

CITY OF MIDLAND, TEXAS
BRIEFING SESSION AGENDA
July 24, 2012 - 9:30 A.M.
Council Chamber - City Hall
300 North Loraine
Midland, Texas

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

1. Receive an update from Craig Farmer, Project Consultant of MOTOR MPO, regarding the State Highway 191 Corridor and Access Management Study.

AGENDA FOR CITY COUNCIL MEETING
July 24, 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 Savior'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. Presentation of a Proclamation for National Night Out.

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. Special Meeting of July 9, 2012.
 - b. Regular Meeting of July 10, 2012
6. Consider a resolution recording a vote on a proposal to consider an Ad Valorem Tax Rate for the Fiscal Year 2012 - 2013 and to establish dates to hold public hearings on the proposed tax rate; and to establish dates when there will be a record vote on the tax rate; and authorizing and directing the City Manager to post all appropriate notices. (FINANCE) (2012 - 224)

7. Consider a resolution approving plans and specifications and authorizing advertisement for bids for the construction of a fence around the commons area at the Scharbauer Sports Complex. (GENERAL SERVICES) (2012 - 225)
8. Consider a resolution authorizing the execution of a contract with Reece Albert, Incorporated, for the 2011-2012 Street Improvement Mill/Overlay Project at a cost of \$2,253,322.65; and authorizing an additional ten percent (10%) contingency fee bringing the total funds available to \$2,478,655.00; and allocating and appropriating funds. (GENERAL SERVICES) (2012 - 226)
9. Consider a resolution authorizing the advertisement for bids for the sale of real property described as being Lots three A (3A), four A (4A) and five A (5A), Block three (3), Midland International Airport Industrial Park, an Addition to the City of Midland, Midland County, Texas; accepting an appraisal setting the fair market value of the property at \$435,000.00; said property to be developed into hotel facilities. (GENERAL SERVICES) (2012 - 227)
10. Consider a resolution authorizing the issuance of a Request for Proposals for the replacement of the City-Wide Public Safety and Public Works Radio System for the City of Midland, Texas. (GENERAL SERVICES) (2012 - 228)
11. Consider a resolution authorizing the execution of a Land Lease Agreement with COG Realty LLC for Hangar Development located on a 1.35 acre tract of land located in Lot 4B, Block 11, Midland International Airport, Industrial Park Addition, Section 6, an addition to the City of Midland, Midland County, Texas. (AIRPORTS) (2012 - 229)
12. Consider a resolution authorizing the execution of an Airport Fueling Agreement with COG Realty LLC in order to store and dispense all forms of aviation propellants and fuels from fixed dispensers only to COG Realty LLC's aircraft at the Midland International Airport, Midland, Midland County, Texas. (AIRPORTS) (2012 - 230)
13. Consider a resolution authorizing the City of Midland to accept \$21,500.00 in grant funds from the Permian Basin Area Foundation for improvements to the porch and decking at the Scarborough Linebery House; and appropriating funds. (COMMUNITY SERVICES) (2012 - 231)
14. Consider a resolution authorizing a reallocation of certain Community Development Block Grant Funds from previous program years to the Community Development Block Grant Fund Program Year 2012-2013 in the amount of \$22,326.00. (DEVELOPMENT SERVICES) (2012 - 232)
15. Consider a resolution authorizing the adoption of the City of Midland's 2012-2013 Action Plan to the Consolidated Plan for Community Development and Housing Funds for Fiscal Years 2011-2015, (October 2010-September 2015);

the Consolidated Plan was approved by Resolution Number 2010-197; and authorizing the execution of an application for Community Development Block Grant Funds. (DEVELOPMENT SERVICES) (2012 - 233)

16. Consider a resolution appropriating interest earned in the amount of \$58.00 on the 2009 Justice Assistance Grant Funds; this grant was acquired for the purchase of needed equipment for the Midland Police Department. (POLICE) (2012 - 234)
17. Consider a resolution authorizing the advertisement for bids for the sale of property owned by the City of Midland described as a Troxler 4640 Nuclear Density Gauge; and setting a minimum bid at \$1,000.00. (ENGINEERING SERVICES) (2012 - 235)
18. Consider a resolution authorizing the office of the City Attorney to file all documents and make all necessary appearances to represent the City of Midland in a lawsuit styled, Shayla Haynes, individually and as next friend of Jataisha Woodard, a minor child v. City of Midland, Texas, in the County Court at Law, Midland County, Texas; Cause No. CC16654; and ratifying all actions taken to date by the office of the City Attorney as part of settlement negotiations. (CITY ATTORNEY'S OFFICE) (2012 - 236)
19. Consider a resolution of the City of Midland, Texas, denying Atmos Energy Corporation - West Texas Division's ("Atmos West Texas") requested rate change; requiring the company to reimburse the city's reasonable ratemaking expenses; finding that the meeting at which this resolution is passed is open to the public as required by law; requiring notice of this resolution to the company and the City's legal counsel. (CITY MANAGER'S OFFICE) (2012 - 237)

SECOND READINGS

20. 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 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)
21. Consider an ordinance on second reading changing the zoning classification by amending Chapter One, Title XI, of the City Code of Midland, Texas, by permitting Lots 1-5, 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)

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

PUBLIC HEARINGS

25. At approximately 10:30 a.m. hold a public hearing and consider an ordinance changing the zoning use classification of the property described as the north 125 feet of the east half of Block 29 and the adjacent vacated 0.032-acre portion of West Louisiana Avenue right-of-way, Homestead Addition, City and County of Midland, Texas (Generally located on the southwest corner of the intersection of West Louisiana Avenue and North Colorado Street), which is presently zoned C-1, Central Area District, by permitting said property to be used under a Specific Use Permit with Term for the sale of all alcoholic beverages in a restaurant for on-premises consumption; making said permit subject to certain conditions and restrictions contained herein; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2,000.00); and ordering publication. (DEVELOPMENT SERVICES) (9043)
26. At approximately 10:33 a.m. hold a public hearing and consider an ordinance changing the zoning use classification of the property described as Lot 1A, Block 1, Alldredge Gardens Addition, Section 2, City and County of Midland, Texas (Generally located on the east side of Fairgrounds Road at its intersection with Wadley Avenue), which is presently zoned LR-3, Local Retail District, by permitting said property to be used under a Specific Use Permit with Term for the sale of all alcoholic beverages in a restaurant for on-premises consumption; making said permit subject to certain conditions and restrictions contained herein; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2,000.00); and ordering publication. (DEVELOPMENT SERVICES) (9044)
27. At approximately 10:36 a.m. hold a public hearing and consider an ordinance of the City of Midland, Texas, amending the Midland Comprehensive Plan 2025 as authorized by Chapter 213 of the Texas Local Government Code; said Comprehensive Plan illustrating the future development of the City of Midland; providing a savings and severability clause; and providing an effective date. (DEVELOPMENT SERVICES) (9045)

DEVELOPMENT SERVICES

28. Consider an ordinance amending Title VIII, "Food Establishments, Health and General Sanitation", Chapter 6, "Garbage, Trash and Rubbish," Section 18, "Accumulation of Stagnant Water, Filth, Weeds, Brush, and Debris on Lots" Subsection A "Prohibited Accumulations" Paragraph 5 of the Midland City Code so as to modify the term "debris" and adding a new Paragraph 6 so as to create presumptions as to ownership, possession and occupying; and amending Title VIII, "Food Establishments, Health and General Sanitation", Chapter 6, "Garbage, Trash and Rubbish," Section 18, "Accumulation of Stagnant Water,

Filth, Weeds, Brush, and Debris on Lots” Subsection “B” “Affirmative Defenses” so as to establish affirmative defenses to prosecution and subsection “C” “Penalty” of the City Code of Midland, Texas, containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of five hundred dollars (\$500.00); and ordering publication. (DEVELOPMENT SERVICES) (9046)

MISCELLANEOUS

29. Consider an ordinance approving a Promotional Agreement between the Midland Tax Increment Reinvestment Zone No. 1 and the Downtown Midland Management District; and approving a grant of \$50,000.00 from the Midland Tax Increment Reinvestment Zone No. 1 to the Downtown Midland Management District pursuant to the Promotional Agreement. (DEVELOPMENT SERVICES) (9047)
30. Consider a resolution authorizing the Mayor to negotiate and execute a Texas Local Government Code Chapter 380 Economic Development Agreement between the City of Midland and the Tax Increment Reinvestment Zone No. 1 (“TIRZ”) regarding the TIRZ purchasing City-owned property described as being approximately 0.884 acres, Block 053, Lots 013 through 023, Original Town Addition, recorded in Volume 0858, Page 0111; and/or property described as being approximately 0.886 acres, Block 053, Lots 1 through 8 and 9 (N8 and W75), and the E65 of Lots 9 through 12, Original Town Addition, recorded in Volume 0649, Page 0762, all located in Midland, Midland County, Texas; and authorizing the execution of all necessary documents and legal instruments related thereto. (City Manager's Office) (2012 - 238)
31. Consider a resolution authorizing the Mayor to negotiate and execute an Economic Development Agreement between the City of Midland and the Midland Development Corporation for construction of a parking facility and related infrastructure to be located on property described as being approximately 0.884 acres, Block 053, Lots 013 through 023, Original Town Addition, recorded in Volume 0858, Page 0111; or on property described as being approximately 0.886 acres, Block 053, Lots 1 through 8 and 9 (N8 and W75), and the E65 of Lots 9 through 12, Original Town Addition, recorded in Volume 0649, Page 0762, all located in Midland, Midland County, Texas, as authorized by Chapter 501 of the Texas Local Government Code. (City Manager's Office) (2012 - 239)
32. Consider a motion making appointments to various City of Midland Boards and Commissions.

EXECUTIVE SESSION

33. 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 551.071, Consultation with the City Attorney
 - b.1. Discuss with the City Attorney and Attorney(s) with the law firm of Cotton, Bledsoe, Tighe, and Dawson, litigation styled in Re: Heritage Consolidated, LLC, Case No. 10-36484-hdh, Chapter 11, Jointly Administered, in the United States Bankruptcy Court, Northern District of Texas, Dallas Division.
- c. Section 551.072 Deliberation Regarding Real Property
 - c.1. Discuss the sale, lease and value of two City of Midland-owned properties located east of the Midland Center described as:
 - (i) 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) 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
July 09, 2012**

The City Council convened in a Special Session in the Council Chamber, City Hall, Midland, Texas, at 9:00 a.m. on July 09, 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).

Council Members absent: None.

1. Consider a resolution authorizing the execution of Commercial Hangar Lease Agreement between Midland Development Corporation and the City of Midland, Texas. (AIRPORTS)

RESOLUTION NO. 2012 - 208

RESOLUTION AUTHORIZING THE EXECUTION OF A LEASE AGREEMENT WITH THE MIDLAND DEVELOPMENT CORPORATION REGARDING CERTAIN REAL PROPERTY AT MIDLAND INTERNATIONAL AIRPORT AND DESCRIBED AS HANGARS S-11A AND S-11B, AND TRACTS 4-A AND 4-B, LOCATED IN LOT 1, BLOCK 13, INDUSTRIAL PARK REGIONAL AIR TERMINAL, UNIT 12, MIDLAND, MIDLAND COUNTY, TEXAS

Council Member Sparks moved to adopt Resolution No. 2012 - 208; 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.

2. Consider a resolution authorizing the execution of Commercial Land Lease Agreement between XCOR Aerospace and the City of Midland, Texas. (AIRPORTS)

RESOLUTION NO. 2012 - 209

RESOLUTION AUTHORIZING THE EXECUTION OF A LEASE AGREEMENT BETWEEN THE CITY OF MIDLAND AND XCOR AEROSPACE, INC. REGARDING REAL PROPERTY LOCATED AT MIDLAND INTERNATIONAL AIRPORT AND DESCRIBED AS APPROXIMATELY 22,500 SQUARE FEET OF BUNKER SPACE

Council Member Trost moved to adopt Resolution No. 2012 - 209; 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.

3. Consider a resolution approving an Economic Development Agreement Between the Midland Development Corporation (MDC) and XCOR Aerospace, Inc. (XCOR). (CITY ATTORNEY'S OFFICE)

RESOLUTION NO. 2012 - 210

RESOLUTION APPROVING AN ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE MIDLAND DEVELOPMENT CORPORATION AND XCOR

AEROSPACE, INC., AS AUTHORIZED BY CHAPTER 501 OF THE TEXAS LOCAL GOVERNMENT CODE

Council Member Hailey moved to adopt Resolution No. 2012 - 210; 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.

4. Consider a resolution approving a Sublease Agreement between the Midland Development Corporation (MDC) and XCOR Aerospace, Inc. (XCOR). (CITY ATTORNEY'S OFFICE)

RESOLUTION NO. 2012 - 211

RESOLUTION APPROVING A SUBLEASE AGREEMENT BETWEEN THE MIDLAND DEVELOPMENT CORPORATION AND XCOR AEROSPACE, INC. REGARDING CERTAIN REAL PROPERTY LOCATED AT MIDLAND INTERNATIONAL AIRPORT AND DESCRIBED AS HANGARS S-11A AND S-11B, AND TRACTS 4-A AND 4-B, LOCATED IN LOT 1, BLOCK 13, INDUSTRIAL PARK REGIONAL AIR TERMINAL, UNIT 12, MIDLAND, MIDLAND COUNTY, TEXAS

Council Member Morales moved to adopt Resolution No. 2012 - 211; 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.

Mayor Perry announced that the meeting would reconvene at 11:00 a.m. at the AMI Hangar at the Midland International Airport for a press conference. He recessed the meeting at 9:05 a.m.

Mayor Perry reconvened the meeting at the AMI Hangar at the Midland International Airport at approximately 11:00 a.m. The announcement was made that XCOR would be moving their headquarters to Midland, Texas. MDC Chairman Laura Roman, Texas State Representative Tom Craddick, Governor Rick Perry, Mayor Wes Perry, and MDC Board Member Robert Rendall spoke and welcomed XCOR to Midland. President and Co-Founder of XCOR Jeff Greason and Chief Operating Officer Andrew Nelson made introductory comments and Former NASA Space Shuttle Commander Richard Searfross was introduced as XCOR's Chief Test Pilot. The Lynx model was revealed.

All of the business at hand having been completed, the meeting adjourned at approximately 12:05 p.m.

PASSED AND APPROVED the 24th day of July, 2012.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, Interim City Secretary

**MIDLAND CITY COUNCIL
MINUTES
July 10, 2012**

BRIEFING SESSION

The City Council convened in a Briefing Session in the basement conference room, City Hall, Midland, Texas, at 8:15 a.m. on July 10, 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).

Council Members absent: None.

Staff members present: City Manager Courtney Sharp, City Attorney Keith Stretcher, Deputy City Manager Tommy Hudson, Assistant City Manager Jim Nichols, City Secretary Amy Turner, Police Chief Price Robinson, General Services Director Robert Patrick, Finance Director Robert McNaughton, Administrative Services Director Catherine Clifton, Chief Information Officer Sharlett Chowning, City Engineer David Beard, Downtown Development Director Genora Young, Transportation Manager Gary Saunders, Public Information Officer Persephone Dakopolos, Accounting Manager Charlene Fox, Comptroller Tommy Howell, and Multimedia Developer Ryan Stout.

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

City Manager Sharp and Finance Director McNaughton provided an overview of the 2012-2013 City of Midland budget. Mr. McNaughton reported that all funds were in good condition except for water and sewer because of a rate increase from CRMWD. He provided a comparison with other like cities noting that the only other city that had lower comparative tax rate was Tyler. He reviewed the tax rates for the last 10 years.

City Manager Sharp reported the proposed tax rate is .47305 compared to the current rate of .47054. He reviewed sales tax and other revenue resources. The General Fund Budget includes facility renovations, technology, a proposed decrease in water and \$4.3 million for street maintenance. He reviewed proposed enhancements for the various departments and reviewed the enterprise funds which includes Water and Sewer, Sanitation, Golf Course and Airport. He reviewed the internal services fund, spoke about personnel costs and other various funds.

Discussion ensued about the Hotel/Motel Fund. Consensus was received to have a meeting to talk about Hotel/Motel funding and to set policy direction and philosophical guidelines. Council Members were asked to send their suggestions to the City Manager.

Mr. Sharp reviewed funding for the Scharbauer Sports Complex and the MDC. Discussion ensued about matching funds. It was determined it was best to deal with those on a case by case basis.

Mr. McNaughton reviewed the next actions that needed to be taken in the budget process. Consensus was received to hold an evening public hearing for the budget on Tuesday, August 14, 2012, at 6:00 p.m.

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

REGULAR SESSION

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

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

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

The Agenda Items were heard in the following order: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 14, 16, 17, 23, 18, 19, 20, 21, 22, 22a, 25, 26, 24.

OPENING ITEMS

1. Invocation
2. Pledge of Allegiance

PRESENTATIONS

3. Presentation of special events, organizations, individuals, or periods of time including, but not limited to:
 - a. Doreen Womack of Keep Midland Beautiful explained the various awards received and given by their organization.

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.

Seberiano Velasquez, 604 Spraberry Drive, stated his business is located at 700 South Marienfeld and expressed concern over the current state of the street near his business after repairs were completed by Atmos Energy.

Larry Sims, 400 South Pecos, spoke in favor of the development of an apartment complex in downtown (Agenda Item No. 20.)

CONSENT AGENDA

Council Member James moved to approve Consent Agenda items 5 - 15 excluding 14; 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.

5. Approved a motion approving the following minutes:
 - a. Regular Meeting of June 26, 2012
6. Approved a resolution approving the purchase of a Microsoft Enterprise Agreement for three years from Dell Marketing L.P. of Austin, Texas, through State Contract DIR-SDD-890-TX for the Communications and Information Systems Department. (GENERAL SERVICES)

RESOLUTION NO. 2012 - 212

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 ENROLMENT 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

7. Approved a resolution approving the issuance of a request for proposals for Wrecker and Impound Services for the City of Midland for the Police Department. RFP 5047-12 (GENERAL SERVICES)

RESOLUTION NO. 2012 - 213

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

8. Approved 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 (GENERAL SERVICES)

RESOLUTION NO. 2012 - 214

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

9. Approved a resolution appropriating funds to Atmos RRM (Rate Review Mechanism) Project 8923. (CITY MANAGER'S OFFICE)

RESOLUTION NO. 2012 - 215

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

10. Approved a resolution accepting reimbursement funds from the Texas Department of State Health Services Amendment No. 001A to assist Health & Senior Services Division with the delivery of services. (COMMUNITY SERVICES)

RESOLUTION NO. 2012 - 216

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

11. Approved 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. (COMMUNITY SERVICES)

RESOLUTION NO. 2012 - 217

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

12. Approved a resolution authorizing staff to advertise for bids for the Water and Wastewater Tap Project. (ENGINEERING SERVICES)

RESOLUTION NO. 2012 - 218

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

13. Approved 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. (ENGINEERING SERVICES)

RESOLUTION NO. 2012 - 219

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

15. Approved a resolution allowing the Midland Fire Department to apply for re-authorization of a grant through the U.S. Department of Homeland Security. (FIRE)

RESOLUTION NO. 2012 - 221

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

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

14. Consider a resolution to award the Hicks Ave. & Gist Ave. CDBG Sidewalk Improvements to Onyx Contractors in the amount of \$234,756. (ENGINEERING SERVICES)

RESOLUTION NO. 2012 - 220

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

Discussion ensued about potentially putting off this item to see if a lower cost could be obtained. Objections were raised to delaying this project.

Council Member Hailey moved to adopt Resolution No. 2012 - 220; seconded by Council Member Morales. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James. NAY: Sparks. ABSTAIN: None. ABSENT: None.

SECOND READINGS

16. Consider an ordinance on second reading 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

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

Council Member Hailey moved to approve the second and final reading of Ordinance No. 9035 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.

17. Consider an ordinance on second reading 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

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

Council Member Hailey moved to approve the second and final reading of Ordinance No. 9036 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.

Mayor Perry noted it was not yet time for the first public hearing and moved Agenda Item Number 23 forward on the agenda.

MISCELLANEOUS

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)

ORDINANCE NO. 9042

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

Transportation Manager Saunders provided an overview of the school zone study noting that growth has caught up with the City and a new school zone has been added.

Discussion ensued as to why it was necessary to repeal previous Ordinances. City Attorney Stretcher replied that Council wanted all information contained in one Ordinance which is why the previous ordinance is being repealed. The cost of signals was also discussed.

City Secretary Turner read the caption of Ordinance No. 9042.

Council Member Hailey moved approval of the first of two readings of Ordinance No. 9042 in accordance with the Charter of the City of Midland; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

PUBLIC HEARINGS

18. 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. (DEVELOPMENT SERVICES)

RESOLUTION NO. 2012 - 222

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

Planning Division Manager Walker gave an overview of item noting it was a proposal to use 3.19 acres of land located in Beal Park. The park land is owned by the City and dedicated for park use. He noted there were specific procedural requirements that were required to be met prior to coming before the City Council and that all of those requirements had been met. He reported no letters of objection had been received and that staff had no recommendation.

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

Andrew Mellen, 110 West Louisiana, reported he was representing Rick Shirley. He shared information about the development and reported that a detention basin was required to take care of pre-flow versus post-flow. They opted to use Beal Park because of limited space on their property. In exchange, the developer will expand the City's Hike and Bike Trail around Beal Park near their development and out to an adjoining street noting the trail would be concrete. He also explained how they would landscape the surrounding area.

There being no one else wishing to speak, the public hearing was closed at 10:42 a.m.

City Attorney Stretcher clarified that the passing of the Resolution does not authorize the improvement in the drainage basin noting that would be addressed in a Development Agreement that could be considered after a 30-day waiting period.

Council Member James moved to adopt Resolution No. 2012 - 222; 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.

19. At approximately 10:33 a.m. hold a public hearing 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. (Generally located near the southwest corner of the intersection of W. Interstate Hwy 20 and Camp Street. – District 2) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9037

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

Planning Division Manager Walker gave an overview of item noting the request was to change the zoning to allow for a 4-story hotel to be developed. He reported no letters of

objection had been received, that the minimum parking requirements had been met, and that Planning & Zoning recommended approval.

Mayor Pro Tem Morales opened the public hearing at 10:46 a.m.

Adam Shin, 1000 West I-20, stated he was the owner of the West Texas Inn & Suites that is located next door to the proposed development. He stated there were three motels in the location and expressed concern that this would hurt their business. He also felt the building would block their location for customers traveling from the west.

There being no one else wishing to speak, the public hearing was closed at 10:48 a.m.

City Secretary Turner read the caption of Ordinance No. 9037.

Discussion ensued about the area and the differences in zoning. Council Member James clarified that per the current zoning a two-story hotel could be built in that location which would still block traffic to the West Texas Inn & Suites.

Council Member Sparks moved approval of the first of two readings of Ordinance No. 9037 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.

20. At approximately 10:36 a.m. hold a public hearing 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) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9038

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

Planning Division Manager Walker gave an overview of the item noting the proposal was to change zoning to allow for a multi-family housing development. He reported no letters of objection had been received and that Planning & Zoning recommended approval.

Mayor Perry opened the public hearing at 10:57 a.m.

Randall Manning, 410 South Pecos, stated he was the founding Pastor of Rock

Fellowship located across the street from the development. He and his wife supported the development and felt it would benefit the area.

Angela Manning, 410 South Pecos, also expressed her support of the development.

C.W. Fields, 5646 Milton Street, Dallas, felt the development would revitalize that portion of the downtown by bringing in affordable housing. He made himself available to answer questions. When asked about parking concerns, he reported the management would monitor parking via video surveillance as well as towing vehicles that parked in fire lanes. He stated he guaranteed they would own the Brownstones for the next 30 years and was willing to put that in a Development Agreement. Mr. Fields explained that materials such as granite countertops and faux hardwood floors would be used and that there would be onsite management and maintenance.

Discussion ensued regarding rental rates that would be based on household income and the number of people in the household. Mr. Fields provided examples of occupations that could qualify for their affordable housing such as police officers, firefighters, and radiology technologists.

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

City Secretary Turner read the caption of Ordinance No. 9038.

Council Member James moved approval of the first of two readings of Ordinance No. 9038 in accordance with the Charter of the City of Midland; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

21. At approximately 10:39 a.m. hold a public hearing 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) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9039

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

Planning Division Manager Walker provided an overview of the item noting the request was to place an electronic/static billboard from Lamar Advertising in front of Casa Madrid Restaurant. No letters of objection had been received.

Discussion ensued regarding parking at the restaurant and potential illumination issues. Mr. Walker clarified that per Section 11.1.10(j) of the Municipal Code, if there were glare issues, their SUP would be subject to non-renewal.

Mayor Perry opened the public hearing at 11:27 a.m.

Guy V. Speck, 4113 Baybrook, reported there were three existing billboard locations between the I-20 and Florida Street and this would be the fourth location. No other signs could be placed within 1500 feet which means only one sign could be located within each 3000 feet of spacing. He reported that if there were glare issues, he would reverse the sign for the electronic side to face into Casa Madrid parking lot or they would turn the sign off at a certain time. Special warnings and Amber Alerts could be displayed on their signs. When asked if he would be willing to use the electronic sign to announce downtown events if needed, he responded he would continue to work with all of his signs to make announcements based on availability.

There being no one else wishing to speak, the public hearing was closed at 11:35 a.m.

City Secretary Turner read the caption of Ordinance No. 9039.

Discussion ensued regarding advertising on the electronic billboard at this location and whether or not there should be requirements. It was suggested that the City Manager work with the advertiser and come up with language before the second reading of the Ordinance.

Council Member Trost moved approval of the first of two readings of Ordinance No. 9039 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, Sparks. NAY: None. ABSTAIN: James. ABSENT: None.

Mr. Speck stated he would be happy to provide free advertising for various causes and would not want to limit advertising to one sign when potentially free advertising could be made available at four other locations.

22. 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) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9040

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 LYNDSIDE 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

Planning Division Manager Walker provided an overview of the item noting the Planning & Zoning Commission recommended approval and that no letters of objection had been received. He reported MCDC planned to build workforce housing in the area.

Mayor Perry opened the public hearing at 11:50 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. 9040.

Council Member Morales moved approval of the first of two readings of Ordinance No. 9040 in accordance with the Charter of the City of Midland; seconded by Council Member Hailey. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

- 22 a. 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.)

ORDINANCE NO. 9041

AN ORDINANCE VACATING AND ABANDONING A 0.3863-PORTRION 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 LYNDSIDE 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

Planning Division Manager Walker provided an overview of the item noting there were no requirement for compensation for the right-of-way because when MCDC plats the property they would dedicate land back to the City.

Mayor Perry opened the public hearing at 11:55 am. There being no one present wishing to speak, the public hearing was immediately closed.

City Secretary Turner read the caption of Ordinance No. 9041.

Council Member Morales moved approval of the first of two readings of Ordinance No. 9041 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.

MISCELLANEOUS (Continued)

25. Consider making appointments to various Boards and Commissions.

No appointments were made.

EXECUTIVE SESSION

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

a. Section 551.072 Deliberation Regarding Real Property

- a.1. Discuss the 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.

Mayor Perry recessed the meeting to Executive Session 11:58 a.m. The entire Council met in Executive Session until 12:31 p.m.

Mayor Perry reconvened the meeting to Regular Session at 12:31 p.m.

24. Consider a resolution authorizing the City Manager to negotiate and execute a contract to employ appraisers for certain City owned property. (CITY ATTORNEY'S OFFICE)

RESOLUTION NO. 2012 - 223

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

Council Member Dufford moved to adopt Resolution No. 2012 – 223; 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.

All of the business at hand having been completed, the meeting adjourned at 12:32 p.m.

PASSED AND APPROVED the 24th day of July, 2012.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary



City Council Agenda

Approved for Agenda:
csharp
City Manager's Office

MEETING DATE: 7/24/2012

TO: City Council / City Manager

FROM: Bob McNaughton, Finance Director

SUBJECT: Consider a resolution recording a vote on a proposal to consider an ad valorem tax rate for the Fiscal Year 2-12 – 2013 and establish dates to hold public hearings on the proposed tax rate; and to establish dates when there will be a record vote on the tax rate; and authorizing and directing the City Manager to post all appropriate notices.

Purpose:

Consider a resolution recording a vote on a proposal to consider an ad valorem tax rate for the Fiscal Year 2-12 – 2013 and establish dates to hold public hearings on the proposed tax rate; and to establish dates when there will be a record vote on the tax rate; and authorizing and directing the City Manager to post all appropriate notices.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Required for FY'13 budget and tax rate adoption of a proposed ad valorem tax rate of ____ per \$100 valuation

Discussion:

Truth-in-Taxation requirements call for a vote to place a proposal to adopt a tax rate that exceeds the lower of the effective rate or the rollback rate, whichever is lower, on the agenda of a future meeting as an action item.

The current proposed rate exceeds the lower of these two rates and therefore does require a record vote.

The item is placed on the agenda to meet requirements in public notification of the upcoming vote on the tax rate.

The proposal must specify a desired rate.

The rate specified does not require the Council to adopt that rate.

RESOLUTION NO.

**RESOLUTION RECORDING A VOTE ON A PROPOSAL
TO CONSIDER AN AD VALOREM TAX RATE FOR THE
FISCAL YEAR 2012 - 2013 AND TO ESTABLISH DATES
TO HOLD PUBLIC HEARINGS ON THE PROPOSED
TAX RATE; AND TO ESTABLISH DATES WHEN
THERE WILL BE A RECORD VOTE ON THE TAX
RATE; AND AUTHORIZING AND DIRECTING THE
CITY MANAGER TO POST ALL APPROPRIATE
NOTICES**

WHEREAS, the City Council of the City of Midland ("City") finds it to be in the public interest to call for a vote to place a proposal to adopt a tax rate of \$_____ per \$100 taxable assessed valuation on the agenda of a future Council meeting as an action item;

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

SECTION ONE. That there will be public hearings on the proposed tax rate of \$_____ per \$100 taxable assessed valuation on August 7, 2012, at 9:00 a.m., and August 14, 2012, at 6:00 p.m., and there will be a record vote on said proposed tax rate on August 21, 2012, at 9:00 a.m., and August 27, 2012, at 9:00 a.m.

SECTION TWO. That the City Manager is hereby authorized and directed to execute all documents necessary to give proper notice to the public regarding the property tax rate issue to be discussed at the August 7, 2012, and August 14, 2012 meetings of the Midland City Council and any other notices required by law.

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 McNaughton, Finance Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:
csharp
City Manager's Office

MEETING DATE: 7/24/2012

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving plans and specifications and authorizing advertisement for bids for the construction of a commons area fence at the Scharbauer Sports Complex for the Community Services Department.

Purpose:

Approval of a resolution approving plans and specifications and authorizing advertisement for bids for the construction of a fence throughout the commons area at the Scharbauer Sports Complex.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

No funding required at this time.

Discussion:

Please consider approval of a resolution approving plans and specifications and authorizing advertisement for bids for labor, material, equipment and supervision necessary for the construction of a fence throughout the commons area at the Scharbauer Sports Complex for the Community Services Department. For more information, please see the attached memo from Tina Jauz, Community Services Director.

RESOLUTION NO.

RESOLUTION APPROVING PLANS AND SPECIFICATIONS AND AUTHORIZING ADVERTISEMENT FOR BIDS FOR THE CONSTRUCTION OF A FENCE AROUND THE COMMONS AREA AT THE SCHARBAUER SPORTS COMPLEX

WHEREAS, plans and specifications have been prepared for the construction of a fence around the commons area at the Scharbauer Sports Complex; and

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

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

SECTION ONE. That the plans and specifications for the construction of a fence around the commons area at the Scharbauer Sports Complex are hereby approved, those plans and specifications being substantially in the form as those on file with the office of the City Secretary, referenced by the date and number of this Resolution.

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

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, General Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

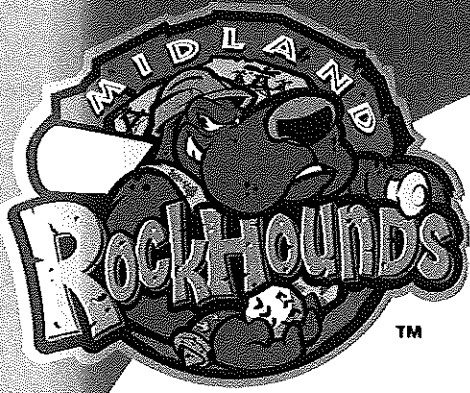
CITY OF MIDLAND
Community Services Department
Interoffice Memorandum

Date: July 10, 2012
To: Tommy Hudson, Deputy City Manager
From: Tina Jauz, Community Services Director
Subject: Scharbauer Sports Complex: Commons Fence Area Bid

In 2011, the 4B Board voted in favor of constructing a fence throughout the commons area of the Sports Complex. The fence would be located on the east and west end of the Commons Area. The purpose of the fencing project is twofold:

1. Eliminate the use of temporary fencing for events.
2. Create a new rentable space, which will increase the revenue generation on site.

Staff is seeking the City Council's authorization to solicit qualified bidders for the Commons Fence area project. The project holds an available budget of \$185,000 from 4B funds. Parkhill Smith and Cooper has already completed the design for this project; the cost of this project would include the purchase and installation of fencing that matches the existing fence line.



Friday, June 29, 2012

To: City Council and City Staff

From: Monty Hoppel

Re: Sponsorship of the Commons Area

As per the direction given by the City Council last fall, the Midland RockHounds made numerous presentations to secure naming rights for the commons area at the Scharbauer Sport Complex.

As you are aware , the Council wanted a naming rights sponsor secured before construction began on the commons area fence .

After months of presentations, we secured Cimarex Energy as the naming rights sponsor and the area will now be named "Cimarex Energy Pavilion."

Cimarex will pay \$20,000 per year and we have signed them to a four year agreement. (It is a two year guarantee with a two year option).

We are confident that Cimarex Energy will remain the commons area sponsor for many years to come just as Citibank and Grande have.

Please call me if you have any questions. Thank you.



5514 CHAMPIONS DR.
MIDLAND, TX
79706-2843
(432) 520-2255
(432) 520-8326 fax
rockhounds@nwol.net
midlandrockhounds.org

Project Manual



Scharbauer Sports Complex

Stadium Fence

Midland, TX

January 2012

PSC Project # 03979411



TABLE OF CONTENTS

INSTRUCTIONS TO BIDDERS	IB-1
BID BOND	BB-1
PROPOSAL	C-1
CONTRACT	D-1
PERFORMANCE BOND	E-1
PAYMENT BOND	F-1
CERTIFICATE OF INSURANCE	G-1
EXPERIENCE RECORD	H-1
EQUIPMENT SCHEDULE	I-1

Contract Assurance

SPECIAL PROVISIONS

<u>Paragraph</u>		<u>Page</u>
SP-1	Scope of Work	SP-1
SP-2	Contract Documents	SP-1
SP-3	Time and Order of Completion	SP-2
SP-4	Limitation of Operation	SP-2
SP-5	DELETED	SP-3
SP-6	Affidavit of Bills Paid	SP-3
SP-7	Calendar Day	SP-3
SP-8	Protection of Property	SP-3
SP-9	DELETED	SP-3
SP-10	DELETED	SP-3
SP-11	DELETED	SP-3
SP-12	DELETED	SP-3
SP-13	Barricades, Signs, and Hazard Markings	SP-3
SP-14	DELETED	SP-4
SP-15	Public Convenience and Safety	SP-4
SP-16	Final Cleaning Up	SP-4
SP-17	Insurance	SP-4
SP-18	Removal and Disposal of Structures, Utilities and Obstructions	SP-6
SP-19	Conformity with Plans and Allowable Deviations	SP-6
SP-20	Removal of Defective and Unauthorized Work	SP-7
SP-21	Disputed Claims for Extra Work	SP-7
SP-22	DELETED	SP-7
SP-23	Indemnification	SP-8
SP-24	Contractor's Responsibility for Work	SP-8
SP-25	Correction of Faulty Work after Final Payment	SP-8
SP-26	Texas State Sales Tax	SP-8
SP-27	Separate Contracts	SP-9
SP-28	Trench Safety	SP-9
SP-29	Load Restrictions	SP-9
SP-30	Notice to Proceed	SP-9
SP-31	Payment for Materials on Hand	SP-10
SP-32	DELETED	SP-10
SP-33	DELETED	SP-10
SP-34	Average Climatic Range	SP-11

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<u>Paragraph</u>		<u>Page</u>
SP-35	Substantially Complete	SP-11
SP-36	Sovereign Immunity	SP-12
SP-37	Governing Law and Venue	SP-12
SP-38	Third-Party Beneficiaries	SP-12
SP-39	Releases	SP-12
SP-40	Independent Contractor	SP-11
SP-41	Notice of Alleged Breach; Statutory Prerequisites	SP-13
SP-42	Assignment	SP-13

GENERAL CONDITIONS OF THE CONTRACT

GC-01	Owner	GC-1
GC-02	Contractor	GC-1
GC-03	Architect/Engineer	GC-1
GC-04	Contract Documents	GC-1
GC-05	Sub-Contractor	GC-1
GC-06	Written Notice	GC-1
GC-07	Work	GC-1
GC-08	Deleted	GC-1
GC-09	Deleted	GC-2
GC-10	Layout of Work	GC-2
GC-11	Architect/Engineer's Authority and Duty	GC-2
GC-12	Superintendence and Project Regulation	GC-2
GC-13	Contractor's Duty and Superintendence	GC-3
GC-14	Contractor's Understanding	GC-3
GC-15	Character of Workers	GC-3
GC-16	Contractor's Buildings	GC-3
GC-17	Sanitation	GC-3
GC-18	Shop Drawings	GC-3
GC-19	Preliminary Approval	GC-4
GC-20	Defects and Their Remedies	GC-4
GC-21	Changes and Alterations	GC-4
GC-22	Right of Architect/Engineer to Modify Methods & Equipment	GC-4
GC-23	Keeping of Plans and Specifications Accessible	GC-5
GC-24	Ownership of Drawings	GC-5
GC-25	Adequacy of Design	GC-5
GC-26	Right of Entry	GC-5
GC-27	Collateral Contracts	GC-5
GC-28	Discrepancies and Omissions	GC-5
GC-29	Deleted	GC-5
GC-30	Protection against Accident to Employees & Public	GC-5
GC-31	Deleted	GC-6
GC-32	Time for Completion and Liquidated Damages	GC-6
GC-33	Price for Work	GC-7
GC-34	Bonds	GC-7
GC-35	Losses from Natural Causes	GC-7
GC-36	Protection of Adjoining Property	GC-7

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<u>Paragraph</u>		<u>Page</u>
GC-37	Protection against Claims of Sub-Contractors, Laborers, Materialmen & Furnishers of Machinery, Equipment & Supplies	GC-8
GC-38	Protection against Royalties or Patented Invention	GC-8
GC-39	Laws and Ordinances	GC-8
GC-40	Assignment and Subletting	GC-8
GC-41	Time and Order of Completion	GC-9
GC-42	Extension of Time	GC-9
GC-43	Hindrances and Delays	GC-9
GC-44	Quantities and Measurements	GC-9
GC-45	Estimated Quantities	GC-9
GC-46	Partial Payments	GC-10
GC-47	Use of Completed Portions	GC-10
GC-48	Final Completion and Acceptance	GC-10
GC-49	Final Payment	GC-10
GC-50	Payment Withheld	GC-10
GC-51	Delayed Payments	GC-10
GC-52	Extra Work	GC-10
GC-53	Time of Filing Claims	GC-12
GC-54	Deleted	GC-12
GC-55	Abandonment by Contractor	GC-13
GC-56	Abandonment by Owner	GC-14
GC-57	Federal Wage Requirements	GC-14

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TECHNICAL SECTIONS

DIVISIONS 0 - 1

Not Used

DIVISION 2 – SITE WORK

02300 Earthwork

DIVISION 3 - CONCRETE

03300 Cast-In-Place-Concrete

DIVISION 4 - MASONRY

04720 Cast Stone

04810 Unit Masonry Assemblies

DIVISION 5 - METAL

05120 Structural Steel

05500 Metal Fabrications

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DIVISION 6 - WOOD AND PLASTICS

Not Used

DIVISION 7 - THERMAL AND MOISTURE PROTECTION

07910 Joint Sealers

DIVISION 8 - DOORS AND WINDOWS

Not Used

DIVISION 9 - FINISHES

09810 Ferrous Metal Special Coatings

DIVISION 10 - SPECIALTIES

10431 Specialty Signs

DIVISIONS 11- 15

Not Used

DIVISION 16 – ELECTRICAL

16500 Lighting

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DESIGN PROFESSIONAL RESPONSIBILITY

The specification sections authenticated by my seal and signature are limited in the following:

DIVISION 2 – SITE WORK

02300 Earthwork

DIVISION 3 – CONCRETE

03300 Cast-In-Place-Concrete

DIVISION 4 - MASONRY

04720 Cast Stone

04810 Unit Masonry Assemblies

DIVISION 5 - METAL

05120 Structural Steel

05500 Metal Fabrications

DIVISION 7 - THERMAL AND MOISTURE PROTECTION

07910 Joint Sealers

DIVISION 9 - FINISHES

09810 Ferrous Metal Special Coatings

DIVISION 10 - SPECIALTIES

10431 Specialty Signs

DIVISION 16 – ELECTRICAL

16500 Lighting

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INSTRUCTIONS TO BIDDERS

IB-1. BID FORMS

Bid shall be submitted on the Proposal form in the bound specifications.

In addition to the completed Proposals, bid forms shall include Bid Security, Financial Statement, and other specified documents. Failure to submit a complete bid as specified will be considered as sufficient cause for rejection of the bid.

IB-2. PREPARATION OF PROPOSALS

All blanks in the forms shall be filled in or marked "N.A." (Not Applicable) and all required information shall be included with the Proposals. Bid prices shall be written in ink and shall be shown both in written words and figures. Receipt of all addenda issued shall be acknowledged in the space provided on the addendum. Each addendum received and the Bid Security shall be enclosed with the Proposal. The Proposal and accompanying documents shall be enclosed in a sealed envelope, addressed to the Honorable Mayor and City Council, City of Midland, Texas marked "Proposal for Scharbauer Sports Complex Stadium Fence" with the name and address of the Bidder also shown thereon.

IB-3. EXPERIENCE RECORD AND FINANCIAL STATEMENT

The Experience Record included herein, shall be filled in, showing completed jobs, of a similar nature to the one covered by the Proposal, and the work in progress with contract and bond amounts and percent complete.

A sworn statement of the current financial condition of the Bidder shall also be enclosed with the Proposal, in order to provide the Owner with information relative to the responsibility of bidders and their ability to finance and construct the work. This statement shall be enclosed with the Proposal in a separate envelope and will be returned to the Bidder upon return of his bid security.

IB-4. BID SECURITY

Each proposal must be accompanied by a Bid Bond, Certified Check, or cash in the amount of not less than five percent of the maximum bid submitted, payable without recourse to the City of Midland, Texas. If a Bid Bond is submitted as bid security, it shall be executed by an approved surety company authorized to do business in the State of Texas, and accepted according to the latest list of companies holding certificates of authority from the Secretary of the Treasury of the United States of America. Such bid security shall be so conditioned that if the Bidder is awarded the Contract and is unable or fails to furnish performance and payment bonds and execute the Contract within ten days after date of award, the security shall revert to the Owner as compensation for damages which the Owner suffers because of such failure by the Bidder.

IB-5. PERFORMANCE AND PAYMENT BONDS

With the execution and delivery of the contract documents, the Contractor shall furnish, on the forms provided herein, bonds, as required by the General Conditions, in the sum of 100% of the total contract price, executed by an approved surety company authorized to do business in the State of Texas, and accepted according to the latest list of companies holding certificates of authority from the Secretary of the Treasury of the United States of America. Performance and Payment Bonds submitted shall be in compliance with Chapter 2253 of the Texas Government Code.

IB-6. INTERPRETATION OF BIDS

No bid will be considered which fails to supply all information indicated, or which has any limitation or provisions placed upon it by the Bidder. In case of a difference between the written words and the figures in the Proposal, the amount stated in written words will be considered as the bid price, without recourse on the part of the Contractor. In case of ambiguity or lack of clearness in the Proposal, the Owner will adopt the most advantageous construction thereof or reject the bid. The Owner reserves the right to accept or reject any or all bids, if it is deemed to be in the best interest of the public. Further, the Owner

reserves the right to reject any bids because of irregularity or to waive such irregularity if such action is in the public interest.

IB-7. DISPOSITION OF BIDS

The Owner expects to make award of the contracts as soon as possible after the opening of bids, but specifically reserves the right to hold all Proposals for a period not to exceed ninety (90) days, before making an award. No Proposal, having been opened, may be withdrawn prior to expiration of this one hundred twenty day period. Bid security of all but the successful Bidder will be returned upon making an award.

The Owner and Bidder agree that, if the Contract is awarded, that is will be awarded to either the lowest responsible bidder/proposer, or to the bidder/proposer who provides goods or services at the best value for the city of Midland. In determining the best value for the City of Midland, the City of Midland may consider the criteria enumerated in Section 252.043 of the Texas Local Government Code.

Further, Owner reserves the all rights granted by Section 271.027 of the Texas Local Government Code. The Owner reserves the right to award the bid to the lowest responsible bidder.

IB-8. EXAMINATION OF SITE, PLANS AND SPECIFICATIONS

Prior to submission of a Proposal, each Bidder shall have made a thorough examination of the site of work and of the plans and specifications, and shall become informed as to the location and nature of the proposed construction, labor conditions and all other matters that may affect the cost and time of completion of the work upon which he bids. Bidders shall make such investigations of the nature of the project as they deem necessary and shall assume all responsibility for fully informing themselves of the character of materials which will be encountered. The submission of a Proposal shall be prima facie evidence that the Bidder has made such an examination. Contact Ben Telesca, Recreation Superintendant (432) 685-7379 to schedule a site examination visit.

IB-9. INTERPRETATION OF SPECIFICATIONS PRIOR TO BIDDING

Any questions arising during the advertising period as to the meaning or intent of the specifications will be answered by an addendum which will be sent to all who have placed a deposit and have been furnished plans and contract documents. The Engineer/Architect shall receive requests for clarifications to specifications and plans at least three (3) days prior to the date for receipt of bids.

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

IB-10. AVAILABILITY OF PLANS

A. For Bidders

It is intended that all parties with an interest in the type of work included in the project covered by these documents be given a reasonable opportunity to examine the documents and prepare a bid or subbid. Documents may be examined without charge as noted in the Notice to Bidders. Complete sets of documents may be obtained from the Engineer upon request, accompanied by a non-refundable deposit of \$25.00 for a set of specifications and plans.

B. For the Contractor

The Contractor will be furnished five (5) sets of specifications and plans for his use during construction. This shall include all plans and specifications furnished to material suppliers and subcontractors but does not include the executed contract copies. Plans and specifications for use during construction will be furnished directly only to the Contractor. The Contractor shall then distribute copies of plans and specifications to suppliers, subcontractors, or others, as required for proper execution of the work.

Should additional sets of documents be desired, they may be purchased, by the Contractor only, at the following prices, exclusive of postage or freight charges:

Plans and Specifications \$25.00 per set

IB-11. SPECIAL PROVISIONS

Attention of Bidders is directed to SPECIAL PROVISIONS included in these documents for requirements concerning scope of work, labor, wage schedule, insurance and similar subjects.

IB-12. PLANT LOCATION AND STORAGE AREA

Contractors bidding on the work included in this contract who desire to locate a material storage area or other similar facility on the property may secure such site, buildings or areas by direct negotiation with Eric Ferland at Scharbauer Sports Complex, Midland, Texas. An area located adjacent to the project area will be identified as available for use by the Contractor for staging and material storage.

IB-13. WITHDRAWAL OF PROPOSALS

Any Bidder, upon his or his authorized representative's written request, will be given permission to withdraw his Proposal not later than the time set for opening thereof. At the time of opening of the Proposals, when such Proposal is reached, it will be returned to him unread.

IB-14. DISQUALIFICATION OF BIDDERS

Any one or more of the following causes may be considered as sufficient for the disqualification of bidder and the rejection of his bid or bids:

More than one Proposal for the same work from an individual firm, partnership, or corporation under the same or different name.

Evidence of collusion among bidders. Participants in such collusion may not receive recognition as Bidders for any future work.

Unbalanced Proposals in which the prices for some items are out of proportion to the prices for other items.

Failure to submit a unit price for each item of work for which a bid price is required by the Proposal.

Lack of competency as revealed by the financial statement submitted.

Lack of responsibility as shown by past work judged from the standpoint of workmanship and progress.

Uncompleted work which, in the judgment of the Owner, might hinder or prevent the prompt completion of additional work if awarded.

For being in arrears on existing contracts, in litigation with the Owner, or having defaulted on a previous contract.

IB-15. MATERIAL GUARANTY

Before any contract is awarded, the Bidder may be required to furnish a complete statement of the origin, composition, or manufacture of any or all materials proposed to be used in the construction of the work, together with samples, which may be subjected to the tests provided for in these specifications to determine their quality and fitness for the work.

IB-16. WAIVER

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

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

BY SUBMITTING A BID, THE BIDDER ACKNOWLEDGES THAT THE BIDDER UNDERSTANDS ALL TERMS OF THE BIDDING DOCUMENTS AND CONSENTS TO THE BIDDING PROCESS AND THE POSSIBILITY OF A NEGATIVE ASSESSMENT. BY SUBMITTING A BID, THE BIDDER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN THE BIDDER AND THE CITY OF MIDLAND, TEXAS.

THE BIDDER AGREES THAT THIS IS THE INTENTIONAL RELINQUISHMENT OF THE ABOVE LISTED PRESENTLY EXISTING KNOWN RIGHTS.

IB-18. WAIVER OF ATTORNEY FEES

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

THE BIDDER AGREES THAT THIS IS THE INTENTIONAL RELINQUISHMENT OF A PRESENTLY EXISTING KNOWN RIGHT.

BY EXECUTION AND SUBMISSION OF THIS BID, THE BIDDER HEREBY REPRESENTS AND WARRANTS TO THE CITY OF MIDLAND THAT THE BIDDER HAS READ AND UNDERSTANDS THE BID DOCUMENTS AND THE CONTRACT DOCUMENTS AND THIS BID IS MADE IN ACCORDANCE WITH THE BID DOCUMENTS. BIDDER ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS WITHIN THE BID DOCUMENTS, WHICH INCLUDE THE WAIVER

PROVISIONS, AND THAT IT HAD THE RIGHT TO CONSULT WITH COUNSEL REGARDING ALL OF THE ABOVE DOCUMENTS.

BID BOND

THE STATE OF TEXAS §

SURETY NO. _____

COUNTY OF MIDLAND §

KNOW ALL MEN BY THESE PRESENTS, THAT _____

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

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

PROPOSAL

TO: The Mayor and City Council
City of Midland
Midland, Texas

Gentlemen:

Pursuant to the foregoing Request for Proposal, the undersigned Proposer hereby proposes to do all work and furnish all necessary superintendence, labor, machinery, equipment, tools, and materials, and whatever else may be necessary to complete all work upon which he bids, as provided by the attached specifications and shown on the plans, and binds himself on acceptance of this proposal to execute a Contract and Bonds according to the accompanying forms, for performing and completing the said work within the time stated, and furnishing all required guarantees, for the following sum:

SCHARBAUER SPORTS COMPLEX
STADIUM FENCE

A. BASE PROPOSAL, Lump Sum: _____
_____ Dollars (\$ _____)

B. ALTERNATE NO. 1: Turfgrass salvage and reinstallation; Lump Sum: _____
_____ Dollars (\$ _____)
☐ add ☐ deduct ☐ no change

C. ALTERNATE NO. 2: .New turfgrass sod installation; Lump Sum: _____
_____ Dollars (\$ _____)
☐ add ☐ deduct ☐ no change

If awarded the contract, the undersigned agrees to commence work under this contract with 10 days of a date to be specified in Written Notice to Proceed and to substantial complete the project within _____ calendar days (Bidder to fill in days) from said date (but no later than February 1st 2011), unless modified by change order.

(**Note:** All amounts shall be shown in both written and figure form. In case of discrepancy between the written amount and the figure, the written amount will govern. For alternates, check whether it is an add, deduct or no change.)

We have included, in the Bid sum, all applicable taxes and all cash and contingency allowances described in Section 01200 – PRICE AND PAYMENT and Section 01020 Allowances.

The Proposer is required to separate the cost of materials to be incorporated into this project. Such material costs are separated from the other costs so that the Proposer is a seller of such materials to the City. The Proposer shall be required to issue a resale certificate on such materials in lieu of paying the sales tax on such materials at the time of purchase. The City will provide the successful Bidder with a sales tax exemption certificate for such materials. The labor and materials charge shall be separated as follows:

MATERIALS	\$ _____
LABOR	\$ _____
TOTAL BASE PROPOSAL	\$ _____
MATERIALS	\$ _____
LABOR	\$ _____
TOTAL ALTERNATE NO. 1	\$ _____
MATERIALS	\$ _____
LABOR	\$ _____
TOTAL ALTERNATE NO. 2	\$ _____

The undersigned Proposar hereby declares that he has visited the site of the work and has carefully examined the Plans, Specifications and Contract Documents pertaining to the work covered by the above bid, and that the prices bid herein are based on the minimum wage rates included in the specifications.

The bidder certifies, by submission of this proposal or acceptance of this contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. It further agrees that by submitting this proposal that it will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts, and subcontracts. Where the bidder or any lower tier participant is unable to certify to this statement, it shall attach an explanation to this proposal.

The contractor or subcontractor, by submission of an offer and/or execution of a contract, certifies that it:

- a. is not owned or controlled by one or more citizens or nationals of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);
- b. has not knowingly entered into any contract or subcontract for this project with a contractor that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list.
- c. has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a contractor or subcontractor who is unable to certify to the above. If the contractor knowingly procures or subcontracts for the supply of any product or service of a foreign country on said list for use on the project,

Further, the contractor agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in each contract and in all lower tier

subcontracts. The contractor may rely upon the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous.

The contractor shall provide immediate written notice to the sponsor if the contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The subcontractor agrees to provide immediate written notice to the contractor, if at any time it learns that its certification was erroneous by reason of changed circumstances.

