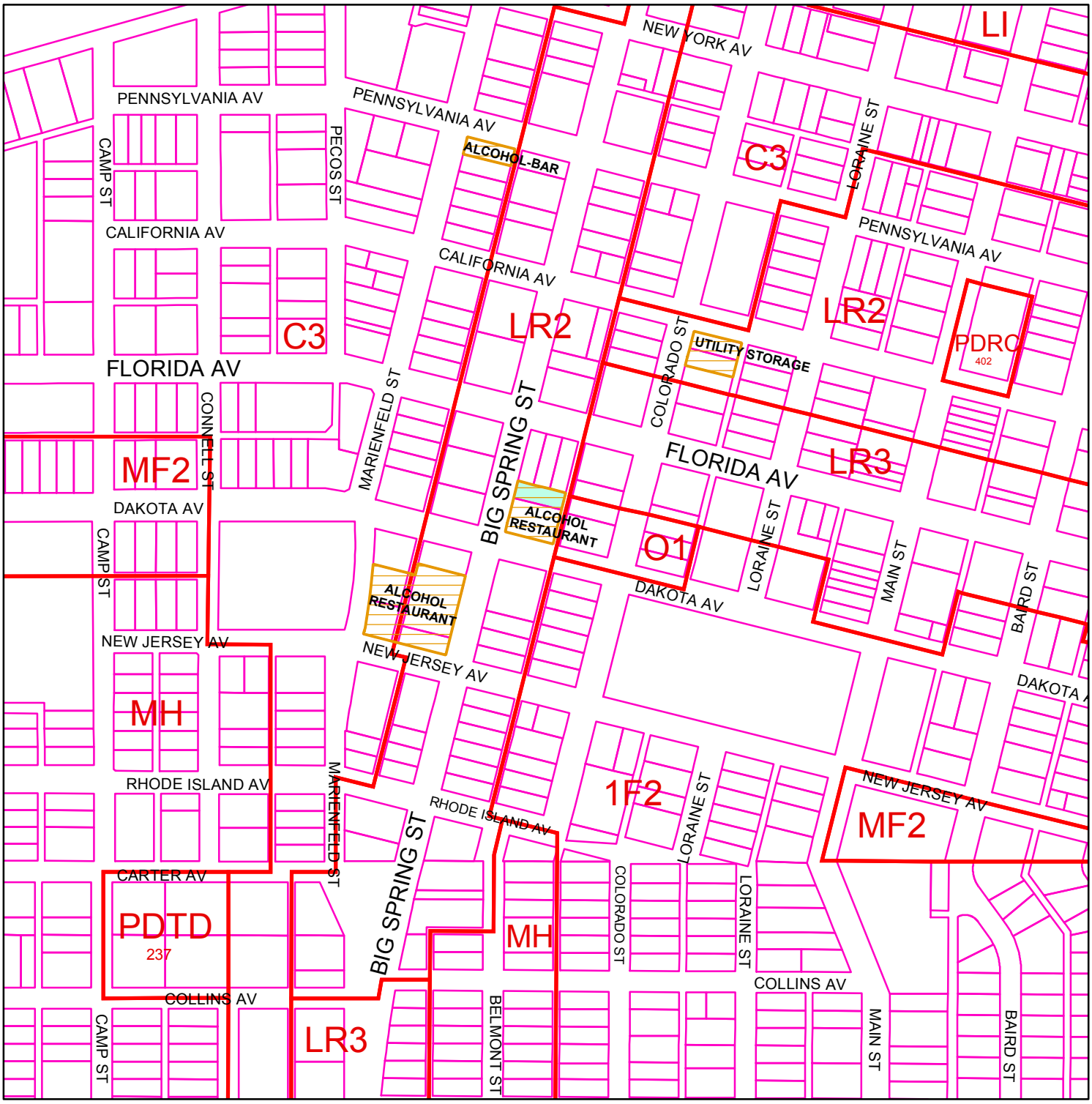

ZONING MAP

S - 12 - 008 **Scale: 1" = 400'**

Consider a request for a Specific Use Permit with Term for an Electronic Billboard/ Billboard Sign, on Lot 9, Block 183, Southern Addition, City and County of Midland, Texas.

LEGEND

ZONING PARCELS SPECIFIC USE PERMITS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, O2	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2 ,LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP ,IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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City Council Agenda

Approved for Agenda:
jnichols
City Manager's Office

MEETING DATE: 7/10/2012

TO: City Council / City Manager

FROM: Cameron Walker, Planning Division Manager

SUBJECT: At approximately 10:42 A.M. hold a public hearing and consider an ordinance on a request by Midland Community Development Corporation for a zone change from O-1, Office District to PD, Planned District for a Housing Development and to TH, Townhouse Dwelling District. (Generally located on both the north and south sides of Elm Avenue between N. Tyler Street and N. Carver Street. – District 2)

Purpose:

At approximately 10:42 A.M. hold a public hearing and consider an ordinance on a request by Midland Community Development Corporation for a zone change from O-1, Office District to PD, Planned District for a Housing Development on Lots 1 through 12, Block 8 and the to be vacated 0.3863-acre portion of the right-of-way of Elm Avenue and to TH, Townhouse Dwelling District on Lots 1 through13, Block 7 and the to be vacated 0.1445-acre portion of right-of-way of Elm Avenue, all out of Lynside Neighborhood, City and County of Midland, Texas.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

There is no cost to the City to process this application

Discussion:

The subject property was rezoned from residential districts to an O-1 District in 1987 in an effort to stimulate development on this land. It has since remained vacant. Midland Community Development Corporation (MCDC) has presented a development plan for workforce housing, which represents a down zoning to residential development. In addition to a zone change, this plan includes vacating a 10-foot portion of Elm Avenue and a replat that will dedicate five feet of right-of-way for Elm Avenue, and additional right-of-way for new alleys and for Scharbauer Draw. MCDC is requesting a TH District on the south side of Elm Avenue, even though detached homes are proposed. This is to allow a reduction in minimum lot size from 5,500 square feet required by a 1F-3 District to 5,000 square feet.

The land on the north side of Elm Avenue is proposed to be zoned Planned District for a Housing Development, subject to the TH District regulations, but with a minimum lot depth of only 85 feet instead of 100 feet; however, the minimum area and width requirements will still be met. Attached townhouse development is proposed here. The Planning and Zoning Commission recommended approval of this request on June 4, 2012. It also approved the associated preliminary plat. The request to vacate a portion of Elm Street to allow for the shifting of the centerline southward is also scheduled on the July 10th agenda. No public opposition has been noted as of this writing.

Attachments:

June 4, 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 1-12, BLOCK 8, AND A TO BE VACATED 0.3863-ACRE PORTION OF ELM AVENUE RIGHT-OF-WAY, WHICH IS PRESENTLY ZONED O-1, OFFICE DISTRICT, TO BE USED AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT; BY PERMITTING LOTS 1-13, BLOCK 7, AND A TO BE VACATED 0.1445-ACRE PORTION OF ELM STREET RIGHT-OF-WAY, WHICH IS PRESENTLY ZONED O-1, OFFICE DISTRICT, TO BE USED AS A TH, TOWNHOUSE DWELLING DISTRICT; SAID PROPERTY BEING ALL OUT OF LYNSIDE ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS; SAID 0.3863-ACRE TRACT AND SAID 0.1445-ACRE TRACT BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS MADE A PART HEREOF; SAID PROPERTY IS GENERALLY LOCATED ON BOTH SIDES OF ELM AVENUE, BETWEEN TYLER STREET AND CARVER 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 Districts under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by the creation of a PD, Planned District for a Housing Development, and a TH, Townhouse Dwelling District, as set out hereinafter;

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

SECTION ONE. That Chapter 1, Title XI, of the City Code of Midland, Texas, and

the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned O-1, Office District, and it shall be used as a PD, Planned District for a Housing Development, subject to the special conditions and restrictions hereinafter set out, said property being described as follows:

> Lots 1-12, Block 8, and a to be vacated 0.3863-acre portion of Elm Avenue right-of-way, all out of Lynside Addition, City and County of Midland, Texas, said 0.3863-acre tract being more specifically described by metes and bounds in Exhibit "A", which is attached hereto and incorporated herein.

Special Conditions and Restrictions:

1. That the development of the property described in Section One hereof shall be subject to the regulations of the TH, Townhouse Dwelling District, except as stated in Paragraph 2 below.

2. That the minimum lot depth for residential use shall be 85 feet.

SECTION TWO. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned O-1, Office District, and it shall be used as a TH, Townhouse Dwelling District, subject to the special conditions and restrictions hereinafter set out, said property being described as follows:

> Lots 1-13, Block 7, and a to be vacated 0.1445-acre portion of Elm Avenue right-of-way, all out of Lynside Addition, City and County of Midland, Texas, said 0.1445-acre tract being more specifically described by metes and bounds in Exhibit "B", which is attached hereto and incorporated herein.

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

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

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

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

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

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2012; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2012.

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Jim Nichols, Assistant City Manager

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

PROPERTY DESCRIPTION
(LYNSIDE NEIGHBORHOOD)
(ZONE CHANGE FROM OD TO TH)

DESCRIPTION OF A 3.091 ACRE TRACT OF LAND KNOWN AS LOTS 1 THRU 13, BLOCK 7 AND PORTION OF ELM AVENUE LYNSIDE NIEGHBORHOOD, AND ADDITION TO THE CITY AND COUNTY OF MIDLAND, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A POINT BEING THE SE CORNER OF THIS PARCEL, SAME BEING THE CENTER OF NORTH CARVER STREET, AND FROM WHICH THE CITY OF MIDLAND GPS PT. "E89-7505" LOCATED AT THE INTERSECTION OF WADLEY AVE AND FAIRGROUNDS ROAD BEARS N24°4'28"E., 6,090.08 FEET;

THENCE S61°40'52"W 163.58 ALONG THE NORTH LINE OF LOT 14A, LYNSIDE NEIGHBORHOOD, SECTION 5 FEET TO POINT FOR THE SW CORNER OF THIS PARCEL IN THE CENTER OF THE CENTER LINE OF A 20 FEET ALLEY;

THENCE IN A NORTHWESTERLY DIRECTION WITH THE CURVED CENTER RIGHT-OF-WAY LINE OF SAID 20 FOOT ALLEY HAVING A RADIUS OF 681.10 FEET, AN ARCH DISTANCE OF 543.13 FEET, (CURVE DATA AS FOLLOWS: CHORD DISTANCE 528.85 FEET, CHORD BEARING N51°21'28"W, DELTA 45°41'21", TANGENT 286.93 FEET) TO AN ANGLE POINT;

THENCE IN A SOUTHWESTERLY DIRECTION WITH THE CURVED CENTER RIGHT- OF -WAY LINE OF SAID 20 FOOT ALLEY HAVING A RADIUS OF 419.50 FEET, AN ARCH DISTANCE OF 331.90 FEET, (CURVE DATA AS FOLLOWS: CHORD DISTANCE 323.31 FEET, CHORD BEARING S83°19'33""W, DELTA 45°19'53", TANGENT 175.19 FEET) TO A POINT FOR THE SOUTHWEST CORNER OF THIS TRACT AND IN THE CENTER OF TYLER STREET;

THENCE N29°24'50"W 127.50 FEET ALONG THE SAID EAST RIGHT-OF-WAY LINE OF TYLER STREET TO A POINT FOR THE NW CORNER OF THIS TRACT;

THENCE IN A NORTHEASTERLY DIRECTION WITH THE CURVED LINE HAVING A RADIUS OF 547.00 FEET, AN ARCH DISTANCE OF 432.86 FEET, (CURVE DATA AS FOLLOWS: CHORD DISTANCE 421.65 FEET, CHORD BEARING N83°18'46"E, DELTA 45°20'24", TANGENT 228.48 FEET) TO A POINT FOR AN ANGLE POINT;

THENCE IN A NORTHEASTERLY DIRECTION WITH THE CURVED LINE HAVING A RADIUS OF 808.60 FEET, AN ARCH DISTANCE OF 415.98 FEET, (CURVE DATA AS FOLLOWS: CHORD DISTANCE 411.40 FEET, CHORD BEARING S59°26'24"E, DELTA 29°28'31", TANGENT 212.70 FEET) TO A POINT FOR AN ANGLE POINT;

THENCE IN A NORTHEASTERLY DIRECTION WITH THE CURVED LINE HAVING A RADIUS OF 110.74 FEET, AN ARCH DISTANCE OF 138.62 FEET, (CURVE DATA AS FOLLOWS: CHORD DISTANCE 129.74 FEET, CHORD BEARING S82°5'30"E, DELTA 71°43'2", TANGENT 80.04 FEET) TO A POINT FOR AN ANGLE POINT;

THENCE S14°50'E 153.32 FEET ALONG THE WEST RIGHT- OF -WAY LINE OF CARVER STREET TO THE PLACE OF BEGINNING AND SAID PARCEL CONTAINING IN ALL 3.091 ACRES OF LAND.