This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the contractor or subcontractor knowingly rendered an erroneous certification.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

The Proposer hereby agrees to commence work under this contract within 10 days of a date to be specified in written "Notice to Proceed" and to complete the work within the consecutive calendar day framework noted in the Contract. Proposer further agrees to pay as liquidated damages the sum of \$750.00 for each consecutive calendar day beyond each phase of the days allowed; as hereinafter provided in Paragraph 32 of the General Conditions.

Proposer acknowledges receipt of the following addendum: _____

Enclosed with this Proposal is a Cashier's or Certified Check for _____ Dollars (\$_____) or, a Proposal Bond in the sum of 5% of Greatest Amount Bid Dollars (\$ 5% of Greatest Bid), which it is agreed shall be collected and retained by the Owner as liquidated damages in the event the Proposal is accepted by the Owner within ninety (90) days after the date advertised for the reception of bids and the undersigned fails to execute the contract or required bonds with the Owner, under the conditions hereof, within ten (10) days after the date said proposal is accepted; otherwise, said check or bond shall be returned to the undersigned upon demand.

(Seal if Bidder is a Corporation)

Contractor

By _____

Address

CONTRACT

STATE OF TEXAS

COUNTY OF MIDLAND

THIS CONTRACT, made and entered into this ____ day of _____
A.D. 20__, by and between the City of Midland, of the County of Midland and the State of Texas, acting
through _____
thereunto duly authorized so to do, Party of the First Part, hereinafter termed Owner, and

of the City of _____, County of _____ and State of _____, Party of the Second Part,
herein-after termed Contractor.

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned,
to be made and performed by the Party of the First Part (Owner), and under the conditions expressed in the
bond bearing even date herewith, the said Party of the Second Part (Contractor) hereby agrees with said Party
of the First Part (Owner) to commence and complete the construction of items of work included in this project
which are described as follows: The rehabilitation of the building exterior and hangar doors, replacement of
skylight panels and exterior painting, and miscellaneous items of construction.

The work will also include other miscellaneous materials, equipment, machinery, superintendence
and labor for constructing these improvements for the City of Midland, Texas.

These improvements are shown on the plans entitled "City of Midland, Scharbauer Sports Complex,
Stadium Fence dated January, 2012 and the specifications attached hereto.

This contract shall include all extra work in connection, therewith, under the terms as stated in the
General Conditions of the Contract; and at his (or their) owner proper cost and expense to furnish all the
materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and other accessories and
services necessary to complete the said construction, in accordance with the conditions and prices stated in he
Proposal attached hereto, and in accordance with all the General Conditions of the Contract, and in
accordance with the plans, which includes all maps, plats, blueprints and other drawings and printed or
written explanatory matter thereof, and the Specifications therefor, as prepared by Parkhill, Smith & Cooper,
Inc., Consulting Engineers, Lubbock, El Paso, Midland and Amarillo, Texas, herein entitled the Engineer,
each of which has been identified by the endorsement of the Contractor and the Engineer thereon, together
with the Contractor's written Proposal, and General Conditions of the Agreement, and the Performance Bond
and Payment Bond hereto attached; all of which are made a part hereof and collectively evidence and
constitute the entire contract.

The Proposer hereby agrees to commence work under this contract within 10 days of a date to be
specified in written "Notice to Proceed" and to complete the work under the Base Bid identified on the plans
within 180 consecutive calendar days from Notice to Proceed including manufacture and delivery time.

Proposer further agrees to pay as liquidated damages the sum of \$750.00 for each consecutive
calendar day beyond the days allowed as hereinafter provided in Paragraph 32 of the General Conditions.

The Owner agrees to pay the Contractor in the amount of \$ _____ for the performance of
the contract in accordance with the Proposal submitted therefor, subject to additions and deductions, as
provided in the specifications, and to make payments on account thereof as provided therein.

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

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

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

IN WITNESS WHEREOF, the parties to these presents have executed this Agreement in the year and day first above written.

Party of the First Part (Owner)

ATTEST:

By _____
W. Wesley Perry, Mayor

By _____
Amy M. Turner, Interim City Secretary

Party of the Second Part (Contractor)

ATTEST:

By _____

By _____

Complete Address:

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

PERFORMANCE BOND

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

SURETY'S NO. _____

KNOW ALL MEN BY THESE PRESENTS, THAT _____

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

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

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

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

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

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

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

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

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

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

Principal

Surety

By_____

By_____

Address_____

Address_____

APPROVED AS TO FORM:

City Attorney

NOTE: ATTACH POWER OF ATTORNEY

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

CERTIFICATE OF INSURANCE

TO: CITY OF MIDLAND
SCHARBAUER SPORTS COMPLEX
STADIUM FENCE
MIDLAND, TEXAS

Date _____

Type of
Project: Stadium Fence

THIS IS TO CERTIFY THAT _____
(Name of Insured)

is, at the date of this certificate, insured by this Company with respect to the business operations hereinafter described, for the types of Insurance and in accordance with the provisions of the standard policies used by this Company, and further hereinafter described. Exceptions to standard policy noted on reverse side hereof.

Policy No.	Effective	TYPE OF INSURANCE	Expires	Limits of Liability
Workmen's		<u>Public</u>	<u>Compensation</u>	
	1 person \$ _____	<u>Liability</u>		
	1 accident \$ _____	<u>Contingent</u>		
	1 person \$ _____	<u>Liability</u>		
	1 accident \$ _____		<u>Property</u>	
<u>Damage</u>				
Builder's		<u>Risk</u>		
		<u>Automobile</u>		
<u>Other</u>				
_____ The foregoing Policies (do) (do not) cover all sub-contractors.				

Locations Covered: _____

Description of Operations Covered: _____

The above policies either in the body thereof or by appropriate endorsement provide that they may not be changed or cancelled by the insurer in less than the legal time required after the insured has received written notice of such change or cancellation, or, in case there is no legal requirement, in less than five days after the insured has received such written notice.

FIVE COPIES OF THIS
CERTIFICATE MUST BE
SENT TO THE OWNER

(Name of Insurer)

By _____
Title _____
Phone _____

NOTE: THE CITY OF MIDLAND AND PARKHILL, SMITH & COOPER, INC. SHALL BE
NAMED AS ADDITIONAL INSURED ON REQUIRED INSURANCE POLICIES.

EXPERIENCE RECORD

List of Projects, similar to that covered by Proposal, which Bidder has successfully completed:

Amount of Contract Award	Type of Work	Date Completed	Name and Address of Owner
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List of Projects Bidder is now engaged in completing:

Amount of Contract Award	Type of Work	Percent Completed	Name and Address of Owner
-----------------------------	--------------	----------------------	------------------------------

List of Surety Bonds in force on the above uncompleted work:

Amount of Contract Award	Amount of Bond	Name of Surety Company
-----------------------------	----------------	------------------------

Bidder

By

Business Address

EQUIPMENT SCHEDULE

The Bidder should list the major equipment which is available and serviceable for use on this work.

By_____

Title _____

CONTRACT ASSURANCE

Contractor will ensure that the following clause is placed in every DOT-assisted contract and subcontract:

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

PROMPT PAYMENT

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 working days from the receipt of each payment the prime contractor receives from the City of Midland. The prime contractor agrees further to return retainage payments to each subcontractor within 30 working days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the City of Midland. The clause applies to both DBE and non-DBE subcontractors.

SPECIAL PROVISIONS

SP-1 SCOPE OF WORK

The work to be accomplished under these specifications, including the plans, shall consist of the following:

The principal items of work are set forth in specific detail in the proposal section of these specifications; however, the work items may be generally described as: Work includes formwork, reinforcement, concrete materials, mix design, placement procedures, and finishes.

The work will also include other miscellaneous materials, equipment, machinery, superintendence and labor for constructing these improvements for the Scharbauer Sports Complex Stadium Fence, Midland, Texas.

All labor, materials and equipment necessary to complete the work called for in these specifications and shown on the plans shall be furnished by the Contractor.

Payment for the various items of work will be made as specified under the various payment paragraphs of the technical sections.

SP-2 CONTRACT DOCUMENTS

All work covered by this contract shall be done in accordance with the Contract Documents described in the General Conditions. The drawings included in the documents consist of the plans entitled "Scharbauer Sports Complex, Stadium Fence" dated January, 2012.

All bidders shall be thoroughly familiar with all of the drawings and specifications. The Contractor shall be responsible for the satisfactory completion of all work shown on the drawings or specified.

The intent of the plans and specifications is to prescribe a complete work or improvement which the Contractor undertakes to do in full compliance with the plans, the specifications, the special provisions, proposal, and contract. The Contractor shall do all work including such additional, extra, and incidental work as may be considered necessary to complete the project in a satisfactory and acceptable manner, as provided in the plans, proposal, and contract. He shall furnish, unless otherwise provided in the specifications, special provisions, or contract, all materials, equipment, tools, labor and incidentals necessary to prosecute the completion of the work.

The Contract Documents are complementary, and what is called for by any one shall be as binding as if called for by all. In case of conflict between any of the Contract Documents, priority of interpretation shall be in the following order: Signed Contract, Performance Bond, Special Bonds (if any), Proposal, Special Provisions, Notice to Bidders, Instructions to Bidders, Technical Specifications, Plans and General Conditions of the Contract.

SP-3 TIME AND ORDER OF COMPLETION

The Contractor will be permitted to prosecute certain portions of the work in the order and manner of his own choosing to the best interest of the project. However, the work shall be conducted in such manner and with such materials, equipment and labor as may be required to insure completion in accordance with the plans and specifications within the time stated in the Proposal and in the Contract. The Contractor shall furnish the Architect with his proposed progress schedule and this schedule shall be approved by the Architect before work is commenced on the project.

The Contractor is reminded that approved material submittals are required prior to the incorporation of the materials into this project. To avoid any delays in the progress of the work, it is imperative that complete information be provided to the Architect as early as possible for review and approval.

The Contractor will be required to execute various portions of the project in phases to maintain usage of airport facilities as well as safety during the entire project. The Contractor will be allowed to develop his own phasing plan which will meet the intent of the phasing shown on the Plans. The Contractor's phasing plan will be subject to the Architect's approval.

Other contractors may be performing work for the Owner in the same general area as that covered under this contract. The Contractor shall be expected to coordinate his work with the work of other contractors as may be required to insure that all work can be carried out with the least possible interference with the operation of other contractors or the Owner. The Contractor's coordination with other contractors shall require the approval of the Architect. The Owner reserves the right to control and direct the sequence of operations in the areas where others will be working. Provision shall be made for other contractors to have suitable space to work and for storage of materials, as well as access to these areas.

The Contractor shall schedule his work well in advance of actual operations and shall keep the Architect advised of this schedule so that close coordination can be maintained with the Recreation Superintendant and with other contractors.

SP-4 LIMITATION OF OPERATION

Each item of work shall be completed without delay and in no instance shall the Contractor be permitted to transfer his forces from uncompleted work to new work without the permission of the Architect. The Contractor shall be required to submit a schedule of operations to the Architect for approval. The Contractor shall not commence new work to the prejudice of work already started.

The Contractor shall take all precautions necessary to insure the safety of facility employees as well as that of his own equipment and personnel. The Contractor shall make his own estimate of all difficulties to be encountered.

Nighttime construction activities will not be permitted without the prior approval of the Architect and the Recreation Superintendant.

The Contractor shall schedule his work well in advance of actual operations and shall keep the Architect advised of this schedule so that close coordination can be maintained with the Recreation Superintendant.

The Contractor shall provide an entrance gate for his employees and subcontractors. The Contractor shall be responsible for allowing only authorized personnel to enter the operational area of the job site through this gate. Entrance through the gate shall be controlled by the Contractor at all times.

When not in use by the Contractor, the gate shall be securely locked to prevent entrance by unauthorized persons.

The Contractor shall maintain the pavement surfaces in a clean condition.

The Contractor shall be subject to a pre-construction conference to discuss phasing and project safety control after award of contract.

SP-5 DELETED

SP-6 AFFIDAVIT OF BILLS PAID

Prior to final acceptance of this project by the Owner, the Contractor shall execute an affidavit that all bills for labor, materials and incidentals incurred in the construction of these improvements, have been paid in full, including any retainage, and that there are no claims pending, of which he has been notified.

SP-7 CALENDAR DAY

Time for completion of the project and for liquidated damages shall be in accordance with the provisions of the General Conditions, Paragraph GC-32, TIME FOR COMPLETION AND LIQUIDATED DAMAGES. A calendar day is defined as every day shown on the calendar.

SP-8 PROTECTION OF PROPERTY

The Contractor shall exercise care to prevent damage to all structures, either above or below ground, including buildings, fences, pipelines, utilities, roads, etc., whether publicly or privately owned and including work performed by others. The Contractor shall be responsible for locating all underground facilities that might be damaged by the proposed construction.

The Contractor shall be responsible for all damage done to either public or private property during the course of construction except as specifically provided otherwise in these specifications.

Known existing underground utilities and structures are shown on the plans. Their locations are believed to be reasonably accurate but are not guaranteed.

The Contractor shall take all steps necessary to protect these existing facilities during construction.

SP-9 DELETED

SP-10 DELETED

SP-11 DELETED

SP-12 DELETED

SP-13 BARRICADES, SIGNS, AND HAZARD MARKINGS

The Contractor shall provide, erect, and maintain all necessary barricades, signs, danger signals, and lights for the protection of the work and the safety of the public for land traffic.

SP-14 DELETED

SP-15 PUBLIC CONVENIENCE AND SAFETY

Materials stored on the site shall be so placed and the work shall, at all times, be so conducted as to cause no greater obstruction to the air and ground traffic than is considered necessary by the Architect.

SP-16 FINAL CLEANING UP

As each intermediate phase of work is completed and prior to opening any portion of the job, the Contractor shall be responsible for cleaning the construction site and adjacent pavement as specified above.

Upon completion of the work and before acceptance and final payment will be made, the Contractor shall remove from the site all machinery, equipment, surplus, and discarded materials, rubbish and temporary structures. Material cleared from the site and deposited on property adjacent, will not be considered as being disposed of satisfactorily. The cost of the "Cleanup" shall be included as a part of the cost of the various items of work involved, and no direct compensation will be made for this work.

SP-17 INSURANCE

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

Commercial General Liability (including Contractual liability):

-Personal Injury: \$1,000,000.00 per person
\$1,000,000.00 per occurrence
-Property Damage: \$500,000.00 per occurrence

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

Worker's Compensation: Statutory limits

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

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

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

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

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

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

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

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

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

The Contractor shall also obtain an Owner's Protective or Contingent Public Liability Insurance Policy naming the City of Midland, Texas and the Architect as additional insureds and waiving all rights of subrogation in favor of the City of Midland, Texas. The amount of the policy shall be as follows: \$1,000,000 for injuries, including accidental death, to one or more persons and subject to the above limit for each person, a total limit of \$1,000,000 for all damages arising out of bodily injuries to or death of two or more persons in any one accident, a limit of not less than \$1,000,000 for all damages arising out of injury to or destruction of property in any one accident, and subject to that limit per accident, a total (or aggregate) limit of \$2,000,000 for all damages arising out of injury to or destruction of property during the policy period. A copy of this policy shall be delivered to the Owner.

Before work on any contract or subcontract is started, each Contractor and Subcontractor shall submit to the Owner for approval seven (7) certificates covering each insurance policy carried and offered as evidence of compliance with the above requirements, signed by an authorized representative of the insurance company, setting forth:

1. Name and address of the insured.
2. The location of the operations to which the insurance applied.
3. The number of policy and the type or types of insurance in force thereunder on the date borne by such certificate.
4. The expiration date of the policy and the limit or limits of liability thereunder on the date borne by such certificate.
5. A statement that the insurance of the type afforded by the policy applied to all of the operations of whatever character, which are undertaken by the insured during the performance of this contract, provided such operations are required in the performance of the contract.
6. A provision that the policy may be canceled only by mailing written notice to the named insured at the address shown in this policy stating when, not less than ten (10) days thereafter, cancellation of such policy shall be effective, with copy to the Owner of letter of intent.

These certificates will become a part of the Contract Documents and must be included with Contract Documents before execution by the City of Midland, Texas. Coverages specified herein apply to all operations of the Contractor in connection with this work, including automobile and other vehicles.

The Contractor's insurance shall cover himself and all subcontractors and sub-subcontractors. All other sublevels of contractors shall provide copies of proof of insurance if not covered by the general contractor.

The Contractor shall provide a Waiver of Subrogation in favor of the City of Midland and Parkhill, Smith & Cooper, Inc. on the Worker's Compensation and Employee Liability Insurance, Contractor's Public Liability and Property Damage Liability Insurance, and Automobile Insurance.

SP-18 REMOVAL AND DISPOSAL OF STRUCTURES, UTILITIES AND OBSTRUCTIONS

All materials and debris specified to be disposed of by the Contractor shall become the property of the Contractor and shall be properly disposed of off the airport property by the Contractor.

SP-19 CONFORMITY WITH PLANS AND ALLOWABLE DEVIATIONS

Finished surfaces shall conform to the lines, grades, cross sections and dimensions. Any deviation from the plans which may be required by the exigencies of construction shall be determined by the Architect and authorized by him in writing.

SP-20 REMOVAL OF DEFECTIVE AND UNAUTHORIZED WORK

All work which has been rejected or condemned shall be repaired or, if it cannot be satisfactorily repaired, removed and replaced at the Contractor's expense. Materials not conforming to the requirements of the specifications shall be removed immediately from the site of the work and replaced with satisfactory material by the Contractor at his expense.

Work done beyond that shown on the plans, or as given, except as herein provided, work done without proper inspection, or any extra or unclassified work done without written authority and prior contract in writing as to prices, will be done at the Contractor's risk and will be considered unauthorized and, at the option of the Architect, may not be measured and paid for and may be ordered removed and replaced at the Contractor's expense.

Upon the failure of the Contractor to repair satisfactorily or to remove and replace, if so directed, rejected, unauthorized, or condemned work or materials immediately after receiving formal notice from the Architect, the Owner may recover for such defective work or materials on the Contractor's bond, or by action in a court having proper jurisdiction over such matters, or may employ labor and equipment and satisfactorily repair or remove and replace such work and charge the cost of the same to the Contractor, which cost will be deducted from any money due him.

SP-21 DISPUTED CLAIMS FOR EXTRA WORK

In case the Contractor deems extra compensation is due him for work on materials not clearly covered in the contract, or not ordered by the Architect as an extra, the Contractor shall notify the Architect in writing of his intention to make claim for such extra compensation before he begins the work on which he bases the claim and shall afford the Architect every facility for keeping actual cost of the work. Failure on the part of the Contractor to give such notification or to afford the Architect proper facilities for keeping strict account of actual costs shall constitute a waiver of the claim for such extra compensation. The filing of such notice by the contractor and the keeping of costs by the Architect shall

not in any way be construed to prove validity of the claim. When the work has been completed, the Contractor shall within 10 days file his claim for extra compensation with the Architect, who will present it to the Owner for consideration.

SP-22 DELETED

SP-23 INDEMNIFICATION

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

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

The Contractor agrees that he will indemnify and save the Owner and Parkhill, Smith & Cooper, Inc. harmless from all claims growing out of any demands of subcontractors, laborers, workmen, mechanics, materialmen, and furnishers of machinery and parts thereof, equipment, power tools, all supplies, including commissary incurred in the furtherance of the performance of this contract. When Owner so desires, the Contractor shall furnish satisfactory evidence that all obligations of the nature hereinabove designated have been paid, discharged or waived.

The Contractor hereby waives all rights to any attorney's fees awarded as a result of any action brought under the Texas Uniform Declaratory Judgments Act relating to this contract.

SP-24 CONTRACTOR'S RESPONSIBILITY FOR WORK

Until acceptance by the Architect of any part or all of the construction, as provided for in these specifications, it shall be under the charge and care of the Contractor, and he shall take every necessary precaution against injury or damage to any part of the work by the action of the elements or from any other cause whatsoever, whether arising from the execution or from the nonexecution of the work. The Contractor shall rebuild, repair, restore, and make good, at his own expense, all injuries or damage to any portion of the work occasioned by any of the above causes before its completion and acceptance.

SP-25 CORRECTION OF FAULTY WORK AFTER FINAL PAYMENT

The making of the final payment by the Owner to the Contractor shall not relieve the Contractor of responsibility for faulty materials or workmanship. The Contractor shall promptly replace any such defects discovered within one year from the date of written acceptance of the work.

The Performance Bond shall remain in effect until one year after the date of the written acceptance of the work to insure compliance by the Contractor with the requirements of this paragraph.

SP-26 TEXAS STATE SALES TAX

The work under this contract is for an entity which qualifies for exemption pursuant to the provisions of Article 151.309 of the Texas Tax Code.

The Contractor performing this contract may purchase, rent or lease all materials, supplies and equipment incorporated into the project by issuing to his supplier an exemption certificate in lieu of the tax, said exemption certificate complying with State Comptroller's rulings. However, equipment and parts for equipment purchased to be used on the project but not incorporated into the project do not qualify for said tax exemption.

The Contractor shall issue a resale certificate in lieu of paying such sales tax for all materials incorporated into this project. Further, the Contractor shall separate the charges for materials incorporated into the project from the charges for labor. Any such exemption certificate issued by the Contractor in lieu of the tax shall be subject to the provisions of the State Comptroller's rulings.

SP-27 SEPARATE CONTRACTS

The Owner reserves the right to let other contracts in connection with or in the vicinity of the project. The Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work, and shall coordinate his work and theirs. The Contractor's coordination with other contractors shall require the approval of the Architect. See Paragraph SP-3 for additional requirements concerning separate contracts.

SP-28 TRENCH SAFETY

The Contractor shall strictly comply with all requirements of the Occupational Safety and Health Administration (OSHA) Manual, Chapter XVII, Subpart P - EXCAVATION, TRENCHING AND SHORING for all trenching and excavation operations.

If depths of trenches are encountered which are over five (5) feet, the Contractor shall cut the trench walls to the angle of repose of the soils encountered, or shall submit alternate shoring details to the Architect for approval.

SP-29 LOAD RESTRICTIONS

The Contractor shall comply with all legal load restrictions in the hauling of materials on public roads beyond the limits of the work. A special permit will not relieve the Contractor of liability for damage which may result from the moving of material or equipment.

The operations of equipment of such weight or so loaded as to cause damage to structures or to any other type of construction will not be permitted. Hauling of materials over the base course will not be permitted. Hauling of materials over the base course or surface course under construction shall be limited as directed. No loads will be permitted on a concrete pavement, base or structure before the expiration of the curing period. The Contractor shall be responsible for all damage done by his/her hauling equipment and shall correct such damage at his/her own expense.

SP-30 NOTICE TO PROCEED

The notice to proceed shall state the date on which it is expected the Contractor will begin the construction and from which date contract time will be charged. The Contractor shall begin the work to be performed under the contract within 10 days of the date set by the Architect in the written Notice to Proceed, but in any event, the Contractor shall notify the Architect at least 24 hours in advance of the time actual construction operations will begin.

SP-31 PAYMENT FOR MATERIALS ON HAND

Partial payments may be made to the extent of the delivered cost of materials to be incorporated in the work, provided that such materials meet the requirements of the contract, plans and specifications and are delivered to acceptable sites on the airport property or at other sites in the vicinity that are acceptable to the Owner. Such delivered costs of stored or stockpiled materials may be included in the next partial payment after the following conditions are met:

- a. The material has been stored or stockpiled in a manner acceptable to the Architect at or on an approved site.
- b. The Contractor has furnished the Architect with acceptable evidence of the quantity and quality of such stored or stockpiled materials.
- c. The Contractor has furnished the Architect with satisfactory evidence that the material and transportation costs have been paid.
- d. The Contractor has furnished the owner legal title (free of liens or encumbrances of any kind) to the material so stored or stockpiled.
- e. The Contractor has furnished the Owner evidence that the material so stored or stockpiled is insured against loss by damage to or disappearance of such materials at any time prior to use in the work.

It is understood and agreed that the transfer of title and the Owner's payment for such stored or stockpiled materials shall in no way relieve the Contractor of his/her responsibility for furnishing and placing such materials in accordance with the requirements of the contract, plans and specifications.

In no case will the amount of partial payments for materials on hand exceed the contract price for such materials or the contract price for the contract item in which the material is intended to be used.

No partial payment will be made for stored or stockpiled living or perishable plant materials.

The Contractor shall bear all costs associated with the partial payment of stored or stockpiled materials in accordance with the provisions of this subsection. Partial payments shall be in accordance with GC-46, "Partial Payments."

SP-32 DELETED

SP-33 DELETED

SP-34 AVERAGE CLIMATIC RANGE

The time allowed for completion of the entire project shall include the number of calendar days for anticipated delays due to normal weather conditions. No time extension for delays due to weather will be allowed until and unless such delays exceed the claims for extension of time because of abnormal inclement weather, such extension of time shall be granted only because such abnormal inclement weather prevented the execution of major items of work on normal working days. Weather conditions on a particular day may affect work on days following the normal weather day. This subsequent delay shall not be considered abnormal and no extension of time will be considered.

The following weather table reflects the meteorological data from the Midland-Odessa area, and will be used to determine contract time extensions due to abnormally inclement weather. For the purposes of this Contract, "abnormally inclement weather" will be interpreted as the number of days in excess of the normal number of days on which rainfall exceeds 0.01 inch, or snow/ice pellets exceed 1.0 inch. Extensions of time to complete the work will be based on calendar days, and will be granted by monthly account. No "rain days" unused for previous months may be carried over or accountable for future periods of time.

<u>WEATHER TABLE</u>		
<u>Month</u>	<u>Mean Number of Days of Rain (1)</u>	<u>Mean Number of Days of Snow/Ice Pellets (2)</u>
January	4	1
February	4	1
March	3	0
April	3	0
May	6	0
June	5	0
July	5	0
August	6	0
September	6	0
October	5	0
November	3	0
December	<u>4</u>	<u>1</u>
Annually	54	3

- (1) Mean number of days rainfall, 0.01" or more.
 (2) Mean number of days 1.0 inch or more.
 (*) Less than one-half inch.

This table is based on information reported from Midland International Airport, Midland, Texas. Latitude 31 degrees 56 minutes N. Longitude 102 degrees 12 minutes W., elevation (ground) 2,863 feet.

Means are based on records covering a period of 30 years.

SP-35 SUBSTANTIALLY COMPLETE

In various areas of the specifications the term "Substantially Complete" is used. The definition of this term shall be as follows:

Substantially complete shall occur at the time the work to be completed is complete as specified and Owner accepts and occupies the facility or improvement. All equipment shall have been completely installed, tested, ready for Owner acceptance and use and accepted by the Owner before work can be defined as substantially complete.

SP-36 SOVEREIGN IMMUNITY

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

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

SP-37 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.

SP-38 **THIRD-PARTY BENEFICIARY**

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

SP-39 **RELEASE**

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

SP-40 **INDEPENDENT CONTRACTOR**

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

SP-41 **NOTICE OF ALLEGED BREACH; STATUTORY PREREQUISITES**

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

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

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

SP-42 ASSIGNMENT

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

GENERAL CONDITIONS OF THE CONTRACT

GC-01. OWNER

Whenever the word Owner, or the expression Party of the First Part, or First Party, is used in the contract documents, it shall be understood as referring to the Owner as described in the Contract.

GC-02. CONTRACTOR

Whenever the word Contractor, or the expression Party of the Second Part, or Second Party, is used, it shall be understood to mean the person, persons, co-partnership or corporation so defined in the contract and who has agreed to perform the work embraced in this contract, or to his or their legal representatives.

GC-03. ARCHITECT/ENGINEER

Whenever the word Architect/Engineer is used in this contract, it shall be understood as referring to Parkhill, Smith and Cooper, Inc., Consulting Engineers, Lubbock, Midland, El Paso and Amarillo Texas, Architect/Engineer of the Owner, or such other Architect/Engineer, supervisor or inspector as may be authorized by said Owner to act in any particular.

GC-04. CONTRACT DOCUMENTS

The Contract Documents shall consist of the Notice to Bidders (Advertisement), Instructions to Bidders, Proposal, signed Contract, Performance Bond, Payment Bond, General Conditions of the Contract, Special Provisions, Technical Specifications, Plans, and all modifications thereof incorporated in any of the documents before the execution of the contract.

The Contract Documents are complementary, and what is called for by any one shall be as binding as if called for by all. In case of conflict between any of the Contract Documents, priority of Interpretation shall be in the following order: Signed Contract, Performance Bond, Special Bonds (if any), Proposal, Special Provisions, Notice to Bidders, Instructions to Bidders, Technical Specifications, Plans and General Conditions of the Contract.

GC-05. SUB-CONTRACTOR

The term Sub-Contractor, as employed herein, includes only those having a direct contract with the Contractor, and it includes one who furnished material worked to a special design according to the plans or specifications of this work, but does not include one who merely furnished material not so worked.

GC-06. WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual or to a member of firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered mail to the last business address know to him who gives the notice.

GC-07. WORK

Unless otherwise stipulated, the Contractor shall provide and pay for all materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and all water, light, power, fuel, transportation and other facilities necessary for the execution and completion of the work covered by the contract documents. Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of a good quality. The Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials. Materials or work described in words which so applied have a well known technical or trade meaning shall be held to refer to such recognized standards.

GC-08. DELETED

GC-09. DELETED

GC-10. LAYOUT OF WORK

Except as specifically provided herein, the Contractor shall be responsible for laying out all work and shall accomplish this work in a manner acceptable to the Architect/Engineer. The Architect/Engineer will check the Contractor's layout of all major structures and any other layout work done by the Contractor at the Contractor's request, but this check does not relieve the Contractor of the responsibility of correctly locating all work in accordance with the plans and specifications.

GC-11. ARCHITECT/ENGINEER'S AUTHORITY AND DUTY

Unless otherwise specified, it is mutually agreed between the parties to this Contract that the Architect/Engineer will observe the quality and progress of the work at various times. In order to prevent delays and disputes and to discourage litigation, it is further agreed that the Architect/Engineer shall in all cases determine the amounts and quantities of the several kinds of work which are to be paid for under this contract. He shall determine all questions in relation to said work and the construction thereof, and shall in all cases decide every question which may arise relative to the execution of this contract on the part of said Contractor. The Architect/Engineer's estimates and findings shall be the conditions precedent to the right of the parties hereto to any action of the contract, and to any rights of the Contractor to receive any money under this contract; provided, however, that should the Architect/Engineer render any decision or give any direction, which in the opinion of either party hereto, is not in accordance with the meaning and intent of this contract, either party may file with said Architect/Engineer within thirty (30) days his written objection to the decision or direction so rendered. It is the intent of this contract that there shall be no delay in the execution of the work, therefore, the written decision or directions of the Architect/Engineer as rendered shall be promptly carried out, and any claim arising therefrom shall be thereafter adjusted as hereinafter provided.

The Architect/Engineer shall, within a reasonable time, render and deliver to both the Owner and the Contractor a written decision on all claims of the parties hereto and on all questions which may arise relative to the execution of the work or the interpretation of the contract, specifications and plans. Should the Architect/Engineer fail to make such decision within a reasonable time, an appeal may be taken as if his decision had been rendered against the party appealing.

Whenever the words "directed", "required", "permitted", "designated", "considered necessary", "prescribed", or words of like import are used, it shall be understood that the direction, requirement, permission, order, designation, or prescription, of the Architect/Engineer is intended; and similarly, the words "approval", "acceptable", "satisfactory", or words of like import shall mean approved by or acceptable or satisfactory to the Architect/Engineer.

Whenever in the specifications or drawings accompanying this contract, the terms of description of various qualities relative to finish, workmanship, or other qualities of similar kind which cannot, from their nature, be specifically and clearly described and specified, but are necessarily described in general terms, the fulfillment of which must depend on individual judgment, then in all such cases, any question of the fulfillment of said specifications shall be decided by the Architect/Engineer, and said work shall be done in accordance with his interpretations of the meaning of the words, terms or clauses defining the character of the work.

GC-12. SUPERINTENDENCE AND PROJECT REPRESENTATION

It is agreed by the Contractor that the Architect/Engineer shall be and is hereby authorized to appoint from time to time such subordinate engineers, supervisors or project representatives as the said Architect/Engineer may deem proper to inspect the material furnished and the work done under this contract, and to see that the said material is furnished, and said work is done in accordance with the specifications therefor. The Contractor shall furnish all reasonable aid and assistance required by the subordinate engineers, supervisors or project representatives for the proper inspection and examination of

the work. The Contractor shall regard and obey the directions and instructions of any subordinate engineers, supervisors or project representatives so appointed, when such directions and instructions are consistent with the obligations of this Contract and the accompanying plans and specifications, provided, however, should the Contractor object to any orders by any subordinate engineer, supervisor or project representative, the Contractor may within six (6) days make written appeal to the Architect/Engineer for his decision.

GC-13. CONTRACTOR'S DUTY AND SUPERINTENDENCE

The Contractor shall give personal attention to the faithful prosecution and completion of this contract and shall keep on the work, during its progress, a competent superintendent and any necessary assistants all satisfactory to the Architect/Engineer. The superintendent shall represent the Contractor in his absence and all directions given to him shall be as binding as if given to the Contractor. Adequate supervision by competent and responsible representatives of the Contractor is essential to proper performance of the work and lack of such supervision shall be grounds for suspending operations of the Contractor. Important directions shall be confirmed in writing to the Contractor. Other directions shall be so confirmed on written request in each case.

GC-14. CONTRACTOR'S UNDERSTANDING

It is understood and agreed that the Contractor has, by careful examination, satisfied himself as to the nature and location of the work, the confirmation of the ground, the character, quality and quantity of materials to be encountered, the character of equipment and facilities needed preliminary to and during the prosecution of the work, the general and local conditions, and all other matters which can in any way affect the work under this contract. No verbal contract or conversation with any officer, agent or employee of the Owner, either before or after the execution of this contract shall affect or modify any of the terms or obligations herein contained.

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

GC-15. CHARACTER OF WORKERS

The Contractor agrees to employ only orderly and competent employees, skillful in the performance of the type of work required under this contract, to do the work; and agrees that whenever the Architect/Engineer shall inform him in writing that any employee or employees on the work are, in his opinion, incompetent, unfaithful, or disorderly, such employee or employees shall be discharged from the work and shall not again be employed on the work without the Architect/Engineer's written consent.

GC-16. CONTRACTOR'S BUILDINGS

The building of structures for housing employees, or the erection of tents or other forms of protection, will be permitted only at such places as the Architect/Engineer shall direct, and the sanitary conditions of the grounds in or about such structures shall at all times be maintained in a manner satisfactory to the Architect/Engineer.

GC-17. SANITATION

Necessary sanitary conveniences for the use of laborers on work, properly secluded from public observation, shall be constructed and maintained by the Contractor in such manner and at such points as shall be approved by the Architect/Engineer, and their use shall be strictly enforced.

GC-18. SHOP DRAWINGS

The Contractor shall submit to the Architect/Engineer with such promptness as to cause no delay in his own work or in that of any other Contractor, shop and/or setting drawings and schedules required for the work of the various trades, and the Architect/Engineer shall pass upon them with reasonable promptness, making required corrections. The Architect/Engineer's approval of such drawings or schedules shall not relieve the Contractor from responsibility for deviations from drawings or specifications, unless he has in writing called the Architect/Engineer's attention to such deviations at the time of submission nor shall it relieve him from responsibility for errors of any sort in shop drawings or schedules.

GC-19. PRELIMINARY APPROVAL

The Architect/Engineer shall not have the power to waive the obligations of this contract for the furnishing by the Contractor of good material, and of his performing good work as herein described, and full accordance with the plans and specifications. No failure or omission of the Architect/Engineer to condemn any defective work or material shall relieve the Contractor from the obligations to at once tear out, remove and properly replace the same at any time prior to final acceptance upon the discovery of said defective work or material; provided, however, that the Architect/Engineer shall upon request of the Contractor, inspect and accept or reject any material furnished, and in event the material has been once accepted by the Architect/Engineer, such acceptance shall be binding on the owner, unless it can be clearly shown that such material furnished does not meet the specifications for this work. Any questioned work may be ordered taken up or removed for re-examination, by the Architect/Engineer, prior to final acceptance, and, if found not in accordance with the specifications for said work, all expense of removing, re-examination and replacement shall be borne by the Contractor, otherwise the expense thus incurred shall be allowed as Extra Work, and shall be paid for by the Owner, provided that, where inspection or approval is specifically required by the specifications prior to performance of certain work, should the Contractor proceed with such work without requesting prior inspection or approval, he shall bear all expense of taking up, removing and replacing his work if so directed by the Architect/Engineer.

GC-20. DEFECTS AND THEIR REMEDIES

It is further agreed that if the work or any part thereof, or any material brought on the site of the work for use in the work or selected for the same, shall be deemed by the Architect/Engineer as unsuitable or not in conformity with the specifications, the Contractor shall, after receipt of written notice thereof from the Architect/Engineer, forthwith remove such material and rebuild or otherwise remedy such work so that it shall be in full accordance with this contract.

GC-21. CHANGES AND ALTERATIONS

The Contractor further agrees that the Owner may make such changes and alterations as the Owner may see fit, in the line, grade, form, dimensions, plans or materials for the work herein contemplated, or any part thereof, either before or after the beginning of the construction without affecting the validity of this contract and the accompanying performance bond.

If such changes or alterations diminish the quantity of the work to be done, they shall not constitute the basis for a claim for damages, or anticipated profits on the work that may be dispensed with, except as provided for unit price items under "Estimated Quantities". If the amount of work is either increased or decreased, and the work can fairly be classified under the specifications, price adjustment for such increase or decrease shall be made according to the quantity actually done and at the unit price, if any, established for such work under this contract, except as provided for unit price items under "Estimated Quantities"; otherwise, price adjustment for such changed work shall be made as provided under Extra Work. In case the Owner shall make such changes or alterations as shall make useless any material already done or material already furnished or used then the Owner shall recompense the Contractor for any material or labor so used, and for any actual loss occasioned by such change, due to actual expense incurred in preparation as originally planned.

GC-22. RIGHT OF ARCHITECT/ENGINEER TO MODIFY METHODS AND EQUIPMENT

If at any time the methods or equipment used by the Contractor are found to be inadequate to secure the quality of work or the rate of progress required under this contract, the Architect/Engineer may order the Contractor in writing to increase their safety or improve their character and efficiency, and the Contractor shall comply with such order.

If, at any time the working force of the Contractor is inadequate for securing the progress herein specified, the Contractor shall, if so ordered in writing, increase his force or equipment, or both, to such an extent as to give reasonable assurance of compliance with the schedule of progress.

GC-23. KEEPING OF PLANS AND SPECIFICATIONS ACCESSIBLE

The Architect/Engineer shall furnish the Contractor with an adequate and reasonable number of copies of all specifications without expense to him, and the Contractor shall keep one copy of the same constantly accessible on the work, with the latest revisions noted thereon.

GC-24. OWNERSHIP OF DRAWINGS

All drawings, specifications and copies thereof furnished by the Architect/Engineer shall not be reused on other work, and with the exception of the signed contract sets, are to be returned to him on request, at the completion of the work. All models are the property of the Owner.

GC-25. ADEQUACY OF DESIGN

It is understood that the Owner believes it has employed competent engineers and designers. It is, therefore, agreed that the Owner shall be responsible for the adequacy of the design, sufficiency of the Contract Documents, the safety of the structure and the practicability of the operations of the completed project; provided the Contractor has complied with the requirements of the said Contract Documents, all approved modifications thereof, and additions and alterations thereto approved in writing by the Owner. The burden of proof of such compliance shall be upon the Contractor to show that he has complied with the said requirements of the Contract Documents, approved modifications thereof and all approved additions and alterations thereto.

GC-26. RIGHT OF ENTRY

The Owner reserves the right to enter the property or location on which the works herein contracted for are to be constructed or installed, by such agent or agents as he may elect, for the purpose of supervising and inspecting the work, or for the purpose of constructing or installing such collateral work as said Owner may desire.

GC-27. COLLATERAL CONTRACTS

The Owner agrees to provide by separate contract or otherwise, all labor and material essential to the completion of the work specifically excluded from this contract, in such manner as not to delay the progress of the work, or damage said Contractor, except where such delays are specifically mentioned elsewhere in the Contract Documents.

GC-28. DISCREPANCIES AND OMISSIONS

It is further agreed that it is the intent of this contract that all work must be done and all material must be furnished in accordance with the generally accepted practice, and in the event of any discrepancies between the separate contract documents, the priority of interpretation defined under "Contract Documents" shall govern. In the event that there is still any doubt as to the meaning and intent of any portion of the contract, specifications or drawings, the Architect/Engineer shall define which is intended to apply to the work.

GC-29. DELETED

GC-30. PROTECTION AGAINST ACCIDENT TO EMPLOYEES AND THE PUBLIC

The Contractor shall take out and procure a policy or policies of workmen's compensation insurance with an insurance company licensed to transact business in the State of Texas, which policy shall comply with the Workman's Compensation Law of the State of Texas. The Contractor shall at all times exercise reasonable precautions for the safety of employees and others on or near the work and shall comply with all applicable provisions of Federal, State and Municipal safety laws and building and construction codes. All machinery and equipment and other physical hazards shall be guarded in accordance with the "Manual of Accident Prevention in Construction" of the Associated General Contractors of America except where incompatible with Federal, State or Municipal laws or regulations. The Contractor, his sureties and insurance carriers shall defend, indemnify and save harmless the Owner and all its officers, agents, and employees and the Architect/Engineer and his agents and employees from all suits, actions or claims of any character, name and description brought for or on account of any injuries or damages received or sustained by any persons or property, on account of any negligent act or fault of the Contractor or any Subcontractor, their agents or employees, in the execution and supervision of said contract and project which is the subject matter of this contract or on account of the failure of the Contractor or any Subcontractor to provide necessary barricades, warning lights or signs, and will be required to pay any judgment with costs which may be obtained against the Owner or any of its officers, agents or employees, and/or the Architect/Engineer, his agents and employees.

The safety precautions taken shall be the sole responsibility of the Contractor, in his sole discretion as an independent contractor; the inclusion of this paragraph in the contract, as well as any notice which may be given by the Owner, the Architect/Engineer or their representatives concerning omissions under this paragraph as the work progresses, are intended only as reminders to the Contractor of his duty and shall not be construed as any assumption of duty to supervise safety precautions by either the Owner or the Architect/Engineer.

GC-31. DELETED

GC-32. TIME FOR COMPLETION AND LIQUIDATED DAMAGES

It is hereby understood and mutually agreed, by and between the Contractor and the Owner, that the date of beginning and the time for completion as specified in the contract of the work to be done hereunder are ESSENTIAL CONDITIONS of this contract; and it is further mutually understood and agreed that the work embraced in this contract shall be commenced on a date to be specified in the "Notice to Proceed."

The Contractor agrees that said work shall be prosecuted regularly, diligently, and uninterruptedly at such rate of progress as will insure full completion thereof within the time specified. It is expressly understood and agreed, by and between the Contractor and the Owner, that the time for the completion of the work described herein is a reasonable time for the completion of the same, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality.

If the said Contractor shall neglect, fail or refuse to complete the work within the time herein specified, or any proper extension thereof granted by the Owner, then the Contractor does hereby agree, as a part consideration for the awarding of this contract, to pay to the Owner the amount specified in the contract, not as a penalty but as liquidated damages for such breach of contract as hereinafter set forth, for each and every calendar day that the Contractor shall be in default after the time stipulated in the contract for completing the work.

The said amount is fixed and agreed upon by and between the Contractor and the Owner because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain, and said amount is agreed to be the amount of damages which the Owner would sustain and said amount shall be retained from time to time by the Owner from current periodical estimates.

It is further agreed that time is of the essence of each and every portion of this contract and of the specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever; and where under the contract an additional time is allowed for the completion of any work, the new time limit fixed by such extension shall be of the essence of this contract. Provided, that the Contractor shall not be charged with liquidated damages or any excess cost when the Owner determines that the Contractor is without fault and the Contractor's reasons for the time extension are acceptable to the Owner; Provided, further, that the Contractor shall not be charged with liquidated damages of any excess cost when the delay in completion of the work is due:

- a. To any preference, priority or allocation order duly issued by the Government;
- b. To unforeseeable cause beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God, or of the public enemy, acts of the Owner, acts of another Contractor in the performance of a contract with the Owner, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and severe weather; and
- c. To any delays of Subcontractors or suppliers occasioned by any of the causes specified in subsection (a) and (b) of this article:

Provided, further, that the Contractor shall, within ten (10) days from the beginning of such delay, unless the Owner shall grant a further period of time prior to the date of final settlement of the contract, notify the Owner, in writing, of the causes of the delay, who shall ascertain the facts and extent of the delay and notify the Contractor within a reasonable time of its decision in the matter.

GC-33. PRICE FOR WORK

In consideration of the furnishing of all necessary labor, equipment and material and the completion of all work by the Contractor, and on the delivery of all material embraced in this contract in full conformity with the specifications and stipulations herein contained, the Owner agrees to pay the Contractor the prices set forth in the Proposal hereto attached, which has been made a part of this contract, and the Contractor hereby agrees to receive such prices in full for furnishing all material and all labor required for the aforesaid work, also for all expenses incurred by him, and for well and truly performing the same and the whole thereof in the manner and according to this Contract, the attached specifications, the drawings and the requirements of the Architect/Engineer.

GC-34. BONDS

It is further agreed by the parties to this contract that the Contractor will execute bonds in the sum of 100% of the total contract price, for the satisfactory performance of the work and payment of all labor, materials, and equipment in accordance with this contract on the forms provided for this purpose, executed by an approved surety company authorized to do business in the State of Texas, and it is agreed that this contract shall not be in effect until such bonds are furnished and approved by the Owner. Performance and Payment Bonds shall be in compliance with Chapter 2253 of the Texas Government Code.

GC-35. LOSSES FROM NATURAL CAUSES

Unless otherwise specified, all loss or damage to the Contractor arising out of the nature of the work to be done, or from the action of the elements, or from any unforeseen circumstances in the prosecution of the same, or from unusual obstructions or difficulties which may be encountered in the prosecution of the work, shall be sustained and borne by the Contractor at his own expense.

GC-36. PROTECTION OF ADJOINING PROPERTY

The said Contractor shall take proper means to protect the adjacent or adjoining property or properties, in any way encountered, which might be injured or seriously affected by any process of construction to be undertaken under this Contract, from any damage or injury by reason of said process of construction; and he shall be liable for any and all claims for such damage on account of his failure to fully protect all adjoining property. The Contractor agrees to indemnify, save and hold harmless the Owner against any claim or claims for damages due to any injury to any adjacent or adjoining property, arising or growing out of the performance of the contract, but any such indemnity shall not apply to any claim of any kind arising out of the existence or character of the work.

GC-37. PROTECTION AGAINST CLAIMS OF SUB-CONTRACTORS, LABORERS, MATERIALMEN AND FURNISHERS OF MACHINERY, EQUIPMENT AND SUPPLIES

The Contractor agrees that he will indemnify and save the Owner harmless from all claims growing out of the lawful demands of sub- contractors, laborers, workmen, mechanics, materialmen and furnishers of machinery and parts thereof, equipment, power tools, and all supplies, including commissary, incurred in the furtherance of the performance of this contract. When so desired by the Owner, the Contractor shall furnish satisfactory evidence that all obligations of the nature hereinabove designated have been paid, discharged or waived. If the Contractor fails so to do, then the Owner may at the option of the Contractor either pay directly any unpaid bills, of which the Owner has written notice, or withhold from the Contractor's unpaid compensation a sum of money deemed reasonably sufficient to liquidate any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged, whereupon payments to the Contractor shall be resumed in full, in accordance with the terms of this contract, but in no event shall the provisions of this paragraph be construed to impose any obligations upon the Owner by either the Contractor or his surety.

GC-38. PROTECTION AGAINST ROYALTIES OR PATENTED INVENTION

The Contractor shall pay all royalties and license fees, and shall provide for the use of any design, device, material or process covered by letters patent or copyright by suitable legal contract with the patentee or owner. The Contractor shall defend all suits or claims for infringement of any patent or copyrights and shall indemnify and save the Owner harmless from any loss on account thereof, except that the Owner shall defend all such suits and claims and shall be responsible for all such loss when a particular design, device, material or process or the product of a particular manufacturer or manufacturers is specified or required by the Owner; provided, however, if choice of alternate design, device, material or process is allowed to the Contractor, then the Contractor shall indemnify and save Owner harmless from any loss on account of thereof. If the material or process specified or required by the Owner is an infringement, the Contractor shall be responsible for such loss unless he promptly gives such information to the Owner.

GC-39. LAWS AND ORDINANCES

The Contractor shall at all times observe and comply with all Federal, State and local laws, ordinances and regulations, which in any manner affect the contract or the work, and shall indemnify and save harmless the Owner against any claims arising from the violation of any such laws, ordinances, and regulations whether by the Contractor or his employees, except where such violations are called for by the provisions of the Contract Documents. If the Contractor observes that the plans and specifications are at variance therewith, he shall promptly notify the Architect/Engineer in writing, and any necessary changes shall be adjusted as provided in the contract for changes in the work. If the Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the Architect/Engineer, he shall bear all costs arising therefrom. In case the Owner is a body politic and corporate the law from which it derives its powers, insofar as the same regulates the objects for which, or in the manner in which, or the conditions under which the Owner may enter into contract, shall be controlling, and shall be considered as part of this contract, to the same effect as though embodied herein.

GC-40. ASSIGNMENT AND SUBLETTING

The Contractor further agrees that he will retain personal control and will give his personal attention to the fulfillment of this contract and that he will not assign by Power of Attorney, or otherwise, or sublet said contract without the written consent of the Owner, and that no part or feature of the work will be sublet to anyone objectionable to the Architect/Engineer or the Owner. The Contractor further agrees that the subletting of any portion or feature of the work, or materials required in the performance of this contract, shall not relieve the Contractor from his full obligations to the Owner, as provided by this Contract.

GC-41. TIME AND ORDER OF COMPLETION

It is the meaning and intent of this contract, unless otherwise herein specifically provided, that the Contractor shall be allowed to prosecute his work at such times and sessions, in such order of precedence, and in such manner as shall be most conducive to economy of construction; provided, however, that the order and the time of prosecution shall be such that the work shall be substantially completed as a whole or in part, in accordance with this contract, the plans and specifications, and within the time of completion designated in the proposal; provided, also, that when the Owner is having other work done, either by contract or by his own force, the Architect/Engineer may direct the time and manner of constructing the work done under this contract so that conflict will be avoided and the construction of the various works being done for the Owner shall be harmonized.

The Contractor shall submit, at such times as may be reasonably be requested by the Architect/Engineer, schedules which shall show the order in which the Contractor proposes to carry on the work, with dates at which the Contractor will start the several parts of the work, and estimated dates of completion of the several parts.

GC-42. EXTENSION OF TIME

Should the Contractor be delayed in the completion of the work by any act or neglect of the Owner or Architect/Engineer or by any employee of either, or by other contractors employed by the Owner, or by changes ordered in the work, or by strikes, lockouts, fires and unusual delays by common carriers, or unavoidable cause or causes beyond the Contractor's control, or by any cause which the Architect/Engineer shall decide justifies the delay, then an extension of time shall be allowed for completing the work, sufficient to compensate for the delay, the amount of the extension to be determined by the Architect/Engineer, provided, however, that the Contractor shall give the Architect/Engineer prompt notice in writing of the cause of such delay.

GC-43. HINDRANCES AND DELAYS

No claims shall be made by the Contractor for damages resulting from hindrances or delays from any cause (except where the work is stopped by order of the Owner for his own convenience) during the progress of any portion of the work embraced in this contract. In case said work shall be stopped by the act of the Owner, then such expense as in the judgment of the Architect/Engineer is caused by such stoppage of said work shall be paid by the Owner to the Contractor.

GC-44. QUANTITIES AND MEASUREMENTS

No extra or customary measurements of any kind will be allowed, but the actual measured and/or computed length, area, solid contents, number and weight only shall be considered, unless otherwise specifically provided.

GC-45. ESTIMATED QUANTITIES

This Contract, including the specifications, plans and estimate, is intended to show clearly all work to be done and material to be furnished hereunder. Where the estimated quantities are shown for the various classes of work to be done and material to be furnished under this contract, they are approximate and are to be used only as a basis for estimating the probable cost of the work and for comparing the proposals offered for the work. It is understood and agreed that the actual amount of work

to be done and material to be furnished under this contract may differ somewhat from these estimates, and that where the basis for payment under this contract is the unit price method, payment shall be for the actual amount of such work done and the material furnished.

Where payment is based on the unit price method, the Contractor agrees that he will make no claim for damages, anticipated profits, or otherwise on account of any differences which may be found between the quantities of work actually done, the material actually furnished under this contract and the estimated quantities contemplated and contained in the proposal; provided, however, that where the actual quantity of any major item in this contract is an estimated quantity and where the actual quantity of such "major item" varies more than twenty-five percent (25%) above or below the estimated quantity stated in this contract, an equitable adjustment in the contract price shall be made upon demand of either party. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above one hundred twenty-five percent (125%) or below seventy-five percent (75%) of the estimated quantity.

A "Major Item" shall be construed to be any individual bid item included in the proposal that has a total cost equal to or greater than ten (10) percent of the total contract cost, computed on the basis of the proposal quantities and the contract unit prices.

Any revised consideration is to be determined by contract between the parties, otherwise by the terms of this Contract, as provided under "Extra Work."

GC-46. PARTIAL PAYMENTS

On or before the 10th day of each month the Architect/Engineer shall prepare a statement showing as completely as practicable the total value of the work done by the Contractor up to and including the last day of the preceding month; said statement shall also include the value of all sound materials delivered on the site of the work that are to be fabricated into the work.

The Owner shall then pay the Contractor within three (3) working days after receipt of partial payment from the applicable governmental authority, the total amount of the Architect/Engineer's statement, less 5 percent of the amount thereof, which 5 percent shall be retained until final payment, and further less all previous payments and all further sums that may be retained by the Owner under the terms of this Contract. It is understood, however, that in case the whole work be near to completion and some unexpected and unusual delay occurs due to no fault or neglect on the part of the Contractor, the Owner may--upon written recommendation of the Architect/Engineer--pay a reasonable and equitable portion of the retained percentage to the Contractor; or the Contractor at the Owner's option, may be relieved of the obligation to fully complete the work, and thereupon, the Contractor shall receive payment of the balance due him under the contract subject only to the conditions stated under "Final Payment."

GC-47. USE OF COMPLETED PORTIONS

The Owner shall have the right to take possession of and use any completed or partially completed portions of the work, notwithstanding the time for completing the entire work or such portions may not have expired but such taking possession and use shall not be deemed an acceptance of any work not completed in accordance with the Contract Documents. If such prior use increases the cost of or delays the work, the Contractor shall be entitled to such extra compensation, or extension of time, or both, as the Architect/Engineer may determine.

GC-48. FINAL COMPLETION AND ACCEPTANCE

Within twenty (20) days after the Contractor has given the Architect/Engineer written notice that the work has been completed, the Architect/Engineer and the Owner shall inspect the work and within said time, if the work is found to be completed in accordance with the Contract Documents, the Architect/Engineer shall issue to the Owner and the Contractor his Certificate of Completion, and

thereupon it shall be the duty of the Owner within ten (10) days to issue a Certificate of Acceptance of the work to the Contractor.

GC-49. FINAL PAYMENT

Upon the issuance of the Certificate of Completion, the Architect/Engineer shall proceed to make final measurements and prepare final statement of the value of all work performed and materials furnished under the terms of the Contract and shall certify same to the Owner, who shall pay to the Contractor on or before the 20th day after the date of the Certificate of Completion, or if governmental financial assistance is involved, within thirty (30) working days of receipt of final payment from the applicable governmental authority, the balance due the Contractor under the terms of this Contract, provided he has fully performed his contractual obligations under the terms of this contract; and said payment shall become due in any event upon said performance by the Contractor. Neither the Certificate of Acceptance nor the final payment, nor any provision in the Contract Documents, shall relieve the Contractor of the obligation for fulfillment of any warranty which may be required in the Special Provisions of the Specifications.

GC-50. PAYMENT WITHHELD

The Owner may, on account of subsequently discovered evidence, withhold or nullify the whole or part of any certificate to such extent as may be necessary to protect himself from loss on account of:

- a. Defective work not remedied.
- b. Claims filed or reasonable evidence indicating possible filing of claims.
- c. Failure of the Contractor to make payments properly to subcontractors or for material or labor.
- d. Damage to another contractor.

When the above grounds are removed, or the Contractor provides a Surety Bond satisfactory to the Owner, which will protect the Owner in the amount withheld, payment shall be made for amounts withheld because of them.

GC-51. DELAYED PAYMENTS

Should the Owner fail to make payment to the Contractor of the sum named in any partial or final statement, when payment is due, or should the Architect/Engineer fail to issue any statement on or before the date above provided, then the Owner shall pay to the Contractor, in addition to the sum shown as due by such statement, interest thereon at the rate of six (6) percent per annum, unless otherwise specified, from date due as provided under "Partial Payments" and "Final Payments", until fully paid, which shall fully liquidate any injury to the Contractor growing out of such delay in payment, but the right is expressly reserved to the Contractor in the event payments be not promptly made as provided under "Partial Payments", to at any time thereafter treat the contract as abandoned by the Owner and recover compensation, as provided under "Abandonment of Contract", unless such payments are withheld in accordance with the provisions of "Payments Withheld."

GC-52. EXTRA WORK

The term "Extra Work" as used in this contract shall be understood to mean and include all work that may be required by the Architect/Engineer or Owner to be done by the Contractor to accomplish any change, alteration or addition to the work shown upon the plans, or reasonably implied by the specifications, and not covered by the Contractor's Proposal, except as provided under "Changes and Alterations" herein.

It is agreed that the Contractor shall perform all Extra Work under the direction of the Architect/Engineer when presented with a written Extra Work Order signed by the Architect/Engineer, subject, however, to the right of the Contractor to require a written confirmation of such Extra Work Order by the Owner. It is also agreed that the compensation to be paid the Contractor for performing said Extra Work shall be determined by one or more of the following methods:

Method A - By agreed unit prices; or

Method B - By agreed lump sum; or

Method C - If neither Method A nor Method B be agreed upon before the Extra Work is commenced, then the Contractor shall be paid the "actual field cost" of the work, plus fifteen (15) percent.

In the event said Extra Work be performed and paid for under Method C, then the provisions of this paragraph shall apply and the "actual field cost" is hereby defined to include the cost of all workmen, such as foremen, timekeepers, mechanics and laborers, and materials, supplies, teams, trucks, rentals on machinery and equipment, for the time actually employed or used on such Extra Work, plus actual transportation charges necessarily incurred, together with all expenses incurred directly on account of such Extra Work, including Social Security, Old Age Benefits, Maintenance Bonds, Public Liability and Property Damage and Workmen's Compensation, and all other insurance as may be required by any law or ordinance, or directed by the Architect/Engineer or Owner, or by them agreed to. The Architect/Engineer may direct the form in which accounts of the "actual field cost" shall be kept and the records of these accounts shall be made available to the Architect/Engineer. The Architect/Engineer may also specify in writing, before the work commences, the method of doing the work and the type and kind of machinery and equipment to be used; otherwise these matters shall be determined by the Contractor. Unless otherwise agreed upon, the prices for the use of machinery and equipment shall be determined by using 100 percent, unless otherwise specified, of the latest schedule of Equipment Ownership Expense adopted by the Associated General Contractors of America. Where practicable, the terms and prices for the use of machinery and equipment shall be incorporated in the Written Extra Work Order. The fifteen (15%) of the "actual field cost" to be paid the Contractor shall cover and compensate him for his profit, overhead, general superintendence and field office expense, and all other elements of cost and expense not embraced within the "actual field cost" as herein defined, save that where the Contractor's Camp or Field Office must be maintained primarily on account of such Extra Work, then the cost to maintain and operate the same shall be included in the "actual field cost."

No claim for Extra Work of any kind will be allowed unless ordered in writing by the Architect/Engineer. In case any orders or instructions, either oral or written, appear to the Contractor to involve Extra Work for which he should receive compensation or an adjustment in the construction time, he shall make written request to the Architect/Engineer for written order authorizing such Extra Work. Should a difference of opinion arise as to what does or does not constitute Extra Work, or as to the payment therefor, and the Architect/Engineer insists upon its performance, the Contractor shall proceed with the work after making written request for written order and shall keep an accurate account of the "actual field cost" thereof, as provided under Method C. The Contractor will thereby preserve the right to submit the matter of payment by filing a claim as hereinbelow provided.

GC-53. TIME OF FILING CLAIMS

It is further agreed by both parties hereto that all questions of dispute or adjustment presented by the Contractor shall be in writing and filed with the Architect/Engineer within fifteen (15) days after the Architect/Engineer has given any directions, order or instruction to which the Contractor desires to take exception. The Architect/Engineer shall reply to such written exceptions by the Contractor and render his final decision in writing. In case the Contractor should appeal from the Architect/Engineer's decision, the appeal shall be filed with the Architect/Engineer and the Owner in

writing within ten (10) days after the date of delivery to Contractor of the Architect/Engineer's final decision. It is further agreed that final acceptance of the work by the Owner and the acceptance by the Contractor of the final payment shall be a bar to any claim by either party, except where noted otherwise in the Contract Documents.

GC-54. DELETED

GC-55. ABANDONMENT BY CONTRACTOR

In case the Contractor should abandon and fail or refuse to resume work within ten (10) days after written notification from the Owner, or the Architect/Engineer, or if the Contractor fails to comply with the orders of the Architect/Engineer, when such orders are consistent with the Contract Documents, then, and in that case, where a performance bond exists, the Surety on the bond shall be notified in writing and directed to complete the work, and a copy of said notice shall be delivered to the Contractor.

After receiving said notice of abandonment, the Contractor shall not remove from the work any machinery, equipment, tools, materials or supplies then on the job, but the same, together with any materials and equipment under contract for the work, may be held for use on the work by the Owner or the Surety on the construction bond, or another contractor in completion of the work; and the Contractor shall not receive any rental or credit therefor (except when used in connection with Extra Work, where credit shall be allowed as provided for under "Extra Work"), it being understood that the use of such equipment and materials will ultimately reduce the cost to complete the work and be reflected in the final settlement.

Where there is no performance bond provided or in case the Surety should fail to commence compliance with the notice for completion hereinbefore provided for, within ten (10) days after service of such notice, then the Owner may provide for completion of the work in either of the following elective manners:

- a. The Owner may thereupon employ such force of men and use such machinery, equipment, tools, materials and supplies as said Owner may deem necessary to complete the work and charge the expense of such labor, machinery, equipment, tools, materials and supplies to said Contractor, and expense so charged shall be deducted and paid by the Owner out of such moneys as may be due, or that may thereafter at any time become due to the Contractor under and by virtue of this Contract. In case such expense is less than the sum which would have been payable under this contract, if the same had been completed by the Contractor, then said Contractor shall receive the difference. In case such expense is greater than the sum which would have been payable under this contract, if the same had been completed by said Contractor, then the Contractor and/or his Surety shall pay the amount of such excess to the Owner; or
- b. The Owner under sealed bids, after five (5) days notice published one or more times in a newspaper having general circulation in the county of the location of the work, may let the contract for the completion of the work under substantially the same terms and conditions which are provided in this contract. In case of any increase in cost to the Owner under the new contract as compared to what would have been the cost under this contract, such increase shall be charged to the Contractor and the Surety shall be and remain bound therefor. However, should the cost to complete any such new contract prove to be less than what would have been the cost to complete under this contract, the Contractor and/or his Surety shall be credited therewith.

When the work shall have been substantially completed, the Contractor and his Surety shall be so notified and Certificates of Completion and Acceptance, as provided hereinabove shall be issued. A complete itemized statement of the contract accounts, certified to by the Architect/Engineer as being correct, shall then be prepared and delivered to the Contractor and his Surety, whereupon the Contractor and/or his Surety, or the Owner as the case may be, shall pay the balance due as reflected by said statement, within fifteen (15) days after the date of such Certificate of Completion.

In the event the statement of accounts shows that the cost to complete the work is less than that which would have been cost to the Owner, had the work been completed by the Contractor under the terms of this contract; or when the Contractor and/or his Surety shall pay the balance shown to be due by them to the Owner, then all machinery, equipment, tools, materials or supplies left on the site of the work shall be turned over to the Contractor and/or his Surety. Should the cost to complete the work exceed the contract price, and the Contractor and/or his Surety fail to pay the amount due the Owner within the time designated hereinabove, and there remains any machinery, equipment, tools, materials or supplies on the site of the work, notice thereof, together with an itemized list of such equipment and materials, shall be mailed to the Contractor and his Surety at the respective addresses designated in this contract provided, however, that actual written notice given in any manner will satisfy this condition. After mailing, or other giving of such notice, such property shall be held at the risk of the Contractor and his Surety subject only to the duty of the Owner to exercise ordinary care to protect such property. After fifteen (15) days from the date of said notice the Owner may sell such machinery, equipment, tools, materials or supplies and apply the net sum derived from such sale to the credit of the Contractor and his Surety. Such sale may be made at either public or private sale, with or without notice, as the Owner may elect. The Owner shall release any machinery, equipment, tools, materials, or supplies, which remain on the work, and belong to persons other than the Contractor or his Surety, to their proper owners. The books on all operations provided herein shall be open to the Contractor and his Surety.

GC-56. ABANDONMENT BY OWNER

In case the Owner shall fail to comply with the terms of this contract, and should fail or refuse to comply with said terms within ten (10) days after written notification by the Contractor, then the Contractor may suspend or wholly abandon the work, and may remove therefrom all machinery, tools and equipment, and all materials on the site of work that have not been included in payments to the Contractor and have not been wrought into the work. And thereupon the Architect/Engineer shall make an estimate of the total amount earned by the Contractor, which estimate shall include the value of all work actually completed by said Contractor (at the prices stated in the attached proposal where unit prices are used), the value of all partially completed work at a fair and equitable price, and the amount of all Extra Work performed at the prices agreed upon, or provided for by the terms of this contract, and a reasonable sum to cover the cost of any provisions made by the Contractor to carry the whole work to completion and which cannot be utilized. The Architect/Engineer shall then make a final statement of the balance due the Contractor by deducting from the above estimates all previous payments by the Owner and all other sums that may be retained by the Owner under the terms of this Contract and shall certify same to the Owner who shall pay to the Contractor on or before thirty (30) days after the date of the notification by the Contractor the balance shown by said final statement as due the Contractor, under the terms of this Contract.

GC-57 FEDERAL WAGE REQUIREMENTS

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

SECTION 02300

EARTHWORK

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. Drawings, General Conditions of the Contract for Construction, Supplementary Conditions and Division 1 - General Requirements apply to Work of this Section.

1.2 SECTION INCLUDES

- A. Preparing subgrades for slabs-on-grade.
- B. Excavating and backfilling for buildings and structures.
- C. Excavating and backfilling trenches within building lines.
- D. Excavating and backfilling trenches for buried mechanical and electrical utilities and pits for buried utility structures.
- E. Division 15 and 16 Sections for excavating and backfilling buried mechanical and electrical utilities and buried utility structures.

1.3 RELATED SECTIONS

- A. Section 03300 - Cast-in-Place Concrete: For granular course over vapor retarder.

1.4 DEFINITIONS

- A. Backfill: Soil materials used to fill an excavation.
 - 1. Initial Backfill: Backfill placed beside and over pipe in a trench, including haunches to support sides of pipe.
 - 2. Final Backfill: Backfill placed over initial backfill to fill a trench.
- B. Bedding Course: Layer placed over the excavated subgrade in a trench before laying pipe.
- C. Borrow: Satisfactory soil imported from off-site for use as fill or backfill.
- D. Excavation: Removal of material encountered above subgrade elevations.
 - 1. Unauthorized Excavation: Excavation below subgrade elevations or beyond indicated dimensions without direction by Architect. Unauthorized excavation, as well as remedial work directed by Architect, shall be without additional compensation.
- E. Fill: Soil materials used to raise existing grades.
- F. Structures: Buildings, footings, foundations, retaining walls, slabs, tanks, curbs, mechanical and electrical appurtenances, or other man-made stationary features constructed above or below the ground surface.
- G. Subgrade: Surface or elevation remaining after completing excavation, or top surface of a fill or backfill immediately below subbase, drainage fill, or topsoil materials.
- H. Utilities include on-site underground pipes, conduits, ducts, and cables, as well as underground services within buildings.

1.5 SUBMITTALS

- A. Geotechnical Testing Agency Qualification: Evidence of conformance to Quality Assurance Article.
- B. Material Test Reports: From a qualified testing agency indicating and interpreting test results for compliance of the following with requirements indicated:
 - 1. Classification according to ASTM D 2487 of each on-site or borrow soil material proposed for fill and backfill.
 - 2. Laboratory compaction curve according to ASTM D 698 for each on-site or borrow soil material proposed for fill and backfill.
 - 3. Atterberg limits ASTM D 4318.

1.6 QUALITY ASSURANCE

- A. Geotechnical Testing Agency Qualifications: An independent testing agency qualified according to ASTM E 329 to conduct soil materials testing, as documented according to ASTM D 3740 and ASTM E 548.

1.7 PROJECT CONDITIONS

- A. Existing Utilities: Do not interrupt utilities serving facilities occupied by Owner or others unless permitted in writing by Architect and then only after arranging to provide temporary utility services according to requirements indicated:
 - 1. Notify Architect not less than two days in advance of proposed utility interruptions.
 - 2. Do not proceed with utility interruptions without Architect's written permission.
 - 3. Contact utility-locator service for area where Project is located before excavating.

PART 2 - PRODUCTS

2.1 SOIL MATERIALS

- A. General: Provide borrow soil materials when sufficient satisfactory soil materials are not available from excavations.
- B. Satisfactory Soils: Select non-expansive material meeting the following general requirements free of waste, frozen materials, vegetation, and other deleterious matter:
 - 1. Maximum Aggregate Size : 3.0 inches
 - 2. Percent Retained on No. 4 Sieve : 25-50 %
 - 3. Percent Retained on No. 40 Sieve : 50-85 %
 - 4. Plasticity Index : 15 maximum
- C. Unsatisfactory Soils: ASTM D 2487 soil classification groups OL, MH, CH, OH, and PT. or a combination of these group symbols.
 - 1. Unsatisfactory soils also include satisfactory soils not maintained within 2 percent of optimum moisture content at time of compaction.
- D. Backfill and Fill: Satisfactory soil materials. Stratum I or II material stockpiled by Owner.
- E. Bedding: Naturally or artificially graded mixture of natural or crushed gravel, crushed stone, and natural or crushed sand; ASTM D 2940; except with 100 percent passing a 1-inch sieve and not more than 8 percent passing a No. 200 sieve.

PART 3 - EXECUTION

3.1 PREPARATION

- A. Protect structures, utilities, sidewalks, pavements, and other facilities from damage caused by settlement, lateral movement, undermining, washout, and other hazards created by earthwork operations.
- B. Protect subgrades and foundation soils against freezing temperatures or frost. Provide protective insulating materials as necessary.
- C. Provide erosion-control measures to prevent erosion or displacement of soils and discharge of soil-bearing water runoff or airborne dust to adjacent properties and walkways.

3.2 DEWATERING

- A. Prevent surface water and ground water from entering excavations, from ponding on prepared subgrades, and from flooding Project site and surrounding area.
- B. Protect subgrades from softening, undermining, washout, and damage by rain or water accumulation.
 - 1. Reroute surface water runoff away from excavated areas. Do not allow water to accumulate in excavations. Do not use excavated trenches as temporary drainage ditches.
 - 2. Install a dewatering system to keep subgrades dry and convey ground water away from excavations. Maintain until dewatering is no longer required.

3.3 EXCAVATION, GENERAL

- A. Unclassified Excavation: Excavation to subgrade elevations regardless of the character of surface and subsurface conditions encountered, including rock, soil materials, and obstructions.
 - 1. If excavated materials intended for fill and backfill include unsatisfactory soil materials and rock, replace with satisfactory soil materials.

3.4 EXCAVATION FOR STRUCTURES

- A. Excavate to indicated elevations and dimensions within a tolerance of plus or minus 1 inch. Extend excavations a sufficient distance from structures for placing and removing concrete formwork, for installing services and other construction, and for inspections.
 - 1. Excavations for Footings and Foundations: Do not disturb bottom of excavation. Excavate by hand to final grade just before placing concrete reinforcement. Trim bottoms to required lines and grades to leave solid base to receive other work.

3.5 EXCAVATION FOR UTILITY TRENCHES

- A. Excavate trenches to indicated gradients, lines, depths, and elevations.
 - 1. Beyond building perimeter, excavate trenches to allow installation of top of pipe below frost line.
- B. Excavate trenches to uniform widths to provide a working clearance on each side of pipe or conduit. Excavate trench walls vertically from trench bottom to 12 inches higher than top of pipe or conduit, unless otherwise indicated.
 - 1. Clearance: 12 inches on each side of pipe or conduit.
- C. Trench Bottoms: Excavate and shape trench bottoms to provide uniform bearing and support of pipes and conduit. Shape subgrade to provide continuous support for bells,

joints, and barrels of pipes and for joints, fittings, and bodies of conduits. Remove projecting stones and sharp objects along trench subgrade.

1. For pipes and conduit less than 6 inches in nominal diameter and flat-bottomed, multiple- duct conduit units, hand-excavate trench bottoms and support pipe and conduit on an undisturbed subgrade.
2. For pipes and conduit 6 inches or larger in nominal diameter, shape bottom of trench to support bottom 90 degrees of pipe circumference. Fill depressions with tamped sand backfill.
3. Excavate trenches 6 inches deeper than elevation required in rock or other unyielding bearing material to allow for bedding course.

3.6 APPROVAL OF SUBGRADE

- A. Notify Owner's Representative when excavations have reached required subgrade.
- B. If Owner's Representative determines that unsatisfactory soil is present, continue excavation and replace with compacted backfill or fill material as directed.
 1. Additional excavation and replacement material will be paid for according to Contract provisions for changes in the Work.
- C. Proof roll subgrade with heavy pneumatic-tired equipment to identify soft pockets and areas of excess yielding. Do not proof roll wet or saturated subgrades.
- D. Reconstruct subgrades damaged by freezing temperatures, frost, rain, accumulated water, or construction activities, as directed by Architect.

3.7 UNAUTHORIZED EXCAVATION

- A. Fill unauthorized excavation under foundations or wall footings by extending bottom elevation of concrete foundation or footing to excavation bottom, without altering top elevation. Lean concrete fill may be used when approved by Architect.
 1. Fill unauthorized excavations under other construction or utility pipe as directed by Architect.

3.8 STORAGE OF SOIL MATERIALS

- A. Stockpile borrow materials and satisfactory excavated soil materials. Stockpile soil materials without intermixing. Place, grade, and shape stockpiles to drain surface water.
 1. Stockpile soil materials away from edge of excavations.

3.9 BACKFILL

- A. Place and compact backfill in excavations promptly, but not before completing the following:
 1. Construction below finish grade including, where applicable, dampproofing, waterproofing, and perimeter insulation.
 2. Surveying locations of underground utilities for record documents.
 3. Inspecting and testing underground utilities.
 4. Removing concrete formwork.
 5. Removing trash and debris.
 6. Removing temporary shoring and bracing, and sheeting.
 7. Installing permanent or temporary horizontal bracing on horizontally supported walls.

3.10 UTILITY TRENCH BACKFILL

- A. Place and compact bedding course on trench bottoms and where indicated. Shape bedding course to provide continuous support for bells, joints, and barrels of pipes and for joints, fittings, and bodies of conduits.
- B. Backfill trenches excavated under footings and within 18 inches of bottom of footings; fill with concrete to elevation of bottom of footings.
- C. Provide 4-inch- thick, concrete-base slab support for piping or conduit less than 30 inches below surface of roadways. After installing and testing, completely encase piping or conduit in a minimum of 4 inches of concrete before backfilling or placing roadway subbase. Coordinate backfilling with utilities testing.
- D. Fill voids with approved backfill materials while shoring and bracing, and as sheeting is removed.
- E. Place and compact final backfill of satisfactory soil material to final subgrade.

3.11 FILL

- A. Plow, scarify, bench, or break up sloped surfaces steeper than 1 vertical to 4 horizontal so fill material will bond with existing material.
- B. Place and compact fill material in layers to required elevations as follows:

3.12 MOISTURE CONTROL

- A. Uniformly moisten or aerate subgrade and each subsequent fill or backfill layer before compaction to within 2 percent of optimum moisture content.
 - 1. Do not place backfill or fill material on surfaces that are muddy, frozen, or contain frost or ice.
 - 2. Remove and replace, or scarify and air-dry, otherwise satisfactory soil material that exceeds optimum moisture content by 2 percent and is too wet to compact to specified dry unit weight.

3.13 COMPACTION OF BACKFILLS AND FILLS

- A. Place backfill and fill materials in layers not more than 8 inches in loose depth for material compacted by heavy compaction equipment, and not more than 4 inches in loose depth for material compacted by hand-operated tampers.
- B. Place backfill and fill materials evenly on all sides of structures to required elevations, and uniformly along the full length of each structure.
- C. Compact soil to not less than the following percentages of maximum dry unit weight according to ASTM D 698:
 - 1. Under structures, building slabs, steps, and pavements, scarify and recompact top 12 inches of existing subgrade and each layer of backfill or fill material at 95 percent.
 - 2. Under walkways, scarify and recompact top 6 inches below subgrade and compact each layer of backfill or fill material at 92 percent.
 - 3. Under lawn or unpaved areas, scarify and recompact top 6 inches below subgrade and compact each layer of backfill or fill material at 85 percent.

3.14 GRADING

- A. General: Uniformly grade areas to a smooth surface, free from irregular surface changes. Comply with compaction requirements and grade to cross sections, lines, and elevations indicated.
 - 1. Provide a smooth transition between adjacent existing grades and new grades.
 - 2. Cut out soft spots, fill low spots, and trim high spots to comply with required surface tolerances.
- B. Site Grading: Slope grades to direct water away from buildings and to prevent ponding.
- C. Grading inside Building Lines: Finish subgrade to a tolerance of 1/2 inch when tested with a 10- foot straightedge.

3.15 FIELD QUALITY CONTROL

- A. Testing Agency: Engage a qualified independent geotechnical engineering testing agency to perform field quality-control testing.
- B. Allow testing agency to inspect and test subgrades and each fill or backfill layer. Proceed with subsequent earthwork only after test results for previously completed work comply with requirements.
- C. Testing agency will test compaction of soils in place according to ASTM D 1556, ASTM D 2167, ASTM D 2922, and ASTM D 2937, as applicable. Tests will be performed at the following locations and frequencies:
 - 1. Paved and Building Slab Areas: At subgrade and at each compacted fill and backfill layer, at least one test for every 2000 sq. ft. or less of paved area or building slab, but in no case fewer than three tests.
 - 2. Foundation Wall Backfill: At each compacted backfill layer, at least one test for each 100 feet or less of wall length, but no fewer than two tests.
 - 3. Trench Backfill: At each compacted initial and final backfill layer, at least one test for each 150 feet or less of trench length, but no fewer than two tests.
- D. Testing agency will provide schematic map denoting location of test. Report shall include approximate depth from finish floor that the test was taken.
- E. When testing agency reports that subgrades, fills, or backfills have not achieved degree of compaction specified, scarify and moisten or aerate, or remove and replace soil to depth required; recompact and retest until specified compaction is obtained.

3.16 PROTECTION

- A. Protecting Graded Areas: Protect newly graded areas from traffic, freezing, and erosion. Keep free of trash and debris.
- B. Repair and reestablish grades to specified tolerances where completed or partially completed surfaces become eroded, rutted, settled, or where they lose compaction due to subsequent construction operations or weather conditions.
 - 1. Scarify or remove and replace soil material to depth as directed by Architect; reshape and recompact.
- C. Where settling occurs before Project correction period elapses, remove finished surfacing, backfill with additional soil material, compact, and reconstruct surfacing.
 - 1. Restore appearance, quality, and condition of finished surfacing to match adjacent work, and eliminate evidence of restoration to the greatest extent possible.

3.17 DISPOSAL OF SURPLUS AND WASTE MATERIALS

- A. Disposal: Remove surplus satisfactory soil and waste material, including unsatisfactory soil, trash, and debris, and legally dispose of it off Owner's property.

END OF SECTION

SECTION 03300

CAST-IN-PLACE CONCRETE

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. Drawings, General Conditions of the Contract for Construction, Supplementary Conditions and Division 1 - General Requirements apply to Work of this Section.

1.2 SUMMARY

- A. This Section specifies cast-in place concrete, including formwork, reinforcement, concrete materials, mix design, placement procedures, and finishes.

1.3 DEFINITIONS

- A. Cementitious Materials: Portland cement alone or in combination with fly ash.

1.4 SUBMITTALS

- A. Product Data: For each type of manufactured material and product indicated.
- B. Design Mixes: For each concrete mix. Include alternate mix designs when characteristics of materials, project conditions, weather, test results, or other circumstances warrant adjustments.
 - 1. Indicate amounts of mix water to be withheld for later addition at Project site.
- C. Steel Reinforcement Shop Drawings: Details of fabrication, bending, and placement, prepared according to ACI 315, "Details and Detailing of Concrete Reinforcement." Include material, grade, bar schedules, stirrup spacing, bent bar diagrams, arrangement, and supports of concrete reinforcement. Include special reinforcement required for openings through concrete structures.
- D. Testing Agency Qualifications: Evidence of conformance to Quality Assurance Article.

1.5 QUALITY ASSURANCE

- A. Installer Qualifications: An experienced installer who has completed concrete Work similar in material, design, and extent to that indicated for this Project and whose work has resulted in construction with a record of successful in-service performance.
- B. Manufacturer Qualifications: A firm experienced in manufacturing ready-mixed concrete products complying with ASTM C 94 requirements for production facilities and equipment.
 - 1. Manufacturer must be certified according to the National Ready Mixed Concrete Association's Certification of Ready Mixed Concrete Production Facilities.
- C. Source Limitations: Obtain each type or class of cementitious material of the same brand from the same manufacturer's plant, each aggregate from one source, and each admixture from the same manufacturer.
- D. ACI Publications: Comply with the following, unless more stringent provisions are indicated:
 - 1. ACI 301, "Specification for Structural Concrete."
 - 2. ACI 117, "Specifications for Tolerances for Concrete Construction and Materials."

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- E. Testing Agency Qualifications: An independent testing agency, acceptable to authorities having jurisdiction, qualified according to ASTM C 1077 and ASTM E 329 to conduct the testing indicated, as documented according to ASTM E 548.
 - 1. Personnel conducting field tests shall be qualified as ACI Concrete Field Testing Technician, Grade 1, according to ACI CP-1 or an equivalent certification program.

1.6 DELIVERY, STORAGE, AND HANDLING

- A. Deliver, store, and handle steel reinforcement to prevent bending and damage.

PART 2 - PRODUCTS

2.1 FORM-FACING MATERIALS

- A. Smooth-Formed Finished Concrete: Form-facing panels that will provide continuous, true, and smooth concrete surfaces. Furnish in largest practicable sizes to minimize number of joints.
 - 1. Plywood, metal, or other approved panel materials.
- B. Rough-Formed Finished Concrete: Plywood, lumber, metal, earth or another approved material. Provide lumber dressed on at least two edges and one side for tight fit.
- C. Chamfer Strips: Wood, metal, PVC, or rubber strips, 3/4 by 3/4 inch, minimum.
- D. Form-Release Agent: Commercially formulated form-release agent that will not bond with, stain, or adversely affect concrete surfaces and will not impair subsequent treatments of concrete surfaces.
 - 1. Formulate form-release agent with rust inhibitor for steel form-facing materials.

2.2 STEEL REINFORCEMENT

- A. Reinforcing Bars: ASTM A 615, Grade 60, deformed.

2.3 REINFORCEMENT ACCESSORIES

- A. Bar Supports: Bolsters, chairs, spacers, and other devices for spacing, supporting, and fastening reinforcing bars and welded wire fabric in place. Manufacture bar supports according to CRSI's "Manual of Standard Practice" from steel wire, plastic, or precast concrete or fiber-reinforced concrete of greater compressive strength than concrete, and as follows:
 - 1. For concrete surfaces exposed to view where legs of wire bar supports contact forms, use CRSI Class 1 plastic-protected or CRSI Class 2 stainless-steel bar supports.

2.4 CONCRETE MATERIALS

- A. Portland Cement: ASTM C 150, Type I.
 - 1. Fly Ash: ASTM C 618, Class C or F.
- B. Normal-Weight Aggregate: ASTM C 33, uniformly graded, and as follows:
 - 1. Class: Moderate weathering region, but not less than 3M.
 - 2. Nominal Maximum Aggregate Size: 1 inch.
 - 3. Combined Aggregate Gradation: Well graded from coarsest to finest with not more than 18 percent and not less than 8 percent retained on an individual sieve, except

that less than 8 percent may be retained on coarsest sieve and on No. 50 sieve, and less than 8 percent may be retained on sieves finer than No. 50.

- C. Water: Potable and complying with ASTM C 94.

2.5 ADMIXTURES

- A. General: Admixtures certified by manufacturer to contain not more than 0.1 percent water-soluble chloride ions by mass of cementitious material and to be compatible with other admixtures and cementitious materials. Do not use admixtures containing calcium chloride.
- B. Air-Entraining Admixture: ASTM C 260.
- C. Water-Reducing Admixture: ASTM C 494, Type A.

2.6 CURING MATERIALS

- A. Evaporation Retarder: Waterborne, monomolecular film forming, dissipating-type, manufactured for application to fresh concrete.

2.7 REPAIR MATERIALS

- A. Repair Underlayment: Cement-based, polymer-modified, self-leveling product that can be applied in thicknesses from 1/8 inch and that can be feathered at edges to match adjacent floor elevations.
 - 1. Cement Binder: ASTM C 150, portland cement or hydraulic or blended hydraulic cement as defined in ASTM C 219.
 - 2. Primer: Product of underlayment manufacturer recommended for substrate, conditions, and application.
 - 3. Aggregate: Well-graded, washed gravel, 1/8 to 1/4 inch or coarse sand as recommended by underlayment manufacturer.
 - 4. Compressive Strength: Not less than 4100 psi at 28 days when tested according to ASTM C 109/C 109M.

2.8 CONCRETE MIXES

- A. Prepare design mixes for each type and strength of concrete determined by either laboratory trial mix or field test data bases, as follows:
 - 1. Proportion normal-weight concrete according to ACI 211.1 and ACI 301.
- B. Use a qualified independent testing agency for preparing and reporting proposed mix designs for the laboratory trial mix basis.
- C. Footings: Proportion normal-weight concrete mix as follows:
 - 1. Compressive Strength (28 Days): 3000 psi.
 - 2. Minimum Slump: 3 inches.
 - 3. Maximum Slump: 5 inches.
 - 4. Maximum Slump for Concrete Containing Water-Reducing Admixture: 8 inches after admixture is added to concrete with 2- to 4-inch slump.
 - 5. Maximum Water Cementitious Material Ratio: .55.
- D. Cementitious Materials: Limit percentage, by weight, of cementitious materials other than portland cement in concrete as follows:
 - 1. Fly Ash: 25 percent.
- E. Limit water-soluble, chloride-ion content in hardened concrete to 0.15 percent by weight of cement.

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- F. Admixtures: Use admixtures according to manufacturer's written instructions.
 - 1. Use water-reducing admixture in concrete, as required, for placement and workability, and shall be added at the point of delivery only.

2.9 FABRICATING REINFORCEMENT

- A. Fabricate steel reinforcement according to CRSI's "Manual of Standard Practice."

2.10 CONCRETE MIXING

- A. Ready-Mixed Concrete: Measure, batch, mix, and deliver concrete according to ASTM C 94, and furnish batch ticket information.

PART 3 - EXECUTION

3.1 FORMWORK

- A. Design, erect, shore, brace, and maintain formwork, according to ACI 301, to support vertical, lateral, static, and dynamic loads, and construction loads that might be applied, until concrete structure can support such loads.
- B. Construct formwork so concrete members and structures are of size, shape, alignment, elevation, and position indicated, within tolerance limits of ACI 117.
- C. Limit concrete surface irregularities, designated by ACI 347R as abrupt or gradual, as follows:
 - 1. Class C, ½ inch: Walls and members permanently concealed.
- D. Construct forms tight enough to prevent loss of concrete mortar.
- E. Fabricate forms for easy removal without hammering or prying against concrete surfaces. Provide crush or wrecking plates where stripping may damage cast concrete surfaces. Provide top forms for inclined surfaces steeper than 1.5 horizontal to 1 vertical. Kerf wood inserts for forming keyways, reglets, recesses, and the like, for easy removal.
 - 1. Do not use rust-stained steel form-facing material.
- F. Set edge forms, bulkheads, and intermediate screed strips for slabs to achieve required elevations and slopes in finished concrete surfaces. Provide and secure units to support screed strips; use strike-off templates or compacting-type screeds.
- G. Provide temporary openings for cleanouts and inspection ports where interior area of formwork is inaccessible. Close openings with panels tightly fitted to forms and securely braced to prevent loss of concrete mortar. Locate temporary openings in forms at inconspicuous locations.
- H. Chamfer exterior corners and edges of permanently exposed concrete.
- I. Retighten forms and bracing before placing concrete, as required, to prevent mortar leaks and maintain proper alignment.
- J. Coat contact surfaces of forms with form-release agent, according to manufacturer's written instructions, before placing reinforcement.

3.2 EMBEDDED ITEMS

- A. Place and secure anchorage devices and other embedded items required for adjoining work that is attached to or supported by cast-in-place concrete. Use Setting Drawings, templates, diagrams, instructions, and directions furnished with items to be embedded.
 - 1. Install anchor bolts, accurately located, to elevations required.

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- B. Electrical and plumbing lines, pipes, and conduit generally shall be run below concrete slabs. Any lines or conduit that must be located within a concrete member shall only be installed after consulting with the structural engineer of record.

3.3 REMOVING AND REUSING FORMS

- A. General: Formwork, for sides of beams, walls, columns, and similar parts of the Work, that does not support weight of concrete may be removed after cumulatively curing at not less than 50 deg F for 48 hours after placing concrete provided concrete is hard enough to not be damaged by form-removal operations and provided curing and protection operations are maintained.
- B. Clean and repair surfaces of forms to be reused in the Work. Split, frayed, delaminated, or otherwise damaged form-facing material will not be acceptable for exposed surfaces. Apply new form-release agent.
- C. When forms are reused, clean surfaces, remove fins and laitance, and tighten to close joints. Align and secure joints to avoid offsets. Do not use patched forms for exposed concrete surfaces unless approved by Architect.

3.4 STEEL REINFORCEMENT

- A. General: Comply with CRSI's "Manual of Standard Practice" for placing reinforcement.
 - 1. Do not cut or puncture vapor retarder. Repair damage and reseal vapor retarder before placing concrete.
- B. Clean reinforcement of loose rust and mill scale, earth, ice, and other foreign materials.
- C. Accurately position, support, and secure reinforcement against displacement. Locate and support reinforcement with bar supports to maintain minimum concrete cover. Do not tack weld crossing reinforcing bars.
- D. Set wire ties with ends directed into concrete, not toward exposed concrete surfaces.

3.5 JOINTS

- A. General: Construct joints true to line with faces perpendicular to surface plane of concrete.

3.6 CONCRETE PLACEMENT

- A. Before placing concrete, verify that installation of formwork, reinforcement, and embedded items is complete and that required inspections have been performed.
- B. Before placing concrete, water may be added at Project site, subject to limitations of ACI 301.
 - 1. Do not add water to concrete after adding high-range water-reducing admixtures to mix.
- C. Deposit concrete continuously or in layers of such thickness that no new concrete will be placed on concrete that has hardened enough to cause seams or planes of weakness. If a section cannot be placed continuously, provide construction joints as specified. Deposit concrete to avoid segregation.
- D. Deposit concrete in forms in horizontal layers no deeper than 24 inches and in a manner to avoid inclined construction joints. Place each layer while preceding layer is still plastic, to avoid cold joints.
 - 1. Consolidate placed concrete with mechanical vibrating equipment. Use equipment and procedures for consolidating concrete recommended by ACI 309R.

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2. Do not use vibrators to transport concrete inside forms. Insert and withdraw vibrators vertically at uniformly spaced locations no farther than the visible effectiveness of the vibrator. Place vibrators to rapidly penetrate placed layer and at least 6 inches into preceding layer. Do not insert vibrators into lower layers of concrete that have begun to lose plasticity. At each insertion, limit duration of vibration to time necessary to consolidate concrete and complete embedment of reinforcement and other embedded items without causing mix constituents to segregate.
- E. Cold-Weather Placement: Comply with ACI 306.1 and as follows. Protect concrete work from physical damage or reduced strength that could be caused by frost, freezing actions, or low temperatures.
1. When air temperature has fallen to or is expected to fall below 40 deg F, uniformly heat water and aggregates before mixing to obtain a concrete mixture temperature of not less than 50 deg F and not more than 80 deg F at point of placement.
 2. Do not use frozen materials or materials containing ice or snow. Do not place concrete on frozen subgrade or on subgrade containing frozen materials.
 3. Do not use calcium chloride, salt, or other materials containing antifreeze agents or chemical accelerators, unless otherwise specified and approved in mix designs.
- F. Hot-Weather Placement: Place concrete according to recommendations in ACI 305R and as follows, when hot-weather conditions exist:
1. Cool ingredients before mixing to maintain concrete temperature below 90 deg F at time of placement. Chilled mixing water or chopped ice may be used to control temperature, provided water equivalent of ice is calculated to total amount of mixing water. Using liquid nitrogen to cool concrete is Contractor's option.
 2. Cover steel reinforcement with water-soaked burlap so steel temperature will not exceed ambient air temperature immediately before embedding in concrete.
 3. Fog-spray forms, steel reinforcement, and subgrade just before placing concrete. Keep subgrade moisture uniform without standing water, soft spots, or dry areas.

3.7 CONCRETE PROTECTION AND CURING

- A. General: Protect freshly placed concrete from premature drying and excessive cold or hot temperatures. Comply with ACI 306.1 for cold-weather protection and with recommendations in ACI 305R for hot-weather protection during curing.

3.8 CONCRETE SURFACE REPAIRS

- A. Defective Concrete: Repair and patch defective areas when approved by Architect. Remove and replace concrete that cannot be repaired and patched to Architect's approval.
- B. Patching Mortar: Mix dry-pack patching mortar, consisting of one part portland cement to two and one-half parts fine aggregate passing a No. 16 sieve, using only enough water for handling and placing.
- C. Repairing Unformed Surfaces: Test unformed surfaces, such as floors and slabs, for finish and verify surface tolerances specified for each surface. Correct low and high areas. Test surfaces sloped to drain for trueness of slope and smoothness; use a sloped template.
1. Repair finished surfaces containing defects. Surface defects include spalls, popouts, honeycombs, rock pockets, crazing and cracks in excess of 0.01 inch wide or that penetrate to reinforcement or completely through unreinforced sections regardless of width, and other objectionable conditions.
 2. After concrete has cured at least 14 days, correct high areas by grinding.

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3. Correct localized low areas during or immediately after completing surface finishing operations by cutting out low areas and replacing with patching mortar. Finish repaired areas to blend into adjacent concrete.
 4. Correct other low areas scheduled to receive floor coverings with a repair underlayment. Prepare, mix, and apply repair underlayment and primer according to manufacturer's written instructions to produce a smooth, uniform, plane, and level surface. Feather edges to match adjacent floor elevations.
 5. Correct other low areas scheduled to remain exposed with a repair topping. Cut out low areas to ensure a minimum repair topping depth of 1/4 inch to match adjacent floor elevations. Prepare, mix, and apply repair topping and primer according to manufacturer's written instructions to produce a smooth, uniform, plane, and level surface.
 6. Repair defective areas, except random cracks and single holes 1 inch or less in diameter, by cutting out and replacing with fresh concrete. Remove defective areas with clean, square cuts and expose steel reinforcement with at least 3/4 inch clearance all around. Dampen concrete surfaces in contact with patching concrete and apply bonding agent. Mix patching concrete of same materials and mix as original concrete except without coarse aggregate. Place, compact, and finish to blend with adjacent finished concrete. Cure in same manner as adjacent concrete.
 7. Repair random cracks and single holes 1 inch or less in diameter with patching mortar. Groove top of cracks and cut out holes to sound concrete and clean off dust, dirt, and loose particles. Dampen cleaned concrete surfaces and apply bonding agent. Place patching mortar before bonding agent has dried. Compact patching mortar and finish to match adjacent concrete. Keep patched area continuously moist for at least 72 hours.
- D. Perform structural repairs of concrete, subject to Architect's approval, using epoxy adhesive and patching mortar.
- E. Repair materials and installation not specified above may be used, subject to Architect's approval.

3.9 FIELD QUALITY CONTROL

- A. Testing Agency: Engage a qualified independent testing and inspecting agency to sample materials, perform tests, and submit test reports during concrete placement. Sampling and testing for quality control may include those specified in this Article.
- B. Testing Services: Testing of composite samples of fresh concrete obtained according to ASTM C 172 shall be performed according to the following requirements:
1. Testing Frequency: Obtain one composite sample for each day's pour of each concrete mix exceeding 5 cu. yd., but less than 25 cu. yd., plus one set for each additional 50 cu. yd. or fraction thereof.
 - a. When frequency of testing will provide fewer than five compressive-strength tests for each concrete mix, testing shall be conducted from at least five randomly selected batches or from each batch if fewer than five are used.
 2. Slump: ASTM C 143; one test at point of placement for each composite sample, but not less than one test for each day's pour of each concrete mix. Perform additional tests when concrete consistency appears to change.
 3. Air Content: ASTM C 231, pressure method, for normal-weight concrete; ASTM C 173, volumetric method, for structural lightweight concrete; one test for each composite sample, but not less than one test for each day's pour of each concrete mix.

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4. Concrete Temperature: ASTM C 1064; one test hourly when air temperature is 40 deg F and below and when 80 deg F and above, and one test for each composite sample.
 5. Compression Test Specimens: ASTM C 31/C 31M; cast and laboratory cure one set of four standard cylinder specimens for each composite sample.
 6. Compressive-Strength Tests: ASTM C 39; test two laboratory-cured specimens at 7 days and two at 28 days.
- C. Strength of each concrete mix will be satisfactory if every average of any three consecutive compressive-strength tests equals or exceeds specified compressive strength and no compressive-strength test value falls below specified compressive strength by more than 500 psi.
- D. Test results shall be reported in writing to Architect, concrete manufacturer, and Contractor within 48 hours of testing. Reports of compressive-strength tests shall contain Project identification name and number, date of concrete placement, name of concrete testing and inspecting agency, location of concrete batch in Work, design compressive strength at 28 days, concrete mix proportions and materials, compressive breaking strength, and type of break for both 7-and 28-day tests.
- E. Nondestructive Testing: Impact hammer, sonoscope, or other nondestructive device may be permitted by Architect but will not be used as sole basis for approval or rejection of concrete.
- F. Additional Tests: Testing and inspecting agency shall make additional tests of concrete when test results indicate that slump, air entrainment, compressive strengths, or other requirements have not been met, as directed by Architect. Testing and inspecting agency may conduct tests to determine adequacy of concrete by cored cylinders complying with ASTM C 42 or by other methods as directed by Architect.

END OF SECTION

SECTION 04720

CAST STONE

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. Drawings, General Conditions of the Contract for Construction, Supplementary Conditions and Division 1 - General Requirements apply to Work of this Section.

1.2 SECTION INCLUDES

- A. Cast stone windowsills.
- B. Cast stone lintels.
- C. Cast stone medallions.
- D. Cast stone coping.

1.3 RELATED SECTIONS

- A. Division 4 Section "Unit Masonry Assemblies" for installing cast stone units in unit masonry.

1.4 DEFINITIONS

- A. Cast Stone: Architectural precast concrete building units intended to simulate natural cut stone.

1.5 SUBMITTALS

- A. Product Data: Include construction details, material descriptions, dimensions of individual components and profiles, and finishes for cast stone units.
- B. Samples: For each color and texture of cast stone required, 10 inches square in size.
- C. Samples for Initial Selection: For colored mortar, showing the full range of colors available.
- D. Samples for Verification: For each mortar color required, showing the full range expected in the finished construction. Make samples using the same sand and mortar ingredients to be used on Project. Label samples to indicate type and amount of colorant used.
- E. Full-Size Samples: For each type of cast stone unit required. Make available for Architect's review at Project site before installing cast stone.
 - 1. Approved Samples may be installed in the Work.
- F. Qualification Data: For firms and persons specified in "Quality Assurance" Article to demonstrate their capabilities and experience. Include lists of completed projects with project names and addresses, names and addresses of Architects and Owners, and other information specified. Include copies of material test reports for completed projects, indicating compliance of cast stone with ASTM C 1364.
- G. Material Test Reports: From a qualified testing agency indicating and interpreting test results for compliance of cast stone with requirements indicated.

1.6 QUALITY ASSURANCE

- A. Manufacturer Qualifications: A firm experienced in manufacturing cast stone units similar to those indicated for this Project and with a record of successful in-service performance, as well as sufficient production capacity to manufacture required units.
- B. Testing Agency Qualifications: An independent testing agency qualified according to ASTM E 329 to conduct the testing indicated, as documented according to ASTM E 548.
- C. Source Limitations for Cast Stone: Obtain cast stone units through one source from a single manufacturer.
- D. Mockup Wall: Before installing cast stone, build mockup wall to verify selections made under sample Submittals and to demonstrate aesthetic effects and qualities of materials and execution. Build mockup wall to comply with the following requirements, using materials indicated for the completed Work:
 - 1. Locate mockup wall in the locations indicated or, if not indicated, as directed by Architect.
 - 2. Build mockup of typical wall area as shown on Drawing A20E-59 in Baseball Detail Manual.
 - 3. Clean exposed faces of mockups with masonry cleaner as indicated.
 - 4. Notify Architect seven days in advance of dates and times when mockups will be constructed.
 - 5. Protect accepted mockup wall from the elements with weather-resistant membrane.
 - 6. Maintain mockup wall during construction in an undisturbed condition as a standard for judging the completed Work.
 - 7. Approval of mockup wall is for color, texture, and blending of masonry units; relationship of mortar and sealant colors to masonry unit colors; tooling of joints; and aesthetic qualities of workmanship.
 - a. Approval of mockup wall is also for other material and construction qualities specifically approved by Architect in writing.
 - b. Approval of mockup wall does not constitute approval of deviations from the Contract Documents contained in mockups, unless such deviations are specifically approved by Architect in writing.
 - 8. Demolish and remove mockup wall when directed.

1.7 DELIVERY, STORAGE, AND HANDLING

- A. Pack, handle, and ship cast stone units in suitable packs or pallets.
 - 1. Lift with wide-belt slings; do not use wire rope or ropes that might cause staining. Move cast stone units, if required, using dollies with wood supports.
 - 2. Store cast stone units on wood skids or pallets with nonstaining, waterproof covers.
 - 3. Arrange to distribute weight evenly and to prevent damage to units. Ventilate under covers to prevent condensation.

1.8 COORDINATION

- A. Coordinate production and delivery of cast stone with unit masonry work to minimize the need for on-site storage and to avoid delaying the Work.

PART 2 - PRODUCTS

2.1 MANUFACTURERS

- A. Manufacturers: Subject to compliance with requirements, provide products by one of the following:
 - 1. Architectural Cast Stone Corp.
 - 2. Classic Cast Stone of Dallas, Inc.
 - 3. Continental Cast Stone Manufacturing, Inc.
 - 4. Cut Art Castings Co.
 - 5. Dallas Cast Stone Co., Inc.
 - 6. Miller Precast, Inc.
 - 7. Stone Legends Div., C S.C S., Inc.
 - 8. United Cast Stone.

2.2 CAST STONE MATERIALS

- A. General: Comply with ASTM C 1364 and the following:
- B. Portland Cement: ASTM C 150, Type I, containing not more than 0.60 percent total alkali when tested according to ASTM C 114.
- C. Coarse Aggregates: Granite, quartz, or limestone complying with ASTM C 33; gradation as needed to produce required textures.
- D. Fine Aggregates: Manufactured or natural sands complying with ASTM C 33, gradation as needed to produce required textures.
- E. Air-Entraining Admixture: ASTM C 260, certified by the manufacturer to be compatible with other admixtures used.
 - 1. Add to mixes for units exposed to the exterior at manufacturer's prescribed rate to result in an air content of 5 to 7 percent.
- F. Reinforcement: Deformed steel bars complying with ASTM A 615/A 615M.
 - 1. Galvanized Coating: ASTM A 767/A 767M.
- G. Embedded Anchors and Other Inserts: Fabricated from stainless steel complying with ASTM A 276 or ASTM A 666, Type 304.

2.3 CAST STONE UNITS

- A. Provide cast stone units complying with ASTM C 1364.
 - 1. Provide units that are resistant to freezing and thawing as determined by laboratory testing according to ASTM C 666, Procedure A, as modified by ASTM C 1364.
- B. Reinforce units as indicated and as required by ASTM C 1364. Use galvanized or epoxy-coated reinforcement when covered with less than 1-1/2 inches of material.
- C. Fabricate units with sharp arris and details accurately reproduced with indicated texture on all exposed surfaces, unless otherwise indicated.
 - 1. Slope exposed horizontal surfaces at least 1:12, unless otherwise indicated.
 - 2. Provide raised fillets at backs of sills and at ends indicated to be built into jambs.
 - 3. Provide drips on projecting elements, unless otherwise indicated.
- D. Cure and finish units as follows:
 - 1. Cure units in totally enclosed curing room under dense fog and water spray at 95 percent relative humidity for 24 hours.
 - 2. Yard cure units until the sum of the mean daily temperatures for each day equals or exceeds 350 deg F.
 - 3. Acid etch units to remove cement film from surfaces indicated to be finished.

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- E. Colors and Textures: As selected by Architect from manufacturer's full range for these characteristics.

2.4 ACCESSORIES

- A. Anchors: Type and size indicated, fabricated from stainless steel complying with ASTM A 276 or ASTM A 666, Type 304.
- B. Dowels: Round stainless-steel bars complying with ASTM A 276, Type 304, 1/2-inch diameter.

2.5 MORTAR MIXES

- A. Comply with requirements in Division 4 Section "Unit Masonry" for mortar mixes.
 - 1. Limit cementitious materials to portland cement and lime.
 - 2. Pigmented Mortar: Select and proportion pigments with other ingredients to produce color required. Do not exceed pigment-to-cement ratio of 1:10, by weight.

PART 3 - EXECUTION

3.1 EXAMINATION

- A. Examine substrates and conditions, with Installer present, for compliance with requirements for installation tolerances and other conditions affecting performance of cast stone.
- B. Proceed with installation only after unsatisfactory conditions have been corrected.

3.2 INSTALLATION

- A. Install cast stone units to comply with requirements in Division 4 Section "Unit Masonry" for installing stone units.
- B. Set cast stone as indicated on Drawings. Install anchors, supports, fasteners, and other attachments indicated or necessary to secure units in place. Set units accurately in locations indicated with edges and faces aligned according to established relationships and indicated tolerances.
- C. Drench units with clear water just before setting.
- D. Set units in full bed of mortar with full head joints, unless otherwise indicated. Build anchors and ties into mortar joints as units are set.
 - 1. Fill dowel holes and anchor slots with mortar.
 - 2. Fill collar joint solid as units are set.
 - 3. Build concealed flashing into mortar joints as units are set.
 - 4. Leave head joints open in coping and other units with exposed horizontal surfaces. Keep joints clear of mortar, and rake out to receive sealant.
- E. Rake out joints for pointing with mortar to depths of not less than 3/4 inch. Rake joints to uniform depths with square bottoms and clean sides. Scrub faces of units to remove excess mortar as joints are raked.
- F. Point mortar joints by placing and compacting mortar in layers not greater than 3/8 inch. Compact each layer thoroughly and allow to become thumbprint hard before applying next layer.
- G. Tool exposed joints slightly concave when thumbprint hard, using a jointer larger than joint thickness, unless otherwise indicated.