Hong Sioe Oey 5/2/12

Hong Sioe Oey, RPLS No. 3454

STATE OF TEXAS
REGISTERED
HONG SIOE OEY
3454
PROFESSIONAL
LAND SURVEYOR

EXHIBIT A

CASE NO. Z-12-004

PROPERTY DESCRIPTION
(LYNSIDE NEIGHBORHOOD)
(ZONE CHANGE FROM OD TO PD)

DESCRIPTION OF A 3.500 ACRE TRACT OF LAND KNOWN AS LOTS 1 THRU 12, BLOCK 8 AND PORTION OF ELM AVENUE, LYNSIDE NIEGHBORHOOD, AND ADDITION TO THE CITY AND COUNTY OF MIDLAND, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A POINT BEING THE SE CORNER OF THIS PARCEL, SAME BEING IN THE CENTEROF NORTH CARVER STREET, AND FROM WHICH THE CITY OF MIDLAND GPS PT. "E89-7505" LOCATED AT THE INTERSECTION OF WADLEY AVE AND FAIRGROUNDS ROAD BEARS N.24°59'55"E., 5,971.56 FEET;

THENCE IN A NORTHEASTERLY DIRECTION WITH THE CURVED LINE HAVING A RADIUS OF 110.74 FEET, AN ARCH DISTANCE OF 138.62 FEET, (CURVE DATA AS FOLLOWS: CHORD DISTANCE 129.74 FEET, CHORD BEARING N82°5'30"W, DELTA 71°43'2", TANGENT 80.04 FEET) TO A POINT FOR AN ANGLE POINT;

THENCE IN A NORTHEASTERLY DIRECTION WITH THE CURVED LINE HAVING A RADIUS OF 808.60 FEET, AN ARCH DISTANCE OF 415.98 FEET, (CURVE DATA AS FOLLOWS: CHORD DISTANCE 411.40 FEET, CHORD BEARING N59°26'24"W, DELTA 29°28'31", TANGENT 212.70 FEET) TO A POINT FOR AN ANGLE POINT;

THENCE IN A NORTHEASTERLY DIRECTION WITH THE CURVED LINE HAVING A RADIUS OF 547.00 FEET, AN ARCH DISTANCE OF 432.86 FEET, (CURVE DATA AS FOLLOWS: CHORD DISTANCE 421.65 FEET, CHORD BEARING S83°18'46"W, DELTA 45°20'24", TANGENT 228.48 FEET) TO A POINT FOR AN ANGLE POINT;

THENCE N29°24'50"W 152.50 FEET ALONG THE SAID CENTER LINE OF TYLER STREET TO A POINT FOR THE NW CORNER OF THIS TRACT IN THE CENTER LINE OF A 20 FOOT ALLEY;

THENCE IN A NORTHEASTERLY DIRECTION WITH THE CURVED CENTER LINE OF SAID 20 FOOT ALLEY PART OF THE WAY AND PARALLEL TO THE SOUTH RIGHT-OF-WAY LINE OF MIDLAND DRAW A 120 FOOT WIDE PLATTED STRIP OF LAND HAVING A RADIUS OF 699.50 FEET, AN ARCH DISTANCE OF 554.38 FEET, (CURVE DATA AS FOLLOWS: CHORD DISTANCE 539.98 FEET, CHORD BEARING N83°20'6"E, DELTA 45°24'32", TANGENT 292.67 FEET) TO AN ANGLE POINT;

THENCE S67°21'17"E, 124.58 FEET PARALLEL TO THE SOUTH RIGHT-OF-WAY LINE OF MIDLAND DRAW TO AN ANGLE POINT;

THENCE S62°4'26"E 314.56 FEET PARALLEL TO THE SAID SOUTH RIGHT-OF-WAY LINE OF MIDLAND DRAW TO A POINT FOR THE CENTER LINE OF NORTH CARVER STREET AND THE NE CORNER OF THIS TRACT;

THENCE S14°50'E 184.34 FEET ALONG THE WEST RIGHT- OF -WAY LINE OF CARVER STREET TO THE PLACE OF BEGINNING AND SAID PARCEL CONTAINING IN ALL 3.500 ACRES OF LAND.

Hong Sioe Oey 5/2/12

Hong Sioe Oey, RPLS No. 3454

STATE OF TEXAS
REGISTERED
HONG SIOE OEY
3454
PROFESSIONAL
LAND SURVEYOR

EXHIBIT B

CASE NO. Z-12-004

PLANNING AND ZONING COMMISSION

June 4, 2012

CASE: Z-12-004.

REQUEST: Hold a public hearing and consider a request for a zone change from O-1, Office District to TH, Townhouse Dwelling District and PD, Planned District for a Housing Development.

APPLICANT/OWNER: Midland Community Development District.

REPRESENTATIVE: David Diaz.

LEGAL DESCRIPTION: Lots 1-13, Block 7 and Lots 1-12, Block 8; and a 0.5308-acre portion of Elm Avenue right-of-way, Lynside Neighborhood Addition, City and County of Midland.

LOCATION: Both sides of Elm Avenue, between Carver Street and Tyler Street.

CURRENT ZONING: O-1, Office District.

ASSOCIATED CASES: V-12-002, P-11-069, Pueblo del Arroyo.

DETAILS OF REQUEST:

1. This property is located in the Lynside Addition, which dates back to the 1950's. However, the land has remained vacant, and few public improvements exist. We have received a proposal from Midland Community Development Corporation for a residential development for affordable housing. There are three separate applications that must be approved before this project can proceed. The first is this zone change application. While residential development is allowed in an O-1 District, we believe that the property should be rezoned for the intended use. The applicant concurs with our position. The second application is a replat. A preliminary plat application is also scheduled on the June 4th agenda. The third application is a request to vacate a portion of Elm Avenue right-of-way. This application proposes to shift the centerline of Elm Avenue 10 feet southward. The vacation application would abandon 10 feet of right-of-way on the north side of Elm Avenue, but the plat would dedicate five feet for the south side, leaving a 55-foot width.

SURROUNDING ZONING AND LAND USE:

2. Scharbauer Draw is located along the north side of this property. The area to the east, across Carver Street, is zoned O-1 District, but is also vacant. The land to the south is zoned 1F-2 District, and is developed with single-family homes. Only a small sliver of land toward the east side of the property is located in the 100-year flood zone. However, there is sufficient area outside the flood zone to construct homes on every lot.

ANALYSIS:

3. The rezoning of this property from 1F-2 and 2F Districts to an O-1 District in 1987 was an unsuccessful effort to stimulate development on this property. We have now been presented with a zone change request and a preliminary plat for affordable housing, which is in short supply today. Consequently, we believe that returning this land to residential development is reasonable. In this instance, two residential zoning districts are proposed. Those lots located on the south side of Elm Avenue meet the area and width requirements of the TH District, but not the minimum depth, which the plat shows to be 90 feet. However, the Subdivision Code allows the Planning and Zoning Commission to approve plats with lots that meet at least 90 percent of the required depth, provided that the lots meet the minimum width and area requirements of the respective district. The lots on the south side of Elm Avenue are all 90 feet deep, and also meet the minimum width (50 feet) and area (5,000 square feet for detached homes) requirements of the TH District. Thus, the proposed zoning conforms to the associated plat. The second zoning district addresses the lots on the north side of Elm Avenue, which are only 85 feet deep. The applicant plans to construct attached townhouses on the north side of Elm Avenue. The TH District specifies a minimum lot width of 32 feet, a minimum depth of 100 feet and a minimum lot area of 3,500 square feet. The lots on the north side of Elm Avenue all exceed these width and area requirements. Therefore, for the northern tier of lots the applicant is requesting a Planned District for a Housing Development, subject to the regulations of the TH District, but with a minimum lot depth of 85 feet. All of the lots on the associated preliminary plat meet these standards.

   The only question is whether the shallower lots on the north side of Elm Avenue are warranted. All lots have over 40-feet of street frontage, which is the minimum width required for a front-entry driveway. The smallest lot is 3,751 square feet, which exceeds the minimum lot size of the TH District. Being mindful that these lots back up to Scharbauer Draw and the other conditions associated with this property, we believe that this development proposal is reasonable.

STAFF RECOMMENDATION:

We recommend approval of this request for a zone change from O-1, Office District to TH, Townhouse Dwelling District for the land located in Block 7. We also recommend approval of a zone change to PD, Planned District for a Housing Development for the land in Block 8, subject to the following conditions:

A. That the development of this property shall be subject to the conditions of the TH, Townhouse Dwelling District, except as otherwise stated below.

B. That the minimum lot depth for the lots on the north side of Elm Avenue shall be 85 feet.

Cameron Walker, AICP
Planning Division Manager
Department of Development Services

Jim Compton, Senior Planner
Department of Development Services

Attachments:

Application
Maps

Case Number: Z-12-004

CITY OF MIDLAND
Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

Midland Community Development Corp. (432) 682-2520
Applicant Name (Phone/e-mail)

208 S. Marienfeld, Midland, TX 79701
Address Zip Code

Midland Community Development Corp. (432) 682-2520
Property Owner Name (Phone/e-mail)

208 S. Marienfeld, Midland, TX 79701
Address Zip Code

David Diaz davidd@midlandcdc.org 432682-2520
Representative Name (Phone/e-mail)

same as above
Address Zip Code

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

lots 1-16, block 7 and lots 1-18, block 8 of Pueblo Del Arroyo Subdivision, a replat of lots 1 thru 13, block 7 and lots 1 thru 12, block 8, Lynside Neighborhood addition

PRESENT ZONE: Office District O1 REQUESTED ZONE: Lots 1-18 block 8=Planned District Lots 1-16 block 7=Single Family
(List by tracts if more than one district is requested)

Reason for Zone Change Request: new subdivision replat. to change from office district to residential and planned district.

Present Use of Property: property is currently unimproved

Proposed Use of Property: Residential development and planned district

How will zone change affect the public health, safety and welfare? no change

Describe how conditions affecting the property have changed since present zoning designation: property has been vacant since present zoning designation. no known changes.

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

APPLICATION FEES:

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

SITE PLAN SUBMITTALS *(if applicable)*:

16 copies (FOLDED) of the PD site plan: see preliminary plat

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

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

Property Owner (signature): David Diaz Date: 2/8/2012

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

STATE of TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared DAVID DIAZ who, being by me duly sworn, upon oath says: That (s)he is authorized by MCDC, 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.

David Diaz
Authorized Agent (signature)

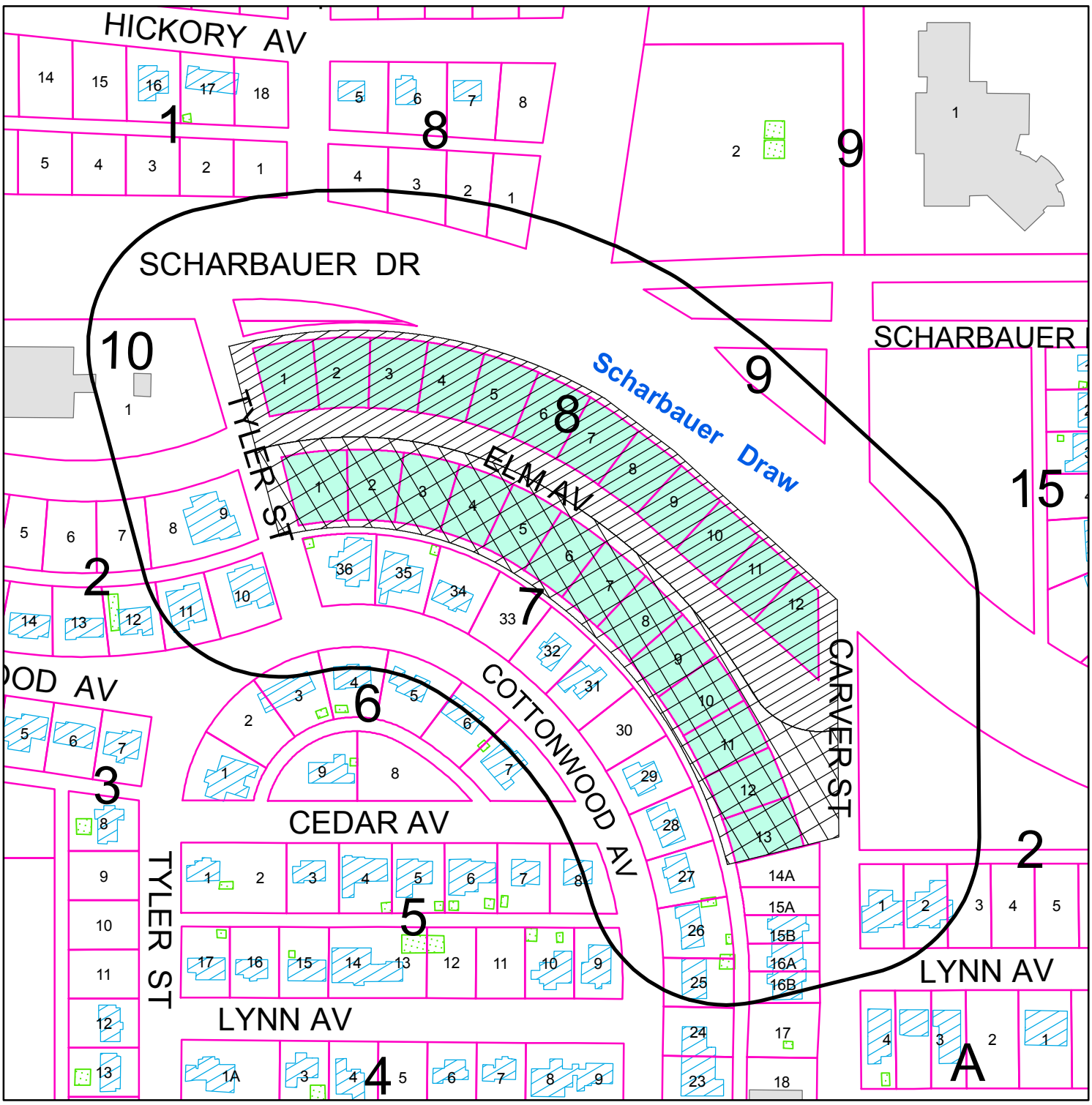
Subscribed and sworn to before me, this 8th day of February, 20 12, to certify which witness my hand and seal of office.