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- H. Provide expansion, control, and pressure-relieving joints of widths and at locations indicated.
 - 1. Sealing joints is specified in Division 7 Section - Joint Sealants.
 - 2. Keep joints free of mortar and other rigid materials.

3.3 ADJUSTING AND CLEANING

- A. Remove and replace stained and otherwise damaged units and units not matching approved samples. Cast stone may be repaired if methods and results are approved by Architect.
- B. Replace units in a manner that results in cast stone matching approved Samples, complying with other requirements, and showing no evidence of replacement.

END OF SECTION

SECTION 04810

UNIT MASONRY ASSEMBLIES

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. Drawings, General Conditions of the Contract for Construction, Supplementary Conditions and Division 1 - General Requirements apply to Work of this Section.

1.2 SECTION INCLUDES

- A. Unit masonry assemblies consisting of the following:
 - 1. Concrete masonry units.
 - 2. Decorative concrete masonry units.
 - 3. Face brick.
 - 4. Mortar and grout.
 - 5. Reinforcing steel.
 - 6. Masonry joint reinforcement.
 - 7. Ties and anchors.
 - 8. Embedded flashing.
 - 9. Miscellaneous masonry accessories.
 - 10. Cavity wall insulation.

1.3 RELATED SECTIONS

- A. Division 2 Section - Unit Pavers: For exterior unit masonry paving.
- B. Division 5 Section - Cold Formed Metal Framing: For structural studs and exterior sheathing for masonry backup.
- C. Division 7 Section - Water Repellents: For water repellents applied to unit masonry assemblies.
- D. Division 7 Section - Sheet Metal Flashing and Trim: For exposed sheet metal flashing.
- E. Division 7 Section - Firestopping: For firestopping at tops of masonry walls and at openings in masonry walls.
- F. Products furnished, but not installed, under this Section include the following:
 - 1. Anchor sections of adjustable masonry anchors for connecting to structural frame, installed under Division 5 Section "Structural Steel."
- G. Products installed, but not furnished, under this Section include the following:
 - 1. Cast Stone trim, furnished under Division 4 Section "Cast Stone."
 - 2. Steel lintels and shelf angles for unit masonry, furnished under Division 5 Section "Metal Fabrications."
 - 3. Manufactured reglets in masonry joints for metal flashing, furnished under Division 7 Section "Sheet Metal Flashing and Trim."
 - 4. Hollow-metal frames in unit masonry openings, furnished under Division 8 Section "Steel Doors and Frames."

1.4 DEFINITIONS

- A. Reinforced Masonry: Masonry containing reinforcing steel in fully grouted cells.

1.5 SUBMITTALS

- A. Product Data: For each different masonry unit, accessory, and other manufactured product specified.
- B. Shop Drawings: Show fabrication and installation details for the following:
 - 1. Reinforcing Steel: Detail bending and placement of unit masonry reinforcing bars. Comply with ACI 315, "Details and Detailing of Concrete Reinforcement." Show elevations of reinforced walls.
 - 2. Fabricated Flashing: Detail corner units, end-dam units, and other special applications.
- C. Samples for Initial Selection: For the following:
 - 1. Unit Masonry Samples in small-scale form showing the full range of colors and textures available for each different exposed masonry unit required.
 - 2. Colored mortar Samples showing the full range of colors available.
- D. Samples for Verification: For the following:
 - 1. Full-size units for each different exposed masonry unit required, showing the full range of exposed colors, textures, and dimensions to be expected in the completed construction.
 - 2. Colored mortar Samples for each color required, showing the full range of colors expected in the finished construction. Make samples using the same sand and mortar ingredients to be used on Project. Label Samples to indicate types and amounts of pig-
 - 3. Weep holes/vents in color to match mortar color.
 - 4. Accessories embedded in the masonry.
- E. List of Materials Used in Constructing Mockups: List generic product names together with manufacturers, manufacturers' product names, model numbers, lot numbers, batch numbers, source of supply, and other information as required to identify materials used. Include mix proportions for mortar and grout and source of aggregates.
 - 1. Submittal is for information only. Neither receipt of list nor approval of mockup constitutes approval of deviations from the Contract Documents, unless such deviations are specifically brought to the attention of the Architect and approved in writing.
- F. Qualification Data: For firms and persons specified in "Quality Assurance" Article.
- G. Material Test Reports: From a qualified testing agency indicating and interpreting test results of the following for compliance with requirements indicated:
 - 1. Each type of masonry unit required.
 - a. Include size-variation data for brick, verifying that actual range of sizes falls within specified tolerances.
 - b. Include test results, measurements, and calculations establishing net -area compressive strength of masonry units.
 - 2. Mortar complying with property requirements of ASTM C 270.
 - 3. Grout mixes complying with compressive strength requirements of ASTM C 476. Include description of type and proportions of grout ingredient s.
- H. Material Certificates: Signed by manufacturers certifying that each of the following items complies with requirements:
 - 1. Each type of masonry unit required.
 - a. Include size-variation data for brick, verifying that actual range of sizes falls within specified tolerances.
 - b. Include test data, measurements, and calculations establishing net-area compressive strength of masonry units.

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2. Each cement product required for mortar and grout, including name of manufacturer, brand, type, and weight slips at time of delivery.
 3. Each combination of masonry unit type and mortar type. Include statement of net-area compressive strength of masonry units, mortar type, and net-area compressive strength of masonry determined according to Tables 1 and 2 in ACI 530.1/ASCE 6/TMS 602.
 4. Each material and grade indicated for reinforcing bars.
 5. Each type and size of joint reinforcement.
 6. Each type and size of anchor, tie, ad metal accessory.

1.6 QUALITY ASSURANCE

- A. Testing Agency Qualifications: An independent testing agency, acceptable to authorities having jurisdiction, qualified according to ASTM C 1093 to conduct the testing indicated, as documented according to ASTM E 548.
- B. Source Limitations for Masonry Units: Obtain exposed masonry units of a uniform texture and color, or a uniform blend within the ranges accepted for these characteristics, through one source from a single manufacturer for each product required.
- C. Source Limitations for Mortar Materials: Obtain mortar ingredients of a uniform quality, including color for exposed masonry, from one manufacturer for each cementitious component and from one source or producer for each aggregate.
- D. Preconstruction Testing Service: Owner will engage a qualified independent testing agency to perform preconstruction testing indicated below. Payment for these services will be made by Owner. Retesting of materials failing to meet specified requirements shall be done at Contractor's expense.
 1. Clay Masonry Unit Test: For each clay masonry unit indicated, per ASTM C 67.
 2. Concrete Masonry Unit Test: For each concrete masonry unit indicated, per ASTM C 140.
 3. Prism Test: For each type of wall construction indicated, per ASTM C 1314.
 4. Mortar Test: For mortar properties per ASTM C 270.
 5. Grout Test: For compressive strength per ASTM C 1019.
- E. Fire-Resistance Ratings: Where indicated, provide materials and construction identical to those of assemblies with fire-resistance ratings determined per ASTM E 119 by a testing and inspecting agency, by equivalent concrete masonry thickness, or by another means, as acceptable to authorities having jurisdiction.
- F. Mockup Wall: Before installing unit masonry, build mockup wall to verify selections made under sample Submittals and to demonstrate aesthetic effects and qualities of materials and execution. Build mockup wall to comply with the following requirements, using materials indicated for the completed Work:
 1. Locate mockup wall in the locations indicated or, if not indicated, as directed by Architect.
 2. Build mockup of typical wall area as shown on Drawing A20E-59 in Baseball Detail Manual.
 3. Clean exposed faces of mockups with masonry cleaner as indicated.
 4. Notify Architect seven days in advance of dates and times when mockups will be constructed.
 5. Protect accepted mockup wall from the elements with weather-resistant membrane.

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6. Maintain mockup wall during construction in an undisturbed condition as a standard for judging the completed Work.
 7. Approval of mockup wall is for color, texture, and blending of masonry units; relationship of mortar and sealant colors to masonry unit colors; tooling of joints; and aesthetic qualities of workmanship.
 - a. Approval of mockup wall is also for other material and construction qualities specifically approved by Architect in writing.
 - b. Approval of mockup wall does not constitute approval of deviations from the contract Documents contained in mockups, unless such deviations are specifically approved by Architect in writing.
 8. Demolish and remove mockup wall when directed.
- G. Preinstallation Conference: Conduct conference at Project site to comply with requirements in Division 1 Section "Project Meetings."

1.7 DELIVERY, STORAGE, AND HANDLING

- A. Store masonry units on elevated platforms in a dry location. If units are not stored in an enclosed location, cover tops and sides of stacks with waterproof sheeting, securely tied. If units become wet, do not install until they are dry.
 1. Protect Type I concrete masonry units from moisture absorption so that, at the time of installation, the moisture content is not more than the maximum allowed at the time of delivery.
- B. Store cementitious materials on elevated platforms, under cover, and in a dry location. Do not use cementitious materials that have become damp.
- C. Store aggregates where grading and other required characteristics can be maintained and contamination avoided.
- D. Deliver preblended, dry mortar mix in moisture-resistant containers designed for lifting and emptying into dispensing silo. Store preblended, dry mortar mix in delivery containers on elevated platforms, under cover, and in a dry location or in a metal dispensing silo with weather-proof cover.
- E. Store masonry accessories, including metal items, to prevent corrosion and accumulation of dirt and oil.

1.8 PROJECT CONDITIONS

- A. Protection of Masonry: During construction, cover tops of walls, projections, and sills with waterproof sheeting at end of each day's work. Cover partially completed masonry when construction is not in progress.
 1. Extend cover a minimum of 24 inches down both sides and hold cover securely in place.
 2. Where one wythe of multiwythe masonry walls is completed in advance of other wythes, secure cover a minimum of 24 inches down face next to unconstructed wythe and hold cover in place.
- B. Do not apply uniform floor or roof loads for at least 12 hours and concentrated loads for at least 3 days after building masonry walls or columns.
- C. Stain Prevention: Prevent grout, mortar, and soil from staining the face of masonry to be left exposed or painted. Immediately remove grout, mortar, and soil that come in contact with such masonry.
 1. Protect base of walls from rain-splashed mud and *from* mortar splatter by coverings spread on ground and over wall surface.
 2. Protect sills, ledges, and projections from mortar droppings.

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3. Protect surfaces of window and door frames, as well as similar products with painted integral finishes, from mortar droppings.
 4. Turn scaffold boards near the wall on edge at the end of each day to prevent rain from splashing mortar and dirt onto completed masonry.
- D. Hot-Weather Requirements: Protect unit masonry work when temperature and humidity conditions produce excessive evaporation of water from mortar and grout. Provide artificial shade and wind breaks and use cooled materials as required.
1. When ambient temperature exceeds 100 deg F, or 90 deg F with a wind velocity greater than 8 mph, do not spread mortar beds more than 48 inches ahead of masonry. Set masonry units within one minute of spreading mortar.
- E. Moisture Protection During Installation: Where exposed to weather, the top of masonry walls shall be covered at the end of each day's work using a waterproof material weighted down to insure its remaining in place. Maintain such protection until final capping of the wall.
- F. Wind Protection: Provide wind barriers, moisture covers or other means of controlling the curing of mortar when excessive wind conditions cause dry shrinking cracking of the mortar.

PART 2 - PRODUCTS

2.1 CONCRETE MASONRY UNITS

- A. General: Refer to Unit Masonry Schedule at the end of this Section for product types and manufactures.
- B. Shapes: Provide shapes indicated and as follows:
1. Provide special shapes for lintels, corners, jambs, sash, control joints, headers, bonding, and other special conditions.
 2. Provide bullnose units for outside corners, unless square edge units are specifically indicated on the Drawings.
- C. Concrete Masonry Units: ASTM C 90 and as follows:
1. Unit Compressive Strength: Provide units with minimum average net-area compressive strength of 1900 psi.
 2. Weight Classification: Medium weight; 115 pound maximum, 105 pounds minimum.
 3. Aggregate: Expanded shale.
 4. Initial Rate of Absorption: 13 pounds per cubic foot for all exterior concrete unit masonry and 15 pounds per cubic foot for all interior concrete masonry.
 5. Provide Type I, moisture-controlled units.
 6. Size (Width): Manufactured to the following dimensions:
 - a. 4 inches nominal; 3-5/8 inches actual.
 - b. 6 inches nominal; 5-5/8 inches actual.
 - c. 8 inches nominal; 7-5/8 inches actual.
 - d. 12 inches nominal; 11-5/8 inches actual.
 7. Exposed Faces: Manufacturer's standard color and texture, unless otherwise indicated.
 - a. Where units are to be left exposed, provide color and texture matching the range represented by Architect's sample.
- D. Decorative Concrete Masonry Units: ASTM C 90 and as follows:
1. Unit Compressive Strength: Provide units with minimum average net-area compressive strength of 1900 psi.

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2. Weight Classification: Medium weight; 115 pound maximum, 105 pounds minimum.
 3. Initial Rate of Absorption: 13 pounds per cubic foot for all exterior concrete unit masonry and 15 pounds per cubic foot for all interior concrete masonry.
 4. Provide Type I, moisture-controlled units.
 5. Size: Manufactured to dimensions indicated for nondecorative units.
 6. Colors and Textures: Refer to Unit Masonry Schedule in Part 3 of this Section.
 - a. Normal-weight aggregate, split-face finish.

2.2 BRICK

- A. General: Provide shapes indicated and as follows for each form of brick required:
 1. Provide units without cores or frogs and with exposed surfaces finished for ends of sills and caps and for similar applications that would otherwise expose unfinished brick surfaces.
- B. Provide special shapes for applications requiring brick of size, form, color, and texture on exposed surfaces that cannot be produced by sawing.
 1. Provide special shapes for applications where stretcher units cannot accommodate special conditions, including those at corners, movement joints, bond beams, sashes, and lintels.
 2. Provide solid units for corners of soldier courses.
 3. Provide special shapes for applications where shapes produced by sawing would result in sawed surfaces being exposed to view.
- C. Face Brick: ASTM C 216, Grade MW or SW, Type FBS, and as follows:
 1. Unit Compressive Strength: Provide units with minimum average net-area compressive strength of 3000 psi.
 2. Initial Rate of Absorption: Less than 20 g/30 sq. in. per minute when tested per ASTM C 67.
 3. Efflorescence: Provide brick that has been tested according to ASTM C 67 and is rated "not effloresced."
 4. Surface Coloring: Brick with surface coloring, other than flashed or sand-finished brick, shall withstand 50 cycles of freezing and thawing per ASTM C 67 with no observable difference in the applied finish when viewed from 10 feet.
 5. Size: Manufactured to the following actual dimensions:
 - a. Standard: 3-1/2 to 3-5/8 inches wide by 2-1/4 inches high by 8 inches long.
 6. Colors and Textures: Refer to Unit Masonry Schedule in Part 3 of this Section.

2.3 MORTAR AND GROUT MATERIALS

- A. Portland Cement-Lime Mix: Packaged blend of portland cement complying with ASTM C 150, Type I or Type III, and hydrated lime complying with ASTM C 207.
 1. For pigmented mortar, use a colored cement formulation as required to produce the color indicated or, if not indicated, as selected from manufacturer's standard formulations.
 - a. Pigments shall not exceed 10 percent of portland cement by weight for mineral oxides nor 2 percent for carbon black.
 - b. Three different mortar colors are required.
- B. Aggregate for Mortar: ASTM C 144; except for joints less than 1/4 inch thick, use aggregate graded with 100 percent passing the No. 16 sieve.
- C. Aggregate for Grout: ASTM C 404.

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- D. Cold-Weather Admixture: Nonchloride, noncorrosive, accelerating admixture complying with ASTM C 494, Type C, and recommended by the manufacturer for use in masonry mortar of composition indicated.
 - E. Water: Potable.
 - F. Products: Subject to compliance with requirements, provide one of the following:
 - 1. Colored Portland Cement-Lime Mix:
 - a. Eaglebond; Blue Circle Cement.
 - b. Color Mortar Blend; Glen-Gery Corporation.
 - c. Rainbow Mortamix Custom Color Cement/Lime; Holnam, Inc.
 - d. Centurion Colorbond PL; Lafarge Corporation.
 - e. Lehigh Custom Color Portland/Lime; Lehigh Portland Cement Co.
 - f. Riverton Portland Cement Lime Custom Color; Riverton Corporation (The).

2.4 REINFORCING STEEL

- A. Uncoated Steel Reinforcing Bars: ASTM A 615/A 615M; ASTM A 616/A 616M, including Supplement 1; or ASTM A 617/A 617M, Grade 60 (Grade 400).

2.5 MASONRY JOINT REINFORCEMENT

- A. General: ASTM A 951 and as follows:
 - 1. Hot-dip galvanized, carbon-steel wire for both interior and exterior walls.
 - 2. Wire Size for Side Rods: W2.8 or 0.188-inch diameter.
 - 3. Wire Size for Cross Rods: W2.8 or 0.188-inch diameter.
 - 4. Provide in lengths of not less than 10 feet, with prefabricated corner and tee units where indicated.
- B. For single-wythe masonry, provide either ladder or truss type with single pair of side rods and cross rods spaced not more than 16 inches o.c.
- C. For multiwythe masonry, provide types as follows:
 - 1. Ladder type with perpendicular cross rods spaced not more than 16 inches o.c. and 1 side rod for each face shell of hollow masonry units more than 4 inches in width, plus 1 side rod for each wythe of masonry 4 inches or less in width.
 - 2. Tab type with single pair of side rods spaced for embedment within each face shell of backup wythe and rectangular box-type cross ties spaced not more than 16 inches o.c. Size ties to extend at least halfway through outer wythe but with at least 5/8-inch cover on outside face.
 - 3. Adjustable (2-piece) type with single pair of side rods and cross ties spaced not more than 16 inches o.c. and with separate adjustable veneer ties engaging the cross ties. Cross ties are either U-shaped with eyes or rectangular. Space side rods for embedment within each face shell of backup wythe and size adjustable ties to extend at least halfway through outer wythe but with at least 5/8-inch cover on outside face.
 - a. Use where indicated and where horizontal joints of facing wythe do not align with those of backup wythe.

2.6 TIES AND ANCHORS, GENERAL

- A. General: Provide ties and anchors, specified in subsequent articles, made from materials that comply with this Article, unless otherwise indicated.
- B. Galvanized Steel Sheet: ASTM A 653/A 653M, G60 (Z180), commercial-quality, steel sheet zinc coated by hot-dip process on continuous lines before fabrication.

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- C. Steel Sheet, Galvanized after Fabrication: ASTM A 366/A 366M cold-rolled, carbon-steel sheet hot-dip galvanized to comply with ASTM A 153.

2.7 BENT WIRE TIRES

- A. General: Rectangular units with closed ends and not less than 4 inches wide. Z-shaped ties with ends bent 90 degrees to provide hooks not less than 2 inches long may be used for masonry constructed from solid units or hollow units laid with cells horizontal.
 - 1. Where coursing between withes does not align, use adjustable ties composed of 2 parts; 1 with pintles, the other with eyes; with maximum misalignment of 1-1/4 inches.
 - 2. Where withes are of different materials, use adjustable ties composed of 2 parts; 1 with pintles, the other with eyes, with maximum misalignment of 1-1/4 inches.
- B. Wire: Fabricated from 3/16-inch diameter, hot-dip galvanized steel wire.

2.8 ADJUSTABLE ANCHORS FOR CONNECTING TO STEEL FRAME

- A. General: Provide two-piece assemblies that allow vertical or horizontal adjustment but resist tension and compression forces perpendicular to plane of wall.
 - 1. Anchor Section: Crimped 1/4 inch diameter, hot-dip galvanized steel wire anchor section for welding to steel.
 - 2. Tie Section: Triangular-shaped wire tie, sized to extend within 1 inch of masonry face, made from 1/4 inch diameter, hot-dip galvanized steel wire.

2.9 ANCHORS FOR CONNECTING TO CONCRETE

- A. General: Provide two-piece assemblies that allow vertical or horizontal adjustment but resist tension and compression forces perpendicular to plane of wall.
 - 1. Tie Section: Triangular-shaped wire tie, sized to extend within 1 inch of masonry face, made from 1/4 inch diameter, hot-dip galvanized steel wire.

2.10 RIGID ANCHORS

- A. General: Fabricate from steel bars as follows:
 - 1. 1-1/2 inches wide by 1/4 inch thick by 24 inches long, with ends turned up 2 inches or with cross pins.
 - 2. Finish: Hot-dip galvanized to comply with ASTM A 153.

2.11 ADJUSTABLE MASONRY-VENEER ANCHORS

- A. General: Provide two-piece assemblies that allow vertical or horizontal adjustment but resist tension and compression forces perpendicular to plane of wall, for attachment over sheathing to wood or metal studs, and as follows:
 - 1. Structural Performance Characteristics: Capable of withstanding 100-lbf load in both tension and compression without deforming or developing play in excess of 0.05 inch.

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- B. Screw-Attached, Masonry-Veneer Anchors: Units consisting of a wire tie section and a metal anchor section complying with the following requirements:
 - 1. Anchor Section: Gasketed sheet metal plate with screw holes top and bottom; top and bottom ends bent to form pronged legs to bridge insulation or sheathing and contact studs; and raised rib-stiffened strap stamped into center to provide a slot between strap and plate for connection of wire tie.
 - a. Plate 1-1/4 inches wide by 6 inches long with strap 5/8 inch wide by 6 inches long; slot clearance formed between face of plate and back of strap shall not exceed diameter of wire tie by more than 1/32 inch.
 - b. Provide anchor manufacturer's standard, self-adhering, modified bituminous gaskets manufactured to fit behind anchor plate and to prevent moisture from penetrating sheathing at pronged legs and screw holes.
 - 2. Wire Tie Section; Triangular- shaped wire tie sized to extend at least halfway through veneer but with at least 5/8 inch cover on outside face.
 - 3. Fabricate sheet metal anchor sections and other sheet metal parts from 0.0966 inch thick, steel sheet, galvanized after fabrication.
 - 4. Fabricate wire tie sections from 1/4 inch diameter hot-dip galvanized steel wire.
 - C. Stainless-Steel Drill Screws for Steel Studs: Proprietary fastener consisting of carbon-steel drill point and 300 Series stainless-steel shank, complying with ASTM C 954 except manufactured with hex washer head and neoprene washer, No. 10 diameter by length required to penetrate steel stud flange by not less than three exposed threads.
 - D. Available Products: Subject to compliance with requirements, cavity drainage materials that may be incorporated into the Work includes, but are not limited to, the following:
 - 1. Screw-Attached, Masonry-Veneer Anchors:
 - a. D/A 213; Dur-O-Wal, Inc.
 - b. D/A 210 with D/A 700-708; Dur-O-Wall, Inc.
 - c. 315-D with 316; Heckman Building Products, Inc.
 - d. DW-10-X; Hohmann 7 Bernard, Inc.
 - e. 1004, Type III; Masonry Reinforcing Corporation of America.
 - f. RJ-711; Masonry Reinforcing Corporation of America.
 - 2. Stainless -Steel Drill Screws for Steel Studs:
 - a. Stainless Steel SX Fastener; Dur-O-Wal, Inc.

2.12 MISCELLANEOUS ANCHORS

- A. Unit Type Inserts in Concrete: Cast-iron or malleable-iron inserts of type and size indicated.
- B. Anchor Bolts: Steel bolts complying with ASTM A 307, Grade A (ASTM F 568, Property Class 4.6); with ASTM A 563 hex nuts and, where indicated, flat washers; hot-dip galvanized to comply with ASTM A 153, Class C; of diameter and length indicated and in the following configurations:
 - 1. Headed bolts.
 - 2. Nonheaded bolts, bent in manner indicated.
- C. Postinstalled Anchors: Anchors as described below, with capability to sustain, without failure, load imposed within factors of safety indicated, as determined by testing per ASTM E 488, conducted by a qualified independent testing agency.
 - 1. Type: Chemical anchors.
 - 2. Type: Expansion anchors.
 - 3. Type: Undercut anchors.
 - 4. Corrosion Protection: Stainless-steel components complying with ASTM F 593 and ASTM F 594, Alloy Group 1 or 2 (ASTM F 738M and ASTM F 836M, Alloy

Group 1 or 4) for bolts and nuts; ASTM A 666 or ASTM A 276, Type 304 or 316, for anchors.

5. For Postinstalled Anchors in Concrete: Capability to sustain, without failure, a load equal to four times the loads imposed.

2.13 EMBEDDED FLASHING MATERIALS

- A. Sheet-Metal Flashing: Fabricate from the following metal:

1. Stainless Steel: 0.0156 inch thick.

2.14 MISCELLANEOUS MASONRY ACCESSORIES

- A. Compressible Filler: Premolded filler strips complying with ASTM D 1056, Grade 2A1; compressible up to 35 percent; of width and thickness indicated; formulated from neoprene or PVC.
- B. Preformed Control-Joint Gaskets: Material as indicated below, designed to fit standard sash block and to maintain lateral stability in masonry wall; size and configuration as indicated.
1. Styrene-Butadiene-Rubber Compound: ASTM D 2000, Designation M2AA-805.
- C. Bond-Breaker Strips: Asphalt-saturated, organic roofing felt complying with ASTM D 226, Type I (No. 15 asphalt felt).
- D. Round Plastic Weep/Vent Tubing: Medium-density polyethylene, 3/8-inch OD by 4 inches long.
- E. Wicking Material: Cotton or polyester rope, 1/4 to 3/8 inch in diameter, in length required to produce 2-inch exposure on exterior and 18 inches in cavity between wythes.
- F. Cavity Drainage Material: Free-draining mesh; made from polyethylene strands and shaped to avoid being clogged by mortar droppings; thickness as required to fill air space.
- G. Reinforcing Bar Positioners: Wire units designed to fit into mortar bed joints spanning masonry unit cells with loops for holding reinforcing bars in center of cells. Units are formed from 0.187-inch steel wire, hot-dip galvanized after fabrication.
1. Provide units with either two loops or four loops as needed for number of bars indicated.
- H. Available Products: Subject to compliance with requirements, cavity drainage materials that may be incorporated into the Work include, but are not limited to, the following:
1. Cavity Drainage Material:
- a. Mortar Break; Advanced Building Products, Inc.
- b. CavCiear Masonry Mat; CavCiear.
- c. Mortar Net; Mortar Net USA, Ltd.
- d. Mortar Stop; Polytite Manufacturing Corp.
2. Reinforcing Bar Positioners:
- a. D/A 811; Dur-0-Wal, Inc.
- b. D/A 816; Dur-0-Wal, Inc.
- c. No. 376 Rebar Positioner; Heckman Building Products, Inc.
- d. #RB Rebar Positioner; Hohmann & Barnard, Inc.
- e. #RB-Twin Rebar Positioner; Hohmann & Barnard, Inc.

2.15 CAVITY-WALL INSULATION

- A. Polyisocyanurate Board Insulation: Aluminum-foil-faced, glass-fiber-reinforced, rigid, cellular, polyisocyanurate thermal insulation complying with ASTM C 1289, Type I, Class 2.
- B. Adhesive: Type recommended by insulation board manufacturer for application indicated.

2.16 MASONRY CLEANERS

- A. Job-Mixed Detergent Solution: Solution of 1/2-cup dry measure tetrasodium polyphosphate and 1/2-cup dry measure laundry detergent dissolved in 1 gal. of water.
- B. Proprietary Acidic Cleaner: Manufacturer's standard-strength cleaner designed for removing mortar/grout stains, efflorescence, and other new construction stains from new masonry without discoloring or damaging masonry surfaces. Use product expressly approved for intended use by cleaner manufacturer and manufacturer of masonry units being cleaned.
 - 1. Available Products: Subject to compliance with requirements, products that may be used to clean unit masonry surfaces include, but are not limited to, the following:
 - a. Cleaners for Red and Light-Colored Brick Not Subject to Metallic Staining with Mortar Not Subject to Bleaching:
 - 1) 202 New Masonry Detergent; Diedrich Technologies, Inc.
 - 2) Sure Klean No. 600 Detergent; ProSoCo, Inc.
 - b. Cleaners for Red and Dark-Colored Brick Not Subject to Metallic Staining:
 - 1) 200 Lime Solv; Diedrich Technologies, Inc.
 - 2) Sure Klean No. 101 Lime Solvent; ProSoCo, Inc.
 - c. Cleaners for Brick Subject to Metallic Staining:
 - 1) 202V Vana-Stop; Diedrich Technologies, Inc.
 - 2) Sure Klean Vana Trol; ProSoCo, Inc.

2.17 MORTAR AND GROUT MIXES

- A. General: Do not use admixtures, including pigments, air-entraining agents, accelerators, retarders, water-repellent agents, antifreeze compounds, or other admixtures, unless otherwise indicated.
 - 1. Do not use calcium chloride in mortar or grout.
- B. Preblended, Dry Mortar Mix: Furnish dry mortar ingredients in the form of a preblended mix. Measure quantities by weight to ensure accurate proportions, and thoroughly blend ingredients before delivering to Project site.
- C. Mortar for Unit Masonry: Comply with ASTM C 270, Proportion Specification.
 - 1. Limit cementitious materials in mortar to portland cement, mortar cement, and lime.
 - 2. For masonry below grade, in contact with earth, and where indicated, use Type M.
 - 3. For reinforced masonry and where indicated, use Type S.
 - 4. For pointing mortar, use Type N.

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- D. Grout for Unit Masonry: Comply with ASTM C 476.
 - 1. Use grout of type indicated or, if not otherwise indicated, of type (fine or coarse) that will comply with Table 4.3.3.4 of ACI 530.1 /ASCE 6/TMS 602 for dimensions of grout spaces and pour height.
 - 2. Provide grout with a slump of 8 to 11 inches as measured according to ASTM C 143.

2.18 QUALITY CONTROL

- A. will engage a qualified independent testing agency to perform source quality-control testing indicated below:
 - 1. Payment for these services will be made by Owner.
 - 2. Retesting of materials failing to meet specified requirements shall be done at Contractor's expense.
- B. Brick Tests: For each type and grade of brick indicated, units will be tested according to
- C. ASTM C 67.
- D. Concrete Masonry Unit Tests: For each type of concrete masonry unit indicated, units will be tested according to ASTM C 140.

PART 3 - EXECUTION

3.1 EXAMINATION

- A. Examine conditions, with Installer present, for compliance with requirements for installation tolerances and other conditions affecting performance.
 - 1. Verify that foundations are within tolerances specified.
 - 2. Verify that reinforcing dowels are properly placed.
 - 3. Proceed with installation only after unsatisfactory conditions have been corrected.
- B. Before installation, examine rough-in and built-in construction to verify actual locations of piping connections.

3.2 INSTALLATION, GENERAL

- A. Thickness: Build cavity and composite walls and other masonry construction to the full thickness shown. Build single-wythe walls to the actual widths of masonry units, using units of widths indicated.
- B. Build chases and recesses to accommodate items specified in this Section and in other Sections of the Specifications.
- C. Leave openings for equipment to be installed before completing masonry. After installing equipment, complete masonry to match the construction immediately adjacent to the opening.
- D. Cut masonry units with motor-driven saws to provide clean, sharp, unchipped edges. Cut units as required to provide a continuous pattern and to fit adjoining construction. Where possible, use full-size units without cutting. Allow units cut with water-cooled saws to dry before placing, unless wetting of units is specified. Install cut units with cut surfaces and, where possible, cut edges concealed.
- E. Select and arrange units for exposed unit masonry to produce a uniform blend of colors and textures.
 - 1. Mix units from several pallets or cubes as they are placed.

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- F. Wetting of Brick: Wet brick before laying if the initial rate of absorption exceeds 30 g/30 sq. in. per minute when tested per ASTM C 67. Allow units to absorb water so they are damp but not wet at the time of laying.

3.3 CONSTRUCTION TOLERANCES

- A. Comply with tolerances in ACI 530.1/ASCE 6/TMS 602 and the following:
- B. For conspicuous *vertical* lines, such as external corners, door jambs, reveals, and expansion and control joints, do not *vary* from plumb by more than 1/4 inch in 20 feet, nor 1/2 inch maximum.
- C. For *vertical* alignment of exposed head joints, do not *vary* from plumb by more than 1/4 inch in 10 feet, nor 1/2 inch maximum.
- D. For conspicuous horizontal lines, such as exposed lintels, sills, parapets, and reveals, do not *vary* from *level* by more than 1/4 inch in 20 feet, nor 1/2 inch maximum.
- E. For exposed bed joints, do not *vary* from thickness indicated by more than plus or minus 1/8 inch, with a maximum thickness limited to 1/2 inch. Do not *vary* from bed-joint thickness of adjacent courses by more than 1/8 inch.
- F. For exposed head joints, do not *vary* from thickness indicated by more than plus or minus 1/8 inch. Do not *vary* from adjacent bed-joint and head-joint thicknesses by more than 1/8 inch.

3.4 LAYING MASONRY WALLS

- A. Lay out walls in advance for accurate spacing of surface bond patterns with uniform joint thicknesses and for accurate location of openings, movement-type joints, returns, and offsets. Avoid using less-than-half-size units, particularly at corners, jambs, and, where possible, at other locations.
- B. Bond Pattern for Exposed Masonry: Lay exposed masonry in the following bond pattern; do not use units with less than nominal 4-inch horizontal face dimensions at corners or jambs.
 - 1. One-half running bond with vertical joint in each course centered on units in courses above and below.
- C. Lay concealed masonry with all units in a wythe in running bond or bonded by lapping not less than 2 inches. Bond and interlock each course of each wythe at corners. Do not use units with less than nominal 4-inch horizontal face dimensions at corners or jambs.
- D. Stopping and Resuming Work: In each course, rack back one-half-unit length for one-half running bond or one-third-unit length for one-third running bond; do not tooth. Clean exposed surfaces of set masonry, wet clay masonry units lightly if required, and remove loose masonry units and mortar before laying fresh masonry.
- E. Built-in Work: As construction progresses, build in items specified under this and other Sections of the Specifications. Fill in solidly with masonry around built-in items.
- F. Fill space between hollow-metal frames and masonry solidly with mortar, unless otherwise indicated.
- G. Where built-in items are to be embedded in cores of hollow masonry units, place a layer of metal lath in the joint below and rod mortar or grout into core.
- H. Fill cores in hollow concrete masonry units with grout 24 inches under bearing plates, beams, lintels, posts, and similar items, unless otherwise indicated.
- I. Fill reinforced cores in hollow concrete masonry units with grout full height of reinforced core, unless otherwise indicated

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- J. Build non-load-bearing interior partitions full height of story to underside of solid floor or roof structure above, unless otherwise indicated.
 - 1. Install compressible filler in joint between top of partition and underside of structure above.
 - 2. At fire-rated partitions, install firestopping in joint between top of partition and underside of structure above to comply with Division 7 Section "Firestopping."

3.5 MORTAR BEDDING AND JOINTING

- A. Lay hollow masonry units as follows:
 - 1. With full mortar coverage on horizontal and vertical face shells.
 - 2. Bed webs in mortar in starting course on footings and in all courses of piers, columns, and pilasters, and where adjacent to cells or cavities to be filled with grout.
 - 3. For starting course on footings where cells are not grouted, spread out full mortar bed, including areas under cells.
- B. Lay solid brick-size masonry units with completely filled bed and head joints; butter ends with sufficient mortar to fill head joints and shove into place. Do not deeply furrow bed joints or slush head joints.
 - 1. At cavity walls, bevel beds away from cavity, to minimize mortar protrusions into cavity. As work progresses, trowel mortar fins protruding into cavity flat against the cavity face of the brick.
- C. Set cast stone trim units in full bed of mortar with vertical joints slushed full. Fill dowel, anchor, and similar holes solid. Wet stone-joint surface thoroughly before setting; for soiled stone surfaces, clean bedding and exposed surfaces with fiber brush and soap powder and rinse thoroughly with clear water.
- D. Tool exposed joints slightly concave when thumbprint hard, using a jointer larger than the joint thickness, unless otherwise indicated.

3.6 BONDING OF MULTIPLY THE MASONRY

- A. Use individual metal ties installed in horizontal joints to bond wythes together. Provide ties as shown, but not less than one metal tie for 4.5 sq. ft. of wall area spaced not to exceed 24 inches o.c. horizontally and 16 inches o.c. vertically. Stagger ties in alternate courses. Provide additional ties within 12 inches of openings and space not more than 36 inches apart around perimeter of openings. At intersecting and abutting walls, provide ties at no more than 24 inches o.c. vertically.
- B. Use masonry joint reinforcement installed in horizontal mortar joints to bond wythes together.
- C. Corners: Provide interlocking masonry unit bond in each wythe and course at corners, unless otherwise indicated.
 - 1. Provide continuity with masonry joint reinforcement at corners by using prefabricated "L" units as well as masonry bonding.
- D. Intersecting and Abutting Walls: Unless vertical expansion or control joints are shown at juncture, bond walls together as follows:
 - 1. Provide continuity with masonry joint reinforcement by using prefabricated "T" units.

3.7 CAVITIES

- A. Keep cavities clean of mortar droppings and other materials during construction. Strike joints facing cavities flush.
 - 1. Use wood strips temporarily placed in cavity to collect mortar droppings. As work progresses, remove strips, clean off mortar droppings, and replace in cavity.
- B. Installing Cavity-Wall Insulation: Place small dabs of adhesive, spaced approximately 12 inches o.c. both ways, on inside face of insulation boards, or attach with plastic fasteners designed for this purpose. Fit courses of insulation between wall ties and other confining obstructions in cavity, with edges butted tightly both ways. Press units firmly against inside wythe of masonry or other construction as shown.
 - 1. Fill cracks and open gaps in insulation with crack sealer compatible with insulation and masonry.

3.8 MASONRY JOINT REINFORCEMENT

- A. General: Provide continuous masonry joint reinforcement as indicated. Install entire length of longitudinal side rods in mortar with a minimum cover of 5/8 inch on exterior side of walls, 1/2 inch elsewhere. Lap reinforcement a minimum of 6 inches.
 - 1. Space reinforcement not more than 16 inches o.c.
 - 2. Space reinforcement not more than 8 inches o.c. in foundation walls and parapet walls.
 - 3. Provide reinforcement not more than 8 inches above and below wall openings and extending 12 inches beyond openings.
 - a. Reinforcement above is in addition to continuous reinforcement.
- B. Cut or interrupt joint reinforcement at control and expansion joints, unless otherwise indicated.
- C. Provide continuity at corners and wall intersections by using prefabricated "L" and "T" sections. Cut and bend reinforcing units as directed by manufacturer for continuity at returns, offsets, column fireproofing, pipe enclosures, and other special conditions.

3.9 ANCHORING MASONRY TO STRUCTURAL MEMBERS

- A. Anchor masonry to structural members where masonry abuts or faces structural members to comply with the following:
 - 1. Provide an open space not less than 1 inch in width between masonry and structural member, unless otherwise indicated. Keep open space free of mortar or other rigid materials.
 - 2. Anchor masonry to structural members with flexible anchors embedded in masonry joints and attached to structure.
 - 3. Space anchors as indicated, but not more than 24 inches o.c. vertically and 36 inches o.c. horizontally.

3.10 ANCHORING MASONRY VENEERS

- A. Anchor masonry veneers to wall framing with masonry-veneer anchors to comply with the following requirements:
 - 1. Fasten each anchor section through sheathing to wall framing with two metal fasteners of type indicated.
 - 2. Fasten anchors to concrete and masonry backup with metal fasteners of type indicated.

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3. Embed tie sections in masonry joints. Provide not less than 2 inches of air space between back of masonry veneer and face of sheathing.
 4. Locate anchor sections to allow maximum vertical differential movement of ties up and down.
 5. Space anchors as indicated, but not more than 18 inches o.c. vertically and 24 inches o.c. horizontally, with not less than 1 anchor for each 2 sq. ft. of wall area. Install additional anchors within 12 inches of openings and at intervals, not exceeding 8 inches, around the perimeter.

3.11 CONTROL AND EXPANSION JOINTS

- A. General: Install control and expansion joints in unit masonry where indicated. If not indicated, locate control joints at a maximum of 50 feet on center. Build-in related items as masonry progresses. Do not form a continuous span through movement joints unless provisions are made to prevent in-plane restraint of wall or partition movement.
 1. In addition to the above requirements and unless otherwise indicated on the drawings, provide vertical control joints in masonry walls as follows:
 - a. Within 2 feet of wall corners and intersections.
 - b. Adjacent to and over openings and pilasters.
 - c. Changes in wall height or wall thickness.
 - d. At construction joints in foundations, in roofs, and in floors.
 - e. At chases, recess, and fixtures.
- B. Form control joints in concrete masonry as follows:
 1. Install preformed control joint gaskets designed to fit standard sash block. Provide one #4 vertical bar and grout fill the first cell full height at each side of all control joints in walls that are 18 feet in height or exterior.
- C. Form control joints in brick made from clay or shale as follows:
 1. Build in joint fillers.
 2. Form open joint 3/8 inch unless otherwise indicated for installation of sealant and backer rod specified in Division 7 Section "Joint Sealants." Maintain joint free and clear of mortar.
- D. Build in horizontal pressure-relieving joints where indicated; construct joints by either leaving an air space or inserting nonmetallic 50 percent compressible joint filler of width required to permit installation of sealant and backer rod specified in Division 7 Section "Joint Sealants."
 1. Locate horizontal pressure-relieving joints beneath shelf angles supporting masonry veneer and attached to structure behind masonry veneer.

3.12 LINTELS

- A. Install steel lintels where indicated.
- B. Provide masonry lintels where shown and where openings of more than 12 inches for brick-size units and 24 inches for block-size units are shown without structural steel or other supporting lintels.
 1. Provide precast lintels made from concrete matching concrete masonry units in color, texture, and compressive strength and with reinforcing bars indicated or required to support loads indicated. Cure precast lintels by the same method used for concrete masonry units.
 2. Provide prefabricated or built-in-place masonry lintels. Use specially formed bond beam units with reinforcing bars placed as indicated and filled with coarse grout.

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- Cure precast lintels before handling and installing. Temporarily support built-in-place lintels until cured.
 - 3. Provide either of above at Contractor's option or provide precast or formed-in-place concrete lintels complying with requirements in Division 3 Section "Cast-in-Place Concrete."
 - C. Provide minimum bearing of 8 inches at each jamb, unless otherwise indicated.

3.13 FLASHING, WEEP HOLES, AND VENTS

- A. General: Install embedded flashing and weep holes in masonry at shelf angles, lintels, ledges, other obstructions to downward flow of water in wall, and where indicated.
- B. Prepare masonry surfaces so they are smooth and free from projections that could puncture flashing. Unless otherwise indicated, place through-wall flashing on sloping bed of mortar and cover with mortar. Before covering with mortar, seal penetrations in flashing with adhesive, sealant, or tape as recommended by flashing manufacturer.
- C. Install flashing as follows:
 - 1. At multiwythe masonry walls, including cavity walls, extend flashing from exterior face of outer wythe of masonry, through outer wythe, turned up a minimum of 8 inches, and through inner wythe to within 1/2 inch of the interior face of the wall in exposed masonry. Where interior surface of inner wythe is concealed by furring, carry flashing completely through inner wythe and turn flashing up approximately 2 inches, unless otherwise indicated.
 - 2. At masonry-veneer walls, extend flashing from exterior face of veneer, through veneer, up face of sheathing at least 8 inches, and behind air-infiltration barrier or building paper.
 - 3. At lintels and shelf angles, extend flashing a minimum of 4 inches into masonry at each end. At heads and sills, extend flashing 4 inches at ends and turn flashing up not less than 2 inches to form a pan.
 - 4. Interlock end joints of ribbed sheet metal flashing by overlapping ribs not less than 1-1/2 inches or as recommended by flashing manufacturer, and seal lap with elastomeric sealant complying with requirements in Division 7 Section "Joint Sealants" for application indicated.
 - 5. Extend sheet metal flashing 1/2 inch beyond face of masonry at exterior and turn flashing down to form a drip.
- D. Install weep holes in the head joints in exterior wythes of the first course of masonry immediately above embedded flashing and as follows:
 - 1. Use round plastic tubing and wicking material to form weep holes.
 - 2. Use wicking material to form weep holes above flashing in brick sills. Turn wicking down at lip of sill to be as inconspicuous as possible.
 - 3. Space weep holes formed from plastic tubing and wicking material 16 inches o.c.
 - 4. Place cavity drainage material immediately above flashing in cavities.
- E. Trim wicking material used in weep holes flush with outside face of wall after mortar has set.
- F. Install relief vents in vertical head joints at the top of each continuous cavity at spacing equal to weep spacing. Use round plastic tubing to form vents.
 - 1. Close cavities off vertically and horizontally with blocking in manner indicated. Install through-wall flashing and weep holes above horizontal blocking.
- G. Install reglets and nailers for flashing and other related construction where they are shown to be built into masonry.

3.14 REINFORCED UNIT MASONRY INSTALLATION

- A. Temporary Formwork and Shores: Construct formwork and shores to support reinforced masonry elements during construction.
 - 1. Construct formwork to conform to shape, line, and dimensions shown. Make it sufficiently tight to prevent leakage of mortar and grout. Brace, tie, and support forms to maintain position and shape during construction and curing of reinforced masonry.
 - 2. Do not remove forms and shores until reinforced masonry members have hardened sufficiently to carry their own weight and other temporary loads that may be placed on them during construction.
- B. Placing Reinforcement: Comply with requirements of ACI 530.1/ASCE 6rrMS 602.
- C. Grouting: Do not place grout until entire height of masonry to be grouted has attained sufficient strength to resist grout pressure. Grout cells full height of reinforcement.
 - 1. Comply with requirements of ACI 530.1/ASCE 6rrMS 602 for cleanouts and for grout placement, including minimum grout space and maximum pour height.

3.15 FIELD QUALITY CONTROL

- A. Owner will engage a qualified independent testing agency to perform field quality-control testing indicated below.
 - 1. Payment for these services will be made by Owner.
 - 2. Retesting of materials failing to meet specified requirements shall be done at Contractor's expense.
- B. Testing Frequency: Tests and Evaluations listed in this Article will be performed during construction for each 5000 sq. ft. of wall area or portion thereof.
- C. Mortar properties will be tested per ASTM C 780.
- D. Grout will be sampled and tested for compressive strength per ASTM C 1019.
- E. Prism-Test Method: For each type of wall construction indicated, masonry prisms will be tested per ASTM C 1314, and as follows:
 - 1. Prepare 1 set of prisms for testing at 7 days and 1 set for testing at 28 days.

3.16 REPAIRING, POINTING, AND CLEANING

- A. Remove and replace masonry units that are loose, chipped, broken, stained, or otherwise damaged or that do not match adjoining units. Install new units to match adjoining units; install in fresh mortar, pointed to eliminate evidence of replacement.
- B. Pointing: During the tooling of joints, enlarge voids and holes, except weep holes, and completely fill with mortar. Point up joints, including corners, openings, and adjacent construction, to provide a neat, uniform appearance. Prepare joints for sealant application.
- C. In-Progress Cleaning: Clean unit masonry as work progresses by dry brushing to remove mortar fins and smears before tooling joints.
- D. Final Cleaning: After mortar is thoroughly set and cured, clean exposed masonry as follows:
 - 1. Remove large mortar particles by hand with wooden paddles and nonmetallic scrape hoes or chisels.
 - 2. Test cleaning methods on sample wall panel; leave one-half of panel uncleaned for comparison purposes. Obtain Architect's approval of sample cleaning before proceeding with cleaning of masonry.

3. Protect adjacent stone and nonmasonry surfaces from contact with cleaner by covering them with liquid strippable masking agent, polyethylene film, or waterproof masking tape.
4. Wet wall surfaces with water before applying cleaners; remove cleaners promptly by rinsing the surfaces thoroughly with clear water.
5. Clean brick by the bucket-and-brush hand-cleaning method described in BIA Technical Notes No. 20, using job-mixed detergent solution.
6. Clean masonry with a proprietary acidic cleaner applied according to manufacturer's written instructions.
7. Clean concrete masonry by cleaning method indicated in NCMA TEK 8-2 applicable to type of stain on exposed surfaces.
8. Clean cast stone units to comply with recommendations in the Indiana Limestone Institute of America's "Indiana Limestone Handbook."

3.17 MASONRY WASTE DISPOSAL

- A. Recycling: Unless otherwise indicated, excess masonry materials are Contractor's property. At completion of unit masonry work, remove from Project site.
- B. Excess Masonry Waste: Remove excess, clean masonry waste that cannot be used as fill, as described above, and other masonry waste, and legally dispose of off Owner's property.

3.18 UNIT MASONRY SCHEDULE

TYPE	MANUFACTURER	PRODUCT
Type A	Texas Building Products	Rockface CMU; "Texas Buff"
Type B	Glen-Gery Brick	Classic Series; Terra Cotta; Modular
	Richtex	Style 740; Modular; Smooth
	Belden Brick Company	470-479 Medium A; Smooth
Type C	Glen-Gery Brick	Tuscan Series; Burnt Almond; Modular
	Endicott Clay Products Co.	Golden Buff; Modular Velour TK
	Belden Brick Company	Modular 461-463; Velour A
Type D		Standard Gray Concrete Block

END OF SECTION

SECTION 05120

STRUCTURAL STEEL

PART 1 - GENERAL

1.1 RELATED SECTIONS

- A. Drawings, General Conditions of the Contract for Construction, Supplementary Conditions and Division 1 - General Requirements apply to Work of this Section.

1.2 SECTION INCLUDES

- A. Structural steel.
- B. Architecturally exposed structural steel.

1.3 RELATED SECTIONS

- A. Division 1 Section - Quality Control: For independent testing agency procedures and administrative requirements.
- B. Division 5 Section - Metal Fabrications: For loose steel bearing plates and miscellaneous steel framing.
- C. Division 9 Section - Ferrous Metal Special Coatings: For surface preparation and priming requirements.

1.4 PERFORMANCE REQUIREMENTS

- A. Structural Performance: Engineer structural steel connections required by the Contract Documents to be selected or completed by the fabricator.
- B. Engineering Responsibility: Engage a fabricator who utilizes a qualified professional engineer to prepare calculations, Shop Drawings, and other structural data for structural steel connections.

1.5 SUBMITTALS

- A. Shop Drawings detailing fabrication of structural steel components.
 - 1. Include details of cuts, connections, splices, camber, holes, and other pertinent data.
 - 2. Indicate welds by standard AWS symbols, distinguishing between shop and field welds, and show size, length, and type of each weld.
 - 3. Indicate type, size, and length of bolts, distinguishing between shop and field bolts. Identify high-strength bolted slip-critical, direct-tension, or tensioned shear/bearing connections.
 - 4. Include Shop Drawings signed and sealed by a qualified professional engineer responsible for their preparation.

1.6 QUALITY ASSURANCE

- A. Installer Qualifications: Engage an experienced Installer who has completed structural steel work similar in material, design, and extent to that indicated for this Project and with a record of successful in-service performance.

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- B. Fabricator Qualifications: Engage a firm experienced in fabricating structural steel similar to that indicated for this Project and with a record of successful in-service performance, as well as sufficient production capacity to fabricate structural steel without delaying the Work.
 - C. Comply with applicable provisions of the following specifications and documents:
 - 1. AISC's "Specification for Structural Steel Buildings--Allowable Stress Design and Plastic Design."
 - 2. AISC's "Load and Resistance Factor Design (LFRD) Specification for Structural Steel Buildings."
 - 3. ASTM A 6 "Specification for General Requirements for Rolled Steel Plates, Shapes, Sheet Piling, and Bars for Structural Use."
 - 4. Research Council on Structural Connections' (RCSC) "Specification for Structural Joints Using ASTM A 325 or A 490 Bolts."
 - D. Professional Engineer Qualifications: A professional engineer who is legally authorized to practice in the jurisdiction where Project is located and who is experienced in providing engineering services of the kind indicated. Engineering services are defined as those performed for projects with structural steel framing that are similar to that indicated for this Project in material, design, and extent.
 - E. Welding Standards: Comply with applicable provisions of AWS D1.1 "Structural Welding Code--Steel."

1.7 DELIVERY, STORAGE, AND HANDLING

- A. Deliver structural steel to Project site in such quantities and at such times to ensure continuity of installation.
- B. Store materials to permit easy access for inspection and identification. Keep steel members off ground by using pallets, platforms, or other supports. Protect steel members and packaged materials from erosion and deterioration.
 - 1. Store fasteners in a protected place. Clean and relubricate bolts and nuts that become dry or rusty before use.
 - 2. Do not store materials on structure in a manner that might cause distortion or damage to members or supporting structures. Repair or replace damaged materials or structures as directed.

1.8 SEQUENCING

- A. Supply anchorage items to be embedded in or attached to other construction without delaying the Work. Provide setting diagrams, templates, instructions, and directions, as required, for installation.

PART 2 - PRODUCTS

2.1 MATERIALS

- A. Structural Steel Shapes:
 - 1. ASTM A 572 Grade 50 or ASTM A 992.
 - 2. Plates and Bars:
 - a. Carbon Steel: ASTM A 36
- B. Cold-Formed Structural Steel Tubing: ASTM A 500, Grade B.

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- C. Anchor Rods, Bolts, Nuts, and Washers: As follows:
 - 1. Unheaded Rods: ASTM A 36.
 - 2. Washers: ASTM A 36.
 - D. High-Strength Bolts, Nuts, and Washers: ASTM A 325, Type 1, heavy hex steel structural bolts, heavy hex carbon-steel nuts, and hardened carbon-steel washers.
 - 1. Finish: Plain, uncoated.
 - E. Welding Electrodes: Comply with AWS requirements.

2.2 PAINT

- A. As specified in Section 09810.