Sylvia A. Ochoa
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY
Rec'd By: _____ Date: _____
Assigned: JC
For: _____ On: _____

SYLVIA A. OCHOA
Notary Public, State of Texas
My Commission Expires 10-20-2014

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



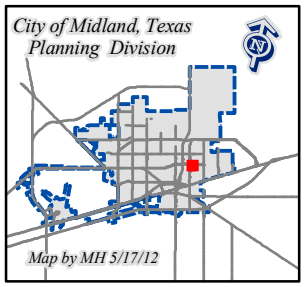
PROPERTY OWNER NOTIFICATION MAP

Z - 12 - 004 **Scale: 1" = 200'**

Consider a request for a zone change from O-1, Office District, to PD, Planned District for a Housing Development on Lots 1thru 12, Block 8, and the to be vacated 0.3863-acre portion of the right-of-way of Elm Avenue, and to TH, Townhouse Dwelling District on Lots 1thru 13, Block 7, and the to be vacated 0.1445-acre portion of right-of-way of Elm Avenue, all out of Lynside Neighborhood, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS
- PD HOUSING DEVELOPMENT
- TOWNHOUSE DWELLING



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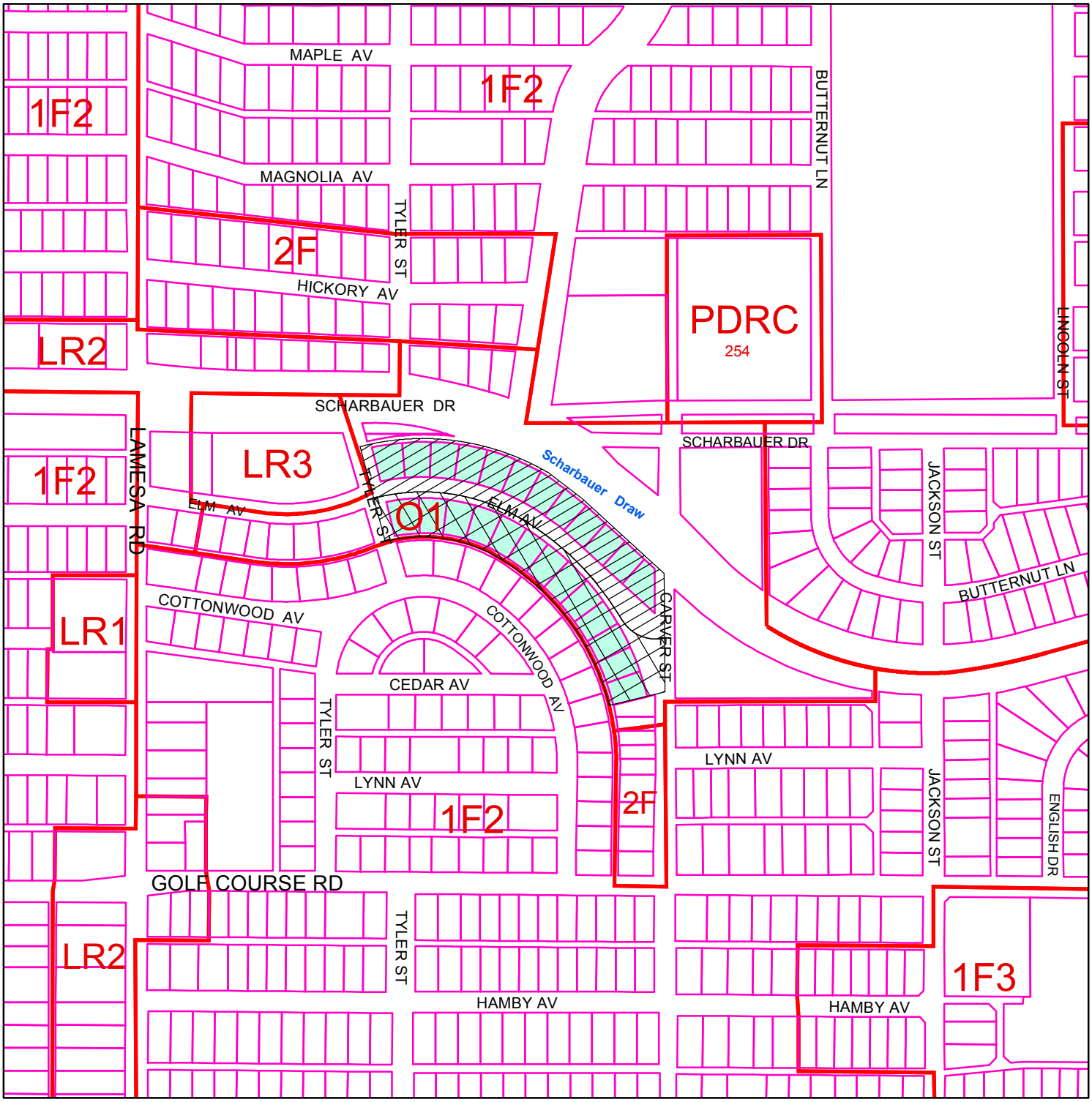

ZONING MAP

Z - 12 - 004 **Scale: 1" = 400'**

Consider a request for a zone change from O-1, Office District, to PD, Planned District for a Housing Development on Lots 1thru 12, Block 8, and the to be vacated 0.3863-acre portion of the right-of-way of Elm Avenue, and to TH, Townhouse Dwelling District on Lots 1thru 13, Block 7, and the to be vacated 0.1445-acre portion of right-of-way of Elm Avenue, all out of Lynside Neighborhood, City and County of Midland, Texas.

LEGEND

ZONING PARCELS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, O2	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2 ,LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP ,IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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City Council Agenda

Approved for Agenda:
jnichols
City Manager's Office

MEETING DATE: 7/10/2012

TO: City Council / City Manager

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Consider an ordinance on a request by Midland Community Development Corporation to vacate a 10-foot wide portion of Elm Avenue right-of-way. (Generally located on both the north and south sides of Elm Avenue between N. Tyler Street and N. Carver Street. – District 2)

Purpose:

Consider an ordinance on a request by Midland Community Development Corporation to vacate a 10-foot wide portion of Elm Avenue right-of-way.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

There is no cost to the City associated with approving this request.

Discussion:

This land is located in the Lynside Neighborhood subdivision, which dates back to the 1950's. While the plat was approved in the prescribed manner, no public improvements were ever constructed. Midland Community Development Corporation (MCDC) has presented a plan to develop workforce housing along Elm Avenue, between Tyler and Carver Streets. This development plan also includes a zone change request and a replat. Elm Avenue currently has a 60-foot right-of-way. The applicant is proposing to move the centerline of Elm Avenue ten feet to the south to provide additional depth for the lots on the north side of Elm Avenue. To accomplish this, the applicant proposes to vacate a 10-foot strip along the north side of the street, and the associated replat would dedicate a five-foot wide strip along the south side. The end result is that the right-of-way width would be reduced to 55 feet, which is still sufficient under the Subdivision Code regulations. Through the platting process, the street would be paved and water and sewer lines would be constructed.

The replat would also dedicate additional right-of-way for a new alley along the north side of the property, two shorter alleys connecting to Elm Avenue, and additional right-of-way for Scharbauer Draw. The right-of-way area requested for vacation contains 23,119.42 square feet, which is far less than new right-of-way to be dedicated by the plat. The portion of Elm Avenue that is proposed for vacation is valued at $2,312 ($0.10/sq. ft. X 23,119 sq. ft.) by the Midland Central Appraisal District. However, since the value of the new right-of-way exceeds the value of the vacated right-of-way, the staff recommends that no compensation be required in consideration of this request.

Attachments:

Proposed Ordinance

ORDINANCE NO.

AN ORDINANCE VACATING AND ABANDONING A 0.3863-PORTION OF ELM AVENUE RIGHT-OF-WAY ADJACENT TO LOTS 1-12, BLOCK 8, AND A 0.1445-ACRE PORTION OF ELM AVENUE RIGHT-OF-WAY ADJACENT TO LOTS 11-13, BLOCK 7, ALL OUT OF LYNSIDE NEIGHBORHOOD ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON BOTH THE NORTH AND SOUTH SIDES OF ELM AVENUE BETWEEN NORTH TYLER STREET AND NORTH CARVER STREET); ADOPTING THE APPRAISAL BY THE CITY MANAGER OF $2,312.00; WAIVING THE FEE FOR THE COST OF THE RIGHT-OF-WAY; AND ORDERING RECORDATION BY THE CITY SECRETARY

WHEREAS, it has been determined by the Midland City Council that a 0.3863-acre portion of Elm Avenue right-of-way adjacent to Lots 1-12, Block 8, and a 0.1445-acre portion of Elm Avenue right-of-way adjacent to Lots 11-13, Block 7, all out of Lynside Neighborhood Addition, City and County of Midland, Texas, are no longer needed for public use; and

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

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

WHEREAS, the City Manager has appraised the value of the City's property interest in the right-of-way at $2,312.00 , as shown in Exhibit "C" attached hereto and incorporated herein by reference; and

WHEREAS, the Council finds it to be in the public interest to waive the fee for the cost of the right-of-way in light of the abutting property owner's status as a nonprofit organization and the abutting property owner's dedication of right-of-way to the City in connection with the replat of this area; 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 0.3863-acre portion of Elm Avenue right-of-way adjacent to Lots 1-12, Block 8, and the 0.1445-acre portion of Elm Avenue right-of-way adjacent to Lots 11-13, Block 7, all out of Lynside Neighborhood Addition, City and County of Midland, Texas, as described in Exhibits "A" and "B" attached hereto and made a part hereof for all legal purposes, are hereby vacated and abandoned for all public purposes. Provided, however, that the City is hereby only abandoning the public interest in said property and this ordinance in no way affects any private easement or access easement which abutting property owners may have in said right-of-way.

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

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

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 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

PROPERTY DESCRIPTION

(PORTION OF ELM AVENUE TO BE VACATED)
(VACATION #2)

STATE OF TEXAS:

COUNTY OF MIDLAND:

DESCRIPTION OF A 0.3863 ACRE PARCEL OF LAND BEING A PORTION OF ELM AVENUE, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS TO WIT:

BEGINNING AT A SET 1/2" REINFORCED BAR BEING THE SE CORNER OF THIS PARCEL, FROM WHICH THE CITY OF MIDLAND GPS PT. "E89-7505" LOCATED AT THE INTERSECTION OF WADLEY AVE AND FAIRGROUNDS ROAD BEARS N25°35'51"E., 5,980.90 FEET;

THENCE IN A NORTHWESTERLY DIRECTION WITH THE CURVED LINE HAVING A RADIUS OF 72.50 FEET, AN ARCH DISTANCE OF 58.96 FEET, (CURVE DATA AS FOLLOWS: CHORD DISTANCE 57.34 FEET, CHORD BEARING N67°59'52.91"W, DELTA 46°35'29.40", TANGENT 31.22 FEET) TO AN ANGLE POINT;

THENCE IN A NORTHWESTERLY DIRECTION WITH THE CURVED LINE HAVING A RADIUS OF 836.10 FEET, AN ARCH DISTANCE OF 429.96 FEET, (CURVE DATA AS FOLLOWS: CHORD DISTANCE 425.24 FEET, CHORD BEARING N59°26'4"W, DELTA 29°27'51.84", TANGENT 219.85 FEET) TO AN ANGLE POINT;

THENCE IN A SOUTHWESTERLY DIRECTION WITH THE CURVED LINE HAVING A RADIUS OF 574.50 FEET, AN ARCH DISTANCE OF 404.67 FEET, (CURVE DATA AS FOLLOWS: CHORD DISTANCE 396.36 FEET, CHORD BEARING S85°48'44.45"W, DELTA 40°21'29.88", TANGENT 211.14 FEET) TO AN ANGLE POINT;

THENCE N72°25'13.44"W A DISTANCE OF 22.10 FEET TO AN ANGLE POINT FOR THE SW CORNER OF THIS PARCEL;

THENCE IN A NORTHEASTERLY DIRECTION WITH THE CURVED LINE HAVING A RADIUS OF 589.50 FEET, AN ARCH DISTANCE OF 431.67 FEET, (CURVE DATA AS FOLLOWS: CHORD DISTANCE 422.09 FEET, CHORD BEARING N85°0'48.69"E, DELTA 41°57'21.24", TANGENT 226.03 FEET) TO AN ANGLE POINT;

THENCE IN A SOUTHEASTERLY DIRECTION WITH THE CURVED LINE HAVING A RADIUS OF 851.10 FEET, AN ARCH DISTANCE OF 103.76 FEET, (CURVE DATA AS FOLLOWS: CHORD DISTANCE 103.69 FEET, CHORD BEARING S70°40'16.77"E, DELTA 6°59'6", TANGENT 51.94 FEET) TO AN ANGLE POINT;

THENCE S62°4'26.03"E A DISTANCE OF 341.86 FEET TO AN ANGLE POINT FOR THE SW CORNER OF THIS PARCEL;

THENCE S14°50'E 59.71 FEET TO THE PLACE OF BEGINNING AND SAID PARCEL CONTAINING IN ALL 16,827.13 SQURE FEET OF 0.3863 ACRES OF LAND.

Hong Sioe Oey 5/2/12

Hong Sioe Oey, RPLS No. 3454
(Not a Ground Survey)

STATE OF TEXAS
REGISTERED
HONG SIOE OEY
3454
PROFESSIONAL
LAND SURVEYOR

EXHIBIT A

CASE NO. V-12-002

PROPERTY DESCRIPTION

(PORTION OF ELM AVENUE TO BE VACATED)
(VACATION #1)

STATE OF TEXAS:

COUNTY OF MIDLAND:

DESCRIPTION OF A 0.1445 ACRE PARCEL OF LAND BEING A PORTION OF ELM AVENUE, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS TO WIT:

BEGINNING AT A FOUND 1/2" REINFORCED BAR BEING THE SE CORNER OF THIS PARCEL, SAME BEING THE NE CORNER OF LOT 14A, LYNSIDE NEIGHBORHOOD, SECTION 5, AND IN THE WEST RIGHT OF WAY OF NORTH CARVER STREET, AND FROM WHICH THE CITY OF MIDLAND GPS PT. "E89-7505" LOCATED AT THE INTERSECTION OF WADLEY AVE AND FAIRGROUNDS ROAD BEARS N.20°49'49"E., 946.86 FEET, N.76°52'39"E., 3224.47 FEET, N.13°41'54"W., 4074.10 FEET;

THENCE S61°40'52"W 22.73 FEET TO A POINT FOR THE SW CORNER OF THIS PARCEL IN THE SOUTH RIGHT-OF-WAY LINE OF ELM AVENUE;

THENCE IN A NORTHWESTERLY DIRECTION WITH THE CURVED NORTH RIGHT-OF-WAY LINE OF SAID ELM AVENUE HAVING A RADIUS OF 791.10 FEET, AN ARCH DISTANCE OF 177.71 FEET, (CURVE DATA AS FOLLOWS: CHORD DISTANCE 177.34 FEET, CHORD BEARING N34°55'17"W, DELTA 12°52'14.52", TANGENT 89.23 FEET) TO A POINT FOR THE NW CORNER OF THIS PARCEL;

THENCE IN A SOUTHEASTERLY DIRECTION WITH THE CURVED LINE HAVING A RADIUS OF 127.50 FEET, AN ARCH DISTANCE OF 69.52 FEET, (CURVE DATA AS FOLLOWS: CHORD DISTANCE 68.66 FEET, CHORD BEARING S81°33'4"E, DELTA 31°14'25.80", TANGENT 35.65 FEET) TO AN ANGLE POINT;

THENCE S59°48'25"E A DISTANCE OF 28.21 FEET TO A POINT ALONG THE WEST RIGHT-OF-WAY LINE OF NORTH CARVER STREET FOR THE NE CORNER OF THIS PARCEL;

THENCE S14°50'E 114.15 FEET ALONG THE WEST RIGHT-OF-WAY LINE OF CARVER STREET TO THE PLACE OF BEGINNING AND SAID PARCEL CONTAINING IN ALL 6,292.29 SQUARE FEET OR 0.1445 ACRES OF LAND.