2.3 FABRICATION

- A. Fabricate and assemble structural steel in shop to greatest extent possible. Fabricate structural steel according to AISC specifications referenced in this Section and in Shop Drawings.
 - 1. Identify high-strength structural steel according to ASTM A 6 and maintain markings until steel has been erected.
 - 2. Mark and match-mark materials for field assembly.
 - 3. Fabricate for delivery a sequence that will expedite erection and minimize field handling of structural steel.
 - 4. Complete structural steel assemblies, including welding of units, before starting shop-priming operations.
 - 5. Comply with fabrication tolerance limits of AISC's "Code of Standard Practice for Steel Buildings and Bridges" for structural steel.
- B. Fabricate architecturally exposed structural steel with exposed surfaces smooth, square, and free of surface blemishes, including pitting, rust and scale seam marks, roller marks, rolled trade names, and roughness.
 - 1. Remove blemishes by filling, grinding, or by welding and grinding, prior to cleaning, treating, and shop priming.
 - 2. Comply with fabrication requirements, including tolerance limits, of AISC's "Code of Standard Practice for Steel Buildings and Bridges" for architecturally exposed structural steel.
- C. Thermal Cutting: Perform thermal cutting by machine to greatest extent possible.
 - 1. Plane thermally cut edges to be welded.
- D. Finishing: Accurately mill ends of columns and other members transmitting loads in bearing.
- E. Shear Connectors: Prepare steel surfaces as recommended by manufacturer of shear connectors. Use automatic end welding of headed-stud shear connectors according to AWS D1.1 and manufacturer's printed instructions.
- F. Holes: Provide holes required for securing other work to structural steel framing and for passage of other work through steel framing members, as shown on Shop Drawings.
 - 1. Cut, drill, or punch holes perpendicular to metal surfaces. Do not flame-cut holes or enlarge holes by burning. Drill holes in bearing plates.
 - 2. Weld threaded nuts to framing and other specialty items as indicated to receive other work.

2.4 SHOP CONNECTIONS

- A. Shop install and tighten high-strength bolts according to RCSC's "Specification for Structural Joints Using ASTM A 325 or A 490 Bolts."
 - 1. Connection Type: Snug tightened, unless indicated as slip-critical, direct-tension, or tensioned shear/bearing connections.
- B. Weld Connections: Comply with AWS D1.1 for procedures, appearance and quality of welds, and methods used in correcting welding work.
 - 1. Assemble and weld built-up sections by methods that will maintain true alignment of axes without warp.
 - 2. Verify that weld sizes, fabrication sequence, and equipment used for architecturally exposed structural steel will limit distortions to allowable tolerances. Prevent surface bleeding of back-side welding on exposed steel surfaces. Grind smooth exposed fillet welds 1/2 inch and larger. Grind flush butt welds. Dress exposed welds.

2.5 SHOP FINISHING

- A. Shop Finishes: As specified in Section 09810 – Ferrous Metal Special Coatings.

PART 3 - EXECUTION

3.1 EXAMINATION

- A. Before erection proceeds, and with the steel erector present, verify elevations of concrete and masonry bearing surfaces and locations of anchorages for compliance with requirements.
- B. Do not proceed with erection until unsatisfactory conditions have been corrected.

3.2 PREPARATION

- A. Provide temporary shores, guys, braces, and other supports during erection to keep structural steel secure, plumb, and in alignment against temporary construction loads and loads equal in intensity to design loads. Remove temporary supports when permanent structural steel, connections, and bracing are in place, unless otherwise indicated.

3.3 ERECTION

- A. Set structural steel accurately in locations and to elevations indicated and according to AISC specifications referenced in this Section.
- B. Base and Bearing Plates: Clean concrete surfaces of bond-reducing materials and roughen surfaces prior to setting base and bearing plates. Clean bottom surface of base and bearing plates.
 - 1. Set base plates for structural members on wedges, shims, or setting nuts as required.
 - 2. Tighten anchor bolts after supported members have been positioned and plumbed. Do not remove wedges or shims but, if protruding, cut off flush with edge of base or bearing plate prior to packing with grout.
- C. Maintain erection tolerances of structural steel within AISC's "Code of Standard Practice for Steel Buildings and Bridges."
 - 1. Maintain erection tolerances of architecturally exposed structural steel within AISC's "Code of Standard Practice for Steel Buildings and Bridges."

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- D. Align and adjust various members forming part of complete frame or structure before permanently fastening. Before assembly, clean bearing surfaces and other surfaces that will be in permanent contact. Perform necessary adjustments to compensate for discrepancies in elevations and alignment.
 - 1. Level and plumb individual members of structure.
 - 2. Establish required leveling and plumbing measurements on mean operating temperature of structure. Make allowances for difference between temperature at time of erection and mean temperature at which structure will be when completed and in service.
 - E. Splice members only where indicated.
 - F. Remove erection bolts on welded, architecturally exposed structural steel; fill holes with plug welds; and grind smooth at exposed surfaces.
 - G. Do not use thermal cutting during erection.
 - H. Finish sections thermally cut during erection equal to a sheared appearance.
 - I. Do not enlarge unfair holes in members by burning or by using drift pins. Ream holes that must be enlarged to admit bolts.

3.4 FIELD CONNECTIONS

- A. Install and tighten high-strength bolts according to RCSC's "Specification for Structural Joints Using ASTM A 325 or A 490 Bolts."
 - 1. Connection Type: Snug tightened, unless indicated as slip-critical, direct-tension, or tensioned shear/bearing connections.
- B. Weld Connections: Comply with AWS D1.1 for procedures, appearance and quality of welds, and methods used in correcting welding work.
 - 1. Comply with AISC specifications referenced in this Section for bearing, adequacy of temporary connections, alignment, and removal of paint on surfaces adjacent to field welds.
 - 2. Assemble and weld built-up sections by methods that will maintain true alignment of axes without warp.
 - 3. Verify that weld sizes, fabrication sequence, and equipment used for architecturally exposed structural steel will limit distortions to allowable tolerances. Prevent surface bleeding of back-side welding on exposed steel surfaces. Grind smooth exposed fillet welds 1/2 inch and larger. Grind flush butt welds. Dress exposed welds.

3.5 FIELD QUALITY CONTROL

- A. Contractor will engage an independent testing and inspecting agency to perform field inspections and tests and to prepare test reports.
 - 1. Testing agency will conduct and interpret tests and state in each report whether tested Work complies with or deviates from requirements.
- B. Correct deficiencies in or remove and replace structural steel that inspections and test reports indicate do not comply with specified requirements.
- C. Additional testing, at Contractor's expense, will be performed to determine compliance of corrected Work with specified requirements.
- D. In addition to visual inspection, field-welded connections will be inspected and tested according to AWS D1.1 and the inspection procedures listed below, at testing agency's option.
 - 1. Magnetic Particle Inspection: ASTM E 709; performed on root pass and on finished weld. Cracks or zones of incomplete fusion or penetration will not be accepted.

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2. Radiographic Inspection: ASTM E 94 and ASTM E 142; minimum quality level "2-2T."
 3. Ultrasonic Inspection: ASTM E 164.
- E. In addition to visual inspection, field-welded shear connectors will be inspected and tested according to requirements of AWS D1.1 for stud welding and as follows:
1. Bend tests will be performed when visual inspections reveal either less than a continuous 360-degree flash or welding repairs to any shear connector.
 2. Tests will be conducted on additional shear connectors when weld fracture occurs on shear connectors already tested, according to requirements of AWS D1.1.

3.6 CLEANING

- A. Touchup Painting: As specified in Section 09810 – Ferrous Metal Special Coatings.

END OF SECTION

SECTION 05500

METAL FABRICATION

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. Drawings, General Conditions of the Contract for Construction, Supplementary Conditions and Division 1 - General Requirements apply to Work of this Section.

1.2 SECTION INCLUDES

- A. Loose bearing and leveling plates.
- B. Metal edgings.
- C. Miscellaneous framing and supports.
- D. Miscellaneous steel trim.
- E. Pipe bollards.
- F. Ornamental Fences and Gates.

1.3 RELATED SECTIONS

- A. Division 5 Section "Structural Steel" for structural steel framing system components.

1.4 SUBMITTALS

- A. Product Data: For the following:
 - 1. Paint products.
 - 2. Grout.
- B. Shop Drawings: Detail fabrication and erection of each metal fabrication indicated. Include plans, elevations, sections, and details of metal fabrications and their connections. Show anchorage and accessory items.
 - 1. Provide templates for anchors and bolts specified for installation under other Sections.
- C. Qualification Data: For firms and persons specified in "Quality Assurance" Article to demonstrate their capabilities and experience. Include lists of completed projects with project names and addresses, names and addresses of architects and owners, and other information specified.

1.5 QUALITY ASSURANCE

- A. Fabricator Qualifications: A firm experienced in producing metal fabrications similar to those indicated for this Project and with a record of successful in-service performance, as well as sufficient production capacity to produce required units.
- B. Welding: Qualify procedures and personnel according to the following:
 - 1. AWS D1.1, "Structural Welding Code--Steel."
- C. Mockup Wall: Use existing masonry columns at existing gates as approved mock up.

1.6 PROJECT CONDITIONS

- A. Field Measurements: Where metal fabrications are indicated to fit walls and other construction, verify dimensions by field measurements before fabrication and indicate

measurements on Shop Drawings. Coordinate fabrication schedule with construction progress to avoid delaying the Work.

1.7 COORDINATION

- A. Coordinate installation of anchorages for metal fabrications. Furnish setting drawings, templates, and directions for installing anchorages, including sleeves, concrete inserts, anchor bolts, and items with integral anchors, that are to be embedded in concrete or masonry. Deliver such items to Project site in time for installation.

PART 2 - PRODUCTS

2.1 METALS, GENERAL

- A. Metal Surfaces, General: For metal fabrications exposed to view in the completed Work, provide materials with smooth, flat surfaces without blemishes. Do not use materials with exposed pitting, seam marks, roller marks, rolled trade names, or roughness.

2.2 FERROUS METALS

- A. Steel Plates, Shapes, and Bars: ASTM A 36/A 36M.
- B. Steel Tubing: Cold-formed steel tubing complying with ASTM A 500.
- C. Steel Pipe: ASTM A 53, standard weight (Schedule 40), unless another weight is indicated or required by structural loads.
- D. Welding Rods and Bare Electrodes: Select according to AWS specifications for metal alloy welded.

2.3 PAINT

- A. Shop Primers: Provide primers to comply with Division 9 Sections "Painting" for Interior Metal Fabrication and "Ferrous Metal Special Coatings" for Exterior Metal Fabrication.
- B. Galvanizing Repair Paint: High-zinc-dust-content paint for regalvanizing welds in steel, complying with SSPC-Paint 20.
- C. Bituminous Paint: Cold-applied asphalt mastic complying with SSPC-Paint 12, except containing no asbestos fibers, or cold-applied asphalt emulsion complying with ASTM D 1187.

2.4 FASTENERS

- A. General: Provide Type 304 or 316 stainless-steel fasteners for exterior use and zinc-plated fasteners with coating complying with ASTM B 633, Class Fe/Zn 5, where built into exterior walls. Select fasteners for type, grade, and class required.
- B. Expansion Anchors: Anchor bolt and sleeve assembly of material indicated below with capability to sustain, without failure, a load equal to six times the load imposed when installed in unit masonry and equal to four times the load imposed when installed in concrete, as determined by testing per ASTM E 488, conducted by a qualified independent testing agency.
 - 1. Material: Alloy Group 1 or 2 stainless-steel bolts complying with ASTM F 593 and nuts complying with ASTM F 594.

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- C. Chemical Anchors: Anchors as described below, with capability to sustain, without failure, load imposed within factors of safety indicated, as determined by testing per ASTM E 488, conducted by a qualified independent testing agency.
 - 1. Type: Chemical anchors.
 - 2. Corrosion Protection: Stainless-steel components complying with ASTM F 593 and ASTM F 594, Alloy Group 1 or 2 (ASTM F 738M and ASTM F 836M, Alloy Group 1 or 4) for bolts and nuts; ASTM A 666 or ASTM A 276, Type 304 or 316, for anchors.
 - 3. For Postinstalled Anchors in Concrete: Capability to sustain, without failure, a load equal to four times the loads imposed.
 - 4. For Postinstalled Anchors in Grouted Masonry Units: Capability to sustain, without failure, a load equal to six times the loads imposed.
 - D. Toggle Bolts: FS FF-B-588, tumble-wing type, class and style as needed.

2.5 GROUT

- A. Nonshrink, Nonmetallic Grout: Factory-packaged, nonstaining, noncorrosive, nongaseous grout complying with ASTM C 1107. Provide grout specifically recommended by manufacturer for interior and exterior applications.

2.6 CONCRETE FILL

- A. Concrete Materials and Properties: Comply with requirements in Division 3 Section "Cast-in- Place Concrete" for normal-weight, air-entrained, ready-mix concrete with a minimum 28-day compressive strength of 3000 psi, unless otherwise indicated.

2.7 FABRICATION, GENERAL

- A. Shop Assembly: Preassemble items in shop to greatest extent possible to minimize field splicing and assembly. Disassemble units only as necessary for shipping and handling limitations. Use connections that maintain structural value of joined pieces. Clearly mark units for reassembly and coordinated installation.
- B. Ornamental Gate Hardware:
 - 1. Barrel hinges: Heavy duty hinges for steel gates; prepared for welding to gate frame and support members.
 - a. Hoover Fence Co. Model GH-207, or acceptable equal.
 - 2. Locking mechanism: Cylinder lock with key operation from both sides.
- C. Shear and punch metals cleanly and accurately. Remove burrs.
- D. Ease exposed edges to a radius of approximately 1/32 inch, unless otherwise indicated.
- E. Form bent-metal corners to smallest radius possible without causing grain separation or otherwise impairing work.
- F. Weld corners and seams continuously to comply with the following:
 - 1. Use materials and methods that minimize distortion and develop strength and corrosion resistance of base metals.
 - 2. Obtain fusion without undercut or overlap.
 - 3. Remove welding flux immediately.
 - 4. At exposed connections, finish exposed welds and surfaces smooth and blended so no roughness shows after finishing and contour of welded surface matches that of adjacent surface.
- G. Provide for anchorage of type indicated; coordinate with supporting structure. Fabricate and space anchoring devices to secure metal fabrications rigidly in place and to support indicated loads.

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- H. Cut, reinforce, drill, and tap metal fabrications as indicated to receive finish hardware, screws, and similar items.
 - I. Fabricate joints that will be exposed to weather in a manner to exclude water, or provide weep holes where water may accumulate.
 - J. Allow for thermal movement resulting from the following maximum change (range) in ambient and surface temperatures by preventing buckling, opening up of joints, overstressing of components, failure of connections, and other detrimental effects. Base engineering calculation on surface temperatures of materials due to both solar heat gain and nighttime-sky heat loss.
 - 1. Temperature Change (Range): 120 deg F, ambient; 180 deg F, material surfaces.
 - K. Form exposed work true to line and level with accurate angles and surfaces and straight sharp edges.
 - L. Remove sharp or rough areas on exposed traffic surfaces.
 - M. Form exposed connections with hairline joints, flush and smooth, using concealed fasteners where possible. Use exposed fasteners of type indicated or, if not indicated, Phillips flat-head (countersunk) screws or bolts. Locate joints where least conspicuous.

2.8 LOOSE BEARING AND LEVELING PLATES

- A. Provide loose bearing and leveling plates for steel items bearing on masonry or concrete construction. Drill plates to receive anchor bolts and for grouting.
- B. Galvanize plates after fabrication.

2.9 MISCELLANEOUS FRAMING AND SUPPORTS

- A. General: Provide steel framing and supports that are not a part of structural-steel framework as necessary to complete the Work.
- B. General: Provide steel framing and supports indicated and as necessary to complete the Work.
- C. Fabricate units from structural-steel shapes, plates, and bars of welded construction, unless otherwise indicated. Fabricate to sizes, shapes, and profiles indicated and as necessary to receive adjacent construction retained by framing and supports. Cut, drill, and tap units to receive hardware, hangers, and similar items.
- D. Prime paint miscellaneous framing and supports, as follows:
 - 1. Interior Installations: As specified in Section 09910.
 - 2. Exterior Installations: As specified in Section 09810.

2.10 MISCELLANEOUS STEEL TRIM

- A. Unless otherwise indicated, fabricate units from structural-steel shapes, plates, and bars of profiles shown with continuously welded joints, and smooth exposed edges. Miter corners and use concealed field splices where possible.
- B. Provide cutouts, fittings, and anchorages as needed to coordinate assembly and installation with other work. Provide anchors, welded to trim, for embedding in concrete or masonry construction, spaced not more than 6 inches from each end, 6 inches from corners, and 24 inches o.c., unless otherwise indicated.
- C. Prime paint miscellaneous framing and supports, as follows:
 - 1. Interior Installations: As specified in Section 09910.
 - 2. Exterior Installations: As specified in Section 09810.

2.11 PIPE BOLLARDS

- A. Fabricate pipe bollards from Schedule 40 steel pipe.

2.12 FINISHES, GENERAL

- A. Comply with NAAMM's "Metal Finishes Manual for Architectural and Metal Products" for recommendations for applying and designating finishes.
- B. Finish metal fabrications after assembly.

2.13 STEEL AND IRON FINISHES

- A. Galvanizing: Hot-dip galvanize items as indicated to comply with applicable standard listed below:
 - 1. ASTM A 123, for galvanizing steel and iron products.
 - 2. ASTM A 153/A 153M, for galvanizing steel and iron hardware.
- B. Preparation for Shop Priming: As specified in Division 9 Sections "Painting" for Interior Metal Fabrication and "Ferrous Metal Special Coatings" for Exterior Metal Fabrication.
 - 1. Stripe paint corners, crevices, bolts, welds, and sharp edges.

PART 3 - EXECUTION

3.1 INSTALLATION, GENERAL

- A. Fastening to In-Place Construction: Provide anchorage devices and fasteners where necessary for securing metal fabrications to in-place construction. Include threaded fasteners for concrete and masonry inserts, toggle bolts, through-bolts, lag bolts, wood screws, and other connectors.
- B. Cutting, Fitting, and Placement: Perform cutting, drilling, and fitting required for installing metal fabrications. Set metal fabrications accurately in location, alignment, and elevation; with edges and surfaces level, plumb, true, and free of rack; and measured from established lines and levels.
- C. Provide temporary bracing or anchors in formwork for items that are to be built into concrete, masonry, or similar construction.
- D. Fit exposed connections accurately together to form hairline joints. Weld connections that are not to be left as exposed joints but cannot be shop welded because of shipping size limitations. Do not weld, cut, or abrade surfaces of exterior units that have been hot-dip galvanized after fabrication and are for bolted or screwed field connections.
- E. Field Welding: Comply with the following requirements:
 - 1. Use materials and methods that minimize distortion and develop strength and corrosion resistance of base metals.
 - 2. Obtain fusion without undercut or overlap.
 - 3. Remove welding flux immediately.
 - 4. At exposed connections, finish exposed welds and surfaces smooth and blended so no roughness shows after finishing and contour of welded surface matches that of adjacent surface.
- F. Corrosion Protection: Coat concealed surfaces of aluminum that will come into contact with grout, concrete, masonry, wood, or dissimilar metals with a heavy coat of bituminous paint.

3.2 SETTING BEARING AND LEVELING PLATES

- A. Clean concrete and masonry bearing surfaces of bond-reducing materials, and roughen to improve bond to surfaces. Clean bottom surface of plates.
- B. Set bearing and leveling plates on wedges, shims, or leveling nuts. After bearing members have been positioned and plumbed, tighten anchor bolts. Do not remove wedges or shims but, if protruding, cut off flush with edge of bearing plate before packing with grout.
 - 1. Use nonshrink grout, either metallic or nonmetallic, in concealed locations where not exposed to moisture; use nonshrink, nonmetallic grout in exposed locations, unless otherwise indicated.
 - 2. Pack grout solidly between bearing surfaces and plates to ensure that no voids remain.

3.3 INSTALLING MISCELLANEOUS FRAMING AND SUPPORTS

- A. General: Install framing and supports to comply with requirements of items being supported, including manufacturers' written instructions and requirements indicated on Shop Drawings, if any.
- B. Anchor supports for operable partitions securely to and rigidly brace from building structure.
- C. Support steel girders on solid grouted masonry, concrete, or steel pipe columns. Secure girders with anchor bolts embedded in grouted masonry or concrete or with bolts through top plates of pipe columns.
 - 1. Where grout space under bearing plates is indicated at girders supported on concrete or masonry, install as specified above for setting and grouting bearing and leveling plates.
- D. Install pipe columns on concrete footings with grouted baseplates. Position and grout column baseplates as specified above for setting and grouting bearing and leveling plates.
 - 1. Do not grout baseplates of columns supporting steel girders until girders are installed and leveled.

3.4 INSTALLING PIPE BOLLARDS

- A. Anchor bollards in place with concrete footings. Support and brace bollards in position in footing excavations until concrete has been placed and cured.
- B. Fill bollards solidly with concrete, mounding top surface.

3.5 ADJUSTING AND CLEANING

- A. Primer Touchup: Cleaning and touchup priming of field welds, bolted connections, and abraded areas of shop primer are specified in Division 9 Sections "Painting" for Interior Metal Fabrication and "Ferrous Metal Special Coatings" for Exterior Metal Fabrication.
- B. Galvanized Surfaces: Clean field welds, bolted connections, and abraded areas and repair galvanizing to comply with ASTM A780.

END OF SECTION

SECTION 07910

JOINT SEALANTS

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. Drawings, General Conditions of the Contract for Construction, Supplementary Conditions and Division 1 - General Requirements apply to Work of this Section.

1.2 SECTION INCLUDES

- A. This Section includes joint sealants for the following locations:
 - 1. Multi-part Nonsag Urethane: Exterior and/or interior joints in vertical surfaces of precast concrete, cast-in-place concrete, and masonry; between concrete and masonry; between metal frames and concrete or mortar; perimeter of metal frames in exterior walls; overhead ceiling joints. Typical locations include, but are not limited to the following:
 - a. Exterior Joints:
 - 1) Control and expansion joints in cast-in-place and precast concrete.
 - 2) Control and expansion joints in unit masonry.
 - 3) Joints between different materials listed above.
 - 4) Control and expansion joints in overhead surfaces.
 - 5) Joints between dissimilar materials.
 - 6) Other joints as indicated.
 - 2. Two-Part Pourable Urethane: Exterior and interior joints in horizontal traffic surfaces of concrete; between metal and concrete, mortar and masonry. Typical locations include, but are not limited to, the following:
 - a. Exterior Joints:
 - 1) Control, expansion, and isolation joints in cast-in-place concrete, precast concrete, and concrete slabs for floors and paving.
 - 2) Joints between different materials listed above.
 - 3) All other horizontal joints indicated.

1.3 RELATED SECTIONS

- A. Division 7 Section - Precast Seating Joint Sealants: For joint treatments in precast concrete seating bowl areas.

1.4 PERFORMANCE REQUIREMENTS

- A. Provide elastomeric joint sealants that establish and maintain watertight and airtight continuous joint seals without staining or deteriorating joint substrates.
- B. Provide elastomeric joint sealants that are water, ozone, chemical, and UV resistant and will not detrimentally affect joint substrates.
- C. Provide joint sealants for interior applications that establish and maintain airtight and water resistant continuous joint seals without staining or deteriorating joint substrates.

1.5 SUBMITTALS

- A. Product Data: For each joint-sealant product indicated.
 - 1. Certification by joint sealant manufacturer that sealants, primers, and cleaners required for complete installation comply with local regulations controlling use of volatile organic compounds (VOC).
- B. Samples for Initial Selection: Manufacturer's color charts consisting of strips or beads of cured sealants showing the full range of colors available for each product exposed to view.
- C. Samples for Verification: For each type and color of joint sealant required. Install joint sealants in 1/2-inch-wide joints formed between two 6-inch-long strips of material matching the appearance of exposed surfaces adjacent to joint sealants.
- D. Product Certificates: Signed by manufacturers of joint sealants certifying that products furnished comply with requirements and are suitable for the use indicated.
- E. SWRI Validation Certificate: For each elastomeric sealant specified to be validated by Sealant Validation Program as provided by Sealant, Waterproofing and Restoration Institute (SWRI).
- F. Qualification Data: For firms and persons specified in "Quality Assurance" Article to demonstrate their capabilities and experience. Include lists of completed projects with project names and addresses, names and addresses of architects and owners, and other information specified.
- G. Preconstruction Field Test Reports: Indicate which sealants and joint preparation methods resulted in optimum adhesion to joint substrates based on preconstruction testing specified in "Quality Assurance" Article.
- H. Field Test Report Log: For each elastomeric sealant application. Include information specified in "Field Quality Control" Article.
- I. Compatibility and Adhesion Test Reports: From sealant manufacturer indicating the following:
 - 1. Materials forming joint substrates and joint-sealant backings have been tested for compatibility and adhesion with joint sealants.
 - 2. Interpretation of test results and written recommendations for primers and substrate preparation needed for adhesion.
- J. Product Test Reports: From a qualified testing agency indicating sealants comply with requirements, based on comprehensive testing of current product formulations.
- K. Warranties: Special warranties specified in this Section.

1.6 QUALITY ASSURANCE

- A. Installer Qualifications: An experienced installer who has specialized in installing joint sealants similar in material, design, and extent to those indicated for this Project and whose work has resulted in joint-sealant installations with a record of successful in-service performance.
- B. Source Limitations: Obtain each type of joint sealant through one source from a single manufacturer.

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- C. Preconstruction Compatibility and Adhesion Testing: Submit to joint sealant manufacturers, for testing indicated below, samples of materials that will contact or affect joint sealants.
1. Use manufacturers standard test methods to determine whether priming and other specific joint preparation techniques are required to obtain rapid, optimum adhesion of joint sealants to joint substrates.
 - a. Perform tests under environmental conditions replicating those that will exist during installation.
 2. Submit not fewer than nine pieces of each type of material, including joint substrates, shims, joint-sealant backings, secondary seals, and miscellaneous materials.
 3. Schedule sufficient time for testing and analyzing results to prevent delaying the Work.
 4. For materials failing tests, obtain joint sealant manufacturer's written instructions for corrective measures, including the use of specially formulated primers.
 5. Testing will not be required if joint sealant manufacturers submit joint preparation data that are based on previous testing of current sealant products for adhesion to, and compatibility with, joint substrates and other materials matching those submitted.
- D. Product Testing: Obtain test results for "Product Test Reports" Paragraph in "Submittals" Article from a qualified testing agency based on testing current sealant formulations within a 36- month period.
1. Testing Agency Qualifications: An independent testing agency qualified according to ASTM C 1021 to conduct the testing indicated, as documented according to ASTM E 548.
 2. Test elastomeric joint sealants for compliance with requirements specified by reference to ASTM C 920, and where applicable, to other standard test methods.
 3. Test elastomeric joint sealants according to SWRI's Sealant Validation Program for compliance with requirements specified by reference to ASTM C 920 for adhesion and cohesion under cyclic movement, low temperature flexibility, modulus of elasticity at 100 percent strain, effects of heat aging, effects of accelerated weathering, adhesion-in peel, and indentation hardness.
 - a. Test new and aged sealants.
 4. Test other joint sealants for compliance with requirements indicated by referencing standard specifications and test methods.
- E. Preconstruction Field-Adhesion Testing: Before installing elastomeric sealants, field test their adhesion to joint substrates as follows:
1. Locate test joints where indicated or, if not indicated, as directed by Architect.
 2. Conduct field tests for each application indicated below:
 - a. Each type of elastomeric sealant and joint substrate indicated.
 - b. Each type of nonelastomeric sealant and joint substrate indicated.
 3. Notify Architect seven days in advance of dates and times when test joints will be erected.
 4. Arrange for tests to take place with joint sealant manufacturer's technical representative present.
 5. Test Method: Test joint sealants by hand-pull method described below:
 - a. Install joint sealants in 60-inch-long joints using same materials and methods for joint preparation and joint-sealant installation required for the completed Work. Allow sealants to cure fully before testing.

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- b. Make knife cuts from one side of joint to the other, followed by two cuts approximately 2 inches long at sides of joint and meeting cross cut at one end. Place a mark 1 inch from cross-cut end of 2-inch piece.
 - c. Use fingers to grasp 2-inch piece of sealant between cross-cut end and 1-inch mark; pull firmly at a 90-degree angle or more in direction of side cuts while holding a ruler along side of sealant. Pull sealant out of joint to the distance recommended by sealant manufacturer for testing adhesive capability, but not less than that equaling specified maximum movement capability in extension; hold this position for 10 seconds.
 - d. For joints with dissimilar substrates, check adhesion to each substrate separately. Do this by extending cut along one side, checking adhesion to opposite side, and then repeating this procedure for opposite side.
6. Report whether sealant in joint connected to pulled-out portion failed to adhere to joint substrates or tore cohesively. Include data on pull distance used to test each type of product and joint substrate. For sealants that fail adhesively, retest until satisfactory adhesion is obtained.
 7. Evaluation of Preconstruction Field-Adhesion-Test Results: Sealants not evidencing adhesive failure from testing, in absence of other indications of noncompliance with requirements, will be considered satisfactory. Do not use sealants that fail to adhere to joint substrates during testing.

1.7 DELIVERY, STORAGE, AND HANDLING

- A. Deliver materials to Project site in original unopened containers or bundles with labels indicating manufacturer, product name and designation, color, expiration date, pot life, curing time, and mixing instructions for multicomponent materials.
- B. Store and handle materials in compliance with manufacturer's written instructions to prevent their deterioration or damage due to moisture, high or low temperatures, contaminants, or other causes.

1.8 PROJECT CONDITIONS

- A. Environmental Limitations: Do not proceed with installation of joint sealants under the following conditions:
 1. When ambient and substrate temperature conditions are outside limits permitted by joint sealant manufacturer.
 2. When ambient and substrate temperature conditions are outside limits permitted by joint sealant manufacturer or are below 40 deg F.
 3. When joint substrates are wet.
- B. Joint-Width Conditions: Do not proceed with installation of joint sealants where joint widths are less than those allowed by joint sealant manufacturer for applications indicated.
- C. Joint-Substrate Conditions:
 1. Do not proceed with installation of joint sealants until contaminants capable of interfering with adhesion are removed from joint substrates.
 2. Do not proceed with installation of joint sealants if joint substrates are irregular, chipped, spalled, or otherwise unsuitable for long term adhesion.

1.9 WARRANTY

- A. General Warranty: Special warranties specified in this Article shall not deprive Owner of other rights Owner may have under other provisions of the Contract Documents and

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- shall be in addition to, and run concurrent with, other warranties made by Contractor under requirements of the Contract Documents.
- B. Special Installer's Warranty: Written warranty, signed by Installer agreeing to repair or replace elastomeric joint sealants that do not comply with performance and other requirements specified in this Section within specified warranty period.
 - 1. Warranty Period: Two years from date of Substantial Completion.
 - C. Special Manufacturer's Warranty: Written warranty, signed by elastomeric sealant manufacturer agreeing to furnish elastomeric joint sealants to repair or replace those that do not comply with performance and other requirements specified in this Section within specified warranty period.
 - 1. Warranty Period: 20 years from date of Substantial Completion.
 - D. Special warranties specified in this Article exclude deterioration or failure of elastomeric joint sealants from the following:
 - 1. Movement of the structure resulting in stresses on the sealant exceeding sealant manufacturer's written specifications for sealant elongation and compression caused by structural settlement or errors attributable to design or construction.
 - 2. Disintegration of joint substrates from natural causes exceeding design specifications.
 - 3. Mechanical damage caused by individuals, tools, or other outside agents.
 - 4. Changes in sealant appearance caused by accumulation of dirt or other atmospheric contaminants.

1.10 SEQUENCING AND SCHEDULING

- A. Schedule installations of joint sealants to occur not less than 21 days nor more than 30 days after completion of waterproofing or sealing of substrates unless otherwise indicated.

PART 2 - PRODUCTS

2.1 ACCEPTABLE MANUFACTURES

- A. Products: Subject to compliance with requirement the following elastomeric joint sealer products are acceptable:
 - 1. Multi-Part Nonsag Urethane Sealant for Use NT:
 - a. "Iso-Flex 881"; LymTal.
 - b. "Vulkem 922"; Mameco.
 - c. "Dymeric 511"; Tremco Inc.
 - d. "Sika Flex 2C NS"; Sika Corporation.
 - 2. Multi-part Pourable Urethane Sealant for Use T:
 - a. "Iso-Flex 880 GB"; LymTal.
 - b. "Vulkem 245"; Mameco.
 - c. "THC 900"; Tremco Inc.
 - d. "Sika Flex 2C SL"; Sika Corporation.

2.2 JOINT SEALER MATERIALS

- A. Compatibility: Provide joint sealants, joint fillers, and other related materials that are compatible with one another and with joint substrates under conditions of service and application, as demonstrated by sealant manufacturer based on testing and field experience.

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- B. Colors: Provide color of exposed joint sealants to comply with the following:
 - 1. Provide selections made by Architect from manufacturer's full range of standard colors for products of type indicated.
 - C. Elastomeric Sealant Standard: Provide manufacturer's standard chemically curing elastomeric sealants that comply with ASTM C 920.
 - D. Latex Sealant: Provide product complying with ASTM C 834 that accommodates joint movement of not more than 5 percent in both extension and compression for a total of 10 percent.

2.3 JOINT-SEALANT BACKING

- A. General: Provide sealant backings of material and type that are nonstaining; are compatible with joint substrates, sealants, primers, and other joint fillers; and are approved for applications indicated by sealant manufacturer based on field experience and laboratory testing.
- B. Cylindrical Sealant Backings: ASTM C 1330, of type indicated below and of size and density to control sealant depth and otherwise contribute to producing optimum sealant performance:
 - 1. Type C: Closed-cell material with a surface skin.
 - 2. Type B: Bicellular material with a surface skin.
 - 3. Type: Either material indicated above.
- C. Bond-Breaker Tape: Polyethylene tape or other plastic tape recommended by sealant manufacturer for preventing sealant from adhering to rigid, inflexible joint-filler materials or joint surfaces at back of joint where such adhesion would result in sealant failure. Provide self- adhesive tape where applicable.

2.4 MISCELLANEOUS MATERIALS

- A. Primer: Material recommended by joint sealant manufacturer where required for adhesion of sealant to joint substrates indicated, as determined from preconstruction joint-sealant-substrate tests and field tests.
- B. Cleaners for Nonporous Surfaces: Chemical cleaners acceptable to manufacturers of sealants and sealant backing materials, free of oily residues or other substances capable of staining or harming joint substrates and adjacent nonporous surfaces in any way, and formulated to promote optimum adhesion of sealants with joint substrates.
- C. Masking Tape: Nonstaining, nonabsorbent material compatible with joint sealants and surfaces adjacent to joints.

PART 3 - EXECUTION

3.1 EXAMINATION

- A. Examine joints indicated to receive joint sealants, with Installer present, for compliance with requirements for joint configuration, installation tolerances, and other conditions affecting joint- sealant performance.
- B. Do not proceed with installation of joint sealants until unsatisfactory conditions have been corrected.

3.2 PREPARATION

- A. Surface Cleaning of Joints: Clean out joints immediately before installing joint sealants to comply with joint sealant manufacturer's written instructions and the following requirements:
 - 1. Remove all foreign material from joint substrates that could interfere with adhesion of joint sealant, including dust, paints (except for permanent, protective coatings tested and approved for sealant adhesion and compatibility by sealant manufacturer), old joint sealants, oil, grease, waterproofing, water repellents, water, surface dirt, and frost.
 - 2. Clean porous joint substrate surfaces by brushing, grinding, blast cleaning, mechanical abrading, or a combination of these methods to produce a clean, sound substrate capable of developing optimum bond with joint sealants. Remove loose particles remaining from above cleaning operations by vacuuming or blowing out joints with oil-free compressed air. Porous joint surfaces include the following:
 - a. Concrete.
 - b. Masonry.
 - 3. Remove laitance and form-release agents from concrete.
 - 4. Clean nonporous surfaces with chemical cleaners or other means that do not stain, harm substrates, or leave residues capable of interfering with adhesion of joint sealants.
 - a. Metal.
 - b. Glass.
 - c. Porcelain enamel.
 - d. Glazed surfaces of ceramic tile.
- B. Joint Priming: Prime joint substrates based on preconstruction joint-sealant-substrate tests or prior experience. Apply primer to comply with joint sealant manufacturer's written instructions. Confine primers to areas of joint-sealant bond; do not allow spillage or migration onto adjoining surfaces.
- C. Masking Tape: Use masking tape where required to prevent contact of sealant with adjoining surfaces that otherwise would be permanently stained or damaged by such contact or by cleaning methods required to remove sealant smears. Remove tape immediately after tooling without disturbing joint seal.

3.3 INSTALLATION OF JOINT SEALANTS

- A. General: Comply with joint sealant manufacturer's written installation instructions for products and applications indicated, unless more stringent requirements apply.
- B. Sealant Installation Standard: Comply with recommendations of ASTM C 1193 for use of joint sealants as applicable to materials, applications, and conditions indicated.
- C. Acoustical Sealant Application Standard: Comply with recommendations of ASTM C 919 for use of joint sealants in acoustical applications as applicable to materials, applications, and conditions indicated.
- D. Install sealant backings of type indicated to support sealants during application and at position required to produce cross-sectional shapes and depths of installed sealants relative to joint widths that allow optimum sealant movement capability.
 - 1. Do not leave gaps between ends of sealant backings.
 - 2. Do not stretch, twist, puncture, or tear sealant backings.
 - 3. Remove absorbent sealant backings that have become wet before sealant application and replace them with dry materials.

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- E. Install bond-breaker tape behind sealants where sealant backings are not used between sealants and back of joints.
 - F. Install sealants by proven techniques to comply with the following and at the same time backings are installed:
 - 1. Place sealants so they directly contact and fully wet joint substrates.
 - 2. Completely fill recesses provided for each joint configuration.
 - 3. Produce uniform, cross-sectional shapes and depths relative to joint widths that allow optimum sealant movement capability.
 - G. Tooling of Nonsag Sealants: Immediately after sealant application and before skinning or curing begins, tool sealants according to requirements specified below to form smooth, uniform beads of configuration indicated; to eliminate air pockets; and to ensure contact and adhesion of sealant with sides of joint.
 - 1. Remove excess sealants from surfaces adjacent to joint.
 - 2. Use tooling agents that are approved in writing by sealant manufacturer and that do not discolor sealants or adjacent surfaces.
 - 3. Provide concave joint configuration per Figure SA in ASTM C 1193, unless otherwise indicated.
 - 4. Provide flush joint configuration, per Figure 58 in ASTM C 1193, where indicated.
 - 5. Provide recessed joint configuration, per Figure 5C in ASTM C 1193, of recess depth and at locations indicated.
 - a. Use masking tape to protect adjacent surfaces of recessed tooled joints.

3.4 FIELD QUALITY CONTROL

- A. Field-Adhesion Testing: Field-test joint-sealant adhesion to joint substrates as follows:
 - 1. Extent of Testing: Test completed elastomeric sealant joints as follows:
 - a. Perform 10 tests for the first 1000 feet of joint length for each type of elastomeric sealant and joint substrate.
 - b. Perform one test for each 1000 feet of joint length thereafter or one test per each floor per elevation.
 - 2. Test Method: Test joint sealants by hand-pull method described below:
 - a. Make knife cuts from one side of joint to the other, followed by two cuts approximately 2 inches long at sides of joint and meeting cross cut at one end. Place a mark 1 inch from cross-cut end of 2-inch piece.
 - b. Use fingers to grasp 2-inch piece of sealant between cross-cut end and 1-inch mark; pull firmly at a 90-degree angle or more in direction of side cuts while holding a ruler along side of sealant. Pull sealant out of joint to the distance recommended by sealant manufacturer for testing adhesive capability, but not less than that equaling specified maximum movement capability in extension; hold this position for 10 seconds.
 - c. For joints with dissimilar substrates, check adhesion to each substrate separately. Do this by extending cut along one side, checking adhesion to opposite side, and then repeating this procedure for opposite side.
 - 3. Inspect joints for complete fill, for absence of voids, and for joint configuration complying with specified requirements. Record results in a field adhesion test log.
 - 4. Inspect tested joints and report on the following:
 - a. Whether sealants in joints connected to pulled-out portion failed to adhere to joint substrates or tore cohesively. Include data on pull distance used to test each type of product and joint substrate. Compare these results to

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- determine if adhesion passes sealant manufacturer's field- adhesion hand-pull test criteria.
- b. Whether sealants filled joint cavities and are free from voids.
 - c. Whether sealant dimensions and configurations comply with specified requirements.
5. Record test results in a field adhesion test log. Include dates when sealants were installed, names of persons who installed sealants, test dates, test locations, whether joints were primed, adhesion results and percent elongations, sealant fill, sealant configuration, and sealant dimensions.
6. Repair sealants pulled from test area by applying new sealants following same procedures used to originally seal joints. Ensure that original sealant surfaces are clean and new sealant contacts original sealant.
- B. Evaluation of Field Test Results: Sealants not evidencing adhesive failure from testing or noncompliance with other indicated requirements, will be considered satisfactory. Remove sealants that fail to adhere to joint substrates during testing or to comply with other requirements. Retest failed applications until test results prove sealants comply with indicated requirements.

3.5 CLEANING

- A. Clean off excess sealants or sealant smears adjacent to joints as the Work progresses by methods and with cleaning materials approved in writing by manufacturers of joint sealants and of products in which joints occur.

3.6 PROTECTION

- A. Protect joint sealants during and after curing period from contact with contaminating substances and from damage resulting from construction operations or other causes so sealants are without deterioration or damage at time of Substantial Completion. If, despite such protection, damage or deterioration occurs, cut out and remove damaged or deteriorated joint sealants immediately so installations with repaired areas are indistinguishable from the original work.

END OF SECTION

SECTION 09810
FERROUS METAL SPECIAL COATINGS

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. Drawings, General Conditions of the Contract for Construction, Supplementary Conditions and Division 1 - General Requirements apply to Work of this Section.

1.2 SUMMARY

- A. Extent of Coating: The application of the special coating system shall include the following:
 - 1. Abrasive Blast Cleaning Surface Preparation: All ferrous metal surfaces to receive a coating system and all bolted surfaces.
 - 2. Primer: All ferrous metal surfaces.
 - 3. Finish Coats: All exposed steel shall receive a finish coat.
- B. Scope of Coating Application: The application of the special coating system includes surface preparation, prime coat, finish coat, coating maintenance and coating repair.
- C. Prepare surfaces and apply prime coat in the steel fabricator's plant. Apply primer to surfaces of bolted connections. At the Contractor option, top coats may be applied in the shop or in the field after erection.
- D. Critical Areas: Areas requiring special coating application techniques/procedures include edges, corners, fillets, bolted connections, welded connections and repairs.

1.3 RELATED SECTIONS

- A. Division 5 Section – Metal Fabrications: For miscellaneous metals to be painted.
- B. Division 5 Section - Structural Steel: For steel fabrication and assembly requirements.

1.4 DEFINITIONS

- A. Maintenance means preservation, conservation, safeguarding, upkeep, or to hold or keep in a particular state. Maintenance includes the management of the coating process from the beginning of the original application to its present as well as future state. Maintenance includes the inspection, record keeping, and observation of the coating and its condition. It also includes repair procedures that are established by studying the substrate, coating materials, extent of failure, type of failure, adhesion of existing coating, as well as other variables that effect the performance of the coating.
- B. Repair means fix, recondition, renew, rebuild, patch or restore to a sound state. Repair refers to the actual act of reconditioning, rebuilding, and restoring a coating to its proper condition and protection standard.

1.5 PERFORMANCE REQUIREMENTS

- A. Provide coating systems that comply with the following performance requirements:
 - 1. Abrasion: Comply ASTM D4060, CS-17 Wheel, 1,000 grams load with not more than 96 mg loss after 1,000 cycles.

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2. Adhesion: Comply with ASTM D4541 with not less than 800 psi, average of three trials.
 3. Exterior Exposure: Comply with ASTM G53, with no blistering, cracking, or chalking and no more than 4.0 MacAdam units color change after 1,500 hours.
 4. Salt Fog Spray: Comply with ASTM B117 with no more than 1/16 inch rust creepage at scribe and no rusting at edges after 1,000 hours exposure.

1.6 SUBMITTALS

- A. Product data and Material Safety Data Sheets (MSDS) for each coating material specified.
- B. Provide the manufacturer's technical information, including label analysis and instructions for handling, storing, and applying each material proposed for use.
- C. List each material and cross-reference the specific coating, finish system, and application. Identify each material by the manufacturer's catalog number and general classification.
- D. Certification by the manufacturer that products supplied comply with local regulations controlling use of volatile organic compounds (VOC's).
- E. Certification by the manufacturer that products supplied comply with the performance requirements specified.
- F. Coating Manufacturer's "Coating Application, Maintenance and Repair Procedures Manual".
- G. Samples: Provide samples of each color and material to be applied with texture to simulate actual conditions on representative samples of the actual substrate.
 1. Provide stepped samples, defining each separate coat. Use representative colors when preparing samples for review. Resubmit until the required sheen, color, and texture are achieved.
 2. Provide additional samples as specified above, with scratched and abraded surfaces. Repair one side of the sample with in accordance with repair procedures included in the "Coating Application, Maintenance and Repair Procedures Manual."
 3. Provide a list of material and application for each coat of each sample. Label each sample as to location and application.
 4. Submit samples on steel substrate for the Architect's review of color and texture only.

1.7 QUALITY ASSURANCE

- A. Paint Applicator Qualifications: Paint contractors shall be qualified by audit according to criteria accepted under SSPC guidelines and the Architect's quality assurance audit.
- B. Single-Source Responsibility: Provide primers and undercoat material produced by the same manufacturer as the finish coat(s) for each type of coating. Use only thinners recommended by the manufacturer and only within recommended limits.
- C. Finish Samples: Duplicate finishes of prepared samples. Provide full-coat finish samples on selected steel surfaces until the required sheen, color, and texture are obtained.
 1. Final acceptance of colors will be from job-applied samples.
 2. The Architect will select surface to represent surfaces and conditions for each type of coating and substrate to be coated. Apply coatings to this surface as specified. After finishes are accepted, this surface will be used for evaluation of coating system.

1.8 DELIVERY, STORAGE AND HANDLING

- A. Deliver materials to the applicator, either in the shop or field, in the manufacturer's original, new, unopened packages and containers bearing manufacturer's name and label and the following information:
 - 1. Name or title of material.
 - 2. Manufacturer's name, stock numbers, and dates of manufacture.
 - 3. Contents by volume, for major pigment and vehicle constituents.
 - 4. Thinning instructions.
 - 5. Application instructions.
 - 6. Color name and number.
 - 7. Handling instructions and precautions.
- B. Store materials not in actual use in tightly covered containers at a minimum ambient temperature of 45 degrees F in a well ventilated area. Maintain containers used in storage of coatings in a clean condition, free of foreign materials and residue.
- C. Cleanliness: Protect from freezing. Keep storage area neat and orderly. Remove oily rags and waste daily. Take necessary precautionary measures to ensure that workmen and work areas are adequately protected from fire hazards and health hazards resulting from handling, mixing and application of coatings.

1.9 PROJECT CONDITIONS

- A. Apply coatings only when the temperature of surfaces to be coated and surrounding air temperatures are between 50 degrees F and 90 degrees F.
- B. Do not apply coatings in snow, rain, fog, or mist; when the relative humidity exceeds 70 percent; at temperatures less than 5 degrees F above the dew point; or to damp or wet surfaces. Allow wet surfaces to dry thoroughly and attain the temperature and conditions specified before proceeding with or continuing the coating operation.

PART 2 - PRODUCTS

2.1 MANUFACTURERS

- A. Products: The standards for quality and performance are based on products manufactured by Thnecm Company, Inc.
- B. Acceptable Manufacturers: Subject to compliance with requirements of the specified product, other acceptable manufacturers include the following:
 - 1. Ameron Protective Coatings Division
 - 2. Carboline Company.
 - 3. ICI/Devoe.
 - 4. PPG Industries, Inc.
 - 5. Sherwin Williams.

2.2 MATERIALS

- A. Blasting Media: As required to produce the specified blast profile.
- B. VOC Compliance: Provide materials that comply with the Air Quality Control regulations of the local Air Quality Management District having jurisdiction over the location of the project or EPA Region II. In the event that local regulations are silent on specific applications, comply with the National Volatile Organic Compound Emission Standards for Architectural Coatings (40 CFR Part 59)

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- C. Primer: Polyamide Epoxy with a minimum volume solids of 54 percent. Apply primer at a rate to achieve a dry film thickness of 3 to 5 mils.
 - 1. Acceptable product:
 - a. "Series 66 Hi-Build Epoxoline"; Tnemec Company, Inc.
 - D. Finish Coat: Aliphatic Acrylic Polyurethane Enamel, semi gloss finish, with a minimum volume solids of 56 percent. Apply at a rate to achieve a dry film thickness of 2 to 3 mils:
 - 1. Acceptable Product:
 - a. "Series 1077 Enduralume", Tnemec Company, Inc.
 - b. Color: Themec 1C73-1243, "Endura-Shiled III", Aluminum.

2.3 COATING APPLICATION

- A. Surface Preparation: Clean surfaces to the following surface cleanliness in accordance with the Steel Structures Painting Council specifications. For commercial blast applications use blasting media to provide a surface profile of 1.5 mils.
 - 1. Surfaces Specified to Receive Commercial Bast Cleaning: SSPC SP6
- B. Application Requirements: The Coating Manufacturer shall prepare specifically for this project a Coating Application, Maintenance and Repair Procedures Manual. This manual shall specify specific application and touch-up requirements for this Project. The manufacturer shall address the following application requirements:
 - 1. Weather and Dew Point.
 - 2. Method of Application (brush, roll or spray including what type of equipment).
 - 3. Mill Thickness and time between surface preparation and application of primer.
 - 4. Equipment cleanliness.
 - 5. Surface preparation prior to application of each coat.
 - 6. Drying time between primer and finish coat(s) and after application of finish coat.
 - 7. Pot Life.
 - 8. Thinning.
 - 9. General application techniques for critical areas to be coated.
 - 10. Requirement that all foreman and applicators understand the Coating Application, Maintenance and Repair Procedure Manual requirements.
- C. Coating Application shall describe surface preparation requirements, the maximum time allowed between surface preparation and primer application, primer and top coat(s) curing time, and procedure for checking minimum and maximum wet and dry film thickness of the primer and top coat(s). Identify procedures for coating critical mil thickness locations (e.g. fillets, edges, welds, bolted connections). See articles "SHOP APPLIED COATINGS AND SURFACE PREPARATION" and "FIELD APPLIED COATINGS" located in this section for additional requirements.

2.4 MAINTENANCE

- A. Responsibility: Maintenance shall be the responsibility of the following parties:
 - 1. Manufacturer: The coating manufacturer shall be responsible for establishing maintenance procedures and coating application procedures based on the requirements specified in this section and by the manufacturer's product requirements.
 - 2. Contractor: The Contractor shall be responsible for coating maintenance from the date of Notice to Proceed to Final Completion of the Contract.
 - 3. Owner: The Owner shall be responsible for coating maintenance after Final Completion of the Contract. subject to the Coating Application, Maintenance and Repair Procedures Manual.

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- B. Maintenance Procedure: The maintenance procedure shall provide a systematic process for inspection, record keeping and observation, coating application, and repair procedures.

2.5 REPAIR

- A. Responsibility: Shop repair shall be the responsibility of the following parties:
 - 1. Contractor: The Contractor shall be responsible for coating Repair from the date of Notice to Proceed to Final Completion of the Contract.
 - 2. Owner: The Owner shall be responsible for repairs after Final Completion of the Contract.
- B. Repair procedures shall be specified by the Manufacturer. Repair procedures will vary because of the different variables that are involved in evaluating a coating failure. The party responsible for making the repairs to the coating shall determine which type of Repair Procedure shall be employed for a particular coating failure and make the repair based on the manufacturer's procedure.
- C. Repair procedures shall establish when a repair is required, what type of repair should be done, with what materials, at what time, and in what manner based on the following considerations:
 - 1. Types of Failure which may include, but are not limited to, undercutting, blistering, pinpoint rusting, delamination, chalking, checking, and abrasion.
 - 2. Extent of Failure shall be determined by visual inspection and the use of one the following ASTM standards, as required by the type of failure involved:
 - a. ASTM D610- Evaluating Degree of Rusting on Surfaces of Painted Steel.
 - b. ASTM D659 - Evaluating Degree of Chalking of Exterior Paint.
 - c. ASTM D660 - Evaluating Degree of Checking of Exterior Paint.
 - d. ASTM D661 -Evaluating Degree of Cracking of Exterior Paint.
 - e. ASTM D662 - Evaluating Degree of Erosion of Exterior Paint.
 - f. ASTM D714- Evaluating Degree of Blistering of Paint.
 - g. ASTM D772 - Evaluating Degree of Flaking (Scaling) of Exterior Paint.
 - h. Acceptance shall require top visual standards in all of the listed ASTM categories.
 - 3. Adhesion of the primer coating to the substrate and the top coat to the primer.
 - 4. Types of coatings involved and their compatibility.
 - 5. Type of substrate involved.

2.6 SHOP APPLIED COATINGS AND SURFACE PREPARATION

- A. General: Surface preparation, coating application, delivery and handling of coated steel, inspection, record keeping, observation, and repair of the coating systems shall be performed in accordance with the Coating Application, Maintenance and Repair Procedures Manual provided by the Coating Manufacturer.
- B. Implementation: The Coating Application, Maintenance and Repair Procedures Manual shall be implemented by the Contractor.
- C. Coating Application and Repair: Coating application and repair shall be provided by the Steel Fabricator.

PART 3 - EXECUTION

3.1 FIELD APPLIED COATINGS

- A. General: The surface preparation, coating application, delivery and handling of coated steel, inspection, record keeping, observation, and repair of the coating system shall be performed in accordance with the Coating Application, Maintenance and Repair Procedures Manual provided by the Coating Manufacturer.
- B. Implementation: The Coating Application, Maintenance and Repair Procedures Manual shall be implemented by the Contractor.
- C. Coating Application and Repair: Coating application and repair shall be provided by the Contractor.

3.2 FIELD REPAIR

- A. General: The steel fabricator shall repair steel components in accordance with the Coating Application, Maintenance and Repair Procedures Manual.

3.3 CLEANING

- A. Clean-Up: At the end of each work day, remove rubbish, empty cans, rags and other discarded materials from the site.
- B. Upon completion of work, clean spattered surfaces. Remove spattered coatings by washing, scraping or other proper methods, using care not to scratch or damage adjacent finished surfaces.

3.4 PROTECTION

- A. Protect coating from damage. Correct damage by cleaning, repairing, replacing, and recoating as required by the Coating Application, Maintenance and Repair Procedures Manual.
- B. At substantial completion repairs to damaged or defaced coated surfaces shall be complete.

END OF SECTION

SECTION 10431

SPECIALTY SIGNS

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. Drawings, General Conditions of the Contract for Construction, Supplementary Conditions and Division 1 - General Requirements apply to Work of this Section.

1.2 SECTION INCLUDES

- A. Specialty signs
- B. Recessed advertising panels.

1.3 SYSTEM PERFORMANCE REQUIREMENTS

- A. Wind Pressures: All exterior signage including their method of attachment to the structure and supports shall be designed and engineered to withstand the positive and negative wind pressures acting perpendicular to the plane of the sign as set forth by local building codes.
- B. Thermal Movement: Design components to allow for expansion and contraction for a minimum ambient temperature of 100 deg. F without causing buckling, excessive opening of joints, or overstressing of welds and fasteners.

1.4 SUBMITTALS

- A. Product Data: Submit manufacturer's technical data and installation instructions relative to materials, dimensions of individual components, profiles, and finishes for each type of sign material required.
- B. Shop Drawings: Submit shop drawings for fabrication and erection of specialty signs. Include plans, elevations, and large scale details of sign wording and lettering layout. Include large scale sections of typical members and other components. Show fabrication joints and fasteners. Show anchors, grounds, reinforcement, accessories, layout, and installation details. Furnish location template drawings for items supported or anchored to permanent construction.
 - 1. For exterior signage required to comply with design loads, include structural analysis data signed and sealed by the qualified professional engineer responsible for their preparation.
 - 2. Provide message list, indicating line breaks for each sign required, including large scale details of signs working and lettering layout, including outline of sign face, letter spacing, line spacing, spelling and punctuation, legibility and copy composition. All submittals will be made simultaneously for review and comparison.
 - 3. For signs supported by or anchored to permanent construction, provide setting drawings, full-size spacing templates, and directions for installation of anchor bolts and other appropriate anchors to be installed.
 - 4. Furnish full-size spacing templates for individually mounted dimensional letters and numbers.
 - 5. Submit all text, in half size, to Architect before fabrication is commenced for verification of spacing and letter height.

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- C. Installation: Sign contractor shall coordinate installation with the Owner. Sign contractor shall establish a time table for completion of installation and final inspection. Schedules must show fabricating, delivery, and installation activities. An appropriate monetary amount shall be assigned to each activity. Sign contractor shall submit the schedule to the Architect and Owner indicating dates and duration of the installation for approval.
 - D. Samples: Submit 12" x 12" samples of each sign material showing finishes, colors, surface textures and qualities of manufacturer and design of each sign component including graphics. Samples to be kept by Architect as a record to later match against items in the field.
 - 1. Aluminum: Samples of each finish type and color, on 6-inch-long sections of extrusions and not less than 12-inch squares of sheet or plate. Where finishes involve normal color and texture variations include sample sets showing the full range of variations expected.
 - 2. Dimensional Letters: Provide full-size representative samples of each dimensional letter type required, showing letter style, color, and material finish and method of attachment.
 - 3. Submit full-size sample units, if requested by Architect. Acceptable units may be installed as part of the work.

1.5 QUALITY ASSURANCE

- A. Professional Engineer Qualifications: A professional engineer who is legally qualified to practice in jurisdiction where Project is located and who is experienced in providing engineering services of the kind indicated. Engineering services are defined as those performed for installations of handrails and railings that are similar to those indicated for this Project in material, design, and extent.
- B. Manufacturer Qualifications: All sign fabrication within this section shall be performed by a manufacturer with a minimum of five (5) years experience producing architectural signs, and a minimum of five (5) years experience producing compliant signs as specified in ANSI 117.1 (1986), Minimum Guidelines and Requirements for Accessible Design (MGRAD), Uniform Federal Accessibility Standards (UFAS) and Americans with Disabilities Act Accessibility Guidelines (ADAAG).
- C. UL Compliance: Provide lighting fixtures and electrical components for illuminated signs that are labeled and listed by UL and comply with applicable NEMA standards.
- D. Drawings and Specifications: Plans, elevations, details, and specifications indicate spacings of members, sizes of components as well as profile, dimensional, material, fabrication and similar design requirements for all sign types. Signs with deviations from indicated dimensions and profiles may be considered provided that deviations in dimensions and profiles are minor and do not change the design concept, or intended performance as judged by the Architect. The burden of proof of equality is on the proposer.
- E. Uniformity of Manufacturer: For each separate type of sign and graphic image required, obtain signs from a single manufacturer.
 - 1. Manufacturer's name, trade name or trade mark shall not appear on any visible surface.
- F. Design Calculations: All structural calculations, and Engineer Qualifications for signs shall comply with Division 5 Sections.
- G. Aesthetic Requirements: All copy straight with letters tightly spaced, typeface accurately reproduced with square corners and even curves, letters and symbols uniform, edges straight and true, and all finishes smooth and with no visible imperfections.

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- H. **Typographic Requirements:** All type shall be standard serif or sans serif meeting ADA requirements for legibility.
1. Typeface and numerals to be computer digitized by one manufacturer and used for all applicable sign types.
 2. Lettering shown on the drawings are intended as guidelines for layouts and type size only, and are based on scale calculations of the message lengths within given and estimated sign areas. Refer to the drawings and schedules for the copy to be provided on individual proceeding.
 3. All spelling and punctuation shall be correct. Should an error in spelling or punctuation be found, or the spelling appear questionable, notify the Architect before proceeding.
 4. Align all letter forms to maintain a baseline parallel to the sign format. Maintain margins as specified in sign layouts.
- I. **ADA Accessibility Guidelines:** All signage shall comply with the ADA Accessibility Guidelines where applicable. Lettering and graphics including both but not limited to copy height, letter stroke, symbols, materials and finishes shown on drawings are intended as guidelines for compliance. Sign Contractor shall be responsible for implementation of ADA Guidelines. Should conflicts arise, Sign Contractor shall notify the Architect before proceeding.
1. Where Grade 2 Braille copy is required, Sign Contractor is responsible to coordinate all messages in conjunction with sign schedule. Braille copy contained on drawings is for size and position only and should not be used for full message.
 2. Contractor shall provide written documentation that the braille translation included on the manufacturer's signage provided in this section has been evaluated by the American Foundation for the blind, and is, in their opinion, correct and compliant with ADAAG.
 3. The symbols and ADA required symbols, (international Symbol of Accessibility; Symbol of Access for Hearing Loss; International TDD Symbol; and Symbol of Volume Control), which are referenced in the documents, are available in EPS formats on 3-1/2" Macintosh discs from the Society for Environmental Graphic Design (SEGD), 47 Third Street, Cambridge, MA 02141, telephone 617/577-8225, fax 617/577-1769.
- J. **Camera-Ready Artwork:** Documents include specifications for all visual elements (i.e., type, symbols, logos, arrows, etc.). Create all "camera-ready artwork" necessary to complete all signs.
1. Typeset copy and photo stat originals of logos and motifs need to be camera-ready artwork used for fabrication.
 2. Computer scanned copy, Owner provided logo, and motifs at 300 dpi, not human digitization, may be used for initial layouts prepared for shop drawing review. Output on high resolution printers with minimum 2400 dpi, such as the Linotronic 300 or Compugraphic 9600. Do not, under any circumstances, use diazo printed construction documents as base art.
 3. Silkscreens shall be executed from photoscreens or negatives. Pattern cut screens may be used where non-repeat copy is required; however, copy mask shall be equivalent to photoscreen quality. Do not use any images shown in the Contract Documents as camera-ready art.
- K. **Inspections:** The Architect and its graphic design consultant has the right to periodically visit the fabricator's shop in order to inspect and approve layouts. The sign contractor shall not hinder the Architect and its graphic design consultant in the performance of these inspections.

1.6 PROJECT CONDITIONS

- A. Field Measurements: Take field measurements prior to preparation of shop drawings and fabrication to ensure proper fitting. Show recorded measurements on final shop drawings. Coordinate fabrication schedule with construction progress to avoid delay.

1.7 DELIVERY, STORAGE AND HANDLING

- A. Package material in like groups and label accordingly.
- B. Protect all items during transit, delivery, storage and handling to prevent damage, soiling and deterioration. Inspect items upon delivery for damage. Minor damages may be repaired provided the finish items are equal in all respects to new work and acceptable to the Architect, otherwise, remove and replace damaged items as directed.
- C. Fabricated signs shall not be delivered to the site until they are ready for installation.
- D. Coordinate with the Owner regarding the delivery and storage of material. Materials stored on the site without prior approval of the Owner, may have to be relocated at the sign contractor's expense.

1.8 MAINTENANCE

- A. Furnish the Owner with a list of cleaning materials appropriate for continued cleaning of signs. Provide written instructions for proper maintenance, service access, replacement procedures, etc. Include recommended methods for removal of residual adhesives from wall surfaces after removal of interior signs.

PART 2 - PRODUCTS

2.1 ACCEPTABLE MANUFACTURERS

- A. Manufacturers: Subject to compliance with requirements, provide products of one of the following:
 - 1. SI
 - 2. Triangle Signs
 - 3. Cornelius
 - 4. DSA/Phototech Inc.

2.2 MATERIALS

- A. General: Use materials of size and thickness indicated or, if not indicated as required to produce strength and durability in finished product for use intended. Work to dimensions shown or accepted on shop drawings, using proven details of fabrication and support. Use type of materials shown or specified for various components of work.
- B. All materials shall be new stock, free from defects impairing strength, durability, and appearance. No fabrication or installation materials or procedures shall be used that will in any way change the usual quality or in any manner have an adverse effect on existing materials and surfaces.

2.3 CUSTOM SIGN MATERIALS

- A. Metals: For the fabrication of exposed metal work, use only materials which are smooth and free of surface blemishes including pitting, roughness, seam marks roller marks, and trade names. Do not use materials which have stains or discolorations.
 - 1. All edges of metal shall be cut in a continuous line and sanded smooth to finish. All seams are to be straight and symmetrical.
 - 2. Form exposed work true to line and level with accurate angles and surfaces and straight sharp edges. Ease exposed edges to a radius of approximately 1/32" unless otherwise shown. Form bent-metal corners to smallest radius possible without causing grain separation of otherwise impairing work.
 - 3. For exposed items of work which include plain flat surfaces in width of more than 50 times the metal thickness, provide sheet stock from the mill which has been stretcher leveled to the highest standard of flatness commercially available.
 - 4. Cut, reinforce, drill and tap miscellaneous metal work as indicated to receive finish hardware and similar items.
 - 5. Welding, when necessary, shall be of the correct type to minimize permanent distortions of flat surfaces. All welding flux, oxides, and discolorations shall be removed by pickling or grinding, so that these areas match the finish of the adjacent areas. Any damage caused by fabrication must be repaired by grinding, polishing, or buffing.
 - 6. Weld corners and seams continuously, complying with AWS recommendations. At exposed connections, grind exposed welds smooth and flush to match and blend with adjoining surfaces.
 - 7. Form exposed connections with hairline joints, flush and smooth.
- B. Aluminum: Aluminum Association Alloy 6063-T5 or 6061-T6 or as recommended to suit required service and finish.
 - 1. Aluminum Sheet: Provide aluminum sheet of alloy and temper recommended by the aluminum producer or finisher for the type of use and finish indicated, and with not less than the strength and durability properties specified in ASTM B 209 for 5005-H15.
 - a. Thickness: .125 for single sided signs
 - 2. Aluminum Extrusions: Provide aluminum extrusions of alloy and temper recommended by the aluminum producer or finisher for the type of use and finish indicated, and with not less than the strength and durability properties specified in ASTM B 221 for 6063-T6.
- C. Steel Plate, Bars, Sheet and Shape: shall conform to ASTM A 36.
- D. Stainless Steel Sheet: ASTM A666, Type 316, stretcher leveled standard of flatness.
- E. Rasters for Braille: All signs that call out for individual stainless steel rasters for Braille can be produced using the Brite-DotterM Engraver:
 - 1. Brite-DotterM Engraver
 - 2. D.A. Edgerton & Associates, P.O. Box 8247, Des Moines, Iowa 50301, (515) 244-5988

2.4 PLASTIC

- A. General: Plastic shall be free of imperfections from forming or fabrication. All surfaces shall be free from scratches and shall be cleaned and polished per manufacturer's instructions at completion of installation. Edges shall be flame polished, free of saw marks and chips, and be square to face, unless otherwise noted.

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- B. Manufacturer: Furnish acrylic as manufactured by Autofina and Ram Industries, Inc., and Ineos Acrylics, Inc. or approved equal.
 - C. Transparent Sheet: Where "clear" is indicated, provide colorless sheet with light transmittance of 92% when tested in accordance with ASTM D 1003, in matte finish unless otherwise indicated.
 - D. Opaque Sheet: Where "opaque" is indicated, provide opaque acrylic sheets in colors and finishes indicated, or if not indicated, as selected from manufacturer's standards.
 - E. Color coatings for acrylic plastic sheet: Use color coatings, including inks and paints for copy and background colors, which are recommended by acrylic manufacturers for optimum adherence to acrylic surface and non-fading for application indicated.
 - F. Vinyl Film: High grade exterior/interior pre-spaced die-cut letters supplied in specified type face, color, and spacing on a quick-release backing sheet.
 - 1. 3M Scotch Print Film™: Series 8640 (or equal).
 - 2. 3M Scotch Lite™: Series 500 (or equal).
 - 3. 3M Special Effects Scotch Caln.1. Series 500 (or equal).

2.5 ELECTRICAL

- A. Electrical parts and material: Shall meet all national electrical codes, applicable local codes and the requirements of Underwriter's Laboratory, Inc., and shall be labeled as such. All electrical parts shall be new and free from defects.
- B. Illuminated units: Using manufacturer's standard listing components including transformers, insulators, sockets, internal wiring as required to provide a complete operable unit and with provisions for servicing and concealed connection to building system. Coordinate electrical characteristics of signs with those of power supply provided.
- C. Lamp holders: Shall be UL listed, white glazed porcelain with spring bronze clip contacts which shall give positive electrical contact and support the lamps. All lamps shall be supported by lamp supports.
- D. Transformers: Shall be 115 Volt, 60Hz, voltage as required by lamp footage. Transformers shall be UL listed, self-contained in a steel housing.
- E. Disconnect Switches: Proper disconnect switches shall be provided. Location shall be inconspicuous and located on the shop drawings for approval by the Architect.

2.6 PAINT AND GRAPHIC IMAGE MATERIALS

- A. Primer: High build, two part polyamide epoxy.
- B. Opaque Finish Coat: Two-part, satin finish Matthews acrylic polyurethane.
- C. Powder Coating: Polyester based powder coating type finish for sheet steel.
- D. Polyurethane Paint: Provide products equal to Matthew Acrylic Polyurethane, custom colors with Gloss between 11 and 19 units @ 60 degrees.
- E. Silkscreen: All silkscreening to use Nazdar, fast drying enamel silkscreen ink. Ink to be totally opaque and a high gloss color not limited to manufacturer's standard colors.

2.7 FASTENERS AND ADHESIVES

- A. General: Use concealed fasteners, unless otherwise indicated, which are fabricated from metals which are non-corrosive to either sign materials or mounting surface. Use vandal proof exposed fasteners, finished to match adjacent surfaces, of type shown (refer to drawing) or manufacturer's recommendation.
- B. Fasteners: Unless otherwise indicated, used concealed fasteners fabricated from metals that are non-corrosive to either the sign material or the mounting surface.

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- C. Anchors and Inserts: Use non-ferrous metal or hot-dipped galvanized anchors and inserts for exterior installations and elsewhere as required for corrosion resistance. Use toothed steel or lead expansion bolt devices for drilled-in-place anchors. Furnish inserts, as required, to be set into concrete or masonry work.
 - D. Adhesives: Provide products equal to "Depend 330" as manufactured by Loctite Acrylic Adhesives. (216)881-2828. Signage manufacturer shall verify with painting manufacturer compatibility of the adhesive to the paint.
 - E. Very High Bond (VHB) Foam Double Face Tape: Provide vinyl double-sided foam tape of thickness required, and manufactured by 3M, or approved equal.
 - F. Silicone Adhesive: Provide liquid silicone adhesive (sealant) with a methanol or acetic cure as recommended by the sign fabricator.
 - G. Rubber Spacers: Provide Manufacturer's standard spacers when necessary.

2.8 CUSTOM SIGN FABRICATION

- A. General: Fabricate signs to comply with requirements indicated for materials, thicknesses, finishes, colors, designs, shapes, sizes and details of construction.
 - 1. Form exposed faces and sides of characters to product surfaces free from warp and distortion, free of "oil canning", include internal bracing for stability and attachment of mounting accessories as required.
 - 2. Welding, when necessary shall be of the correct type to minimize permanent distortions of flat surfaces. All welding flux, oxides and discolorations shall be removed by pickling or grinding, so that these areas match the finish of the adjacent areas. Any damage caused by the fabrication must be repaired by grinding, polishing, or buffing.
 - 3. Produce smooth, even, level sign panel surfaces, constructed to remain flat under installed conditions within a tolerance of plus or minus one percent measured diagonally from corner to corner.
 - 4. Fabricate, brackets and fittings for signs to suit sign panel construction and mounting conditions indicated. Connections, angles, shapes and details shown are suggestive and are to be sized, reinforced and detailed as required. Details not shown are to be equal in quality to those detailed. Factory paint brackets in color matching background color of sign panel.
 - 5. All internally illuminated signs shall have access to their interiors for relamping and service. Such service access shall be waterproof and secured against vandalism. Unless sign contractor shall make recommendations for such access, access panels shall be concealed.
 - 6. For the fabrication of exposed metal work, use only materials which are smooth and free of surface blemishes including pitting, roughness, seam marks, roller marks, and trade names. Do not use materials which have stains or discolorations.
 - 7. All metal signs facing and cladding shall be aluminum unless otherwise indicated or specified. Internal main support structure shall be of hot dipped galvanized steel or aluminum. Where galvanized steel and aluminum meet, the materials shall be materially isolated from one another to prevent electrolytic action. All aluminum joints and connections shall be heli-arc welded and flush, true, ground and polished smooth and without defects. Letter forms shall be cut true to typeface with no burns or imperfections of any kind. All metal sign facing and cladding shall be indicated on the drawings.
 - 8. All union, fabricator, or other labels on all signs shall be concealed.

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- 9. For sign panel units in exterior applications provide standard weatherproofing construction, including weather-stripping, weeping and venting provisions for condensation control.
 - B. Illumination: Provide manufacturer's standard lighting provisions using only UL listed approved electrical components. Make provisions for servicing lamps, and other components.
 - C. Internal Structure: Provide completely hidden, internal structures for support and anchorage, unless indicated otherwise on the drawings.

2.9 PANEL SIGNS

- A. Exterior Dimensional Plaque Sign: Provide products equal to ASI Sign System SignEtch fabricated from .125" zinc plate or Braille-Tac by Advance Corporation fabricated .125" magnesium plate with .030 double face tape mounting and silicone adhesive. Sign copy shall be raised 1/32 inch from plaque first surface by manufacturer's standard photochemical process. Provide opaque graphics and braille to comply with ADA regulations.
 - 1. Finish: Manufacturer's custom color urethane.
- B. Interior Dimensional Plaque Sign: Provide products equal to ASI Sign System ASintouch fabricated from .125" thick acrylic with polyamide resin sign face and .011 carrier with .030 double face tape mounting and silicone adhesive. Sign copy shall be raised 1/32 inch from plaque first surface by manufacturer's standard photomechanical stratification process. Provide opaque graphics and braille to comply with ADA regulations.
 - 1. Finish: Manufacturer's custom color with matte texture.
- C. Metal Plaque Sign: Provide products equal to ASI Sign System Aluminum Plaque Sign fabricated from 1/8" aluminum panel with square edges with .030 double face tape mounting and silicone adhesive. Graphics shall be silk screen graphics sing Nazdar tasty drying enamel silkscreen ink.
 - 1. Finish: Manufacturer's custom color urethane.

2.10 FABRICATED LETTERS AND NUMBERS

- A. General: Fabricate letters and numbers to the required sizes and styles, using metals and thicknesses indicated below. Form exposed faces and sides of characters to produce surfaces free from warp and distortion. Include internal bracing for stability and attachment of mounting accessories as required. Fabricate by the heliarc welding process.
 - 1. Aluminum Sheet: Not less than 0.090" thick.
 - 2. Finish: Manufacturer's custom color urethane.

2.11 FINISHES FOR CUSTOM SIGN

- A. General: Surfaces under painted finish shall be smooth, clean and free. of dust, grease, finger prints, or other foreign matter. If necessary to obtain true color application, surface to be "primed" with white before final color application is applied. Artwork shall be accurately reproduced with all edges straight and true and all finishes smooth and with no visible imperfections
- B. Corrosion Protection: Coat concealed surfaces which will be in contact with concrete, stone, masonry, wood, or dissimilar metals, in exterior work and work to be built into exterior and below grade walls and decks, with a heavy coat of bituminous paint. Do not extend coating onto exposed surfaces.

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- C. Colors and. Surface Textures: For exposed sign material that requires selection of materials with integral or applied colors, surface textures or other characteristics related to appearance, provide custom color matches as selected by the Architect.
 - 1. Ferrous Metal: Paint in accordance with Section 09810 - Ferrous Metal Special Coatings.
 - 2. Aluminum: Polyurethane paint as specified in this section.

2.12 RECESSED ADVERTISING PANELS

- A. General: Provide lighted front access recessed panels with spring-loaded trim edges.
- B. Edge Trim: Clear anodized aluminum with security screws.
- C. Electrical: Provide Integral junction box and power source for 120V, 60 Hz.

PART 3 - EXECUTION

3.1 PREPARATION

- A. General: Installer must examine area, surfaces and conditions under which the work is to be installed. Notify the Construction Manager and/or Contractor in writing of conditions detrimental to the proper and timely completion of the work; i.e., existing mechanical, electrical or plumbing elements, or any visual or physical conflicts. Starting work implies acceptable surfaces and conditions.

3.2 INSTALLATION

- A. General: Locate sign units and accessories where indicated on Sign Schedule and on the Drawings. Attach signs to substrates in accordance with manufacturer's instructions, unless otherwise indicated.
- B. Install sign units level, plumb and at the height indicated, with sign surfaces free from distortion or other defects in appearance.
- C. Surfaces under adhesive applied units shall be smooth, clean, and free of dust, grease, fingerprints, or other foreign matter. All adhesives required shall be used in accordance with recommendations made by the manufacturer of the material to be laminated or adhered. No adhesives that will fade, discolor, or delaminate as a result of ultraviolet light or heat shall be used. Adhesives shall not change the color of or deteriorate the materials to which they are to be applied. The adhesives shall be of a non-staining, non-yellowing quality. All visible joints shall be free from air bubbles and other defects.
- D. Mill joints to a tight, hairline fit. Form joints exposed to the weather to exclude water penetration.
- E. Wall-Mounted Units: Attach panel signs to wall surfaces using the best method for the substrate as indicated below: Provide blocking within wall as required.
 - 1. Flush-Mounting: Mount panel signs with backs in contact with wall surface.
 - 2. VHB Vinyl-Tape and Silicone Adhesive Mounting: Use standard liquid silicone adhesive with a methanol cure recommended by sign manufacturer to attach sign units to irregular, brick porous or vinyl-covered surfaces. Use standard liquid silicone adhesive with an acetic acid cure recommended by sign manufacturer to attach sign units to smooth painted, or glass surfaces. Use double-sided vinyl tape, of thickness indicated, to hold sign in place has been fully cured. Do not use double-sided foam tape for vinyl-covered or rough surfaces.
 - 3. Shim Plate Mounting: Provide concealed aluminum shim plate, .080" thick, with predrilled and countersunk holes, at exterior locations and where other mounting

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- methods are not practicable or where indicated on the drawings. Attach plate with fasteners and anchors suitable for secure attachment to substrate. Attach panel sign units to plate by method specified above for application to smooth surfaces.
4. Pin Mounting: A minimum of four threaded studs to be 3/16" round minimum x 1" long minimum welded to back or bottom with no distortions or discolorations to sign face. Use epoxy adhesive where required and support all signs until setting time of adhesive with foam tape or other mechanical means that does not damage surrounding surfaces
 5. Mechanical Mounting: Securely attach signs to the supporting structure with permanent, concealed vandal resistance fasteners in accordance with manufacturer's installation instructions.
- F. Recessed Advertising Panels: Set panels in locations indicated at appropriate depth to provide for required edge trim.
1. Provide electrical connections to power source installed for each opening.
- G. Metal Letters and Numbers: Mount letters and numbers as follows; use standard fastening methods recommended by manufacturer for letter form, type of mounting, wall construction, and condition of exposure indicated. Provide heavy weight paper template to establish letter spacing and to locate holes for fasteners.
1. Pin Mounting: A minimum of three threaded studs to be 1/8" round minimum x 1/2" long minimum welded to back or bottom with no distortions or discolorations to sign face. Appropriately increase size of studs according to weight of letters. Use epoxy adhesive where required and support all signs until setting time of adhesive with foam tape or other mechanical means that does not damage surrounding surfaces.
- H. Bracket-Mounted or Suspended Units: Use custom fabricated brackets, fittings and hardware as appropriate for mounting signs which project at right angles from supporting elements or suspended from ceilings. Attach brackets and fittings with concealed fasteners and anchoring devices, unless otherwise indicated, to comply with the manufacturer's directions.

3.3 APPLICATION OF SILKSCREENING:

- A. General: Apply paint in accordance with manufacturer's directions. Use applicators and techniques best suited for substrate and type of material being applied. No paints shall be used that will fade, discolor, or delaminated as a result of ultraviolet light or heat. Completely cover to provide an opaque, smooth surface of uniform finish, color, appearance and coverage.

3.4 PATCH AND ADJUST

- A. Patch existing surfaces damaged as a result of work under this section. Patch with same materials as existing. Sign Contractor shall paint and harmoniously blend and contour all repairs to match adjoining conditions.
- B. Touch-up any mars or nicks in painted finishes of all signs and adjacent structures. Touch-up shall be the same paint product as used for this sign finish.

3.5 FIELD QUALITY CONTROL

- A. General Contractor shall coordinate a final walk-through inspection with the Sign Contractor, Architect and Owner within one week of completion of installation. A punch list itemizing any of the following should be made during the walk-through.
 - 1. Uppercase letters instead of lowercase or vice-versa.
 - 2. Improper alignment of letters on sign panel.
 - 3. Improper alignment of signs.
 - 4. Chipped finishes.
 - 5. Unpainted exposed fasteners.
 - 6. Fabricator's label displayed.
 - 7. Improper cleaning of sign surfaces or surrounding wall areas.
 - 8. Damage to surrounding wall or ceiling surfaces.
 - 9. Missing signs.
- B. Repair or replace damaged units as required after Architect's final inspection.

3.6 CLEANING AND PROTECTION

- A. At completion of installation, all exposed sign surfaces shall be cleaned in accordance with the manufacturer's instructions. All signs should be free of glue, fingerprints, dirt, grease or any other imperfections.
- B. All evidence of installation work or damages incurred on other surfaces shall be cleaned or repaired prior to completion of work. Protect units from damage until acceptance by Owner.
- C. Remove all packing and construction materials from site. Leave premises clean, ready for work under other contracts or ready for use.
- D. Instruct the Owner in writing as to the correct operation and maintenance of all signs and sign components.
- E. Demonstrate to the Owner the operation of all access panels, and replacement of lamps, ballasts, and transformers as applicable.
- F. Furnish Owner with a pint of each paint and finish material used on sign.

END OF SECTION

SECTION 16500

LIGHTING

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. Drawings, General Conditions of the Contract for Construction, Supplementary Conditions and Division 1 - General Requirements apply to Work of this Section.

1.2 SUBMITTALS

- A. General: Submit manufacturer's data on all materials according to the Conditions of the Contract and Division 1 Specification Sections.
- B. Product Data: Submit for review complete manufacturer's catalog information on all items specified herein, including materials, construction and UL listing. Include manufacturer's catalog data and drawings on all interior and exterior lighting fixtures with separate sheet for each fixture, assembled by Luminaire "Type" in alphabetical order, with the proposed fixture and accessories clearly labeled. Ballast and lamp data shall accompany fixture submittals. Submit dimensioned drawings and performance data including coefficients of utilization, candela distribution, spacing to mounting height ratio, efficiency and visual comfort probability. Furnish scale drawings, catalog data, samples of finish, distribution curves, and any other data required by the Architect/Engineer for every type fixture.
- C. Manufacturer's Installation Instructions: Submit for review complete manufacturer's installation instructions. Indicate application conditions and limitations of use stipulated by Product testing agency specified under Regulatory Requirements. Include instructions for storage, handling, protection, examination, preparation, and installation of Product.
- D. Operation and Maintenance Manuals: Submit manufacturer's operation and maintenance instructions for each product.

1.3 SUBSTITUTIONS

- A. General: Where a lighting fixture has been scheduled on the drawings by manufacturer's name and catalog number, it has been done in order to establish a standard. Any substitution to the scheduled lighting fixture shall be of equal or better quality. No substitution shall be made without the review of the engineer, who will be the sole judge of equality. It is the contractor's responsibility to submit sufficient data for review by the Engineer. If requested by the engineer, the contractor shall provide samples of each proposed substitution for review. Should a substitution be unacceptable to the Engineer, the Contractor shall provide the originally specified lighting fixture.

1.4 PRE-APPROVAL OF SUBSTITUTIONS

- A. General: All requests for substitute lighting fixtures shall be submitted to the Engineer no fewer than fifteen calendar days prior to the bid opening. The substitution proposal shall be bound, manufacturer's catalog data in alphabetical order by Fixture Type, and a cross index clearly indicating all proposed substitutions. Engineer's review is only to establish for bidding purposes the suitability of the manufacturer and the fixture series. If approved by

the Engineer, the substitution shall be listed in an addendum. The substituted fixtures are still subject to Engineer's review as described elsewhere in this section.

1.5 CATALOG NUMBERS

- A. General: All features specified or scheduled for fixtures shall be provided, even if the catalog number given in the specifications or schedule lacks the required numerals, prefixes or suffixes corresponding to the features called for.

1.6 SCOPE

- A. Description: The work shall include all labor, material, equipment and services necessary for and incidental to the complete lighting system as shown on the drawings and specified herein.

1.7 REGULATORY REQUIREMENTS

- A. Code Requirements: Conform to requirements of ANSI/NFPA 70 (National Electrical Code) and all applicable State and Local Electrical Ordinances.
- B. UL Listing: Furnish products listed and classified by Underwriters Laboratories, Inc. as suitable for purpose specified and shown.

1.8 DELIVERY, STORAGE, AND HANDLING

- A. General: Deliver, store, protect, and handle products according to the Conditions of the Contract and Division 1 Specification Sections. Accept delivery of lighting fixtures on site and inspect for damage. Report concealed damage to carrier within their required time period. Protect lighting fixtures from degradation by storing above grade protected from the weather. Provide appropriate covering. Lighting fixtures shall remain in factory protective shipping cartons until installation.

1.9 PROJECT CONDITIONS

- A. Locations: The drawings are schematic and only indicate the approximate location of lighting fixtures. The precise location of lighting fixtures shall be coordinated with the architectural reflected ceiling plan and other architectural features.
- B. Recessed Lighting Fixtures: Verify that there will be sufficient headroom for the installation of recessed lighting fixtures prior to ordering lighting fixtures. Verify ceiling system type and provide suitable plaster ring or frame if required.

1.10 EXTRA MATERIALS

- A. General: Provide extra materials according to the Conditions of the Contract and Division Specification Sections. Deliver extra materials in factory packing.

PART 2 - PRODUCTS

2.1 EXTERIOR LIGHTING FIXTURES

- A. General: All exterior mounted lighting fixtures shall be UL listed for wet locations where installed in direct contact with weather and UL listed for damp locations where installed protected from weather.

2.2 ACRYLIC LENSES

- A. 0.125 Inch Lenses: Wherever acrylic lenses are specified or noted, the material used shall be virgin acrylic with a minimum nominal thickness of 0.125 inches. Only KSH brand lenses shall be acceptable.

2.3 INCANDESCENT LAMPS

- A. General: Fully equip each fixture with a full set of new lamps at the completion and acceptance of the work; lamps shall be of the best grade, and of the ratings and types scheduled on the drawings or as required by the lighting fixture manufacture; General Electric, Phillips, Sylvania or pre-approved equivalent.
- B. Incandescent A Lamps: Medium base, inside frosted unless scheduled or recommended otherwise by the fixture manufacturer. Lamps shall be 120V, 750 hour minimum.
- C. Incandescent R Lamps: Medium base, reflector flood or spot as scheduled or recommended otherwise by the fixture manufacturer. Lamps shall be 120V, 2000 hour minimum.

2.4 HIGH INTENSITY DISCHARGE (HID) LAMPS

- A. Metal Halide: Phosphor coated "E" or "BT" lamp.

PART 3 - EXECUTION

3.1 INSTALLATION

- A. Wall Mounted Fixtures: Install wall mounted luminaires, emergency lighting units and exit signs at height as indicated on Drawings or as scheduled. Coordinate the locations with architectural wall elevations and with architectural features.
- B. Accessories: Install accessories furnished with each luminaire.
- C. Connections: Connect luminaires to branch circuit outlets provided under Section 16110 - RACEWAYS AND FITTINGS. Make wiring connections to branch circuit using building wire with insulation suitable for temperature conditions within luminaire. Bond products and metal accessories to branch circuit equipment grounding conductor.
- D. Lamps: Install specified lamps in each luminaire.
- E. Firestopping: Install recessed luminaires using accessories and firestopping materials to meet regulatory requirements for fire rating.

3.2 FIELD QUALITY CONTROL

- A. General: Operate each luminaire after installation and connection. Inspect for proper connection and operation.

3.3 ADJUSTING

- A. General: Aim and adjust luminaries as indicated or as directed.

3.4 CLEANING

- A. General: Clean electrical parts to remove conductive and deleterious materials. Remove dirt and debris from enclosures. Clean photometric control surfaces as recommended by manufacturer. Clean finishes and touch up damage.

3.5 PROTECTION OF FINISHED WORK

- A. General: Relamp luminaries that have failed lamps at Substantial Completion.

END OF SECTION



City Council Agenda

Approved for Agenda:
csharp
City Manager's Office

MEETING DATE: 7/24/2012

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving a contract for the base bid only from Reece Albert, Inc. for the 2011-2012 Street Improvement Mill/Overlay Project for the Engineering Services Department. Bid 4941-12

Purpose:

Consider a resolution approving a contract for the 2011-2012 Street Improvement Mill/Overlay Project for the Engineering Services Department.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$2,253,322.65 plus a 10% contingency of \$225,332.27 for a total cost of \$2,478,654.92 from the General Fund

Discussion:

The Mill/Overlay project will include milling the existing asphaltic pavement to a 2 inch depth, blading and/or cleaning the underlying surface, spraying a tack coat, re-paving the roadway with 2 inches of Type D Hot Mix and applying new reflectorized pavement markings. The base bid locations include: Midkiff Road between Illinois Avenue and Wall Street; "A" Street between Scharbauer Drive and Cuthbert Avenue; and Illinois Avenue between Thomason Drive and Midland Drive.

Therefore, please consider a resolution approving a contract with the low bidder Reece Albert, Inc. of Midland, Texas for \$2,253,322.65 plus a 10% contingency of \$225,332.27 for a total cost of \$2,478,654.92.

RESOLUTION NO.

RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT WITH REECE ALBERT, INCORPORATED, FOR THE 2011-2012 STREET IMPROVEMENT MILL/OVERLAY PROJECT AT A COST OF \$2,253,322.65; AND AUTHORIZING AN ADDITIONAL TEN PERCENT (10%) CONTINGENCY FEE BRINGING THE TOTAL FUNDS AVAILABLE TO \$2,478,655.00; AND ALLOCATING AND APPROPRIATING FUNDS

WHEREAS, the City Manager approved plans and specifications and authorized the advertisement for bids for the 2011-2012 Street Improvement Mill/Overlay Project (“Construction”); and

WHEREAS, Reece Albert, Inc., submitted the lowest and most responsible bid for said Construction in the total amount of \$2,253,322.65, 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 Reece Albert, Inc., for said Construction, at a cost of \$2,253,322.65; and

WHEREAS, the City Council finds it to be in the public interest to approve an additional Ten Percent (10%) contingency amount, bringing the total funds available for said Construction to \$2,478,655.00; and

WHEREAS, the City Council finds it to be in the public interest to allocate and appropriate the necessary funds;

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

SECTION ONE. That the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a contract with Reece Albert, Inc., for said Construction, said contract being on file in the office of the City Secretary, referenced by the date and number of this Resolution.

SECTION TWO. That the sum of \$1,472,325.00 is hereby allocated from General Fund (001) Non-Departmental (150) Interfund Transfer (0199) General Construction Fund (6299) to the FY’12 Mill and Overlay Project (8999).

SECTION THREE. That the sum of \$1,006,330.00 is hereby appropriated from to

the General Fund (001) Unappropriated Fund Balance (5650) to the FY'12 Mill and Overlay Project (8999).

SECTION FOUR. That the City Treasurer is hereby authorized and directed to pay Reece Albert, Inc., pursuant to the terms of said contract from funds allocated and appropriated herein upon receipt of proper invoices or statements approved by the City Manager.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, General Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

Project # 4941-121 (FY12 Mill/Overlay Project)

BASE BID

Project # 4941-121 (FY12 Mill/Overlay Project)

Description		Qty		Unit		Engineer's Estimate			Reece Albert Const.			Jones Bros. Const.		
						Unit Price	Total Price		Unit Price	Total Price		Unit Price	Total Price	
1	Unclassified Excavation	100		SY		\$ 15.00	\$ 1,500.00		\$ 6.55	\$ 655.00		\$ 42.00	\$ 4,200.00	
2	Cold Milling Pavement (Nominal 2" - 4")	96,781		SY		\$ 2.50	\$ 241,952.50		\$ 1.75	\$ 169,366.75		\$ 3.15	\$ 304,860.15	
3	Prime Coat	19,360		GAL		\$ 4.50	\$ 87,120.00		\$ 5.00	\$ 96,800.00		\$ 6.90	\$ 133,584.00	
4	2" (minimum) Asphalt Overlay (City Mix Design)	15,969		TN		\$ 100.00	\$ 1,596,900.00		\$ 103.50	\$ 1,652,791.50		\$ 130.00	\$ 2,075,970.00	
5	6" Rock Base (City Base)	100		SY		\$ 30.00	\$ 3,000.00		\$ 10.60	\$ 1,060.00		\$ 58.30	\$ 5,830.00	
6	Full Depth Saw Cut (Asphalt)	1,000		LF		\$ 5.00	\$ 5,000.00		\$ 2.50	\$ 2,500.00		\$ 11.20	\$ 11,200.00	
7	Adjust Manhole	41		EA		\$ 1,000.00	\$ 41,000.00		\$ 1,545.00	\$ 63,345.00		\$ 1,958.00	\$ 80,278.00	
8	Adjust Valve Box	82		EA		\$ 750.00	\$ 61,500.00		\$ 550.00	\$ 45,100.00		\$ 638.00	\$ 52,316.00	
9	Thermoplastic Striping (Double Solid Yellow)	10,969		LF		\$ 0.65	\$ 7,129.85		\$ 0.70	\$ 7,678.30		\$ 0.73	\$ 8,007.37	
10	Thermoplastic Striping (Solid Skip Yellow)	18,101		LF		\$ 0.65	\$ 11,765.65		\$ 0.70	\$ 12,670.70		\$ 0.73	\$ 13,213.73	
11	Thermoplastic Striping (Solid White)	1,217		LF		\$ 0.65	\$ 791.05		\$ 0.70	\$ 851.90		\$ 0.73	\$ 888.41	
12	Thermoplastic Striping (Skip Yellow)	6,305		LF		\$ 0.65	\$ 4,098.25		\$ 0.70	\$ 4,413.50		\$ 0.73	\$ 4,602.65	
13	Job Site Safety, Construction Signing And Traffic Control	1		LS		\$ 25,000.00	\$ 25,000.00		\$ 196,090.00	\$ 196,090.00		\$ 84,280.00	\$ 84,280.00	
TOTAL							\$2,086,757.30			\$2,253,322.65			\$2,779,230.31	



M E M O

TO: Regina Stephenson; City of Midland, Purchasing Manager
FR: David D. Beard, P.E.; City of Midland, City Engineer
DA: July 12, 2012
RE: Revised Memo - FY 2011-2012 Mill & Overlay Project
Project No. P-494-121
Recommend Award

Regina --

I have reviewed the bid tabulation for the FY12 Mill & Overlay Project. Reece Albert Const. was the apparent low bidder. Reece Albert Const. has a track record of successfully completing work in the City of Midland and the surrounding areas. In addition, the unit prices appear to be in line with current pricing and trends. Therefore, I am recommending award of the FY12 Mill & Overlay Project to Reece Albert Const. in the amount of \$2,478,654.92 (Base Bid + 10% Contingency).

Base Bid	\$2,253,322.65
Contingency, 10%	\$ 225,332.27
Total	\$2,478,654.92
Budgeted Amount	\$1,472,325.11 (4240 – Seal Coat Application)
Additional Allocation	\$1,006,329.81

To award this project including the contingency, additional funds in the amount of \$1,006,330 will be required (General Fund Surplus – Unappropriated Fund Balance. The City Manager has approved this amount. I will request the funding language from Bob McNaughton and forward to you to include in the agenda memo.

City of Midland

David D. Beard, P.E.
City Engineer



THE CITY OF MIDLAND

CONTRACT

Contract No.4941-12

THIS CONTRACT, effective the 25th day of July, 2012, by and between the City of Midland, hereinafter referred to as the "Owner", and Reece Albert, Inc., hereinafter referred to as the "Contractor", is made for the following considerations:

1. **Cost:** Total Proposal: \$ 2,253,322.65 DOLLARS

2. **Scope of Work:** The Contractor shall perform all work described for FY2012 Mill/Overlay Project in the following documents, attached hereto and incorporated herein by reference for all legal purposes.

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

EXHIBIT B..... Intentionally Omitted

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

EXHIBIT D..... Wage Scale

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

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

5. **Contractor:** Unless otherwise stipulated, the Contractor shall provide and pay for all materials,

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

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

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

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

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

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

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

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

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

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

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

9. **Start of Work:** The Contractor shall commence work no later than ten (10) days after receipt of the execution of this document or other written release to proceed and shall complete such work no later than 126 calendar days after release to proceed.

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

9.1. TIME IS OF THE ESSENCE IN THIS CONTRACT.

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

11. **Warranty:** Neither the final payment nor any provision in this contract shall relieve the Contractor of responsibility for faulty materials or workmanship, and he shall remedy any defects due thereto and pay for any damage to other work resulting therefrom, which shall appear within a period of

one (1) year from the date of substantial completion. The Owner shall give notice of observed defects with reasonable promptness.

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

12.1. Defective work not remedied; or

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

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

12.4. Damages to another contractor or subcontractor.

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

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

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

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

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

materials and labor completed at the end of each month. Upon approval by the Owner's Representative the request and invoice shall be forwarded for payment less 5% retainage. The total of these payments shall not exceed 95% of the total contract amount.

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

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

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

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

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

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

19. **Insurance**

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

Commercial General Liability (including Contractual liability):

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

-Property Damage: \$500,000.00 per occurrence

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

Worker's Compensation: Statutory limits

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

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

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

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

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

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

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

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

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

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

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

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

occurred in Midland County, Texas.

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

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

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

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

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

Contract No: 4941-12

OWNER, City of Midland

CONTRACTOR

Courtney B. Sharp, City Manager

APPROVED AS TO FORM

Keith Stretcher, City Attorney

ATTEST

Amy M. Turner, City Secretary

Contractor Corporate Acknowledgment: Contract No.4941-12

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

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

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

Notary Public, State of Texas



**CITY OF MIDLAND
PURCHASING DIVISION
BID REQUEST**

DATE: 05-14-12

PAGE: 01

(THIS IS NOT AN ORDER)

BID NO: 4941-12

OPENING TIME: 11:00 AM

CLOSING DATE: 06-06-12

CITY OF MIDLAND
300 NORTH LORAIN
P. O. BOX 1152
MIDLAND, TX 79702

BIDS WILL BE RECEIVED IN THE OFFICE OF THE City Secretary, Suite 330
UNTIL 11:00 A.M., 06-06-12 FOR GOODS AND SERVICES DESCRIBED BELOW WHICH WILL BE DELIVERED TO:
Various Locations, Midland, Texas

ITEM NO.	QTY	UNIT	DESCRIPTION	UNIT PRICE	AMOUNT
			Labor, material, equipment and supervision necessary for the Mill/Overlay Project in accordance with the attached specifications, drawing, proposal and contract.	See Proposal	See Proposal
				TOTAL	

NOTICE TO BIDDERS:

- FAILURE TO RESPOND WITH EITHER A BID OR "NO BID" WILL SUBJECT YOUR FIRM TO REMOVAL FROM THE BID LIST FOR THIS TYPE OF MATERIAL, EQUIPMENT OR SUPPLY ITEM.
- BIDS SHALL BE DELIVERED TO THE CITY IN A SEALED PACKAGE (ENVELOPE, ETC) **UNLESS THE CITY STATES** THAT THE BID MAY BE FAXED OR E-MAILED, OTHERWISE, BIDS FAXED OR E-MAILED DIRECTLY TO THE CITY WILL BE REJECTED. A SEALED BID MAY BE FAXED TO A THIRD PARTY FOR SEALED DELIVERY TO THE CITY. PLEASE CALL FOR MORE INFORMATION.
- IF THIS PURCHASE REQUIRES A CONTRACT, THE ATTACHED CONTRACT AND INSURANCE REQUIREMENTS ARE **NON-NEGOTIABLE**. MODIFICATIONS BY BIDDER/CONTRACTOR OF ANY MATERIAL TERM(S) TO THE CONTRACT DOCUMENTS WILL BE DEEMED A NON-RESPONSIVE BID. NON-RESPONSIVE BIDS WILL BE REJECTED. BIDDER/CONTRACTOR MUST BE WILLING TO SIGN THE CONTRACT AS IS AND WITHOUT MODIFICATIONS, PROVIDE PROPERLY EXECUTED BONDS (IF APPLICABLE) AND PROVIDE INSURANCE SPECIFICALLY AS REQUIRED WITHIN THE CONTRACT DOCUMENTS **WITHIN 21 DAYS** OF THE DATE OF THE TRANSMITTAL LETTER.
- IF THE SELECTED BIDDER/CONTRACTOR CANNOT MEET THE REQUIREMENTS OF PARAGRAPH 3, THEN THE CITY RESERVES THE RIGHT TO AWARD THIS PURCHASE TO ANOTHER BIDDER.
- IMPORTANT NOTICE** – IF THE CONTRACT DOCUMENTS REQUIRE WORKER'S COMPENSATION INSURANCE, BIDDER/CONTRACTOR MUST CARRY WORKER'S COMPENSATION INSURANCE TO BE ELIGIBLE FOR THIS CONTRACT. IF YOU CANNOT PROVIDE WORKER'S COMPENSATION INSURANCE AS REQUIRED BY STATE OF TEXAS STATUTE WE RESPECTFULLY REQUEST THAT YOU "NO BID" THIS WORK.

FOR ADDITIONAL INFORMATION, CONTACT (432) 685-7234 OR 685-7233. FAX NO. (432) 685-0523

NOTE: EACH BIDDER IS TO INDICATE BRAND NAME PRODUCT NUMBER AND ATTACH DESCRIPTIVE LITERATURE CLEARLY MARKED TO SHOW EACH ITEM ON THIS BID.

THE UNDERSIGNED HEREBY OFFERS TO FURNISH AND DELIVER THE ARTICLES OR SERVICE AS SPECIFIED ABOVE AT THE PRICES AND TERMS HEREIN STATED AND IN STRICT ACCORDANCE WITH THE SPECIFICATIONS AND CONDITIONS OF BIDDING ALL WHICH ARE MADE A PART OF THIS OFFER. THIS OFFER IS NOT SUBJECT TO WITHDRAWAL WITHOUT PERMISSION.

COMPANY NAME: Reece Albert, Inc.
ADDRESS P.O. Box 3238
CITY Midland ST TX ZIP 79702
PHONE NO. 432-570-0481 FAX NO. 432-682-3916
EMAIL: mikeh@reecealbertinc.com

CASH DISCOUNT: N/A % N/A DAYS

DELIVERY CAN BE MADE As specified

AUTHORIZED SIGNATURE Mike Albert

PLEASE READ CONDITIONS FOR BIDDING ON BACK BEFORE SUBMITTING

Exhibit "A"

**BID SCHEDULE
FOR
2011-2012 Street Improvement Overlay Program
Bid # 4941-12
(Page 1 of 3)**

The various items in the Bid Schedule shall be paid at the unit price bid. Bidder agrees to perform all work described in the Contract Documents for the following unit prices:

These unit prices or lump sums shall be full compensation for furnishing all materials, equipment, labor, tools, power and transportation necessary to complete the construction of the various items of the project.

The estimated quantities shown in this Bid Schedule are approximate and are to be used only as a basis for estimating probable cost of the work to be accomplished. The materials furnished may differ somewhat from these estimates. In addition, the City of Midland reserves the right to increase, reduce, or delete any item(s) in the bid schedule as deemed to be in the best interest of the City. Payment shall be based on the unit price for the actual amount of such work completed and/or the material furnished.

BASE BID – 2011-2012 Street Improvement Overlay Program

ITEM	DESCRIPTION	UNIT	QTY	UNIT	TOTAL
1	Unclassified Excavation	SY	100	\$6.55	\$655.00
2	Cold Milling Pavement (Nominal 2" - 4")	SY	96,781	\$1.75	\$169,366.75
3	Prime Coat	GAL	19,360	\$5.00	\$96,800.00
4	2" (minimum) Asphalt Overlay (City Mix Design)	TN	15,969	\$103.50	\$1,652,791.50
5	6" Rock Base Repair (City Base)	SY	100	\$10.60	\$1,060.00
6	Full Depth Saw Cut (Asphalt)	LF	1000	\$2.50	\$2,500.00
7	Adjust Manhole	EA	41	\$1,545.00	\$63,345.00
8	Adjust Valve Box	EA	82	\$550.00	\$45,100.00
9	Thermoplastic Striping (Double Solid Yellow)	LF	10,969	\$0.70	\$7,678.30
10	Thermoplastic Striping (Solid Skip Yellow)	LF	18,101	\$0.70	\$12,670.70
11	Thermoplastic Striping (Solid White)	LF	1,217	\$0.70	\$851.90
12	Thermoplastic Striping (Skip White)	LF	6,305	\$0.70	\$4,413.50
13	Job Site Safety, Erosion Protection, Construction Signing and Traffic Control	LS	1	\$196,090.00	\$196,090.00

TOTAL BASE BID: \$2,253,322.65

PAY ITEM NOTES (Base Bid & Alternates):

1. Shall include the necessary equipment, labor and materials to remove areas as noted by the City Representative. All areas noted for removal shall be excavated prior to the milling operation. Additional areas may be noted by the City representative after the milling operation. All excavation shall be a nominal depth of 10" (HMAC + Base Rock).
2. Shall include the equipment, labor and materials to mill the existing pavement. Nominal milling depth of 2" - 4"
3. Shall include the necessary equipment, labor and material to apply the prime or tack coat as directed by the City representative. Application rate not to exceed 0.02 gal/sy for prime coat and 0.058 gal/sy for tack coat. Prime coat will be measured by the gallon before dilution. Water used in the dilution of the emulsified asphalt will not be measured for payment.
4. Shall include the necessary equipment, labor and material to install the asphalt overlay on streets that have been milled. Unit payment shall be tons and shall not exceed 10% of the calculated yield without approval of City representative.
5. Shall include the necessary equipment, labor and materials to remove and replace areas noted by the City representative with base rock. In areas of full-depth removal, prime will be required. AE-P and CSS-1H are both acceptable. Unit payment shall be square yards.
6. Shall include the necessary labor and material to saw cut asphalt to full depth for removal and replacement in pay item 1&5. Unit payment shall be linear foot. Side street saw are subsidiary to Item #2.
- 7-8. Shall include the necessary equipment, labor and material to remove, salvage and install new or existing cast iron features (cast iron ring & cover and valve box) including concrete collars. All features visible from the surface or noted by City representative shall be removed and prepared for replacement.

The City, at its discretion, may provide new manhole rings and lids and/or valve boxes at certain locations that it deems necessary. Contractor shall reinstall original feature or City provided feature.

All franchise utility features shall be replaced using the removed material unless new material is provided by the utility.

- 9-12. Shall include all necessary labor and materials to tab and then place thermoplastic lane markings in accordance with TxDOT standards. Unit payment shall be linear foot.
13. Shall include all necessary equipment, labor and materials to provide jobsite safety, erosion protection, and construction signing / traffic control in accordance with TMUTCD standards. Unit payment shall be lump sum.

GENERAL NOTES:

1. The height of manhole and valve will be adjusted as necessary to fit field conditions.
2. It shall be the responsibility of the contractor to protect cast iron features, not planned for replacement, from damage which may occur during construction. The contractor shall replace or repair, as directed by the City, any structures damaged during the life of the contract. No payment will be made for repair or replacement of damaged items.
3. Replacement of cast iron ring & cover and valve boxes shall be accomplished by removing all necessary concrete/asphalt and salvaging the existing R&C or valve box (prior to the milling operation). Upon completion of the removal, the affected areas shall be plated and prepared for asphalt placement. Once the asphalt surface course has been completed, the asphalt shall be saw cut and the R&C or valve box adjusted to the appropriate grade and constructed in accordance with standard City specifications. Concrete around manholes shall be at least 4'x4' in a diamond shape (a square turned 45 degrees to the flow of traffic). Concrete around valve boxes shall be at least 2'x2'.
4. The Contractor shall be responsible for the traffic control plan. The Contractor shall plan and layout the work such that no traffic travel is allowed on new pavement while the asphalt work is being placed. All traffic control shall be in accordance with TMUTCD standards.