Hongsioe Oey 5/2/12

Hong Sioe Oey, RPLS No. 3454
(This is not a ground survey)

STATE OF TEXAS
REGISTERED
HONG SIOE OEY
3454
PROFESSIONAL
LAND SURVEYOR

EXHIBIT B

CASE NO. V-12002

MIDLAND
CITY OF MIDLAND

Office of
City Manager

300 N. Loraine
P.O. Box 1152
Midland, TX 79702-1152

432.685.7203
Fax 432.686.1600

June 29, 2012

Midland City Council
City of Midland, Texas

RE: Request for vacation of a 0.3863-acre portion of Elm Avenue right-of-way adjacent to Lots 1-12, Block 8, and a 0.1445-acre portion of Elm Avenue right-of-way adjacent to Lots 11-13, Block 7, all out of Lynside Neighborhood 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 $2,312.00.

Very truly yours,

Courtney Sharp
City Manager

Exhibit "C"

L:\Ordinances\Planning\Vacate & Abandon\2012\Elm Avenue, Blks 7 & 8, Lynside Neighborhood Addition Appraisal Letter.wpd

Case Number: V-12-002

CITY OF MIDLAND
Transportation 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:
Area #1 0.1445 Acres Parcel of Land out of Elm Avenue.
Area #2 0.3863 Acres Parcel of Land out of Elm Avenue.

II. Reason for Request: Area #1 to be added to Lots 11 through 13, Block 7 and Area #2 to be added to Lots 1 through 12, Block 8, Lynside Neighborhood, to enlarge lots.
Lots.

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:
Will have no affect on public welfare.

IV. REQUIRED ITEMS:

1. Applicant(s) Information: (Attach extra sheets as necessary.)
   Name: Midland Community Development Corporation / David Diaz
   Address: 208 S. Marienfeld (Street) Phone: 432-682-2520
   Midland (City) TX (State) 79701 (Zip Code)
2. Metes and bounds description of property to be vacated including total square feet of vacation.
3. Map showing:
   - Property to be vacated and its relationship to the applicant's property
   - Lot and block numbers of all adjacent tracts
   - Current zoning of all adjacent tracts
4. Letter(s) of Concurrence signed by adjacent property owner(s). (See attached)
5. Application Fee: **$300.00**

Required items attached? Date Received: 1. _____ 2. _____ 3. _____ 4. _____ 5. _____

The City of Midland will take no action on this request, until items 1-5 are received.

V. Clearance is needed from the following utility companies: City of Midland / Atmos Energy

Caprock Energy / Oncor 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 Transportation Division, must first agree to the proposed vacation. It is the applicant's responsibility to obtain a letter of concurrence signed by the affected landowners.

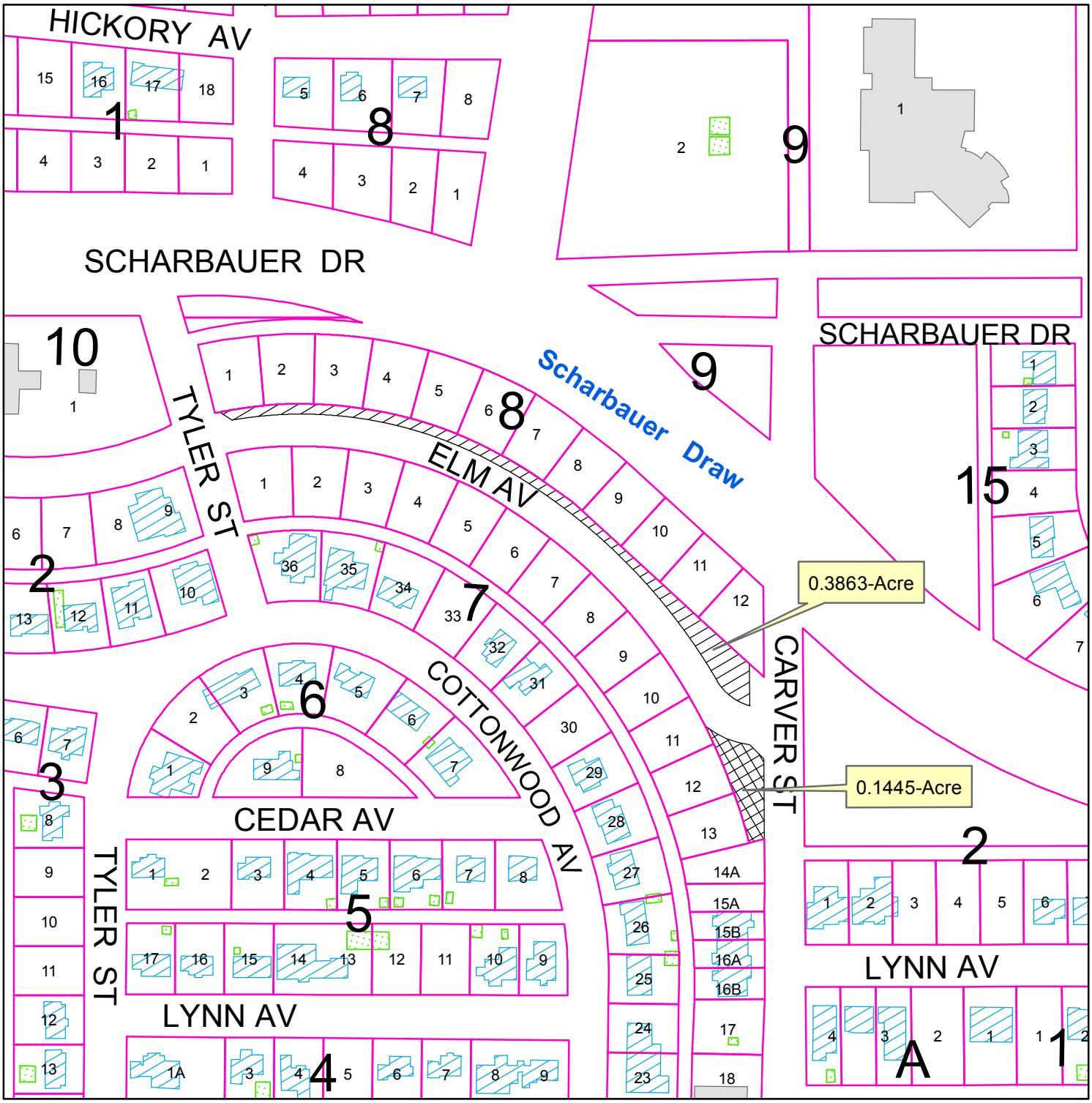
   b. If all letters are received indicating that the affected landowners agree to the request, then a public hearing before the City Council will be scheduled. The Transportation Division will mail public notice of the hearing to landowners within 1,000 feet of the affected right-of-way.

   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 landowner.

Signature of applicant: David Diaz Date: 2/8/2012

****Application will not be considered for scheduling until all required items are reviewed by City Staff.****

FOR OFFICE USE ONLY	
Rec'd. By: _____	Date: _____
Assigned: _____	
For: _____	On: _____



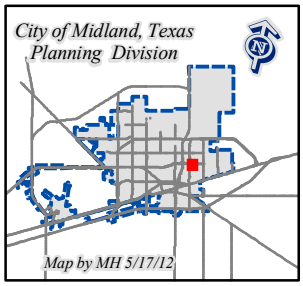
LOCATION MAP

V - 12 - 002 **Scale: 1" = 200'**

Consider a request for the vacation of a 0.1445-acre portion of the right-of-way of Elm Avenue adjacent to Lots 11 thru 13, Block 7; and of a 0.3863-acre portion of the right-of-way of Elm Avenue adjacent to Lots 1 thru 12, Block 8; all out of Lynside Neighborhood, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS
- 0.3863-ACRE VACATION
- 0.1445-ACRE VACATION



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SOLELY ON THE INFORMATION CONTAINE

City Council Agenda

Approved for Agenda:
jnichols
City Manager's Office

MEETING DATE: 7/10/2012

TO: City Council / City Manager

FROM: Gary Saunders, Transportation Manager

SUBJECT: Consider an ordinance amending Title X, "Traffic Regulations", Chapter Four, "Traffic Control Devices", Section 11, "School Zones and Crossings", of the Midland City Code, so as to designate each school zone and school crossing within the City and regulate the speed and movement of traffic therein; authorizing and directing the Traffic Engineer to install appropriate signs and markings; repealing Ordinance No.8920; 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.

Purpose:

Consider an ordinance amending Title X, "Traffic Regulations", Chapter Four, "Traffic Control Devices", Section 11, "School Zones and Crossings", of the Midland City Code, so as to designate each school zone and school crossing within the City and regulate the speed and movement of traffic therein; authorizing and directing the Traffic Engineer to install appropriate signs and markings; repealing Ordinance No.8920; 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 $1,000.00 for installation cost of signs, posts and pavement markings including materials, equipment and labor.

Discussion:

The Legal Department has prepared an ordinance amending the existing ordinance for "School Zones and Crossings" within the City of Midland authorizing the establishment of a 30 m.p.h. school zone on Lamesa Road for Travis Elementary School as follows:

Travis Elementary School

30 mph – 7:00 to 9:00 a.m. and 2:30 to 4:30 p.m.

On Lamesa Road from a point 230 feet north of the centerline of Gist Avenue to a point 230 feet south of the centerline of Gist Avenue.

This school zone has been requested to bring awareness to the motorist of school age pedestrian activity at this location due to increased residential development in the area.

Attached is a map indicating location of the proposed school zone.

Staff recommends approval of this ordinance.

ORDINANCE NO.

AN ORDINANCE AMENDING TITLE X, "TRAFFIC REGULATIONS", CHAPTER FOUR, "TRAFFIC CONTROL DEVICES", SECTION 11, "SCHOOL ZONES AND CROSSINGS", OF THE MIDLAND CITY CODE, SO AS TO DESIGNATE EACH SCHOOL ZONE AND SCHOOL CROSSING WITHIN THE CITY AND REGULATE THE SPEED AND MOVEMENT OF TRAFFIC THEREIN; AUTHORIZING AND DIRECTING THE TRAFFIC ENGINEER TO INSTALL APPROPRIATE SIGNS AND MARKINGS; REPEALING ORDINANCE NO. 8920; 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, Section 10-1-1(A)(43) of the City Code of Midland, Texas, defines school crossings as any crosswalk on a public street designated as such by Ordinance of the Council and marked by signs or pavement markings identifying it as a school crossing, and Section 10-1-1(A)(44) of the City Code defines school zones as areas, whether adjacent to schools or not, when properly marked by signs or pavement markings designating them as school zones; and

WHEREAS, the City Traffic Engineer has recommended the establishment of certain locations within the City to be designated as school zones, and/or crossing areas and certain changes in existing school zones, all based on engineering and traffic investigations; and

WHEREAS, the Council finds it to be in the public interest to follow the recommendations of the City Traffic Engineer in this matter;

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

SECTION ONE. That Section 11, "School Zones and Crossings", Chapter 4, "Traffic Control Devices", Title X, "Traffic Regulations", of the City Code of Midland, Texas, be amended and retitled so as to hereafter read as follows:

10-4-11: SCHOOL ZONES AND CROSSINGS

(A) The following described areas or locations are hereby designated "School Crossing Areas" and no person shall drive a motor vehicle in such areas or locations at a speed

greater than is reasonable and prudent under the circumstances then existing. The speed limits specified hereinafter shall be lawful, but any speed in excess of the limits specified below during the hours set out hereinafter for each location or when flashing lights are in place and operative shall be prima facie evidence that the speed is not reasonable or prudent and is unlawful on the days schools are in session.

1. Alamo Junior High School - 25 mph - 7:30 to 9:00 a.m. and 3:30 to 4:30 p.m.

   On Illinois Avenue from a point 211 feet east of the centerline of McDonald Street to a point 200 feet west of the centerline of McDonald Street.

2. Anson Jones Elementary School - 20 mph - 7:00 to 9:00 a.m. and 2:30 to 4:30 p.m.

   On Illinois Avenue from a point 210 feet east of the centerline of Stoneybrook Drive to a point 210 feet west of the centerline of Stoneybrook Drive.

3. Ben Milam Elementary School

   (a) 20 mph - 7:00 to 9:00 a.m. and 2:30 to 4:30 p.m.

      (1) On Wadley Avenue from a point 293 feet east of the centerline of Edwards Street at its easternmost intersection with Wadley Avenue to a point 280 feet west of the centerline of Edwards Street at its easternmost intersection with Wadley Avenue.

      (2) On Main Street from a point 175 feet north of the centerline of Dormard Avenue to a point 175 feet south of the centerline of Dormard Avenue.

      (3) On Lamesa Road from a point 115 feet north of the centerline of Spruce Avenue at its northernmost intersection with Lamesa Road to a point 295 feet south of the centerline of Spruce Avenue at its northernmost intersection with Lamesa Road.

   (b) 30 mph - 7:00 to 9:00 a.m. and 2:30 to 4:30 p.m.

      On Big Spring Street from a point 330 feet north of the centerline of Dormard Avenue to a point 225 feet south of the centerline of Dormard Avenue.

4. Bonham Elementary School and Alamo Junior High School - 20 mph - 7:00 to 9:00 a.m. and 2:30 to 4:30 p.m.

   On Midland Drive from a point 185 feet north of the centerline of Storey Avenue to a point 185 feet south of the centerline of Storey Avenue.

5. Bowie Elementary School - 20 mph - 7:00 to 9:00 a.m. and 2:30 to 5:30 p.m.

   (a) On Douglas Avenue from a point 205 feet east of the centerline of "D" Street to a point 175 feet west of the centerline of "D" Street.
   (b) On Golf Course Road from a point 190 feet east of the centerline of "C" Street to a point 130 feet west of the centerline of "C" Street.

6. Burnett Elementary School - 20 mph - 7:00 to 9:00 a.m. and 2:30 to 4:30 p.m.

On Thomason Drive from a point 232 feet east of the centerline of Raymond Drive to a point 200 feet west of the centerline of Raymond Drive.

7. Bush Elementary School

(a) 20 mph - 7:00 - 9:00 a.m. and 2:30 to 4:30 p.m.

On Whittle Way from a point 175 feet north of the centerline of Preston Avenue to a point 200 feet south of the centerline of Preston Avenue.

(b) 30 mph - 7:00 to 9:00 a.m. and 2:30 to 4:30 p.m.

On Wadley Avenue from a point 200 feet east of the centerline of Whittle Way to a point 200 feet west of the centerline of Whittle Way

8. Crockett Elementary School - 20 mph - 7:00 to 9:00 a.m. and 2:30 to 4:30 p.m.

(a) On Lamesa Road from a point 135 feet south of the centerline of Parker Avenue at its southernmost intersection with Lamesa Road to a point 200 feet north of the centerline of Parker Avenue at its southernmost intersection with Lamesa Road.