Residential streets and minor collectors may be closed during construction; however, access to properties adjacent to the work zone shall be maintained at all times. Contractor shall limit the number of consecutive residential and minor collector street closures. A minimum of two travel lanes (one for each direction) shall remain open at all times on all arterial streets.

5. Pavement millings shall remain the property of The City and shall be hauled, by the contractor to one of three stockpile locations at the direction of the City representative: 2100 N. Fairgrounds Rd., 4900 Sinclair Av., or 2800 Kentucky Ave.
6. The Contractor is reminded that this project is located in an urban environment, trees and overhead utility lines are common. The Contractor shall provide the proper equipment to complete the work in the urban environment.
7. At crowned roadway sections, the proposed pavement elevation is approximately $\frac{1}{4}$ " to $\frac{3}{8}$ " above the lip of curb. This will help ensure positive drainage from new pavement to the flowline. Therefore, the approximate milling depth at crowned roadway sections will be approximately $1\frac{5}{8}$ " to $1\frac{3}{4}$ " below the lip of curb.

At inverted roadway sections, the proposed pavement elevation shall be flush with the existing curb to allow for positive drainage. The approximate milling depth at inverted roadway sections shall be 2" below the lip of curb.

8. The intent of the mill/overlay project at all adjacent streets and intersections includes surface improvements and drainage improvements. It is the contractor's responsibility to ensure positive drainage at all adjacent streets and intersections is maintained.
9. Silt Socks should be used at the intersections for silt and sediment control. The silt socks should be placed in a manner that does not conflict with traffic flow.
10. The striping of lane-lines shall be performed by the Contractor. Thermoplastic stop-bars, crosswalks, turn arrows, and other items requiring hand-work will be performed by the City of Midland's Transportation Division. Buttons will be placed by the City of Midland's Transportation Division.

SEQUENCE OF CONSTRUCTION:

This Contractor shall be responsible for developing a phasing and construction sequence plan for this contract. The phasing plan shall be submitted within 14 days after the notice of award and shall be approved by the City of Midland Engineering Department before the notice to proceed will be executed. The phasing plan shall meet the following requirements:

1. The proposed sequence of work shall be divided in to distinct phases. The number and order of the phases shall be at the discretion of the Contractor;
2. Each phase must be planned in such a manner that all work contemplated for a particular phase will be completed within 21 calendar days. Completion of a phase shall include necessary milling, reshaping, compacting, base repair, applying tack coat, HMAC overlay, backfill, fine grading and cleanup;
3. No phase shall be started until the previous phase is complete, unless approved by the City of Midland Engineering Department.
4. Notification of intent to start a new phase must be requested by the Contractor and approved by the City of Midland Engineering Department prior to beginning work.

The undersigned bidder hereby declares that he has visited the site of the work and has carefully examined the Contract Documents pertaining to the work covered by the above bid and he further agrees to commence work within ten (10) days after the date of written notice to do so and to substantially complete same within 126 calendar days.

VENDOR CONTACT:

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

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

OR

FAX: (432) 685-0523

E-mail:
purchasing@midlandtexas.gov

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

AWARD

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

BID WAIVERS:

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

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

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

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

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

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

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

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

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

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

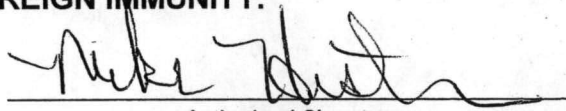
THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

Reece Albert, Inc.

Bidder

P.O. Box 3238 Midland, TX. 79702

Address, City and State



Authorized Signature

Mike Hester

Please Print above Name

432-570-0481

Telephone

432-682-3916

Fax

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

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

PLEASE NOTE:

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

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

FY 2012 Mill and Overlay Project

Special Provisions

1. General

Work shall include milling the existing asphaltic pavement to a 2 inch depth, blading and/or cleaning the underlying surface, spraying a tack-coat, re-paving the roadway with 2 inches of Ty. D hot mix asphaltic concrete, applying new reflectorized pavement markings, and the work zone traffic control necessary to complete all phases of the project. Work shall also include the adjustment of water valves and manholes, as necessary. All work shall be completed according to the City of Midland Standard Specifications and Design & Construction Standards, unless otherwise noted.

Qualification of Material Sources—Tack coat, hot mix asphalt concrete, and material used for the adjustment of water valves and manholes shall conform to The City of Midland Standard Specifications. In addition, producers of hot mix asphalt concrete are to have a proven record of acceptance by the Texas Department of Transportation.

Measurement of Payment—Square Yards will be the unit of measurement for the mill and overlay project.

Locations—

Base Bid:

Midkiff Rd. between Illinois Av. and Wall St.

A St. between Scharbauer Dr. and Cuthbert Av.

Illinois Av. between Thomason Dr. and Midland Dr.

Additive Alternate 1:

Scharbauer Dr. between A St. and Lamesa Rd.

Additive Alternate 2:

Midland Dr. between Andrews Hwy. and Illinois Av.

2. Construction Methods

Construction Schedule—It shall be the responsibility of the contractor to provide a project schedule to City staff prior to construction. The schedule should outline the anticipated start and end dates for each phase of the mill and overlay project.

Traffic Control—Proper traffic control is the sole responsibility of the contractor and shall be in accordance with the TMUTCD. Care shall be used to create a safe work area, with minimal impact on the flow of traffic. Access to properties adjacent to the work zone shall be maintained at all times unless otherwise directed by City staff. A minimum of two travel lanes (one for each direction) shall remain open at all times on all arterial streets. If the milled area is opened to traffic, it will be the contractor's responsibility to provide and place temporary flexible-reflective road marker tabs designating lane lines.

A traffic control plan for each phase of the mill and overlay project shall be submitted to the City of Midland's Transportation Division no less than 48 hours prior to the beginning of construction. Construction cannot begin without a traffic control plan approved by the City of Midland's Transportation Division.

Milling and Cleaning of Existing Pavement—Mill designated area to a depth of two inches using a self-propelled asphalt planner. Care should be taken to ensure that the specified depth and cross-slope is maintained. Perform milling operation, including removal of the milled material, in a manner that prevents dust and other particulate matter from escaping into the air. Millings will be hauled to one of three stockpile locations: 2100 N. Fairgrounds Rd., 4900 Sinclair Av., or 2800 Kentucky Av.

Ensure that the milled area is free from gouges, continuous grooves, ridges, and delaminated areas and has a uniform texture. Correct deviations greater than $\frac{1}{4}$ inch in 16 ft. measured longitudinally or greater than $\frac{1}{4}$ inch over the entire width of the cross-section. Correct by loosening, adding, or removing material and recompact, as necessary. If pavement below the specified milling level becomes dislodged or delaminated, remove and replace.

Saw cut at the limits of paving at intersections and at other limits requiring a neat edge between new and existing pavement. Blade and/or clean with mechanical sweeper the milled area before opening to traffic or before the subsequent tack coat and resurfacing.

When the milled surface is opened to traffic, slope the longitudinal edge to provide a smooth transition from the milled surface to the existing pavement. At transverse edges of milled areas, provide a smooth transition from the milled surface to the existing pavement.

Tack Coat—Uniformly spray tack coat using materials and methods outlined in the City of Midland's Standard Specifications. Uniformly apply tack coat to all longitudinal and transverse joints. Correct uncoated or lightly coated areas. Blot areas showing an excess of tack coat with sand or other similar material and remove blotting material before paving.

Overlay with 2 inches of Hot Mix Asphaltic Concrete—Install 2 inches of hot mix asphaltic concrete according to the City of Midland's Standard Specifications and Design and Construction Standards.

Before paving, the existing surface shall be saw cut at least 6 inches beyond all sides of the milled area, or the limits of broken or undermined pavement. Square off edges of the surface pavement to a 90 degree angle to the underlying surface. Offset the joint in the surface course from the lane lines by 6 inches. When constructing a joint between lanes of opposing traffic, offset the joint by 6 inches into either lane.

After paving, the contractor shall place temporary flexible-reflective road marker tabs designating lane lines.

Reflectorized Pavement Markings—Apply reflectorized pavement markings in accordance with Item 666 of the Texas Department of Transportation's 2004 Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges. Furnish and apply "Hot Applied Thermoplastic."

3. Additional notes

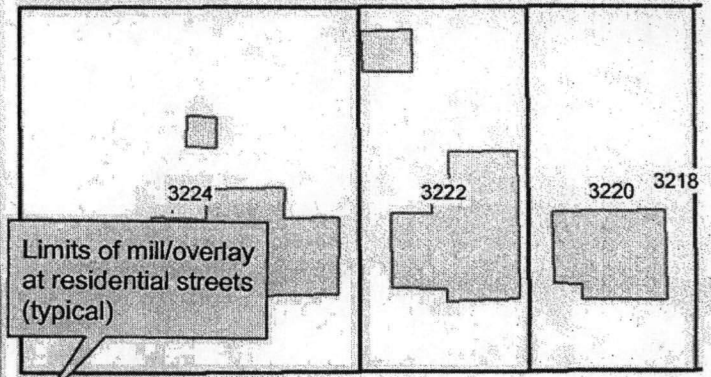
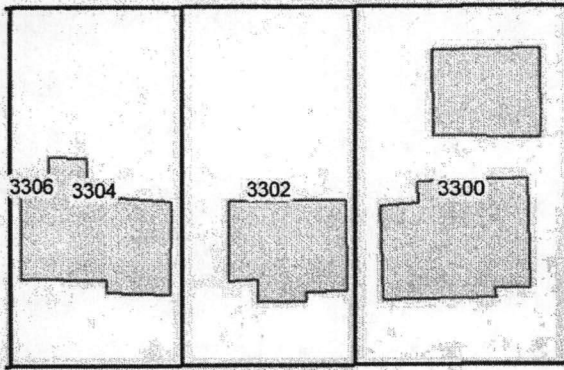
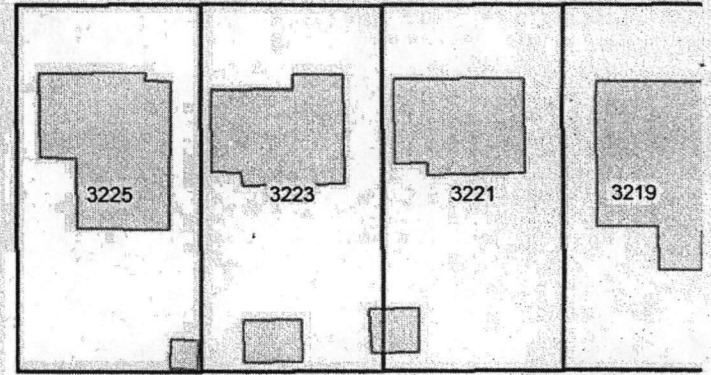
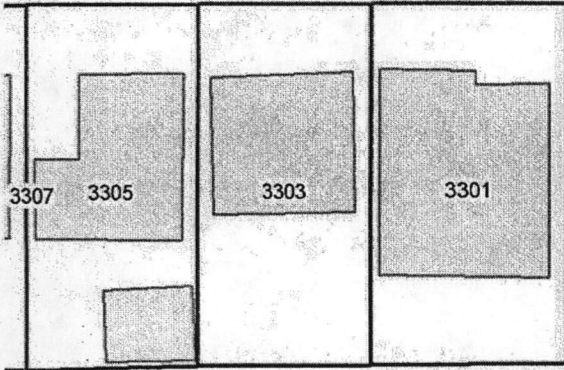
The contractor shall ensure positive surface drainage in the mill and overlay areas with special attention to surface drainage within all intersections. At the intersections, do not simply repeat the longitudinal slope.

Contractor should provide and place erosion control protection at gutter locations at the limits of the work zone, including applicable intersections adjacent to the work zone.



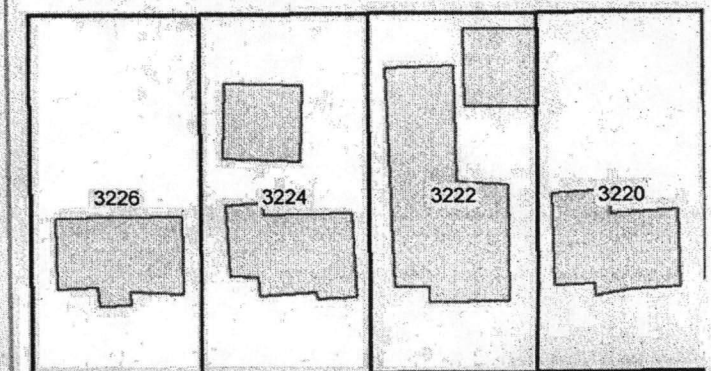
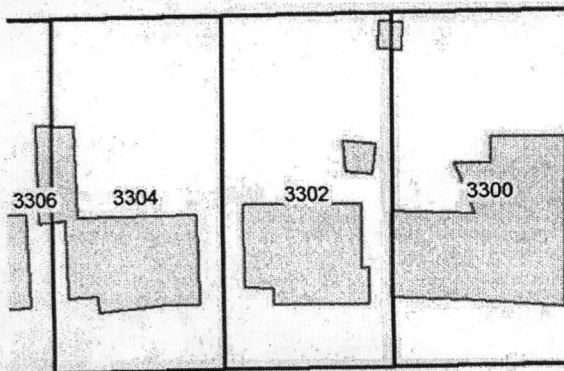
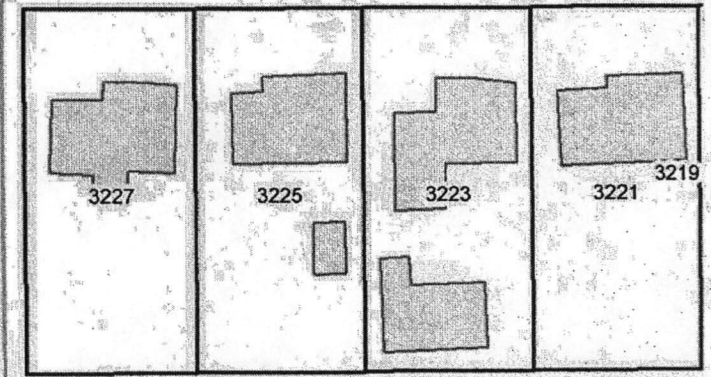
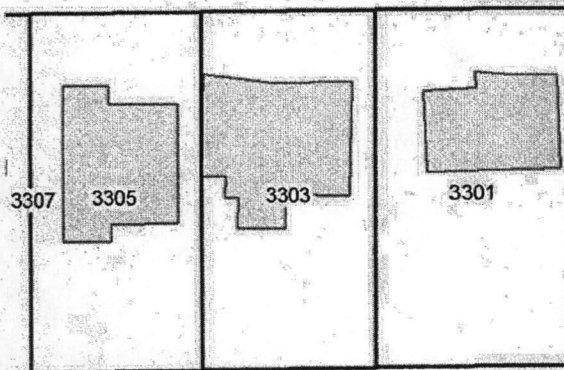
DELANO DR

DELANO AV



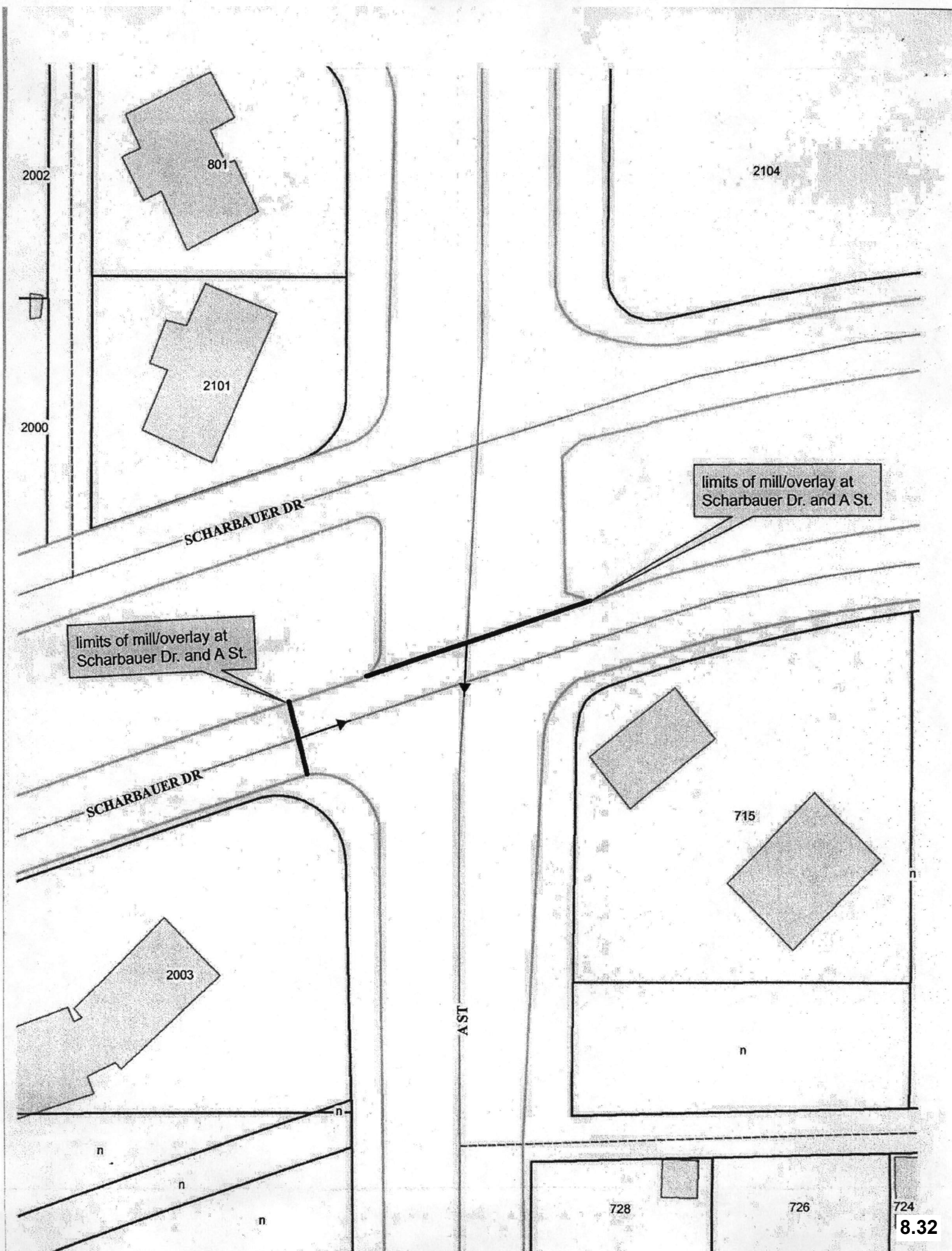
MIDKIFF RD

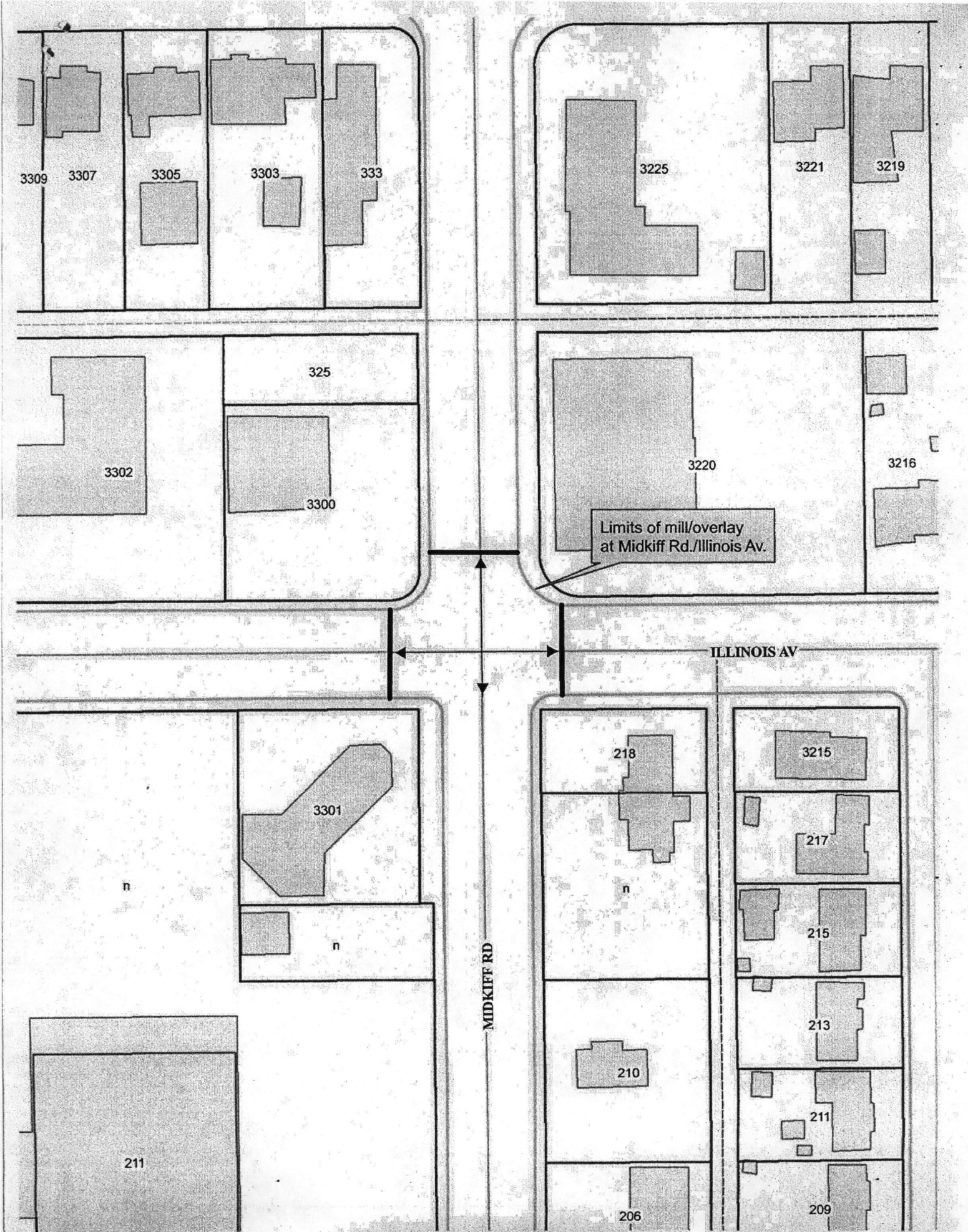
ROOSEVELT AV

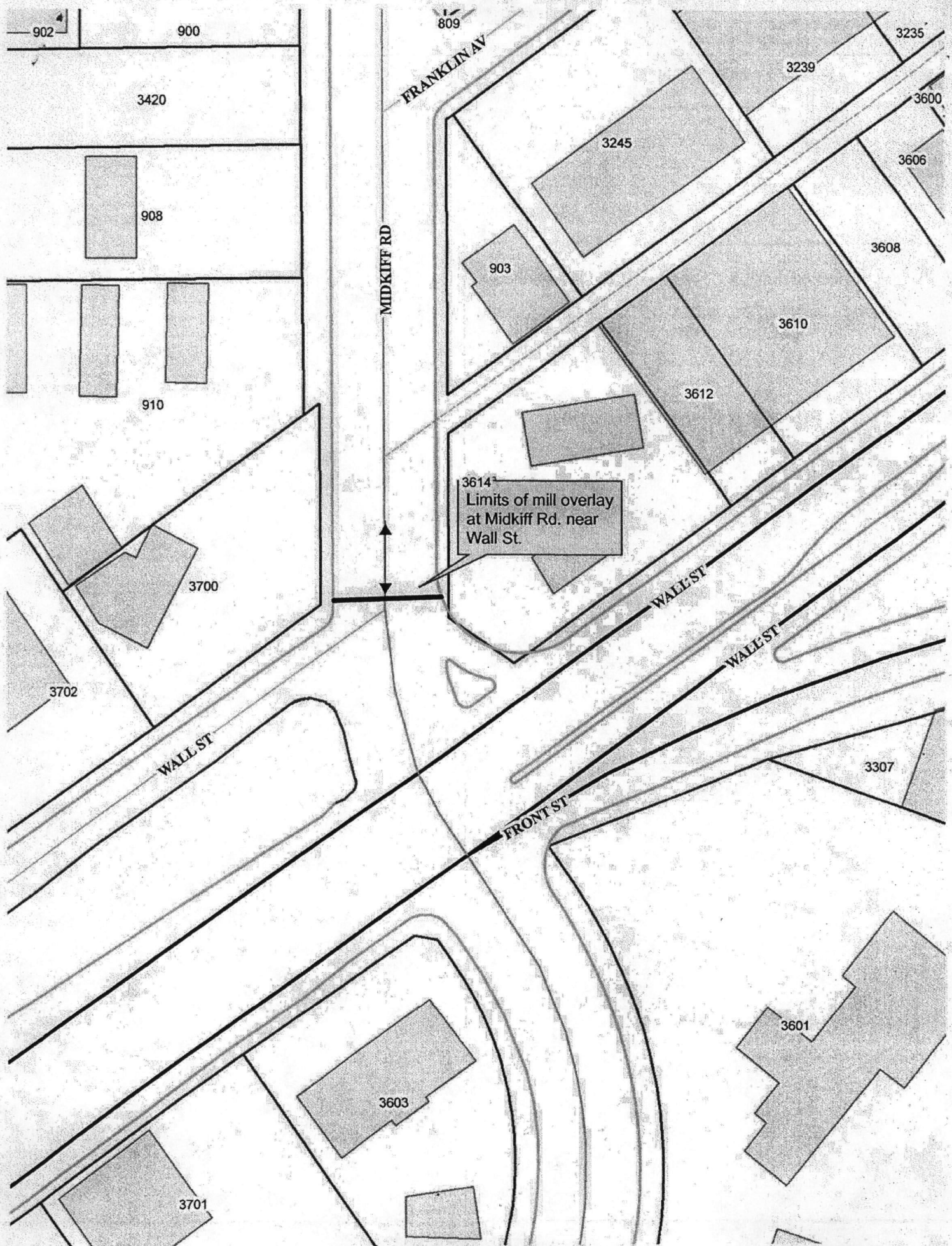


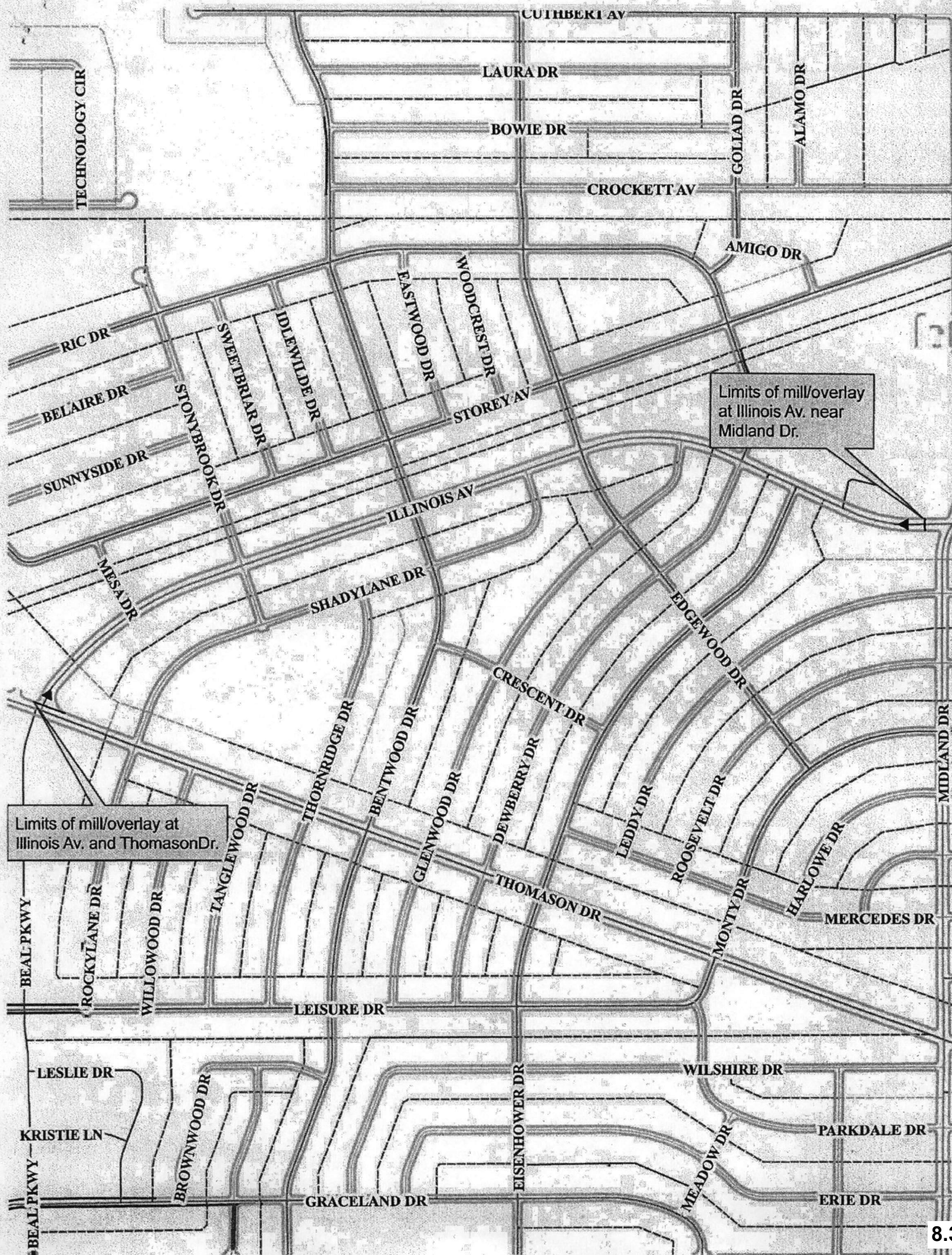
HILL AV

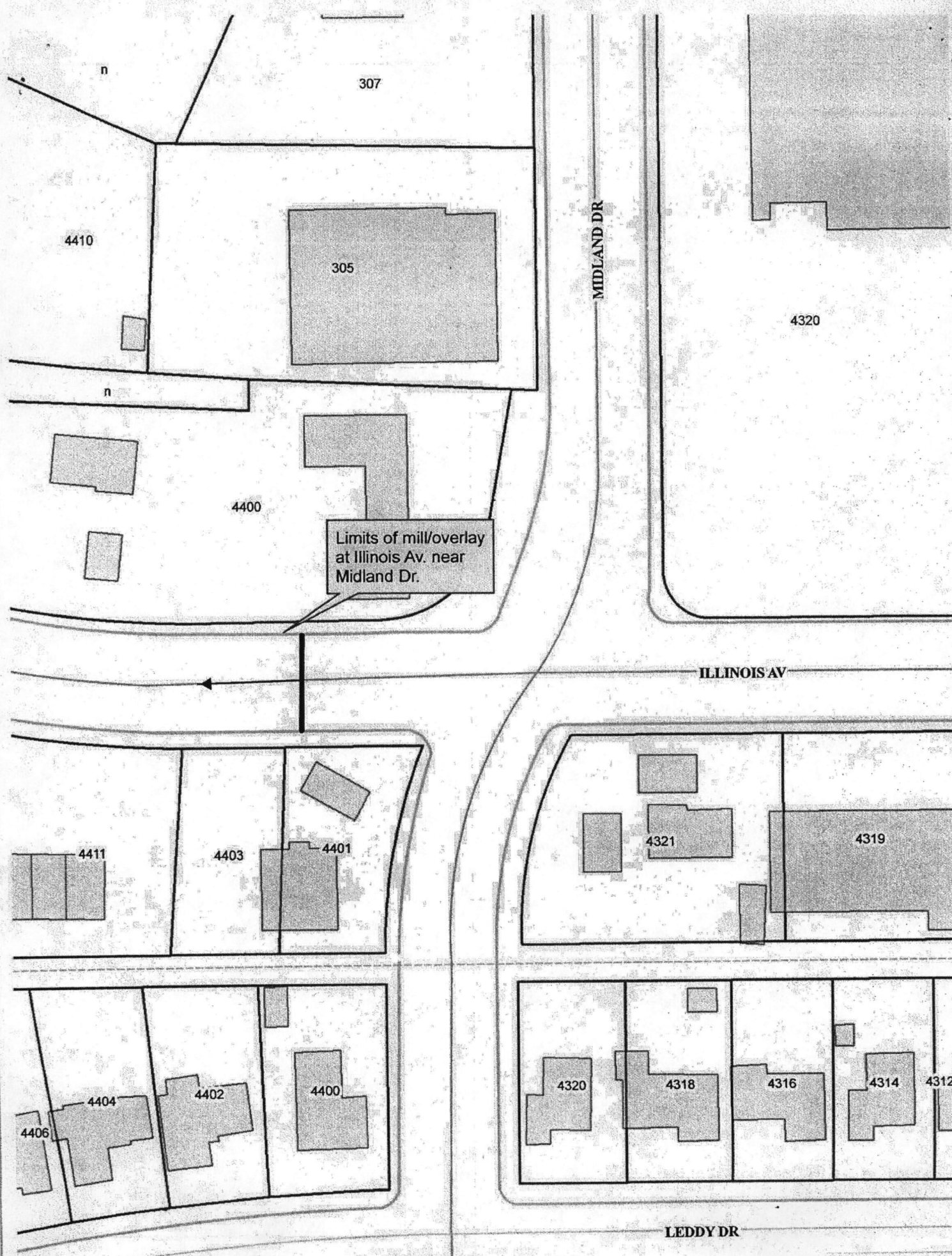


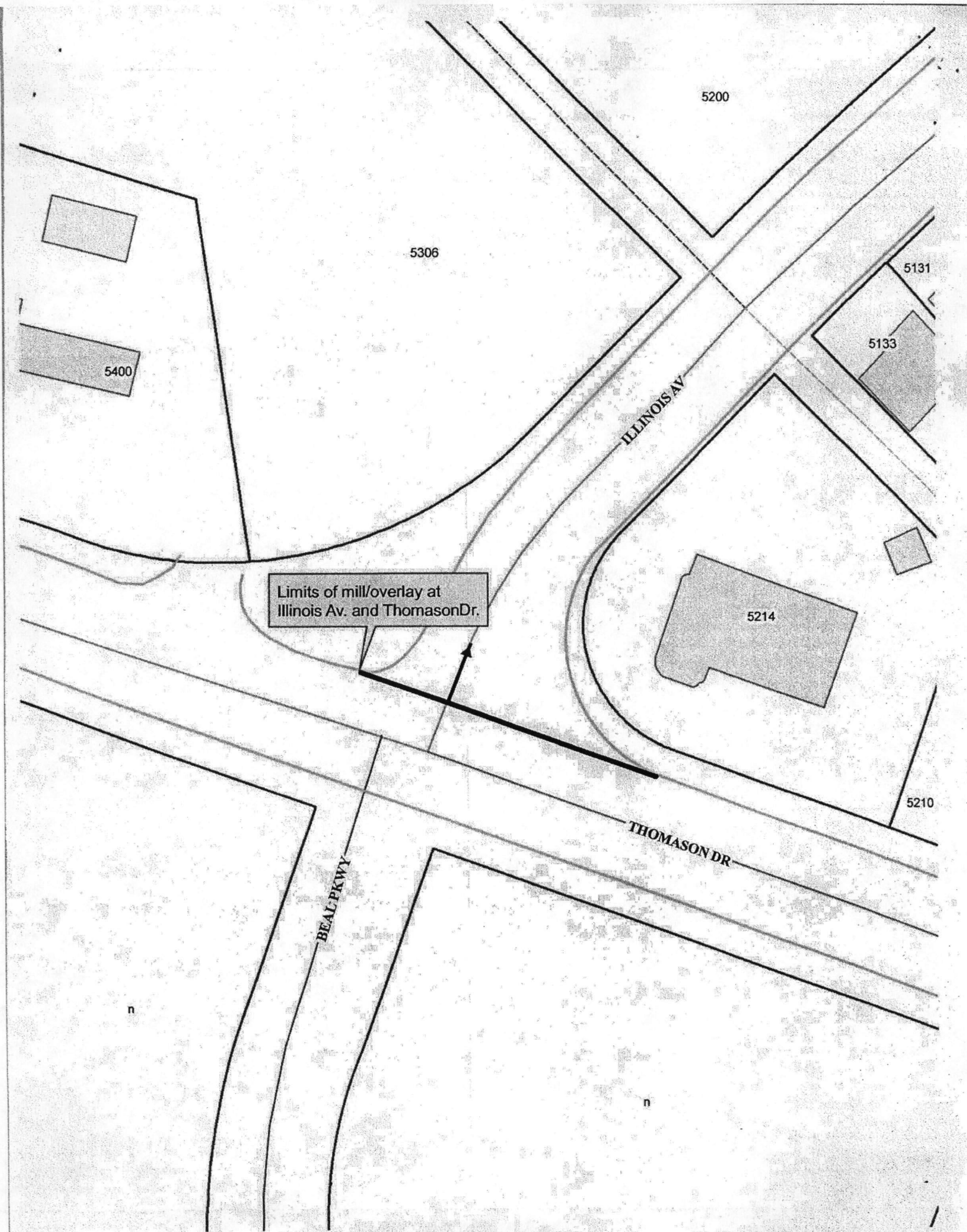












CITY OF MIDLAND

ADDENDUM

BID # 4941-12

FY12 Mill/Overlay Project

TO ALL BIDDERS ON THE SUBJECT BID:

ADDENDUM # 1

DATE: May 22, 2012

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

Q1. What is the projected start date, or can we tell you when we can start?

A1. The projected start date is July 16, 2012 and the projected date of completion is August 24, 2012.

Q2. What are the areas (SY) of the various streets? If this is not available, what are the widths and lengths of the streets?

A2. Please see page 1 of the attachment. Please note that all quantities are approximations and should be verified in the field.

Q3. You are requiring the asphalt tie-ins to be sawed, what are the lengths at each location?

A3. Please see pages 2 and 3 of the attachment. Please note that all measurements are approximations and should be verified in the field.

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

All other terms and conditions shall remain the same.

Reece Albert, Inc.

Company Name


Bidder Authorized Signature

15 June 2012

Date

Mike Hester

Please Print Above Name

432-6820-3769

Phone

CITY OF MIDLAND

ADDENDUM

BID # 4941-12

FY12 Mill/Overlay Project

TO ALL BIDDERS ON THE SUBJECT BID:

ADDENDUM # 2

DATE: June 4, 2012

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

Q1. June 6th is the TxDOT state letting, other projects are bidding the 12th, can the bid date be moved to the end following week?

A1. The new closing date will be June 15, 2012.

Q2. What is the depth of the existing asphalt on the various streets?

A2. Core drilling will be performed by the City of Midland's Transportation Division. Core samples from the roadway sections listed on the base bid, additive alternate 1, and additive alternate 2 will be on display beginning May 31, 2012 at the Purchasing Division's office located at the 2nd floor of City Hall.

Q3. Are we milling 2" below existing curb lip or 2" from existing surface?

A3. At crowned roadway sections, the proposed pavement elevation is approximately 1/4" to 3/8" above the lip of curb. This will help ensure positive drainage from new pavement to the flowline. Therefore, the approximate milling depth at crowned roadway sections will be approximately 1 5/8" to 1 3/4" below the lip of curb.

At inverted roadway sections, the proposed pavement elevation shall be flush with the existing curb to allow for positive drainage. The approximate milling depth at inverted roadway sections shall be 2" below the lip of curb.

Q4. Milling will leave grooves in existing asphalt. Will this be acceptable? Base would be flat wheeled to a smooth surface.

A4. When the milled surface is asphaltic pavement, grooves are acceptable.

Q5. What is the intent on the DIP sections at the intersections, particularly

Illinois?

A5. The intent of the mill/overlay project at all adjacent streets and intersections includes surface improvements and drainage improvements, if necessary. It is the contractor's responsibility to ensure positive drainage at all adjacent streets and intersections.

Q6. What is the number of manholes and water valve adjustments?

A6. Please see the attached spreadsheet. The attached spreadsheet includes city-owned manholes, water-valves, and AT&T manholes.

Q7. SWPPP, are sand bags what you want at the intersections? One or Two high?

A7. Silt Socks should be used at the intersections for silt and sediment control. The silt socks should be placed in a manner that does not conflict with traffic flow.

Q8. On the sawed tie-ins to existing asphalt, if the depth of asphalt is more than 2" how do you want this performed?

A8. Smooth transitions from existing pavement to new pavement shall be the contractor's responsibility. Grinding or milling are both approved methods to obtain a 2" depth at and near sawed tie-ins to existing asphalt. If these methods fail to produce the desired 2" depth, full-depth removal at and/or near the sawed tie-ins may be necessary.

Q9. Can the longitudinal edge ramp be millings? What slope do you want?

A9. Millings can be used for longitudinal edge ramps with a 3:1 maximum slope.

Q10. Is the striping by the contractor or will the City stripe? If by contractor, what is the quantity?

A10. The striping of lane-lines shall be performed by the contractor and is a subsidiary item. Please see the attached spreadsheet for striping quantities. Please note that all quantities are approximations and should be verified in the field.

Q11. Are the thermoplastic stop bars, and cross walks installed by contractor or the City? If by contractor, what is the quantity?

A11. Thermoplastic stop-bars, crosswalks, turn arrows, and other items requiring hand-work will be performed by the City of Midland's Transportation Division.

Q12. The special provisions, measurement of payment, will be on SY. Will addendum 1 quantities be the basis of bid?

A12. Please note that addendum 1 quantities are approximations and should be verified in the field.

Q13. How will you determine sy price with the various subsidiary items, (traffic control, utility adjustments, tabs, striping, SWPPP)?

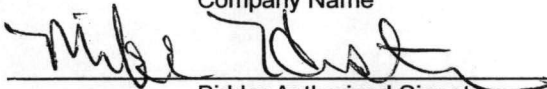
A13. Traffic control, water valve and manhole adjustments, temporary pavement markings, reflectorized pavement markings, and SWPPP are all subsidiary items. The costs associated with the labor, material, equipment, and supervision necessary to complete these items should be included in the single item listed on the bid request.

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

All other terms and conditions shall remain the same.

Reece Albert, Inc.

Company Name


Bidder Authorized Signature

15 June 2012

Date

Mike Hester

Please Print Above Name

432-682-3769

Phone

CITY OF MIDLAND

ADDENDUM

BID # 4941-12

FY12 Mill/Overlay Project

TO ALL BIDDERS ON THE SUBJECT BID:

ADDENDUM # 3

DATE: June 12, 2012

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

Q1. Addendum #1 gives a start date of July 16 and completion August 24. This does not allow a sufficient amount of time to construct the project. Are their liquidated damages for not completing August 24?

A1. No liquidated damages will be assessed for not completing by August 24; however, a project schedule should be provided to the City of Midland's Transportation Division for review and approval. The schedule should outline the anticipated start and end dates for each phase of the project.

Q2. Several streets have buttons. Will the buttons be placed by the City or the contractor?

A2. Buttons will be placed by the City of Midland's Transportation Division.

Q3. Can we close the cross streets on the side we are reconstructing?

A3. Residential streets and minor collectors can be closed during construction; however, access to properties adjacent to the work zone shall be maintained at all times. Please limit the number of consecutive residential and minor collector street closures. A minimum of two travel lanes (one for each direction) shall remain open at all times on all arterial streets.

Q4. In areas that we have to remove full depth of asphalt, do we need to prime? If yes, can we use AE-P, or CSS-1H?

A4. In areas of full-depth removal, prime will be required. AE-P and CSS-1H are both acceptable.

Q5. Is there a limit on the length of roadway we have under construction?

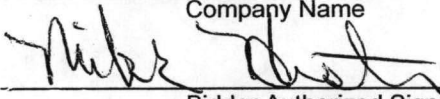
A5. There will be no limit on the length of roadway under construction.

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

All other terms and conditions shall remain the same.

Reece Albert, Inc.

Company Name



Bidder Authorized Signature

15 June 2012

Date

Mike Hester

Please Print Above Name

432-682-3769

Phone

CITY OF MIDLAND

ADDENDUM

BID # 4941-12

FY12 Mill/Overlay Project

TO ALL BIDDERS ON THE SUBJECT BID:

ADDENDUM # 4

DATE: June 13, 2012

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

The bid closing date has been changed to June 29, 2012 at 11:00 AM

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

All other terms and conditions shall remain the same.

Reece Albert, Inc.

Company Name


Bidder Authorized Signature

15 June 2012

Date

Mike Hester

Please Print Above Name

432-682-3769

Phone

CITY OF MIDLAND

ADDENDUM

BID # 4941-12

FY12 Mill/Overlay Project

TO ALL BIDDERS ON THE SUBJECT BID:

ADDENDUM # 5

DATE: June 19, 2012

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

A pre-bid meeting has been scheduled for Friday, June 22, 2012 at 1:30PM in the City Hall Basement Classroom B located at 300 N. Loraine, Midland, Texas. Bidders are responsible for all information discussed at the pre-bid meeting.

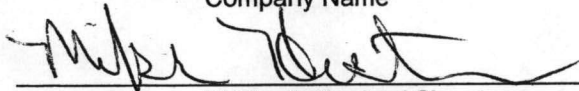
The attached Bid Schedule replaces the Proposal sent originally with the bid request.

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

All other terms and conditions shall remain the same.

Reece Albert, Inc.

Company Name



Bidder Authorized Signature

29 June 2012

Date

Mike Hester

Please Print Above Name

432-682-3769

Phone

CITY OF MIDLAND

ADDENDUM

BID # 4941-12

FY12 Mill/Overlay Project

TO ALL BIDDERS ON THE SUBJECT BID:

ADDENDUM # 6

DATE: June 26, 2012

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

Bid Item #2 shall read "Cold Milling Pavement (Nominal 2" – 4")"

Bid Item #3 shall read "Prime Coat"

Bid Item #3 (base bid) quantity shall change to 19,360*

Bid Item #3 (add alt #1) quantity shall change to 7,152*

Bid Item #3 (add alt #2) quantity shall change to 7,668*

Bid Item #4 shall read "2" (minimum) Asphalt Overlay (City Mix Design)"

Bid Item #4 (base bid) quantity shall change to 15,969^{*1}

Bid Item #4 (add alt #1) quantity shall change to 2,682^{*1}

Bid Item #4 (add alt #2) quantity shall change to 6,325^{*1}

* Please mark through the existing quantity listed in the bid schedule and revise as noted above. All calculations shall be based on the revised quantities. Necessary corrections will be made in favor of the revised quantities.

¹ Asphalt quantities have been calculated at 3" average depth to account for additional asphalt that may be required to complete the overlay. The additional quantity does not relieve the Contractor from obtaining City Representative approval where the yield will be exceeded by more than 10% based on a 2" thickness

Pay Item Note #2 - Revise the Nominal Milling depth to " 2" - 4" "

Pay Item Note #3 - Replace the description with the following:

"Shall include the necessary equipment, labor and material to apply the prime or tack coat as directed by the City representative. Application rate not to exceed 0.2 gal/sy for prime coat and 0.05 gal/sy for tack coat. Prime coat will be measured by the gallon before dilution. Water used in the dilution of the emulsified asphalt will not be measured for payment."

Pay Item Note #6 – Add the following text:

“Side street saw cuts are subsidiary to Item #2.”

General Notes #3 - Add the following text:

“Concrete around manholes shall be at least 4'x4' in a diamond shape (a square turned 45 degrees to the flow of traffic). Concrete around valve boxes shall be at least 2'x2'.”

In an effort to facilitate the Contractor with the timing and scheduling of this work with other projects, the notice to proceed date will be flexible. The Notice to Proceed date will be at the Contractors discretion, but no later than November 30, 2012.

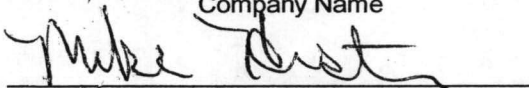
Engineer's Estimate range \$1,000,000 – \$2,000,000 (base bid)

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

All other terms and conditions shall remain the same.

Reece Albert, Inc.

Company Name


Bidder Authorized Signature

29 June 2012

Date

Mike Hester

Please Print Above Name

432-682-3769

Phone

EXHIBIT C

Bonding Requirements

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

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

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

PAYMENT BOND

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

SURETY'S NO. _____

KNOW ALL MEN BY THESE PRESENTS, THAT _____,

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

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

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

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

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

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

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

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

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

Principal

Surety

By _____

By _____

Address _____

Address _____

APPROVED AS TO FORM:

City Attorney

NOTE: ATTACH POWER OF ATTORNEY

PERFORMANCE BOND

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

SURETY'S NO. _____

KNOW ALL MEN BY THESE PRESENTS, THAT _____

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

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

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

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

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

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

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

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

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

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

Principal

Surety

By _____

By _____

Address _____

Address _____

APPROVED AS TO FORM:

City Attorney

NOTE: ATTACH POWER OF ATTORNEY

EXHIBIT "D"

PREVAILING WAGE RATE SCHEDULE HEAVY CONSTRUCTION as of September 3, 2010 General Decision: TX100001

<u>Classification</u>	<u>Rate/hr</u>	<u>Fringes</u>
Air Tool Operator	9.05	
Asphalt Distributor Operator	10.46	
Asphalt Heater Operator	11.21	
Asphalt Paving Machine Operator	9.38	
Asphalt Raker	9.53	
Asphalt Shoveler	7.33	
Batching Plant Weigher	11.15	
Broom or Sweeper Operator	8.01	
Bulldozer Operator	10.88	
Carpenter	10.10	
Concrete Finisher-Paving	11.25	
Concrete Finisher Structures	10.03	
Concrete Paving Saw Operator	15.00	
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel Operator	11.94	
Crusher, Screen Plant Operator	9.00	
Electrician	19.00	
Flagger	7.29	
Form Builder/Setter-Structures	10.01	
Form Setter - Paving & Curb	9.43	
Foundation Drill Operator, Truck Mounted	18.00	
Front End Loader Operator	10.04	
Laborer - Common	8.25	
Laborer Utility	9.62	
Mechanic	14.05	
Milling Machine Operator, Fine Grade	12.20	
Motor Grader Operator Rough	14.36	

<u>Classification</u>	<u>Rate/hr</u>	<u>Fringes</u>
Motor Grader Operator, Fine Grade	13.24	
Oiler	10.67	
Painter, Structures	11.00	
Pavement Marking Machine Operator	9.26	
Planer Operator	17.50	
Reinforcing Steel Setter, Paving	9.50	
Reinforcing Steel Setter, Structure	11.85	
Roller Operator, Pneumatic, Self Propelled	7.55	
Roller Operator, Steel Wheel, Flat Wheel/Tamping	8.66	
Roller Operator, Steel Wheel, Plant Mix Pavement	9.81	
Scraper Operator	7.78	
Servicer	8.22	
Slip Form Machine Operator	13.64	
Spreader Box Operator	10.07	
Tractor Operator, Pneumatic	8.58	
Traveling Mixer Operator	9.71	
Truck driver, lowboy-Float	11.42	
Truck driver, Single Axle, Heavy	11.00	
Truck driver, Single Axle, Light	7.55	
Truck driver, Tandem Axle, Semi-Trailer	9.02	
Wagon Drill, Boring Machine, Post Hole Driller Operator	8.86	
Welder	9.75	
Work Zone Barricade Servicer	8.64	

Welders – Receive rate prescribed for craft performing operation to which welding is incidental.

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



City Council Agenda

Approved for Agenda:
csharp
City Manager's Office

MEETING DATE: 7/24/2012

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager.

SUBJECT: Consider a resolution authorizing the advertisement of the sale of Lots 3-A, 4-A and 5-A, Block 3, Midland International Airport Industrial Park Addition, City of Midland, Midland County, Texas.

Purpose:

Consider a resolution authorizing the advertisement of the sale of Lots 3-A, 4-A and 5-A, Block 3, Midland International Airport Industrial Park Addition, City of Midland, Midland County, Texas.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$435,000.00 to Airport Fund

Discussion:

The Department of Airports has received interest from several parties regarding property at the Airport for the construction of a hotel. The combined three lots of interest recently appraised at \$435,000. Cameron Walker of Development Services/Planning has started the replatting and zoning process to accommodate a four-story hotel. The City of Midland will reserve the right to reject all proposals, place deed restrictions on the property, and place a minimum bid restriction of appraised value or higher.

Therefore, please consider approval of a resolution authorizing the advertisements for the sale of Lots 3-A, 4-A, and 5-A, located in Block 3 Midland International Airport Industrial Park Addition.

RESOLUTION NO.

**RESOLUTION AUTHORIZING THE ADVERTISEMENT
FOR BIDS FOR THE SALE OF REAL PROPERTY
DESCRIBED AS BEING LOTS THREE A (3A), FOUR A
(4A) AND FIVE A (5A), BLOCK THREE (3), MIDLAND
INTERNATIONAL AIRPORT INDUSTRIAL PARK, AN
ADDITION TO THE CITY OF MIDLAND, MIDLAND
COUNTY, TEXAS; ACCEPTING AN APPRAISAL
SETTING THE FAIR MARKET VALUE OF THE
PROPERTY AT \$435,000.00; SAID PROPERTY TO BE
DEVELOPED INTO HOTEL FACILITIES**

WHEREAS, the City of Midland is the owner of real property described as being Lots Three A (3A), Four A (4A), and Five (5A), Block 3, Midland International Airport Industrial Park, an addition to the City of Midland, Midland County, Texas; and

WHEREAS, the City of Midland has received interest from several parties regarding purchasing property at the Airport for the construction of a hotel; and

WHEREAS, the City of Midland no longer uses the above described real property;
and

WHEREAS, the City Council finds it to be in the public interest to sell said property;
and

WHEREAS, the real property has been appraised at a value of \$435,000.00;

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

SECTION ONE. That the City Manager is hereby authorized to advertise for competitive bids pursuant to Texas Local Government Code §272.001 for the sale of real property described as being Lots Three A (3A), Four A (4A), and Five (5A), Block 3, Midland International Airport Industrial Park, an addition to the City of Midland, Midland County, Texas.

SECTION TWO. That the minimum bid that will be considered for this property shall be \$435,000.00.