(b) On Cuthbert Avenue from a point 200 feet east of the centerline of Dallas Street to a point 180 feet west of the centerline of Dallas Street.

(c) On Main Street from a point 230 feet north of the centerline of Parker Avenue at its northernmost intersection with Main Street to a point 230 feet south of the centerline of Parker Avenue at its southernmost intersection with Main Street.

(d) On Golf Course Road from a point 150 feet east of the centerline of Fort Worth Street to a point 140 feet west of the centerline of Fort Worth Street.

9. DeZavala Elementary School - 20 mph - 7:00 to 9:00 a.m. and 2:30 to 4:30 p.m.

(a) On Lamesa Road from a point 300 feet north of the centerline of Louisiana Avenue to a point 250 feet south of the centerline of Louisiana Avenue.

(b) On Louisiana Avenue from a point 200 feet west of the centerline of Lamesa Road to a point 150 feet east of the centerline of Lamesa Road.

(c) On Garden Lane from a point 180 feet west of the centerline of Lee Street to a point 191 feet east of the centerline of Lee Street.

(d) On Walnut Lane from a point 184 feet west of the centerline of Lee Street to a point 196 feet east of the centerline of Lee Street.

10. Fannin Elementary School - 20 mph - 7:00 to 9:00 a.m. and 2:30 to 4:30 p.m.

(a) On Neely Avenue from a point 290 feet east of the centerline of Lanham Street to a point 300 feet west of the centerline of Lanham Street.

(b) On Garfield Street from a point 466 feet south of the centerline of Cimmaron Drive to a point 135 feet north of the centerline of Dengar Avenue.

(c) On Ward Street from a point 150 feet north of the centerline of Fannin Avenue to a point 160 feet south of the centerline of Fannin Avenue.

11. Greathouse Elementary School - 25 mph - 7:00 to 9:00 a.m. and 2:30 to 4:30 p.m.

(a) On Briarwood Avenue from a point 540 feet east of the centerline of Mathis Street to a point 450 feet west of the centerline of Mathis Street.

(b) 20 mph - 7:00 to 9:00 a.m. and 2:30 to 4:30 p.m. On Oriole Drive from a point 220 feet north of the centerline of Woodhollow Drive to a point 198 feet south of the centerline of Woodhollow Drive.

12. Hillander Private School - 20 mph - 7:30 to 9:00 a.m. and 3:00 to 4:00 p.m.

On Neely Avenue from a point 220 feet east of the centerline of "I" Street to a point 210 feet west of the centerline of "I" Street.

13. Lamar Elementary School - 20 mph - 7:00 to 9:00 a.m. and 2:30 to 4:30 p.m.

On Illinois Avenue from a point 330 feet east of the centerline of Crestview Road to a point 240 feet west of the centerline of Crestview Road.

14. Lee Freshman High School - 20 mph - 7:30 to 9:30 a.m. and 3:30 to 4:30 p.m.

On Scharbauer Drive from a point 195 feet west of the centerline of Butternut Lane to a point 202 feet east of the centerline of Butternut Lane.

14a. Midland Academy Charter School - 20 m.p.h. - 7:30 to 9:00 a.m. and 2:30 to 4:30 p.m.

(a) On Baird Street from a point 97 feet north of the centerline of Michigan Avenue to a point 145 feet south of the centerline of Tennessee Avenue.

(b) On Michigan Avenue from a point 180 feet east of the centerline of Weatherford Street to a point 180 feet west of the centerline of Baird Street.

(c) On Tennessee Avenue from a point 180 feet east of the centerline of Weatherford Street to a point 180 feet west of the centerline of Baird Street.

(d) On Weatherford Street from a point 95 feet north of the centerline of Michigan Avenue to a point 165 feet south of the centerline of Tennessee Avenue.

15. Midland Christian School - 20 mph - 7:30 to 8:30 a.m. and 3:00 to 4:30 p.m.

On Neely Avenue from a point 175 feet east of the centerline of Culver Drive to a point 225 feet west of the centerline of Culver Drive.

16. Midland Freshman High School - 25 mph - 7:30 to 9:30 a.m. and 3:30 to 4:30 p.m.

On Rankin Highway from a point 265 feet north of the centerline of Hicks Avenue to a point 170 feet south of the centerline of Hicks Avenue.

17. Pease Elementary School - 25 mph - 7:00 to 9:00 a.m. and 2:30 to 5:30 p.m.

On Fairgrounds Road from a point 200 feet north of the centerline of Pecan Avenue to a point 200 feet south of the centerline of Pecan Avenue.

18. Premier Charter High School - 30 mph - 7:30 to 9:00 a.m. and 2:00 to 3:30 p.m.

On Big Spring Street from a point 200 feet south of the centerline of Golf Course Road to a point 70 feet north of the centerline of Eugene Avenue.

19. Quanah Parker Elementary School

(a) 30 mph - 7:00 to 9:00 a.m. and 2:30 to 4:30 p.m.

On Midland Drive from a point 340 feet north of the centerline of St. Andrews Drive to a point 350 feet south of the centerline of St. Andrews Drive.

(b) 20 mph - 7:00 to 9:00 a.m. and 2:30 to 4:30 p.m.

On Godfrey Drive from a point 150 feet north of the centerline of St. Andrews Drive to a point 135 feet south of the centerline of St. Andrews Drive.

20. Sam Houston Elementary School - 20 mph - 7:00 to 9:00 a.m. and 2:30 to 4:30 p.m.

(a) On Cuthbert Avenue from a point 335 feet east of the centerline of "N" Street at its easternmost intersection with Cuthbert Avenue to a point 297 feet west of the centerline of "N" Street at its easternmost intersection with Cuthbert Avenue.

(b) On Garfield Street from a line 50 feet north of the centerline of Storey Avenue to a line 60 feet north of the centerline of Country Club Drive at its southernmost intersection with Garfield Street.

(c) On Michigan Avenue from a point 180 feet east of the centerline of

North "N" Street to a point 180 feet west of the centerline of North "N" Street.

21. San Jacinto Junior High School - 20 mph - 7:30 to 9:00 a.m. and 3:30 to 4:30 p.m.

    (a) On Golf Course Road from a point 208 feet east of the centerline of "N" Street to a point 185 feet west of the centerline of "N" Street.

    (b) On Garfield Street from a point 287 feet south of the centerline of Community Lane to a point 287 feet north of the centerline of Community Lane.

22. Santa Rita Elementary School - 20 mph - 7:00 to 9:00 a.m. and 2:30 to 4:30 p.m.

    (a) On Bluebird Lane from a point 215 feet east of the centerline of Whitman Street to a point 200 feet west of the centerline of Whitman Street.

    (b) On Bluebird Lane from a point 375 feet east of the centerline of Garfield Street to a point 375 feet west of the centerline of Garfield Street.

    (c) On Garfield Street from a point 245 feet south of the centerline of Bluebird Lane to the centerline of Bluebird Lane.

    (d) On Polo Parkway from a point 50 feet east of the centerline of Canterbury to a point 160 feet south of the centerline of Castleford Road at its southernmost intersection with Polo Parkway.

23. South Elementary School -

    (a) 20 mph - 7:00 to 9:00 a.m. and 2:30 to 4:30 p.m.

    On Big Spring Street from a point 220 feet north of the centerline of Dakota Street to a point 165 feet south of the centerline of Dakota Street.

    (b) 20 mph - 7:00 to 8:00 a.m. and 3:00 to 4:00 p.m.

        (1) On Goode Street from a point 312 feet north of the centerline of Griffin Avenue to a point 175 feet south of the centerline of Griffin Avenue.

        (2) On Griffin Avenue from a point 203 feet east of the centerline of Goode Street to a point 188 feet west of the centerline of Goode Street.

24. Travis Elementary School -

    (a) 20 mph - 7:00 to 9:00 a.m. and 2:30 to 4:30 p.m.

On Terrell Street from a point 160 feet north of the centerline of Gist Avenue to a point 150 feet south of the centerline of Gist Avenue.

(b) 30 mph - 7:00 to 9:00 a.m. and 2:30 to 4:30 p.m.

On Lamesa Road from a point 230 feet north of the centerline of Gist Avenue.

25. Washington Elementary School - 20 mph - 7:00 to 9:00 a.m. and 2:30 to 5:30 p.m.

(a) On Lamesa Road from a point 225 feet north of the centerline of Wall Street to a point 225 feet south of the centerline of Wall Street.

(b) On Lee Street from a point 200 feet north of the centerline of Wall Street to a point 195 feet south of the centerline of Wall Street.

(c) One Indiana Avenue from a point 225 feet west of the centerline of Tilden Street to a point 210 feet east of the centerline of Tilden Street.

26. West Elementary School - 20 mph - 7:00 to 9:00 a.m. and 2:30 to 4:30 p.m.

On Garfield Street from a point 160 feet north of the centerline of Missouri Avenue to a point 250 feet south of the centerline of Indiana Avenue.

(B) The following described locations or areas within the City of Midland are hereby designated "School Zones", and no person shall drive a motor vehicle in such areas or locations at a speed greater than is reasonable and prudent under the circumstances then existing. The speed limits specified hereinafter shall be lawful, but any speed in excess of the limits so specified during the hours set forth hereinafter for each location or when flashing lights are in place and operative shall be prima facie evidence that the speed is not reasonable or prudent and is unlawful, on the days schools are in session.

1. Abell Junior High School - 20 mph - 7:00 a.m. - 4:30 p.m.

(a) On Heritage Boulevard from the centerline of Wadley Avenue to a point 170 feet south of the centerline of Highland Boulevard/Highland Court.

(b) On Highland Boulevard from the centerline of Heritage Boulevard to a point 830 feet west of the centerline of Heritage Boulevard.

(c) On Wadley Avenue from a point 100 feet east of the centerline of Heritage Boulevard to a point 830 feet west of the centerline of Heritage Boulevard.

2. Anson Jones Elementary School - 20 mph - 7:00 a.m. - 4:30 p.m.

(a) Stoneybrook Drive - from a point 88 feet north of the centerline of Shadylane Drive to the centerline of Shadylane Drive.

(b) Shadylane Drive - from a point 160 feet north of the centerline of Thomason Drive to a point 150 feet east of the centerline of Thornridge

Drive.

(c) Thornridge Drive - from a point 160 feet north of the centerline of Thomason Drive to the centerline of Shadylane Drive.

3. Ben Milam Elementary School - 20 mph - 7:00 a.m. - 4:30 p.m.

(a) Shandon Avenue - from a point 230 feet west of the centerline of Edwards Street to a point 300 feet east of the centerline of Barber Drive.

(b) Dengar Avenue - from a point 230 feet west of the centerline of Edwards Street to the centerline of Edwards Street.

(c) Dengar Avenue - from the centerline of Barber Drive to a point 295 feet east of the centerline of Barber Drive

(d) Dormard Avenue - from a point 300 feet west of the centerline of Edwards Street to a point 230 feet east of the centerline of Barber Drive.

(e) Edwards Street - from a point 205 feet south of the centerline of Dormard Avenue to a point 160 feet north of the centerline of Shandon Avenue.

(f) Barber Drive - from a point 175 feet south of the centerline of Dormard Avenue to a point 155 feet north of the centerline of Shandon Avenue.

4. Bonham Elementary School and Alamo Junior High School - 20 mph - 7:00 a.m. - 4:30 p.m.

(a) Cuthbert Avenue - from a point 235 feet west of the centerline of Delmar Street to a point 185 feet east of the centerline of Bonham Street.

(b) Storey Avenue - from a point 450 feet west of the centerline of Delmar Street to the centerline of McDonald Street.

(c) Storey Avenue - from the centerline of Bonham Street to a point 220 feet east of the centerline of Bonham Street.

(d) Delmar Street - from a point 195 feet south of the centerline of Storey Avenue to the centerline of Storey Avenue.

(e) Delmar Street - from a point 170 feet north of the centerline of Cuthbert Avenue to the centerline of Cuthbert Avenue.

(f) McDonald Street - from a point 200 feet south of the centerline of Storey Avenue to a point 115 feet north of the centerline of Cuthbert Avenue.

(g) Bonham Street - from a point 170 feet south of the centerline of Storey Avenue to a point 118 feet north of the centerline of Cuthbert Avenue.

(h) Dunbar Street - from a point 115 feet north of the centerline of Cuthbert Avenue to the centerline of Cuthbert Avenue.

5. Bowie Elementary School - 20 mph - 7:00 a.m. to 5:30 p.m.

(a) Elk Avenue - from the centerline of "B" Street to the centerline of "A" Street.

(b) Douglas Avenue - from a point 90 feet east of the centerline of "C" Street to the centerline of "B" Street.

(c) Douglas Avenue - from the centerline of "A" Street to a point 195 feet east of the centerline of "A" Street.

(d) Princeton Avenue - from a point 255 feet west of the centerline of "B" Street to the centerline of "B" Street.

(e) "B" Street - from a point 150 feet north of the centerline of Elk Avenue to a point 160 feet south of the centerline of Princeton Avenue.

(f) "A" Street - from a point 140 feet north of the centerline of Elk Avenue to a point 175 feet south of the centerline of Douglas Avenue.

6. Bunch Elementary School - 20 mph - 7:30 a.m. to 4:30 p.m.

(a) Pennsylvania Avenue - from a point 165 feet east of the centerline of Carver Street to a point 190 feet east of the centerline of Jackson Street.

(b) Adams Street - from the centerline of Pennsylvania Avenue to a point 135 feet north of the centerline of Pennsylvania Avenue.

(c) Jackson Street - from a point 140 feet north of the centerline of Pennsylvania Avenue to a point 215 feet north of the centerline of Cloverdale Road.

(d) California Avenue - from the centerline of Jackson Street to a point 200 feet east of the centerline of Jackson Street.

7. Burnett Elementary School - 20 mph - 7:00 a.m. to 4:30 p.m.

(a) Spraberry Drive - from a point 175 feet north of the centerline of Devonian Drive to a point 130 feet north of the centerline of Pleasant Drive.

(b) Ruby Drive - from the centerline of Canyon Drive to a point 165 feet north of the centerline of Devonian Drive.

(c) Raymond Drive - from a point 185 feet north of the centerline of Canyon Drive to a point 50 feet north of the centerline of Pleasant Drive.

(d) Devonian Drive - from a point 230 feet west of the centerline of

Spraberry Drive to the centerline of Spraberry Drive.

(e) Canyon Drive - from the centerline of Spraberry Drive to a point 280 feet east of the centerline of Raymond Drive.

(f) Pasadena Drive - from the centerline of Spraberry Drive to a point 230 feet west of the centerline of Spraberry Drive.

(g) Howard Drive - from the centerline of Raymond Drive to a point 295 feet east of the centerline of Raymond Drive.

8. Bush Elementary School - 20 mph - 7:00 a.m. to 4:30 p.m.

(a) Idlewilde Drive - from a point 90 feet north of the centerline of Rainbow Road to the north curb line of Preston Drive.

(b) Preston Drive - from a point 150 feet east of the centerline of Idlewilde Drive to a point 150 feet west of the centerline of Sunburst Drive.

(c) Sunburst Drive - from a point 90 feet north of the centerline of Rainbow Road to a point 150 feet north of the centerline of Preston Drive.

9. Carver Center - 20 mph - 7:00 a.m. to 4:30 p.m.

(a) Carver Street - from a point 175 feet north of the centerline of Texas Avenue to a point 160 feet south of the centerline of Wall Street.

(b) Texas Avenue - from a point 150 feet west of the centerline of Carver Street to the centerline of Carver Street.

(c) Adams Street – from a point 150 feet south of the centerline of Wall Street to the centerline of Wall Street.

(d) Jesse Street – from a point 100 feet north of the centerline of Wall Street to the centerline of Wall Street.

10. Coleman High School - 20 mph - 7:00 a.m. to 4:30 p.m.

(a) Golf Course Road - from a point 60 feet west of the centerline of Benton Street to a point 120 feet west of the centerline of Tilden Street.

(b) Tilden Street - from a point 70 feet north of the centerline of Jax Street to the centerline of Golf Course Road.

11. Crockett Elementary School - 20 mph - 7:00 a.m. to 4:30 p.m.

(a) Jax Avenue - from a point 190 feet west of the centerline of Fort Worth Street to the centerline of Terrell Street.

(b) Parker Avenue - from a point 190 feet west of the centerline of Fort Worth Street to a point 155 feet east of the centerline of Terrell Street.

(c) Fort Worth Street - from the centerline of Parker Avenue to a point 160 feet south of the centerline of Hamby Avenue.

(d) Terrell Street - from the centerline of Parker Avenue to a point 100 feet north of the centerline of Jax Avenue.

(e) Dallas Street - from the centerline of Parker Avenue to a point 180 feet south of the centerline of Parker Avenue.

12. DeZavala Elementary School - 20 mph - 7:00 a.m. to 4:30 p.m.

(a) Orchard Lane - from the centerline of Lee Street to a point 175 feet east of the centerline of Lee Street.

(b) Lee Street - from a point 325 feet north of the centerline of Mesquite Street to a point 50 feet north of the centerline of South Street.

(c) Mesquite Street - from the centerline of Lee Street to a point 175 feet east of the centerline of Lee Street.

13. Emerson Elementary School and Goddard Junior High School - 20 mph - 7:00 a.m. to 4:30 p.m.

(a) Haynes Drive - from a point 175 feet east of the centerline of Lanham Street to a point 150 feet west of the centerline of Ward Street.

(b) Ward Street - from a point 250 feet south of the centerline of Haynes Drive to a point 135 feet north of the centerline of Emerson Place.

(c) Moss Avenue - from a point 465 feet east of the centerline of Whitney Drive to the centerline of Ward Street.

(d) Goddard Drive - from a point 185 feet east of the centerline of Ward Street to the centerline of Ward Street.

(e) Emerson Drive - from a point 185 feet east of the centerline of Ward Street to the centerline of Ward Street.

(f) Lanham Street - from a point 85 feet north of the centerline of Goddard Street to a point 140 feet south of the centerline of Haynes Drive.

14. Fannin Elementary School - 20 mph - 7:00 a.m. to 4:30 p.m.

(a) Cimmaron Avenue - from a point 285 feet west of the centerline of Lanham Street to a point 250 feet east of the centerline of Mogford Street.

(b) Frontier Avenue - from a point 295 feet west of the centerline of Lanham Street to the centerline of Lanham Street.

(c) Fannin Avenue - from a point 255 feet west of the centerline of Lanham Street to a point 325 feet east of the centerline of Mogford Street.

(d) Lanham Street - from a point 160 feet south of the centerline of Fannin Avenue to a point 180 feet north of the centerline of Cimmaron Avenue.

(e) Mogford Street - from a point 155 feet south of the centerline of Fannin Avenue to a point 170 feet north of the centerline of Cimmaron Avenue.

15. Greathouse Elementary School - 20 mph - 7:00 a.m. to 4:30 p.m.

(a) On Mathis Street - from a point 515 feet north of the centerline of Briarwood Avenue to a point 100 feet north of the centerline of Greathouse Avenue.

(b) On Greathouse Avenue - from a point 180 feet south of the centerline of Mathis Street to a point 450 feet north of the centerline of Mathis Street.

(c) On Quicksand Drive - from the centerline of Mathis Street south a distance of 180 feet.

(d) On Woodhollow Drive - from the centerline of Mathis Street north a distance of 390 feet.

16. Henderson Elementary School - 20 mph - 7:00 a.m. to 4:30 p.m.

(a) Bentwood Drive - from a point 265 feet north of the centerline of Graceland Drive to a point 138 feet south of the centerline of Joy Drive.

(b) Wilshire Drive - from the centerline of Graceland Drive to a point 160 feet north of the centerline of Graceland Drive.

(c) Erie Drive - from the centerline of Graceland Drive to a point 205 feet north of the centerline of Graceland Drive.

(d) Eisenhower Drive - from a point 135 feet north of the centerline of Graceland Drive to a point 135 feet south of the centerline of Graceland Drive.

(e) Graceland Drive - from a point 130 feet west of the centerline of Bentwood Drive to a point 135 feet east of the centerline of Eisenhower Drive.

17. Hillander Private School - 20 mph - 7:30 to 9:00 a.m., 11:00 a.m. to 12:30 p.m., and 1:45 to 4:00 p.m.

(a) Wadley Avenue - from a point 275 feet east of the centerline of "I" Street to a point 560 feet west of the centerline of "I" Street.

(b) "I" Street - from a point 170 feet north of the centerline of Wadley Avenue to a point 215 feet south of the centerline of Wadley Avenue.

18. Jane Long Elementary School - 20 mph - 7:00 a.m. to 4:30 p.m.

(a) Devonian Drive - from a point 180 feet north of the centerline of Tanner Drive to a point 200 feet south of the centerline of Cedar Spring Drive.

(b) Leddy Drive - from the centerline of Cedar Spring Drive to a point 165 feet north of the centerline of Tanner Drive.

(c) Tanner Drive - from a point 250 feet west of the centerline of Devonian Drive to a point 215 feet east of the centerline of Leddy Drive.

(d) Beckley Drive - from the centerline of Cedar Spring Drive to a point 150 feet south of the centerline of Cedar Spring Drive.

(e) Aberdeen Drive - from the centerline of Cedar Spring Drive to a point 250 feet south of the centerline of Cedar Spring Drive.

(f) Mercedes Drive - from a point 240 feet west of the centerline of Devonian Drive to the centerline of Devonian Drive.

(g) Avondale Drive - from the centerline of Leddy Drive to a point 85 feet east of the centerline of Leddy Drive.

(h) Cedar Spring Drive - from a point 125 feet west of the centerline of Devonian Drive to a point 185 feet east of the centerline of Leddy Drive.

19. Lamar Elementary School - 20 mph - 7:00 a.m. to 4:30 p.m.

(a) Kessler Avenue - from a point 120 feet east of the centerline of Midkiff Road to a point 220 feet east of the centerline of Crestview Road.

(b) Peach Street - from a point 165 feet south of the centerline of Illinois Avenue to the centerline of Kessler Avenue.

(c) Crestview Road - from a point 185 feet south of the centerline of Illinois Avenue to a point 170 feet south of the centerline of Kessler Avenue.

(d) Barkley Street - from a point 180 feet east of the centerline of Crestview Road to the centerline of Crestview Road.

20. Lee Freshman High School - 20 mph - 7:30 a.m. to 4:30 p.m.

(a) Oak Avenue - from a point 150 feet west of the centerline of Butternut Lane to a point 200 feet east of the centerline of Lincoln Street.

(b) Lincoln Street - from a point 145 feet north of the centerline of Oak Avenue to a point 145 feet north of the centerline of Magnolia Avenue.

(c) Maple Avenue - from a point 229 feet east of the centerline of Lincoln Street to the centerline of Lincoln Street.

(d) Butternut Lane - from a point 150 feet north of the centerline of Oak Avenue to a point 50 feet north of the centerline of Magnolia Avenue.

21. Midland Christian School - 20 mph - 7:30 a.m. to 4:30 p.m.

(a) Culver Drive - from a point 35 feet south of the centerline of Sinclair Avenue to a point 135 feet north of the centerline of Gulf Avenue.

(b) Gulf Avenue - from a point 190 feet east of the centerline of Culver Drive to the centerline of Culver Drive.

(c) Northrup Drive - from a point 384 feet south of the centerline of Sinclair Avenue to a point 135 feet north of the centerline of Gulf Avenue.

(d) Sinclair Avenue - from a point 158 feet east of the centerline of Culver Drive to the centerline at Northrup Drive.

22. Midland Classical Academy School - 20 m.p.h. - 7:30 a.m. to 4:00 p.m.

(a) Whitman Drive - from a point 87 feet north of the centerline of Mockingbird Lane to a point 650 feet south of the centerline of Savoy Place.

23. Midland Freshman High School - 20 mph - 7:30 a.m. to 4:30 p.m.

(a) Main Street - from a point 180 feet north of the centerline of Hicks Avenue to a point 180 feet south of the centerline of Gist Avenue.

(b) Baird Street - from the centerline of Hicks Avenue to a point 150 feet north of the centerline of Hicks Avenue.

(c) Weatherford Street - from the centerline of Hicks Avenue to a point 150 feet north of the centerline of Hicks Avenue.

(d) Hicks Avenue - from a point 200 feet west of the centerline of Main Street to a point 175 feet east of the centerline of Weatherford Street.

(e) Montgomery Avenue - from the centerline of Main Street to a point 210 feet west of the centerline of Main Street.

(f) Gist Avenue - from a point 200 feet west of the centerline of Main Street to a point 1040 feet east of the centerline of Main Street.

24. Midland High School - 20 mph - 7:00 a.m. to 4:30 p.m.

(a) Ohio Avenue - from a point 150 feet east of the centerline of San Angelo Street to the centerline of "A" Street.

(b) "C" Street - from a point 130 feet south of the centerline of Illinois Avenue to the centerline of Illinois Avenue.

(c) "D" Street - from a point 115 feet south of the centerline of Illinois

Avenue to a point 45 feet north of the centerline of Ohio Avenue;

(d) Illinois Avenue - from a point 267 feet west of the centerline of "E" Street to a point 430 feet east of the centerline of "A" Street.

(e) "A" Street - from a point 85 feet south of the centerline of Tennessee Avenue to a point 280 feet south of the centerline of Illinois Avenue.

(f) Carrizo Street - from a point 145 feet north of the centerline of Illinois Avenue to a point 145 feet south of the centerline of Illinois Avenue.

(g) Tennessee Avenue - from a point 103 feet west of the centerline of "B" Street to a point 60 feet east of the centerline of "A" Street.

25. Midland Montessori School - 20 mph - 7:30 a.m. to 4:30 p.m.

On Austin Street from a point 200 feet north of the centerline of Cuthbert Avenue to a point 80 feet south of the centerline of Bedford Avenue.

26. Pease Elementary School - 20 mph - 7:00 a.m. to 5:30 p.m.

(a) Magnolia Avenue - from a point 280 feet west of the centerline of Benton Street to a point 295 feet east of the centerline of Peterson Street.

(b) Hickory Avenue - from a point 340 feet west of the centerline of Benton Street to the centerline of Benton Street.

(c) Scharbauer Drive - from a point 335 feet west of the centerline of Benton Street to a point 290 feet east of the centerline of Peterson Street.

(d) Benton Street - from a point 215 feet north of the centerline of Scharbauer Drive to a point 290 feet east of the centerline of Peterson Street.

(e) Peterson Street - from the centerline of Scharbauer Drive to a point 200 feet north of the centerline of Magnolia Avenue.

27. Quanah Parker Elementary School - 20 mph - 7:00 a.m. to 4:30 p.m.

(a) St. Andrews Drive - from a point 150 feet west of the centerline of Casady Court to a point 140 feet west of the centerline of Norwood Street.

(b) Greenbriar Drive - from a point 150 feet south of the centerline of St. Andrews Drive to the centerline of St. Andrews Drive.

(c) Merrill Drive - from a point 150 feet west of the centerline of Norwood Street to the centerline of Norwood Street.

(d) Russell Drive - from a point 175 feet west of the centerline of Norwood Street to the centerline of Norwood Street.

(e) Norwood Street - from the centerline of St. Andrews Drive to a point 150 feet north of the centerline of Russell Drive.

28. Rusk Elementary School and Lee High School

(a) 20 mph - 7:00 a.m. to 4:30 p.m.

(1) Neely Avenue - from a point 175 feet west of the centerline of McDonald Street to a point 250 feet east of the centerline of Tarleton Street.

(2) McDonald Street - from a point 155 feet south of the centerline of Neely Avenue to a point 115 feet north of the centerline of Cimmaron Avenue.

(3) Wedgewood Street - from a point 200 feet south of the centerline of Neely Avenue to the centerline of Cimmaron Avenue.

(4) Cimmaron Avenue - from a point 205 feet west of the centerline of McDonald Street to a point 170 feet east of the centerline of Shandon Avenue.

(5) Fannin Avenue - from the centerline of McDonald Street to a point 200 feet west of the centerline of McDonald Street.

(6) Shandon Avenue - from a point 235 feet north of the centerline of Cimmaron Avenue to the centerline of Cimmaron Avenue.

(7) Imperial Avenue - from a point 235 feet north of the centerline of Cimmaron Avenue to the centerline of Cimmaron Avenue.

(8) Godfrey Street - from a point 145 feet south of the centerline of Neely Avenue to a point 158 feet north of the centerline of Rebel Drive.

(b) 20 mph - 7:00 a.m. to 4:30 p.m.

(1) Dengar Avenue - from a point 250 feet east of the centerline of Tarleton Street to the centerline of Tarleton Street.

(2) Fannin Avenue - from the centerline of Tarleton Street to a point 240 feet east of the centerline of Tarleton Street.

(3) Cimmaron Avenue - from the centerline of Tarleton Street to a point 295 feet east of the centerline of Tarleton Street.

(4) Tarleton Street - from a point 175 feet south of the centerline of Neely Avenue to a point 140 feet north of the centerline of Dengar Avenue.

29. St. Ann's School

(a) 20 mph - 7:30 a.m. to 8:30 a.m. and 3:00 p.m. to 4:00 p.m.

Illinois Avenue - from a point 195 feet west of the centerline of "N" Street to a point 175 feet east of the centerline of "M" Street.

(b) 20 mph - 7:00 a.m. to 4:00 p.m.

(1) Texas Avenue - from a point 195 feet west of the centerline of "N" Street to a point 30 feet west of the centerline of "L" Street.

(2) "N" Street - from the centerline of Illinois Avenue to a point 180 feet south of the centerline of Texas Avenue.

(3) "M" Street - from the centerline of Illinois Avenue to a point 180 feet south of the centerline of Texas Avenue.

30. Sam Houston Elementary School - 20 mph - 7:00 a.m. to 4:30 p.m.

(a) Louisiana Avenue - from a point 540 feet east of the centerline of Garfield Street to a point 40 feet east of the centerline of "L" Street.

(b) "L" Street - from a point 238 feet south of the centerline of Louisiana Avenue to a point 150 feet north of the centerline of Louisiana Avenue.

(e) "N" Street - from a point 315 feet south of the centerline of Louisiana Avenue to a point 750 feet north of the centerline of Louisiana Avenue.

(f) "M" Street - from a point 250 feet south of the centerline of Louisiana Avenue to the centerline of Louisiana Avenue.

31. San Jacinto Junior High School - 20 mph - 7:30 a.m. to 4:30 p.m.

(a) Community Lane - from a point 160 feet east of the centerline of Garfield Street to a point 120 feet east of the centerline of "N" Street.

(b) Douglas Avenue - from the centerline of "N" Street to a point 190 feet east of the centerline of "N" Street.

(c) Hodges Street - from the centerline of Community Lane to a point 225 feet north of the centerline of Community Lane.

(d) "N" Street - from a point 340 feet north of the centerline of Community Lane to a point 170 feet south of the centerline of Douglas Avenue.

32. Santa Rita Elementary School - 20 mph - 7:00 a.m. to 4:30 p.m.

Whitman Drive - from a point 760 feet north of the centerline of Bluebird Lane and continuing north along Whitman Drive for 920 feet.

33. Scharbauer Elementary School - 20 mph - 7:00 a.m. to 4:30 p.m.

(a) Crowley Boulevard - from a point 250 feet south of the centerline of Hereford Boulevard to a point 575 feet north of the centerline of

Hereford Boulevard.

(b) Hereford Boulevard - from a point 250 feet south of the centerline of Homestead Boulevard to a point 136 feet north of the centerline of Crowley Boulevard.

(e) Homestead Boulevard - from the centerline of Hereford Boulevard to a point 425 feet west of the centerline of Hereford Boulevard.

34. South Elementary School - 20 mph - 7:00 a.m. to 4:30 p.m.

(a) Dakota Avenue - from a point 155 feet west of the centerline of Colorado Street to a point 240 feet east of the centerline of Main Street.

(b) New Jersey Avenue - from a point 205 feet west of the centerline of Colorado Street to a point 235 feet east of the centerline of Main Street.

(c) Colorado Street - from a point 145 feet south of the centerline of New Jersey Avenue to a point 230 feet north of the centerline of Dakota Avenue.

(d) Loraine Street - from a point 230 feet south of the centerline of New Jersey Avenue to the centerline of New Jersey Avenue.

(e) Loraine Street - from the centerline of Dakota Avenue to a point 175 feet north of the centerline of Dakota Avenue.

(f) Main Street - from a point 120 feet south of the centerline of New Jersey Avenue to a point 200 feet north of the centerline of Dakota Avenue.

35. Travis Elementary School - 20 mph - 7:00 a.m. to 4:30 p.m.

(a) Gist Avenue - from a point 190 feet west of the centerline of Marshall Street to a point 170 feet east of the centerline of Atlanta Street.

(b) Marshall Street - from the centerline of Gist Avenue to a point 205 feet north of the centerline of Gist Avenue.

(c) Jefferson Street - from the centerline of Gist Avenue to a point 215 feet north of the centerline of Gist Avenue.

(d) Atlanta Street - from the centerline of Gist Avenue to a point 190 feet north of the centerline of Gist Avenue.

36. Trinity Private School

(a) 25 mph - 7:30 a.m. to 8:30 a.m.; and 2:45 p.m. to 4:45 p.m.

Wadley Avenue - from a point 150 feet west of the centerline of Godfrey Street to the centerline of Tarleton Street.

(b) 20 mph - 7:30 a.m. to 8:30 a.m.; and 2:45 p.m. to 4:45 p.m.

Godfrey Street - from a point 150 feet south of the centerline of Wadley Avenue to a point 265 feet south of the centerline of Trinity Drive.

Jordan Avenue - from a point 150 feet south of the centerline of Wadley Avenue to the centerline of Wadley Avenue.

37. Washington Elementary School - 20 mph - 7:00 a.m. to 5:30 p.m.

(a) Wall Street - from a point 150 feet west of the centerline of Carver Street to the centerline of Calhoun Street.

(b) Tilden Street - from a point 155 feet north of the centerline of Wall Street to a point 100 feet north of the centerline of Indiana Avenue.

(c) Donald Street - from a point 100 feet north of the centerline of Wall Street to the centerline of Wall Street.

(d) Lincoln Street – from a point 100 feet north of the centerline of Wall Street to the centerline of Wall Street.

(e) Jackson Street – from a point 100 feet north of centerline of Wall Street to the centerline of Wall Street.

38. West Elementary School - 20 mph - 7:00 a.m. to 4:30 p.m.

(a) Missouri Avenue - from a point 165 feet west of the centerline of Garfield Street to a point 255 feet east of the centerline of "N" Street.

(b) Indiana Avenue - from a point 265 feet west of the centerline of Garfield Street to a point 550 feet east of the centerline of "N" Street.

(c) "N" Street - from a point 200 feet north of the centerline of Missouri Avenue to a point 215 feet south of the centerline of Indiana Avenue.

(d) "O" Street - from a point 165 feet north of the centerline of Missouri Avenue to the centerline of Missouri Avenue.

SECTION TWO. 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. That Ordinance No. 8920 is hereby expressly repealed; and 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. That the repeal of the ordinance or parts of ordinances effectuated by the enactment of this ordinance shall not be construed as abating any actions now pending under or by virtue of such ordinances or as discontinuing, abating, modifying, or altering any penalty accruing 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 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 hundred dollars ($200.00).

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:

_____
Gary Saunders, Transportation Manager

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

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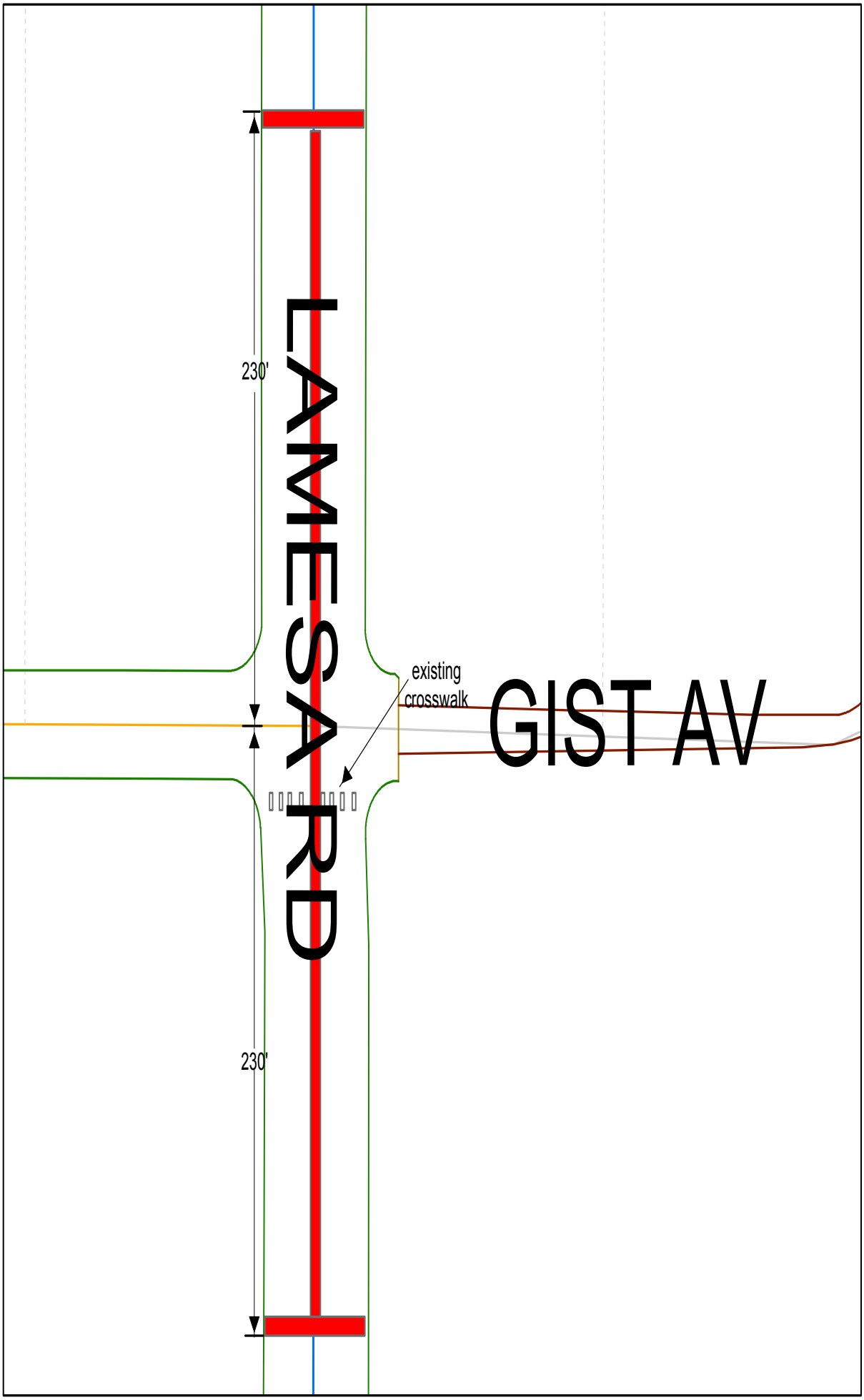

TRANSPORTATION DIVISION

Travis Elemtary School

Proposed 30 M.P.H.
School Zone
7:00 to 9:00 am
and
2:30 to 4:30 pm

N

MIDLAND Transportation

Map by TC 6/27/12

City of Midland

Office Memorandum

DATE: July 5, 2012

TO: The Honorable Mayor and City Council Members

FROM: Keith Stretcher, City Attorney

SUBJECT: Appraisers for City Owned Property

The proposed resolution authorizes the City Manager to negotiate and execute contracts to employ appraisers to appraise certain City owned property. This item has been placed on your executive session agenda so that you may discuss it in more detail.

If you have any questions or if I may be of any assistance, do not hesitate to contact me.

Keith Stretcher

KS/lo

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RESOLUTION NO.

RESOLUTION AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE CONTRACTS WITH QUALIFIED FIRMS FOR APPRAISAL SERVICES REGARDING THE VALUATION OF TWO (2) CITY OF MIDLAND-OWNED PROPERTIES LOCATED EAST OF THE MIDLAND CENTER; AND FURTHER DESCRIBED AS (1) 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; AND (2) 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

WHEREAS, the City Council finds it to be in the public interest to authorize the City Manager to negotiate and execute contracts with qualified firms for appraisal services and appraisal review services ("Professional Services") regarding the valuation of the following Two (2) City of Midland-owned properties located east of the Midland Center:

(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.

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

THAT the City Manager is hereby authorized and directed to negotiate and execute, on behalf of the City of Midland, contracts with qualified firms for appraisal services and appraisal review services ("Professional Services") regarding the valuation of the above-referenced properties.

On motion of Council member _____, seconded by Council member

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

Council members voting "AYE":

Council members voting "NAY":

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Courtney Sharp, City Manager

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

City of Midland

City Secretary's Office

Interoffice Memorandum

Date: July 5, 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 July 10, 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

July 10, 2012

AIRPORT PLANNING AND DEVELOPMENT BOARD

(Advisory)
(Membership-10; Terms - 3 Years expiring 3-3-4.)

	Appt Date	Term Expires	Eligibility Expires
Ronald Schwisow	09/06	Sept 30 2012	Sept 30 2012
Herbert Blankinship	09/06	Sept 30 2012	Sept 30 2012
Jerry Walton	11/09	Sept 30 2012	Sept 30 2015
Mike Owen	10/07	Sept 30 2013	Sept 30 2013
Gregory F. Baiano	09/10	Sept 30 2013	Sept 30 2016
John T. Echols	09/10	Sept 30 2013	Sept 30 2016
Dallas L. Smith	09/10	Sept 30 2013	Sept 30 2016
Earl Erdmann, Chairman	09/08	Sept 30 2014	Sept 30 2014
Brooks Smith	11/11	Sept 30 2014	Sept 30 2017
Don “Woody” Woodward	11/11	Sept 30 2014	Sept 30 2017

Ex-Officio members are Harry Spannaus, the City Manager and the City Attorney. The Secretary is the Director of Aviation.

ANIMAL SERVICES ADVISORY COMMISSION

(Advisory)
(Membership - 6; Terms - 4 Years)

	Appt Date	Term Expires	Eligibility Expires
Dr. Tom Green (Veterinarian)	10/07*	Sept 30 2013	Sept 30 2017
Kelly Spencer	09/09	Sept 30 2013	Sept 30 2017
Laura Hollifield	09/08*	Sept 30 2013	Sept 30 2017
Justin Petty	04/07*	Sept 30 2013	Sept 30 2017
Tony Carrillo	09/09	Sept 30 2013	Sept 30 2017
Paul O’Neill	09/09	Sept 30 2013	Sept 30 2017

BUILDING CODES REVIEW COMMITTEE

(Membership – 9; Terms – 2 Years)

	Appt Date	Term Expires	Eligibility Expires
James Riggen	12/09	Dec 31 2013	Dec 31 2013
Chris Repman	12/09	Dec 31 2013	Dec 31 2013
John Cooper	12/09	Dec 31 2013	Dec 31 2013
Bill Routh	12/09	Dec 31 2013	Dec 31 2013
Tom Woodruff	12/09	Dec 31 2013	Dec 31 2013
Ron Ainsworth	12/09	Dec 31 2013	Dec 31 2013
Walter Pate	12/09	Dec 31 2013	Dec 31 2013
Robert Harrington	12/09	Dec 31 2013	Dec 31 2013
Jerry Morales	12/09	Dec 31 2013	Dec 31 2013

* **Indicates appointment to an unexpired term.**

CITY DEVELOPMENT ADVISORY COMMITTEE

(Advisory)
(Membership - 5; Terms - 2 Years expiring 2 even & 3 odd)

	Appt Date	Term Expires	Eligibility Expires
Vicky Hailey	09/10	Sept 30 2012	Sept 30 2014
Reggie Lawrence	09/10	Sept 30 2012	Sept 30 2014
Lena Margita	10/09	Sept 30 2013	Sept 30 2013
Alonda Massey	11/11	Sept 30 2013	Sept 30 2015
Tim Bryson	11/11	Sept 30 2013	Sept 30 2015

CONSTRUCTION BOARD OF ADJUSTMENTS AND APPEALS

(Decision Making)
(Membership - 7; Terms - 4 Years expiring 2-2-2-1)
To sunset December 31, 2011

	Appt Date	Term Expires	Eligibility Expires
Joe Molina, Jr.	**09/03**	**Sept 30 2011**	**Sept 30 2011**
James W. Riggen (Architect)	**09/99**	**Sept 30 2011**	**Sept 30 2011**
Don Woodward (At Large)	11/11*	Sept 30 2012	Sept 30 2020
Richard D. Dunham	10/05	Sept 30 2013	Sept 30 2013
Greg Turner	03/11*	Sept 30 2013	Sept 30 2021
Chris Repman	10/07*	Sept 30 2014	Sept 30 2018
Jay K. Bradford	09/10	Sept 30 2014	Sept 30 2018

ALTERNATES:

Vacancy	**Sept 30 2007**	
Vacancy	**Sept 30 2007**	

HOTEL/MOTEL TAX ADVISORY BOARD

(Advisory)
(Membership - 7; Terms - 2 Years Staggered)

	Appt Date	Term Expires	Eligibility Expires
Tyler Wolfe	04/11*	Sept 30 2012	Sept 30 2012
Jon S. Blair	02/09*	Sept 30 2012	Sept 30 2014
Karmen Hendrix Bryant	02/12*	Sept 30 2013	Sept 30 2017
David Baur	09/10	Sept 30 2013	Sept 30 2014
Lisa Grissom	9/09	Sept 30 2013	Sept 30 2013
Steve Jones	02/09*	Sept 30 2013	Sept 30 2013
Alex Singh-Hotel/Motel Assn. Rep.	09/09	Dec 31 2013	Assn. Appt.
Vicky Hailey (Liaison Officer)			

* **Indicates appointment to an unexpired term.**

HOUSING AUTHORITY COMMISSION

(Membership - 5; Terms - 2 Years expiring 2 even & 3 odd.)

	Appt Date	Term Expires	Eligibility Expires
Rosie Gransberry	06/08*	Oct 2012	Oct 2012
Norma Duran	11/08*	Oct 2012	Oct 2014
Gregory Maes	11/11	Oct 2013	Oct 2015
Carla Repman, Vice Chairman	09/09	Oct 2013	Oct 2013
James A. Blischke	01/10	Oct 2013	Oct 2013
ALTERNATES:			
Dennis Bade	11/11	Oct 2013	Oct 2015

JOINT ECONOMIC DEVELOPMENT TASK FORCE

(Ad Hoc)

	Appt. Date
(Midland)	
Wes Perry	01/08
LuAnn Morgan	12/00
Keith Stretcher	12/00
Tommy Hudson	08/07
John Breier	01/04
(Odessa)	
Larry Melton	08/01
Jim Morris	11/00
Richard Morton	01/02
Joel Roberts	11/00
Neil McDonald	11/00

MANAGED COMPETITION COMMITTEE

(Ad Hoc)

	Appt. Date
Jon Morgan	01/02
Wes Perry	01/02
Roy Nelson	01/02
Hugh “Andy” Shaffer	12/03
Scott Dufford	01/02
Ted Tipton	04/04
Kevin Sparks	11/07
Scott Lovett	04/10
P. Lourcey Sams	04/10

Ex-Officio members are the Mayor and the City Manager.

- **Indicates appointment to an unexpired term.**

MIDLAND CENTER ADVISORY BOARD

(Advisory & Decision Making)
(Membership - 9; Terms - 3 Years expiring 3-2-2.)

		Appt Date	Term Expires	Eligibility Expires
Brent Blackburn	(City)	09/09*	Sept 30 2013	Sept 30 2016
Charles Spence	(CC)	11/07	Sept 30 2013	N/A
Lorri Lyon West	(City)	09/10	Sept 30 2013	Sept 30 2016
Patricia S. Blackwell	(City)	10/07*	Sept 30 2014	Sept 30 2014
Paula Mitchell	(City)	09/08	Sept 30 2014	Sept 30 2014
Greg Turner	(CC)	12/11	Sept 30 2014	N/A
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)

	Appt Date	Term Expires
Chad Clark	3/12*	Dec 31 2013

MIDLAND DEVELOPMENT CORPORATION

(Membership - 5; Terms -3 Years - Staggered)

	Appt Date	Term Expires	Eligibility Expires
Michael Trost	02/11*	Jan 14 2013	Jan 14 2019
Cary J. Love	12/09	Jan 14 2013	Jan 14 2016
Gary Douglas	11/11*	Jan 14 2013	Jan 14 2019
Laura Roman	01/08	Jan 14 2014	Jan 14 2014
Robert Rendall, Chairman	01/09*	Jan 14 2014	Jan 14 2017

- **Indicates appointment to an unexpired term.**

MIDLAND FRESH WATER SUPPLY DISTRICT #1

(Ad Hoc)
(3 Non Voting Members)

	Appt Date
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)

	Appt Date	Eligibility Term Expires	Expires
Ken Marks, Vice President	**10/07**	**Nov 2011**	**Nov 2011**
James G. Smith	**12/07**	**Nov 2011**	**Nov 2011**
Mike Thompson	11/11	Nov 2013	Nov 2015
Tim Bryson	11/11	Nov 2013	Nov 2015
Wesley D. Bownds	02/09*	Nov 2013	Nov 2013
John James	08/08*	Nov 2013	Nov 2013
Rick Davis (MISD Resp.)	10/10*	Nov 2013	Nov 2015

MIDLAND HIGHER EDUCATION FACILITIES CORPORATION

(Membership - 7; Terms - 2 Years Staggered)

	Appt Date	Term Expires	Eligibility Expires
Vacancy		**Jan 1 2007**	
Vacancy		**Jan 1 2007**	
Vacancy		**Jan 1 2007**	
Vacancy		**Jan 1 2009**	
Cathy Oestmann	**11/05***	**Jan 1 2010**	**Jan 1 2010**
Steve Jones	**09/08***	**Jan 1 2010**	**Jan 1 2012**
Curt Kamradt	**11/05***	**Jan 1 2012**	**Jan 1 2012**

- **Indicates appointment to an unexpired term.**

MIDLAND HOUSING FINANCE CORPORATION

(Decision Making)
(Membership - 5; Terms - 2 Years - Staggered)

	Appt Date	Term Expires	Eligibility Expires
Vacancy - (Damon L. Blakeley)	**07/07***	**Sept 30 2010**	
Adrianne Valencia	**10/07**	**Sept 30 2011**	**Sept 30 2011**
Melissa Wicker	**10/07**	**Sept 30 2011**	**Sept 30 2011**
Jerry Morales (Liaison Officer)	10/08	Sept 30 2012	Sept 30 2012
Nathan Miller	11/11*	Sept 30 2012	Sept 30 2016

MIDLAND MUNICIPAL MANAGEMENT DISTRICT BOARD

(Ad Hoc)

	Appt. Date
Vacancy	
Richard Hatchett	11/08
W. L. “Scooter” Brown	09/04
Ken Burgess	09/04
Jim Hightower	11/08
Ted H. Jones	09/04
Mitch Malouf	11/08
Christi Newton	09/04
Dan Rush	09/04

MIDLAND-ODESSA URBAN TRANSIT DISTRICT BOARD

(Decision Making)
(Membership - 6; Terms - 2 Years Staggered)

	Appt Date	Term Expires	Eligibility Expires
Willie Barber	09/08	Sept 30 2012	Sept 30 2012
Raymond McCarthy	09/08	Sept 30 2012	Sept 30 2012
Michael Trost	09/08	Sept 30 2012	Sept 30 2012
John H. James	09/09	Sept 30 2013	Sept 30 2013
Karen York	06/09*	Sept 30 2013	Sept 30 2013
Guy McKenize	03/11*	Sept 30 2013	Sept 30 2015

- **Indicates appointment to an unexpired term.**

OIL AND GAS ADVISORY COMMITTEE

(Advisory)
(Membership – 5; Terms – 3 Years expiring 2-2-1)

	Appt Date	Term Expires	Eligibility Expires
Richard D. Dunham (Realtor/Petro Eng.)	01/10	Sept 30 2013	Sept 30 2016
D. Patrick Darden (Petroleum Eng.)	02/10	Sept 30 2012	Sept 30 2015
Don Eubank (Drilling Eng.)	04/10	Sept 30 2012	Sept 30 2015
Paul Brown	11/11	Sept 30 2014	Sept 30 2017
David Rosen	11/11	Sept 30 2014	Sept 30 2017

PARKS AND RECREATION COMMISSION

(Advisory)
(Membership - 9; Terms - 3 Years expiring 3-3-3.)

	Appt Date	Term Expires	Eligibility Expires
Berry Simpson	**09/10***	**Sept 30 2011**	**Sept 30 2017**
Amanda McCann	11/11*	Sept 30 2012	Sept 30 2018
David Ham	09/06	Sept 30 2012	Sept 30 2012
Charles A. Spence	01/10*	Sept 30 2013	Sept 30 2016
Susan Nichols	02/06*	Sept 30 2013	Sept 30 2013
Eric L. West	10/07	Sept 30 2013	Sept 30 2013
Kenny Harper	03/12*	Sept 30 2013	Sept 30 2019
P. Lourcey Sams	09/08	Sept 30 2014	Sept 30 2014
Tina Corbett	09/08	Sept 30 2014	Sept 30 2014

PERMIAN BASIN AIRPORT BOARD

(Advisory)
(Membership - 30; Terms - 1 year.)

	Appt. Date	Term Expires
10 Members of the Airport Planning and Development Board		
Bob Forrest (Carlsbad, NM)	**10/04**	**Sept 30 2010**
Larry Shed (Hobbs, NM)	**10/01**	**Sept 30 2010**
Larry Gill (Abilene)	**10/10**	**Sept 30 2011**
Isabelle Blanchard (Pecos)	**10/10**	**Sept 30 2011**
David Harrell (Snyder)	**10/07**	**Sept 30 2011**
Elvin Brownlee III (Andrews)	12/10*	Sept 30 2012
Jim Little (Big Spring)	09/03	Sept 30 2012
David Hardwick (Ft. Stockton)	10/07	Sept 30 2012
Don Bethel (Lamesa)	02/91	Sept 30 2012
Henry Cutbirth (Monahans)	09/05	Sept 30 2012

- **Indicates appointment to an unexpired term.**

PERMIAN BASIN AIRPORT BOARD CON'T

	Appt. Date	Term Expires
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)

	Appt Date	Term Expires	Eligibility Expires
Janet R. Pritchett (City)	**05/09***	**June 2012**	**June 2014**
Larry Edgerton	07/10*	June 2013	June 2015

PERSONNEL BOARD OF APPEALS

(Decision Making)
(Membership - 3; No designated terms.)

	Appt. Date
John James	03/08
Hugh A. "Andy" Shaffer	09/05
Michael Trost	01/10

- **Indicates appointment to an unexpired term.**

PLANNING AND ZONING COMMISSION

(Advisory & Decision Making)
(Membership - 9; Terms - 3 Years)

	Appt Date	Term Expires	Eligibility Expires
Becky Ferguson, Chairman	**03/04***	**Sept 30 2011**	**Sept 30 2011**
Kevin Wilton	09/08*	Sept 30 2012	Sept 30 2015
Bill Woodruff	02/05*	Sept 30 2012	Sept 30 2012
Royce Watkins	02/08*	Sept 30 2012	Sept 30 2015
Karen York	01/10*	Sept 30 2012	Sept 30 2018
Jane Wolf	03/09*	Sept 30 2013	Sept 30 2016
Cindy Lanning	09/10	Sept 30 2013	Sept 30 2016
Jay Norris	11/11	Sept 30 2014	Sept 30 2017
Galen Gatten, Vice Chairman	09/08	Sept 30 2014	Sept 30 2014
ALTERNATES:			
Tony Carrillo	11/11	Sept 30 2014	Sept 30 2017

TAX INCREMENT REINVESTMENT ZONE BOARD

(Decision Making)
(Membership - 12; Terms - 2 Years, or 3 Years if appointed after 3/1/07)

	Appt Date	Term Expires	Eligibility Expires
Neil Florer (College)	**07/01**	**Mar 20 2009**	**Mar 20 2009**
Dan Rush (City)	**07/01**	**Mar 20 2010**	**Mar 20 2010**
Mark T. Wellen (City), Vice Chairman	**07/01**	**Mar 20 2010**	**Mar 20 2010**
Jay Reynolds (Hospital)	**03/02**	**Mar 20 2010**	**Mar 20 2010**
Ralph Way (College)	**07/01**	**Mar 20 2010**	**Mar 20 2010**
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.)

	Appt Date	Term Expires	Eligibility Expires
Trudi Edwards	**10/07**	**Sept 30 2011**	**Sept 30 2011**
Manny Ribera	**10/07**	**Sept 30 2011**	**Sept 30 2011**
Todd Byars	02/08*	Sept 30 2012	Sept 30 2014
Ken Morgan	01/10*	Sept 30 2012	Sept 30 2014
Carla Repman	01/10*	Sept 30 2013	Sept 30 2015

ALTERNATES: (not applicable to Airport Zoning)

Vacancy		**Sept 30 2006**	
Vacancy		**Sept 30 2009**	
Annabel Holguin	11/11	Sept 30 2013	Sept 30 2015
Greg Turner	11/11	Sept 30 2013	Sept 30 2015

* **Indicates appointment to an unexpired term.**