SECTION THREE. That the City of Midland requires the property to be developed

into Hotel Facilities with construction to begin within 18 months of the award of this bid. If construction is not started within 18 months, or completed within 30 months, the property will revert ownership back to the City of Midland, Texas, unless written authorization for an extension is received by the City of Midland.

SECTION FOUR. That the Bid Sheet, attached hereto as Exhibit “B” and incorporated herein for all purposes, is hereby approved.

SECTION FIVE. That the City reserves the right to accept or reject any or all bids, to waive technicalities, to negotiate with any of the bidders, and to make any investigation deemed necessary as to a bidder’s financial status.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

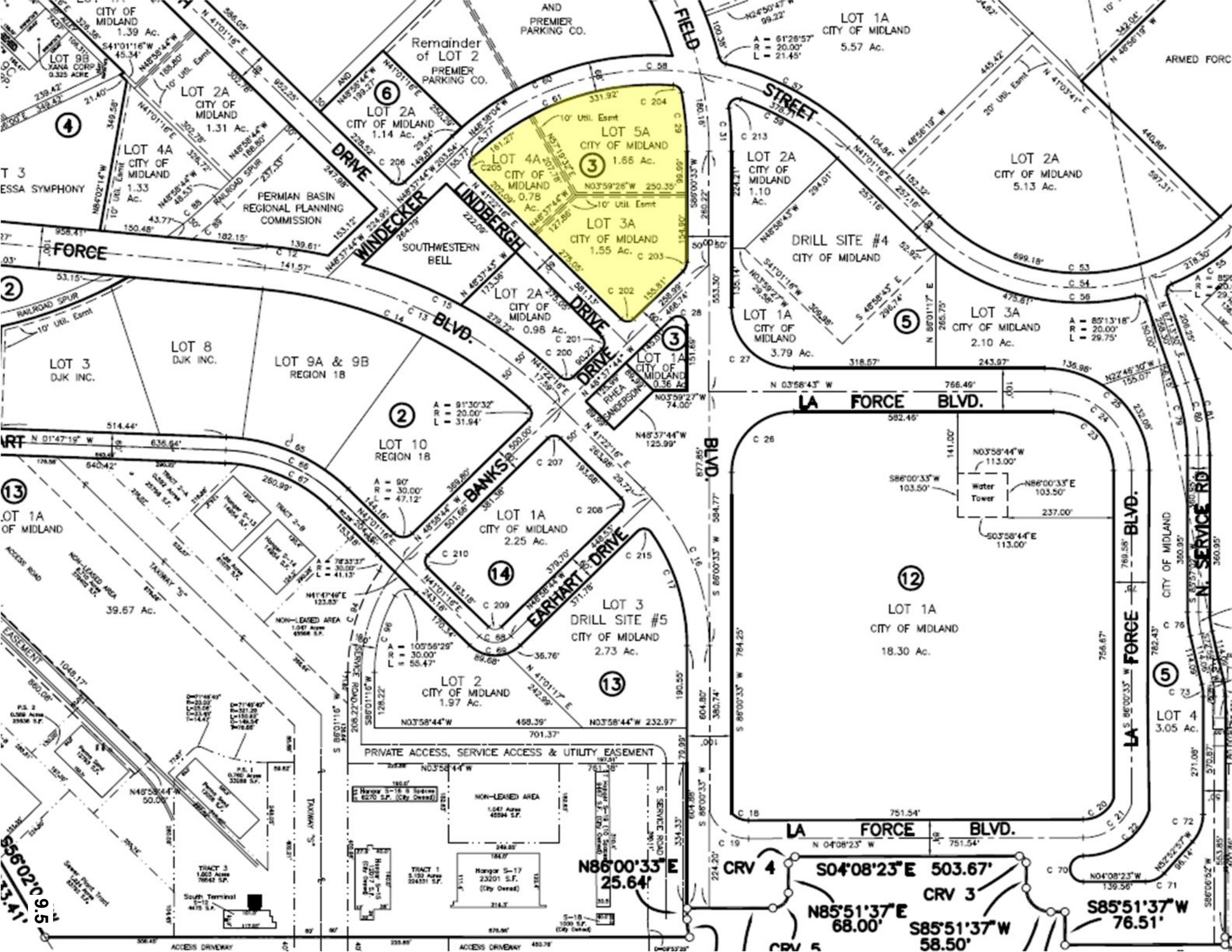
Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Marv Esterly, Director of Airports

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



Bidder's Name: _____

Bid # 5192-12 for the Sale of approximately 4 Acres of Real Property located in the Midland International Airport Industrial Park Addition within the City of Midland, Midland County, Texas.

The City of Midland is requesting bids for the sale of property described as **approximately 4 Acres of Real Property located in the Midland International Airport Industrial Park Addition within the City of Midland, Midland County, Texas.** Said real property being described more fully Plat Map as shown on Exhibit "A," attached hereto and incorporated herein for all legal purposes.

In order to assure yourself that your bid will be properly submitted and considered, it is important that prospective bidders read, understand and follow the following instructions:

- a. A bidder may submit a cash bid, or a bid with alternative terms fully disclosed.
- b. All bids must be accompanied by a certified check or bank money order issued by a bank satisfactory to the City in the amount of 5% of the bid price payable without recourse to the City. Bids without the required check or money order will not be considered. All other checks will be returned after the bid is awarded. The purpose of such check or money order is to provide a guarantee that the bidder will accept a conveyance to said property from the City and pay the balance of the amount bid or comply with any and all conditions of his bid.
- c. All bids must be sealed in an envelope, and the envelope must be plainly marked "Proposal for 4 Acres of Real Property located in the Midland International Airport Industrial Park Addition within the City of Midland, Midland County, Texas. All bids must be submitted to the Purchasing Manager, Room 220 in City Hall, 300 North Loraine Street, or mailed to P. O. Box 1152, Midland, Texas, 79702, on or before 5:00 p.m. o'clock on the day of , 2012. All bids being received after such time and date shall not be considered. Submit plans and timelines for development of the property together with monetary bid.
- d. The minimum bid that will be considered for this property by the City of Midland is \$435,000.00. The City of Midland requires the property to be developed into Hotel Facilities with construction to begin within 18 months of the award of this bid. If construction is not started within 18 months, or completed within 30 months, the property will revert ownership back to the City of Midland, Texas, unless written authorization for an extension is received by the City of Midland.
- e. Bidders are advised that the City reserves the right to accept or reject any or all bids, to waive technicalities, to negotiate with any of the bidders, and to make any investigation deemed necessary as to a bidder's financial status.

Bidder's Name: _____

f. The successful bidder is and shall remain responsible for all closing costs, and will be required to close this property purchase within 60 days of the City's acceptance of the successful bid at Lone Star Abstract & Title Co., Inc., located at 600 N. Loraine, Midland, Texas, 79701.

g. BY SUBMITTING A BID THE BIDDER AGREES AND ACKNOWLEDGES THE SUCCESSFUL BIDDER IS TAKING OR PURCHASING THE PROPERTY "AS IS" WITH ANY AND ALL LATENT AND PATENT DEFECTS AND THAT THERE IS NO WARRANTY, EXPRESS OR IMPLIED BEING MADE BY THE CITY OF MIDLAND, TEXAS THAT THE PROPERTY IS FIT FOR A PARTICULAR PURPOSE. THE BIDDER ACKNOWLEDGES, BY SUBMITTING A BID, THAT BIDDER IS NOT RELYING UPON ANY REPRESENTATION MADE BY THE CITY OF MIDLAND WITH RESPECT TO THE CONDITION OF THE PROPERTY, BUT IS RELYING UPON BIDDER'S EXAMINATION OF THE PROPERTY. BIDDER ALSO RECOGNIZES BY SUBMITTING A BID, THAT THE BIDDER IS AGREEING TO PURCHASE THE PROPERTY "AS IS" THAT BIDDER AGREES TO MAKE BIDDER'S OWN APPRAISAL OF THE PROPERTY AND TO ACCEPT THE RISK THAT BIDDER MAY BE WRONG. THE CITY OF MIDLAND GIVES NO ASSURANCES, EXPRESS OR IMPLIED CONCERNING THE VALUE OR CONDITION OF THE PROPERTY SOLD. IN NO EVENT SHALL A BIDDER HAVE A RIGHT TO RECOVER CONSEQUENTIAL DAMAGES. THEREFORE, THE BIDDER WILL TAKE THE PROPERTY UNDER THE EXPRESS UNDERSTANDING THE PROPERTY IS ACCEPTED "AS IS" AND WITH ALL FAULTS, EXCLUDING EXPRESS OR IMPLIED WARRANTIES. PROVISIONS OF THIS SECTION SURVIVE THE CLOSING.

h. Bidders are advised that the Warranty Deed given by the City will be subject to the following conditions and covenants:

PROVIDED, HOWEVER, that all the oil, gas and other minerals in and under said land are hereby expressly excepted from this conveyance, and it is also subject to any existing easements of record and/or on the ground for pipelines, utilities or other purposes; and all stipulations, conditions and terms of this legal notice including but not limited to those listed in (g) above.

i. Any questions concerning the submission of bids shall be directed to Marv Esterly, Director of Airports, P. O. Box 60305, Midland, Texas, 79711, Phone No. 560-2200 x 3001.

BID WAIVERS:

A. Waiver of Attorney Fees: By submitting a bid, **EACH BIDDER AGREES TO WAIVE AND DOES HEREBY WAIVE ANY CLAIM THE BIDDER HAS OR MAY**

Bidder's Name: _____

HAVE AGAINST THE CITY OF MIDLAND, TEXAS, AND THE CITY'S RESPECTIVE EMPLOYEES AND REPRESENTATIVES FOR THE AWARD OF ATTORNEY'S FEES, ARISING OUT OF OR IN CONNECTION WITH THE ADMINISTRATION, EVALUATION, OR RECOMMENDATION OF ANY BID; WAIVER OF ANY REQUIREMENTS UNDER THE BID DOCUMENTS; OR THE CONTRACT DOCUMENTS; ACCEPTANCE OR REJECTION OF ANY BIDS; AND AWARD OF THE CONTRACT. BY SUBMITTING A BID, THE BIDDER SPECIFICALLY WAIVES ANY RIGHT TO RECOVER OR BE PAID ATTORNEY'S FEES FROM THE CITY OF MIDLAND, TEXAS, OR ANY OF THE CITY'S EMPLOYEES AND REPRESENTATIVE'S UNDER ANY PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE, SECTION 37.001 ET. SEQ., AS AMENDED).

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

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

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

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

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

Bidder's Name: _____

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

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

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

By submitting a bid, the bidder acknowledges and agrees that if his bid is successful, the bidder will be required to close this property purchase within 60 days of the City's acceptance of the successful bid.

By submitting a bid, the bidder acknowledges and accepts sole responsibility for all appointments and arrangements, and for any and all closing costs relating in any way whatsoever to said property purchase.

TOTAL BID: \$ _____

Company Name		Date
Authorized Signature		Phone
Print Above Name		Fax



City Council Agenda

Approved for Agenda:
CSharp
City Manager's Office

MEETING DATE: 7/24/12

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving the issuance of a Request for Proposal for the city-wide public safety and public works Radio System Replacement for the Communications and Information Systems Department.

Purpose:

Approval of a resolution authorizing the release of a Request for Proposals for the city-wide public safety and public works Radio System Replacement for the Communications and Information Systems 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 the city-wide public safety and public works Radio System Replacement. Please see the attached memo from Sharlett Chowning, Chief Information Officer, for further information.

RESOLUTION NO.

**RESOLUTION AUTHORIZING THE ISSUANCE OF A
REQUEST FOR PROPOSALS FOR THE
REPLACEMENT OF THE CITY-WIDE PUBLIC SAFETY
AND PUBLIC WORKS RADIO SYSTEM FOR THE CITY
OF MIDLAND, TEXAS**

WHEREAS, a request for proposals has been prepared for the replacement of the City-wide Public Safety and Public Works Radio System; 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 the replacement of the City-wide Public Safety and Public Works Radio System 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

CITY OF MIDLAND
Communications and Information Services Department
Interoffice Memorandum

Date: July 10, 2012
To: Robert Patrick, Director of General Services
From: Sharlett Chowning, Chief Information Officer
Subject: Release of RFP for Procurement of a Radio System

City staff requests the release of a Request for Proposal (RFP) for the city-wide public safety and public works Radio System Replacement. The current system is not compliant with the upcoming standards required by the federal government.

There are numerous vendors who are currently selling and implementing systems that conform to these standards. To provide a fair and impartial evaluation of each offering, the City needs to release the RFP.

After responses to the RFP are received, an evaluation committee will be formed to look at options available.

CISD is recommending the release of the RFP for the Radio System.

MOBILE RADIO SYSTEM INSTALLATION AGREEMENT

#5246-12

THIS AGREEMENT is made and effective the ____th day of _____, 2012, by and between the CITY OF MIDLAND, TEXAS, a municipal corporation, hereinafter called "City," and _____, hereinafter referred to as "Company."

ARTICLE I.

PURPOSE

The purpose of this Agreement is to state the terms and conditions under which Company shall provide and install a P25 800 Megahertz Simulcast Trunked Land Mobile Radio System for the City.

ARTICLE II.

SERVICES TO BE PERFORMED

1. Company shall provide and install a P25 800 Megahertz Simulcast Trunked Land Mobile Radio System as described in the Scope of Services attached hereto as Exhibit "1" and incorporated herein for all legal purposes.
2. Company represents that any employee who performs services under this Agreement shall be fully qualified and competent to perform the services described in Exhibit "1."

ARTICLE III.

FINANCIAL CONSIDERATIONS

City agrees to pay Company in an amount not to exceed \$_____ for the services described in Exhibit "1." City agrees to pay Company for Labor, Incidental Direct Costs and Sub-contractor Costs as set forth in Exhibit "1" upon presentation of a monthly invoice. The invoice shall set out Labor fees for the month and those Incidental Direct Costs and Sub-contractor Costs described in Exhibit "1" incurred during the previous month. The City Manager must approve all additional expenses and reimbursable expenses in advance. Within 30 days of receipt of the monthly invoice, City shall pay the full amount of such invoice; provided, however, that if City objects to any portion of an invoice, City shall notify Company of City's objection and the grounds therefor within 30 days of the date of receipt of the invoice, and the parties immediately shall make every effort to settle the disputed portion of the invoice. City in any event shall pay every portion of the invoice that is not in dispute within the 30-day period for payment.

ARTICLE IV.

TERM

The term of this Agreement shall be from _____, 2012, until _____, 201____, unless the project is completed sooner or the Agreement is terminated as provided below.

ARTICLE V.

TERMINATION

Either party may terminate this Agreement at will, for no or any reason, upon giving the other party One-Hundred-Eighty (180) days written notice. The parties to this Agreement understand and agree that it is in either party's sole discretion to cancel the Agreement during the term of the Agreement without penalty to the other party. All work and services under this Agreement shall be suspended immediately upon termination of the Agreement becoming effective. The parties have bargained for the flexibility to terminate the Agreement upon giving the requisite notice.

ARTICLE VI.

CONTRACT PERSONAL

This Agreement provides for personal or professional services, and the Company shall not assign this Agreement, in whole or in part, without the prior written consent of City. It is understood that any necessary engineering services shall be subcontracted by the Company.

ARTICLE VII.

INDEPENDENT CONTRACTOR

It is expressly understood and agreed that Company shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of the City; that Company shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of respondeat superior shall not apply as between City and Company, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and Company. No person performing any of the work and services described hereunder by Company shall be considered an officer, agent, servant or employee of the City. Further, it is specifically understood and agreed that nothing in this Agreement is intended or shall be construed as creating a "Community of Pecuniary Interest" or "An Equal Right of Control"

which would give rise to vicarious liability. Company shall be an independent contractor under this Agreement and shall assume all of the rights, obligations and liabilities, applicable to it as such independent contractor hereunder. The City does not have the power to direct the order in which the work is done. The City shall not have the right to control the means, methods or details of the Company's work. Company shall assume exclusive responsibility for the work. Company is entirely free to do the work in its own way.

ARTICLE VIII.

INSURANCE

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

Commercial General Liability (including contractual liability):

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

-Property Damage: \$500,000.00 per occurrence

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

Worker's Compensation: Statutory limits

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

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

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

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

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

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

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

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

ARTICLE IX.

FEDERAL WAGE REQUIREMENTS

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

ARTICLE X.

ATTORNEY FEES

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

ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH COMPANY MIGHT OTHERWISE BE ENTITLED.

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

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

ARTICLE XI.

SOVEREIGN IMMUNITY

By executing this Agreement the City is not waiving its sovereign immunity and retains all immunity from suit. The City is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

ARTICLE XII.

NO THIRD PARTY BENEFICIARIES

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

ARTICLE XIII.

RELEASE

NOTWITHSTANDING ANY OTHER PROVISIONS, COMPANY HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY, CITY'S EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES, OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH COMPANY HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT

LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR CITY'S NEGLIGENCE.

ARTICLE XIV.

GENERAL PROVISIONS

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

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

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

If to City: City Manager's Office

P.O. Box 1152

Midland, Texas 79702

If to Company: [Company NAME]

[Company ADDRESS]

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

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

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

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

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

H. Indemnity. **COMPANY WILL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF COMPANY**, its agents or employees, or any subcontractor, arising out of, or resulting from, Company's use of, or activities on, the Agreement Premises, and Company will be required to pay any judgment with costs which may be obtained against City or any of its officers, agents or employees, including reasonable attorney's fees.

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

ARTICLE XV.

NOTICE OF ALLEGED BREACH:

STATUTORY PREREQUISITES

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

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

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

ARTICLE XVI.

ASSIGNMENT

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

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

Company :

[Company NAME]

By: _____

Title: _____

STATE OF TEXAS §

§

COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed on behalf of [Company NAME].

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS _____ day of _____, A.D., 2012.

Notary Public, State of Texas

Printed Name

My Commission Expires: _____

Request for Proposals

RFP 5246-12

for

P25 800 Mhz Simulcast Trunked Land Mobile Radio System (LMR)

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 5246-12

For

P25 800 Mhz Simulcast Trunked Land Mobile Radio System (LMR)

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 are not allowed to communicate with any City staff or officials regarding this procurement, other than during interviews and demonstrations, and site visits, except at the direction of Regina Stephenson, the designated representative of the City Purchasing Office.

SPECIAL TERMS AND CONDITIONS

Proposal Requirements /Terms

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

Conditions

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

1. Offerors electing to respond to this RFP are responsible for all costs of proposal preparation. The City is not liable for any costs incurred by a offeror in response to this RFP.
2. No public disclosures or news releases pertaining to this RFP shall be made without prior written approval from purchasing.
3. In case of a tie between two or more offerors, the award will be made in accordance with preferences as outlined by statute.
4. The Offeror agrees to protect the City from claims involving infringement of patents or copyrights.
5. The Offeror hereby assigns to Purchaser, any and all claims for overcharges associated with any contract resulting from this RFP which arise under the antitrust laws of the United States 15 U.S.C.A. Section 1, et seq. 1973 and which arise under the antitrust laws of the State of Texas, Texas Business and Commercial Code Ann. Sec. 15.01, et seq. (1967).
6. No substitutions or cancellation permitted without the written approval of the City Purchasing Agent. Deliveries made pursuant to a resulting contract shall be made during normal working hours only, unless approval for late delivery has been obtained.

7. Contractor shall submit two copies of an itemized invoice to Accounts Payable, The City of Midland, Texas, P.O. Box 1152, Midland Texas 79702. Each copy of the invoice shall reference the P.O. and the RFP numbers.
8. In the event of a conflict between the standard proposal requirements and conditions and the attached detail specification, the detail specifications shall govern.
9. Governing Law & Venue: This agreement shall be governed by and construed in accordance with the laws of the State of Texas. Venue for any disputes or lawsuits arising from the performance of this contract shall be exclusively in Midland County, Texas. The parties agree that all performance under this contract shall take place in Midland County, Texas. The Contractor and City agree that all payments made under this contract shall take place in Midland County, Texas.
10. This obligation and undertakings of each of the parties to this contract shall be deemed to have been performed in Midland County, Texas.

1. GENERAL INFORMATION

1.1. INTRODUCTION

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

Request for Proposal Standard Information

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

1.2. INITIAL EVALUATION

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

1.3. DISCUSSION/NEGOTIATION

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

1.4. BEST AND FINAL OFFER

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

1.5. AWARD

- 1.5.1. **If the Contract is awarded, it will be awarded to either the lowest responsible bidder, or to the bidder who provides goods or services at the best value for the City of Midland.**

1.5.2. In determining the best value for the City of Midland, the City of Midland may consider the criteria enumerated in Section 252.043 of the Texas Local Government Code.

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

FAX: (432) 685-0523

e-mail: purchasing@midlandtexas.gov

1.11. FORMAT FOR INQUIRIES:

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

1.12. INTERPRETATION:

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

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

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

1.13. PROPOSAL ORGANIZATION AND SUBMISSION

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

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

1.14. OFFER PRICING

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

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

1.15. ALTERNATE PROPOSALS

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

1.16. SUBMITTING A SEALED PROPOSAL

1.16.1. Number of copies and Location:

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

1.16.2. Each Offeror who submits a proposal represents that:

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

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

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

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

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

1.17. RIGHTS RESERVED

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

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

1.18. BONDING REQUIREMENTS

See Exhibit C

1.19. OFFEROR INTERVIEW / PRODUCT DEMONSTRATION

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

1.20. SUBCONTRACTING

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

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

1.21. INSURANCE REQUIREMENTS

See 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 found in Appendix A.

1.24.3. Exceptions to Contract Terms & Conditions

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

1.24.4. Contract Extension

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

1.24.5. Escalation

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

2. PROPOSAL 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

3.1 Scope of Project

The City of Midland (City) intends to purchase a modern and integrated wide area voice network for use throughout the City and Midland County, utilizing 800Mhz Project 25 (P25) trunked technology. The integrated network should be a highly reliable, fault tolerant system, which will meet current needs and provide a growth path for future expansion. Since the system is expected to serve the communication needs of the City for the next 15 years, it must have the flexibility of adapting to changing system requirements and new technology without the need to replace major equipment elements. In particular, the system must be compliant with the specified P25 Phase 1 protocols. The Proposer's solution must include a clear migration path and a commitment to be

compliant with the P25 Phase 2 requirements. The City intends to implement future data applications and add additional users beyond the initial identified requirements, and requires that this network allow for future growth of the network. The network must also allow for the addition of RF sites to increase coverage should the need arise. The Proposer is encouraged to propose a complete network design with firm prices for all equipment, software and services required by these specifications.

The current system is an EDACS 800Mhz trunked multi-site radio system with five repeaters at the Airport site, (31 degrees 56.245 North by 102 degrees 12.645 West), a 10-repeater site at our Downtown site, (31 degrees 59.823 North by 102 04.626 West) and approximately 1300 users.

The proposed system requires a P25 four-site simulcast trunked LMR communications system with wide area communication capabilities for all users throughout the operational area of Midland and Midland County. The City is allotted 15 frequency pair 800Mhz channels and would prefer to utilize them in single simulcast land mobile radio system consisting of 4 sites within the city limits and possibly two County sites consisting three channel, multisite located in Midland County.

3.2 Implementation and System Description

The current LMR supports both Public Safety and Public Works departments and because these two agencies are critical to the City of Midland, the new LMR system must be in place before any of the legacy equipment is removed. A staged implementation is required.

The Project 25 trunked radio system shall operate in 800Mhz. The backbone of the system shall consist of multiple repeaters sites connected to a wide area controller or switch, to provide reliable wide area voice and data communications to and from mobile and portable units throughout the desired area of coverage. To provide best value to the City of Midland the proposer will maximize the use of commercial, off-the-shelf (COTS) Internet Protocol (IP) networking technologies for interconnectivity of network elements.

The network communications architecture shall provide the radio user transparent communications across the entire area of coverage. The P25 trunked LMR system will permit the radio user transparent radio communications across the entire area of coverage without requiring manual switching or changing of site information.

Dispatch consoles based upon the latest IP technology will be utilized at the dispatch center site and off site. To provide the best value and flexibility to the City, the proposer will maximize the use of commercial, COTS and IP networking technologies for dispatch console interconnectivity.

Consistent with goals of P25, the proposer will provide evidence, in the form of either installed systems or capabilities demonstrations, of multivendor interoperability both through support of P25 trunked air interface and P25 Inter-Sub-System-Interface (ISSI). The proposed P25 LMR system will provide automatic interoperability with existing trunked or conventional radio systems from the same or different manufacturers. Interoperability with other P25 systems shall be supported through ISSI. The city is currently operating Harris radios (M7300, P7200, M7100, P5150 and P7100

3.3 Proposed System Description

Proposer will provide a complete high level block diagram for the entire proposed system showing the simulcast sites, two multisite, wide area controller/ switch, dispatch consoles, and any other major system components (such as system administration and management computers,

etc.).

The City desires to implement a four site P25 simulcast system, with two multi-sites in the county, with the simulcast control point located at the PSCC (601 N. Loraine). The four sites P25 simulcast is the primary goal for this project with the two multi-sites in the county as secondary goals. The site locations are as follows:

- Site 1 (Front Street)- Grid coordinates, 31 degrees 59.903 North by 102 degrees 04.211 West. This location will require a new tower, environmental control unit, shelter, generator and UPS
- Site 2 (Fire Station #4)- Grid coordinates, 32 degrees 03.217 North by 102 degrees 04.956 West. This location will require a new tower, environmental control unit, shelter, generator and UPS
- Site 3 (Lake Peggy Sue)- Grid coordinates, 32 degrees 02.086 North by 102 degrees 10.982 West This location will require a new tower, environmental control unit, shelter, generator and UPS
- Site 4 (Airport)- Grid coordinates, 31 degrees 56.245 North by 102 degrees 12.645 West. This location needs a UPS. This site already has a shelter, A/C, generator and enough room to install the new equipment along side the legacy equipment. This location is near an existing water tower; therefore a new tower is not needed at this location.
- Site 5 (Public Safety Communication Center-PSCC)- Grid coordinates, 32 degrees 00.203 North by 102 degrees 04.584 West. This is the dispatching and IT department location. This will be the primary control point for the proposed radio system. This site already has a 70-foot tower, environmental control, generator and UPS. No shelter will be needed for this location.
- Although sites 6 & 7 are secondary to this project, the proposer will show cost for a 3 channel 800Mhz trunked P25 sites to include, towers, shelters, generators, UPS's, environmental control units. The location for site 6 will be located approximately 9 miles east of Site 1 and location for site 7 will be estimated at 9 miles south of site 1.

Proposer shall provide a block diagram and floor plan for the simulcast control point and a typical P25 trunked repeater site within the simulcast footprint. The proposer will specify the simulcast configuration showing all major components at the control point and the quantity and type of communication circuits required to connect the control point to the wide area controller. The proposer will also specify the simulcast transmit/receive (TX/RX) site configuration, showing all major components at the TX/RX sites and the quantity and type of communication circuits required to connect the TX/RX sites to the control point. The proposer will provide a list of all power and air conditioning requirements for all sites.

The City desires to purchase 12 dispatch consoles, 8 of which will be located at the PSCC site (601 N. Loraine), 3 at the backup dispatch site (9506 La Force Blvd) and 1 at airport operations (9506 La Force Blvd). The proposer will provide a block diagram for the equipment at each location, showing all major components and the quantity and type of communication circuits required to connect the dispatch consoles to the wide area controller. The Proposer will provide a list of all power and air conditioning requirements for the dispatch console equipment. There is an established microwave link from the airport location to the PSCC and an established network in the airport building.

The primary wide area controller or switch will be located at 601 N. Loraine. The proposer may recommend the location of the backup wide area controller. The proposer will provide a block diagram and floor plan for each wide area controller or switch location, showing all major components and the quantity and type of communication circuits required to connect the wide area controller/ switch to the repeater sites, remote consoles, conventional repeaters, etc. The

proposer will provide a list of all power and air conditioning requirements for the wide area controller equipment.

The proposer will be responsible for demonstrating mobile and portable radio coverage performance in accordance with the test plan defined later in this RFP.

The proposer will provide the LMR P25 coverage prediction through use of a radio wave propagation model that has been developed on the basis of theoretical and empirical data, which will take into account terrain irregularity, foliage, urban clutter, noise and long and short term signal variations. The model used for the purposes of the coverage prediction will be identified, and the rationale for system losses (e.g., power, gain, and loss information used in the model for each site) shall be described in the proposer's proposal. Simulcast composite coverage plots shall be presented on an appropriate scale, and include areas of degraded audio quality due to simulcast interference effects.

Coverage is defined as the minimum signal required to provide Deliverable Audio Quality 3.4 (DAQ 3.4), defined as "Speech understandable with repetition only rarely required". The Proposer will relate this quality to a signal level for acceptance testing purposes. The City is looking for 95% reliability portable radio coverage within the city limits.

Mobile Coverage

Mobile voice coverage will be provided with 95% reliability. Proposer will indicate what percentage of the City and County is predicted to have 95% reliable coverage at DAQ 3.4 for a mobile radio. The proposer's percentage value will become the guarantee for pass/fail criteria for coverage acceptance testing. This requirement must account for simulcast interference effects. The boundary of the mobile service area shall be clearly indicated on the proposer's coverage maps provided with their proposal. The proposer will provide all parameters and assumptions used to generate the coverage maps. The proposer will provide detailed RF propagation coverage predictions analysis for talk-out or talkback for mobiles

Portable Coverage

Portable radio outdoor voice coverage shall be provided with 95% reliability. The proposer will indicate what percentage of the City and County is predicted to have 95% reliable coverage at DAQ 3.4 for a portable radio. The proposer's percentage value will become the guarantee for pass/fail criteria for coverage acceptance testing. This requirement must account for simulcast interference effects. The proposer must assume that the user is outdoors and is wearing the portable (with antenna) on his hip and with a speaker microphone (no antenna) at shoulder height. The boundary of the portable radio service area shall be clearly indicated on the proposer's coverage maps provided with their proposal. The proposer will provide all parameters and assumptions used to generate the coverage maps. The proposer will provide detailed RF propagation coverage prediction analysis for the talk-out or talk-back for portables radios outdoors.

Radio Frequencies

The City has 15 800 MHz frequency pairs allotted. The proposer will apply on the City's behalf for any additional frequencies licenses that may be required. The proposed system design must satisfy all requirements outlined by the city and FCC, regarding conformance to transmitter output power limitations. The proposer must include data in the proposal to demonstrate

compliance, such as 40 dBu contours.

Tower Top Amplifiers

It is desirable that receiver tower top amplifiers be used to compensate for coaxial cable loss in order to provide the level of portable talk back coverage specified. The proposer will include tower top amplifiers.

Wide Area Communications

The proposer must include connectivity between the RF sites and the PSCC. All sites will be linked to the wide area network by means of microwave, fiber optic cable, or a combination thereof. The use of 4.9 GHz links to interconnect simulcast RF sites with the simulcast control point is not permitted, due to the high path reliability requirements for proper simulcast timing and the unprotected nature of 4.9 GHz licensing. In addition to the bandwidth that is required for the radio system to operate properly, the City would like an additional 400Mb of bandwidth between the sites. The additional bandwidth will be listed as a separate line item in the cost summary. To provide best value to the City, the proposer will maximize the use of commercial off the shelf (COTS) IP networking technologies for interconnectivity of network elements. The proposer must indicate the amount of bandwidth required to support its proposed system design.

Roaming and Handoff

If the proposed system consists of a simulcast footprint and one or multiple wide area trunked sites, the system shall permit the radio user to roam across the entire area of coverage without requiring manual switching or changing of site information. As a user roams through the system, the system shall automatically provide handoff from one site to the next, ensuring that it will always select a high quality signal. The proposer will indicate whether the handoff is based on the "best server" or some other algorithm, used to determine handoff.

Voice and Control

The system shall provide a minimum of one voice call per 12.5 kHz of radio channel spectrum, with a migration path to P25 Phase 2 to allow the equivalent of one voice call per 6.25 kHz. Migration to non-standard, proprietary TDMA solutions will not be accepted. The proposer will describe the migration path to P25 Phase 2 and identify costs associated with it. The system will support the use of the P25 Common Air Interface and P25 Trunked Operation, as described by the following documents:

ANSI/TIA/EIA 102.BAAA P25 FDMA Common Air Interface, Edition: A Chg: Date 09/00/03
TSB102.BAAB-A APCO Project 25 Common Air Interface Conformance Test, Edition: B Chg: Date 03/00/05
ANSI/TIA/EIA 102.BAAC Project 25 Common Air Interface reserved Values, Edition: C Chg: Date 04/08/11
ANSI/TIA/EIA 102.BABA, Project 25 Vocoder Description, Edition: 3 Chg: ADM1 Date 07/00/09
ANSI/TIA 102.CAAB-A, Land Mobile Radio Transceiver Performance recommendations-Project 25-Digital Radio Technology, C4FM/CQPSK modulation, Edition: C Chg: Date 01/00/10
TSB 102.AABA, APCO Project 25 Trunking Overview, Edition: B Chg: Date 04/22/11
ANSI/TIA/EIA 102.AABB, Project 25 Trunking Control Channel Formats, ANSI/TIA/EIA 102.AABC, Project 25 Trunking Control Channel Messages, Edition: C Chg ADM1 Date: 02/15/11
TIA102.AABF, APCO Project 25 Link Control Word Formats and Messages, Edition: C Chg: Date: 03/00/11

TIA102.AABD, Project 25 Trunking Procedures, Edition: A Chg: ADM1 Date: 04/00/11

Note: All these references can be found at www.tiaonline.org/standards

Radio Disable

The purpose of this feature is to prevent a lost or stolen radio from being used to transmit and receive on the system. The system will have the ability to selectively enable or disable an individual radio from the system management computer. The proposer will indicate to what extent the proposed system is capable of preventing a stolen radio from accessing the system.

Caller Identification

The radio ID shall be included in each transmission. The system will display this ID on its associated group module in the console at the dispatch center. Suitably equipped mobile and portable radios will be able to display the calling unit ID for both individual and group calls. Each mobile radio, portable radio, control station, and dispatch console will be capable of displaying an alphanumeric alias, corresponding to the unit ID, if available from the transmitting device.

System Access by Unauthorized Devices

The system will prevent access by unauthorized devices. The proposer will indicate whether this is accomplished through unit and group validation at the repeater controller, or through a unit authorization/registration procedure, or both.

Over -The-Air Programming

The system shall provide the ability to program radio parameters to the mobile and portable radios over the air (without the need to physically connect the radio programmer to the radio). Provisioning will include the supply of system information such as available radio channels, and user specific information such as talk group list, scan priorities and user privileges.

Encryption and OTAR

Encryption on the system will be standards-based; proprietary encryption protocols are not allowed. The system shall support digital voice encryption using Project 25 encryption, as described by the following documents:

ANSI/TIA 102.AAAB, Digital LMR, Security Services Overview, Edition: A Chg: W/REAF Date: 02/03/11
ANSI/TIA/EIA 102.AAAD, Project 25 Block Encryption Protocol, Edition: A Chg: Date: 08/00/09
The system shall support over-the-air-rekeying (OTAR) of mobile and portable radios using Project 25 OTAR, as described by the following documents: ANSI/TIA/EIA 102.AACA, Project 25 Digital Radio Over-The-Air-Rekeying (OTAR) Operational description, Edition: 01 Chg: ADM2 Date: 03/00/03

Basic P25 Trunked Operation

The system will support voice group operation, where a voice group consists of a number of operational users distributed through the radio network.

The radio user manually selects the voice group he wishes to communicate with, and then presses PTT on the radio. If resources are available, the system shall respond by establishing a voice call to the selected group. Once the group call has been established, voice from the source radio is transmitted to all members of the group, which may involve multiple repeater sites.

The system will track voice group members as they roam through the network and ensure that each multi-site call is routed to all available repeater sites containing members of that voice group.

The system will support P25 defined “announcement group calls” (allowing a dispatcher or authorized user to communicate to a number of individual groups) and “all calls” (allowing a dispatcher or authorized user to communicate to all users on the network).

Call Queuing

If resources are not immediately available for a call originating from the network side, the system will queue the channel request to the base station, mobile, portable, until the radio channel is available.

Voice Group Priority

The base station, mobile, portable radio will queue calls originating from the network side based on voice group priority. Calls will be positioned in the queue based on priority, with calls of highest priority (such as emergency calls) being served first. Calls of equal priority shall be processed on a first in, first out basis.

Group Busy Lockout

This feature prevents other voice group members from interrupting a user who is actively transmitting on a voice group. If a member of a currently active voice group presses PTT to initiate a call on the same voice group, the system will refuse to repeat the call. This is independent of the “Busy Channel Lockout” capability of the subscriber unit.

Exceptions to group busy lockout include network originated emergency calls, dispatcher override, and supervisor override.

Dispatcher Override

This feature ensures that normal members of the same voice group cannot block calls originating from a dispatch console. The system will permit a call originating from a dispatch console to interrupt a call by a normal member of the same voice group, overriding the call so that other members of the voice group only hear the dispatcher. The exception is the transmitting mobile, portable or base station, which cannot hear the dispatcher until after his transmission is completed.

Individual Call

The system will support individual call mode, where a suitably equipped radio or console user can establish a private call to any other radio user in the network. In individual call mode, the

group membership is limited to the source and destination radios. Other mobile or portable subscriber units will not overhear the call.

Proposer will indicate how an individual call is established in the proposed system.

Emergency Alert and Emergency Call

The system shall support emergency notification in the mobile and portable radios. When the emergency button is pressed on a mobile or portable radio, the radio will immediately transmit an emergency alert message to the dispatch console/s locations. The emergency alert message should include at a minimum the radio ID talkgroup of the originating unit. Upon receipt of an emergency alert message the system will immediately establish an emergency voice call. All emergency calls will have the highest priority in the system.

Late Call Entry

The system will permit a user who has just re-entered radio coverage or was engaged in another call to late enter into a call in progress.

Anti Cloning of Radios

Proposer will describe ability for the City to prevent unauthorized users from cloning a radio's personality to load into another radio.

Interoperability

The system will provide automatic interoperability with existing P25 conventional radio systems from the same and different manufacturers. Interoperability is defined as the capability to connect or patch P25 conventional voice groups on the new radio system through the wide area controller tied to P25 conventional voice groups on an existing radio system. The interoperability can be established using a P25 mutual aid repeater or network-level connectivity will be compliant with the p25 ISSI. Automatic is defined as taking place without operator (user or dispatcher) intervention. It is acceptable for an operator to be required to set up the initial connection. However, all subsequent inter-system communications should occur without any human intervention.

The system will provide automatic interoperability with existing P25 trunked radio systems from the same or different manufacturers. Interoperability is defined as the capability to connect or patch P25 trunked voice groups on the new radio system through the wide area controller with P25 trunked voice groups on an existing radio system. This interoperability shall be established using network-level connectivity compliant with the P25 ISSI as described in the following document:

- ANSI/TIA 102.BACA, P25 Inter-RF subsystem Interface Messages and Procedures for Voice Services, Edition: A Chg: ADM3 Date: 07/00/10

The system will provide automatic interoperability with existing conventional FM radio channels, where a voice group on the new system is connected through the wide area controller/switch to a conventional FM radio channel. Automatic is defined as taking place without operator (user or dispatcher) intervention. It is acceptable for an operator to be required to set up the initial connection. However, all subsequent inter-system communications should occur without any human intervention. The existing conventional FM radio systems to be interfaced

may operate in the VHF, UHF, or 800 MHz frequency bands. The conventional FM station interface shall accommodate any one or all of these.

The system will support dynamically defined dispatch console patch style interfaces between conventional channels and talkgroups on the new system, where the interface can be configured by the dispatcher.

City's interoperability

City requires interoperability with the following frequencies:

- V Call 10, V Tac 11, V Tac 12, V Tac 13, V Tac 14, V Tac 17
- 8 Call 90, 8 Call 91, 8 Call 92, 8 Call 93 and 8 Call 94 (Use new after rebanding frequencies.)

The Proposer must propose interoperability through the use of dedicated control stations and interoperability gateways such that a City user may simply select an interoperability talkgroup when communication with a neighboring agency is desired. For agencies with P25 Trunking systems, proposer must propose interoperability through the use of a P25 ISSI.

In addition, the system will control the new trunked radio system and all current VHF channels. Hard patches (not controlled by the console operator) will be provided between existing conventional radio channels and selected talk groups during the changeover to the new trunked radio system.

System Reliability and Fault Tolerance

System reliability and fault tolerance will be major objectives in the design of the system. The system must be designed to operate reliably, so that if a problem develops it will not affect the basic Trunking operation and will not propagate to another part of the system. The proposer will describe in detail all measures taken to ensure reliable operation of the system to include at a minimum, P25 repeaters, channel controllers, and wide area controller/ switch.

No single point of failure within the wide area controller will prevent the system from normal operation. Proposers are required to provide hot standby redundancy for the wide area controller/ switch. The hot standby equipment will be placed at a location several miles from the Dispatch Center for geographical redundancy. Upon failure of the primary network controller, the redundant controller will automatically take over with no user intervention required. If the network link should fail to a simulcast site and the site is isolated, the site will turn off to prevent communication interference with the rest of the simulcast sites. If the network link should fail to a multisite location and the site is isolated, the site will continue to operate as a stand-alone P25 trunked site. The system must be reliable so that a failed link to any site will not affect the rest of the wide area communications.

If the proposed architecture consists of a single system management computer, a redundant configuration must be available as an option. This redundant computer will be located at a site several miles from the primary system management computer.

In the case of failure of one console position, no other console position will fail as a result of that failed console. If the proposed system requires a separate console switch, the console switch will

have redundant operation such that no single failure within the console switch will prevent the unit from normal operation.

The proposer will indicate the impact on system operation of each of the following element failures, how the system responds, and what features, if any are lost:

- Working Channel Failure
- Control Channel Failure
- Site Controller Failure
- Simulcast Control Point or Master Site Failure
- Dispatch console Failure
- Wide Area Controller Failure
- System Management Computer Failure
- Backhaul Link Failure

Network Security and Information Assurance

While IP based radio solutions provide benefits such as a common backbone and infrastructure, commercially available standard products, common support and maintenance, and flexibility for newer technologies, the trade off is to ensure that network security is established and maintained. The City of Midland must have a communication network that provides confidence and trust that their system is maintaining their confidentiality, the integrity of their data, and the availability of their system. Therefore, proposers must explain their Information Assurance methodology as it pertains to:

National Fire Protection Association (NFPA) 1221 Standard for the Installation, Maintenance, and Use of Emergency Services Communications Systems. Edition 2010 (www.nfpa.org) Federal Bureau of Investigation's Criminal Justice Information Services Security Policy that includes all those that support the FBI and DOJ (CJISD-ITS-DOC-08140-5.0) Version 5.0 Date: 01/01/2011 NIST recommendations on Cyber/Computer Security 800-146 Date: May 2012 (csrc.nist.gov/publications/nistpubs/nistpubs/800-146/sp800-146.pdf) A Layered Defense- Not depending on a single technology or methodology COTS based solutions- designed and implemented to industry-standard security practices, as far as it is practical.

The main goal of any information system is to restrict access to those who are authorized to and have need to know, including the ability to audit the information system to ensure that the policies and regulations are being implemented appropriately and to provide accountability for the actions of those with the responsibility of using and administering the system.

Access control requirements should seek to ensure that the system maintains not only confidentiality of information but also ensures the integrity of that information with role based access control. Access control should involve the implementation of least privileges, authentication authorization, and accountability; a vendor should meet the following Access Control requirements:

- Centralized Authentication, Authorization, and Accountability of Users
- Role-based management of users and machines
- Provide the capability to audit the information system to ensure that the policies and regulations are being implemented appropriately
- Provide accountability for the actions of those with the responsibility of using and administering the system.

Proposer must explain how their network accomplishes these goals.

Network Interoperability

Identity assurance is a key component of cyber security and access control. Access in high-risk situations (Remote Access) should be performed as determined by CJIS standards.

The City needs to integrate security into their operations. This integration into the overall information system of the organization needs to take some aspects into consideration such as

- Centralized Log Management
- Security Event and information Monitoring
- Business Continuity and Disaster Recovery

To minimize duplication of administration, equipment and time, it is becoming common to interconnect the LMR system with the enterprise network through a highly restricted firewall and /or intrusion prevention system. The proposer will describe how their authentication and authorization server integrates with the City's existing equipment to allow for the sharing of users identification and passwords.

To support auditing, detection, and accountability practices, the proposer will include how their technology will respond to these needs as part of a centralized log management system along with having secure long term data retention capability. A log management solution should be capable of monitoring and recording system and event logs from a large number of the devices on the network, including but not limited to:

- Operating System Event Logs
- Application Logs
- Network Device logs

Continuity and Disaster Recovery

During critical operations, the system must be able to recover devices to bring the users and the system functionality back to full operational status. The proposer will describe whether their backup/ hot standby solution is easily administered and maintained, supports all operation systems, and is cost effective across the entire life cycle of the system.

Computer Security

Computer systems have become the primary resource for not only storing information but also the primary workhorse for users to perform their jobs, and therefore has become a primary objective for intruders for either data gathering or destruction. This makes a computer system the end point for security that layers need to be built around to minimize the risk associated with the information they contain.

A common approach to gaining access to unauthorized systems is to leverage a known vulnerability within software. This is why it is important to ensure that the system is properly maintained throughout the life cycle of the system. Up-to-date software versions and patches that close vulnerabilities and bugs will be available thru the life expectancy of the system to prevent exploitation of the system.

The Proposer will describe how they can accommodate continuous patching of the LMR system that addresses all software provided with the system including operating systems, third-party

applications, and vendor applications that have been thoroughly vetted through a verification and validation lab.

The patch management solution should be capable of providing the following minimum functionality:

- Centralized role-based Administration
- Integration with Authentication and Authorization Server,
- Patch scheduling
- Air-gap patch capability that requires the updating of the patch management server with mobile media such as DVD's or Thumb Drives, without connectivity to the internet being required.

The proposer will include patch management cost for the first year as part of the base bid and provide annual costs as an option with any multiple year discounts detailed as well.

Security

Host based security is applying a suite of software or software functionality within a single application that protects the host computer from malicious behavior. Antivirus is an absolute minimum to protect workstations, and servers from malicious code, as most individuals accept for even their home computers, but it does not provide a complete solution for all the vectors that malicious behavior can occur from zero-day viruses which are not found by antivirus software, intentional attacks through bugs, or even accidental user actions. A comprehensive host solution is necessary for ensuring proper protection from known attack vectors and unallowable behaviors to anomaly detection for incident handling and chain of events.

The proposer will provide antivirus for all systems capable of supporting such an application, and will provide host-based security software for all servers and high-risk machines, and a centralized server responsible for management, updating, and monitoring of the host security.

The proposer will provide multiple network security capabilities to address the risk associated with routed networks, including but not limited to access control lists on routers, firewalls, network intrusion detection, and link encryption.

The proposer will provide firewall protection to deliver strong network- and application layer security, user-based access control, worm mitigation, and malware protection. The proposer will describe how their network accomplishes these goals.

The proposer will include Network Intrusion and Detection Systems to allow for a combination of vulnerability and anomaly based inspection methods to analyze network traffic and prevent threats from damaging the City's networks by alerting system administrators or preventing suspicious behavior. The proposer will use their risk management framework to determine and explain the placement of Network Intrusion and Detection Systems. The vendor shall also provide a network intrusion and detection system management console that is capable of correlation attacks with real-time network and user intelligence and centrally manages network security and operational functions, including event monitoring, incident prioritization, forensic analysis, alerting, and reporting.

The proposer will provide link encryption for all backhaul connections or connections that traverse public or insecure zones. Proposer will describe how their network accomplishes this

goal.

LMR Life Cycle

The City is concerned that system technology purchased as part of this project may become outdated due to technological change and would like to extend its useful life as long as possible. Therefore, it is required that proposers clearly identify their technological roadmap of the proposed system technology offered in response to this RFP

The technological roadmap will include all major systems and subsystems, including user equipment offered in the proposal. The roadmap will outline where each subsystem currently exists on the technology roadmap, its current P25 Phase 1 compliance status, and clearly define the migration path to P25 Phase 2 operation, including all hardware or software changes. Migration to a proprietary TDMA protocol is not allowed.

The proposed technology roadmap shall outline the forecasted remaining lifetime of each subsystem and should extend out from the date of the proposal to a point at least 10 years into the future. This information will help the City better understand the technological lifetime of the proposed system offering and the likelihood that "technology refreshment" will be required at some point during the system's lifetime.

The proposer will clearly identify their roadmap to P25 Phase 2 compliance for the proposed system technology offered in response to this RFP and address any impact that the migration to Phase 2 may have on radio system coverage. Coverage maps and supporting data including all parameters used in developing the coverage maps must be provided for each transmission mode anticipated to be used in the system. Proposer must specifically address changes in coverage and interference for simulcast transmissions if the proposed system utilizes the P25 Phase 2 transmission standard.

Any technological differences that may exist between the proposed Phase 1 system and a full Project 25 Phase 2 system which affect coverage, audio quality, grade of service, or performance of any feature, must be identified and quantized.

Although LTE is not part of this RFP, the Proposer will provide a roadmap to integrate a future LTE procurement into the proposed P25 system. The proposer will also provide a list of hardware changes required to accomplish this integration.

System Performance Requirements

Voice

The system will support a fleet of at least 5000 registered voice users and a minimum of 2000 voice groups upon initial implementation of the system.

Expansion Capability

The simulcast system shall be capable of expansion to support a minimum of 24 sites, a minimum of 25 consoles, and each simulcast site must be able to support a minimum of 24 channels/repeaters.

Failover

A hot standby wide area controller shall take full control within 60 seconds after sensing that the primary unit has failed. Any loss of voice communications shall be limited to the interval from the failure of the primary unit to the time the standby unit takes full control.

Interoperability

The system shall support 24 statically defined interfaces between conventional channels and talkgroups on the new system.

Equipment Requirements

Repeater Sites

Equipment provided at each site will consist of repeaters and all other associated hardware and software for a digital Project 25 trunked system.

Project 25 Trunked Repeater Stations

The Project 25 trunked repeater station is considered to include the station channel controller.

All repeaters will be capable of being configured to provide Project 25 trunked voice and data transmission to user radios. All repeaters will be capable of being configured, as either a Project 25 control channel or working channel, and any working channel repeater will be capable of automatically assuming the role of the control channel in the case of a failure of the control channel repeater.

Repeaters shall provide automatic call sign identification that meets the FCC requirements for identifying P25 trunked repeater sites.

The system shall provide the ability to reconfigure individual repeaters through the network backhaul interface. The proposer will indicate the extent to which repeater parameters can be configured remotely, and whether this programming is restricted to repeater parameters or also include repeater software.

In case the proposed system does not operate as described the proposer will describe in detail how the same standards can be achieved.

The Project 25 trunked repeater station shall be controlled and managed through the system management computer, which shall be capable of remotely controlling the following functions;

- Taking a repeater off-line
- Retrieving and setting repeater operating parameters

Physical and Environmental

The Project 25 trunked repeater stations, including repeater and station channel controller, will be housed in standard 19 inch EIA rack mounts. All hardware and software necessary for the

stations to meet the system requirements will be provided.

Although the equipment will reside in temperature-controlled environments, the equipment must be able to operate in temperatures below zero and above 120 degrees.

Components within the repeaters will be of solid-state design.

The repeaters will meet or exceed all applicable FCC requirements and fully comply with EIA standards as they apply to measurement of specifications.

R56 grounding standards will be used when grounding all equipment to include but not be limited to shelters, towers, antennas and electronic equipment.

The environmental control unit will need to automatically sustain the room temperature at a constant 70 degrees, 24 hours a day, 7 days a week, 365 days a year.

The generator must be capable of sustaining the operation of all electronic equipment in case of commercial power failure. The equipment must remain operational during the transition of commercial power and generator power through the use of a UPS system. The generator must have enough fuel capacity to sustain operation through a minimum of 24 hours. The generator must be able to support future power needs in case of expansion of repeater at the site.

The UPS must be a commercial grade UPS, (no inline UPS devices) that will support the proposed radio equipment. When all proposed equipment is operating on the UPS the power used will not be more than 50% of the UPS's power rating or capacity. This will insure the UPS's ability to support future growth if needed.

Shelters will be large enough to accommodate all proposed equipment in 19-inch EIA standard racks and have enough workspace around them for a technician to access the front and back of the rack without the need to move the rack to work on it. There will also be enough room to accommodate three additional 72-inch height 19-inch racks. This will ensure there is enough space for expansion.

The towers will be self supported towers and meet or exceed the EIA 222 specs. The towers must be rated at a minimum of 110 mph wind resistance and support up to ½ inch of ice. The towers will have a 20 foot (or deeper) enhanced chemical ground rod system for grounding. Extra antenna and line loading supports will be required on the tower for additional antennas and coax cables that are non-related to the radio project.

Antenna System

Transmitter combiners and receiver multicouplers will be installed in 19" racks with space available to expand to 24 repeaters.

Receiver multicouplers will be the expandable type and the unused ports must be terminated with 50 ohms. A band pass cavity filter will be supplied with the multicoupler to reject out of band RF signals.

Site Alarms

The system will be capable of detecting the failure of all major equipment items at the repeater site, including at a minimum:

- Repeater operation
- Channel controller operation
- Status of leased landline or microwave link
- Status of antenna system (VSWR)
- Status of tower top amplifier
- Failure of AC power
- Failure of DC power
- Site or rack intrusion alarm

Simulcast System

The basic simulcast system design will be a GPS synchronized digital simulcast system. The system will be capable of automatically adjusting the path delay of any one or all interconnecting paths utilized in the system to compensate for any change.

The trunked simulcast system architecture will be described in detail, with written descriptions of all major system components and their functions. System and site block diagrams will be provided to show the interconnection and the detailed audio/logic signal flow between system elements.

Wide Area Controller

The wide area controller will provide intelligent interconnection of the Project 25 trunked radio sites and dispatch consoles to form a fully integrated radio system supporting wide area voice communications.

The wide area controller will track each Project 25 trunked radio and its affiliated talk group as it roams throughout the coverage area of the multisite network. The wide area controller will route calls to individuals or groups at the appropriate sites. A mobile or portable radio will be de-registered from a site when it logs onto a new site, or after a programmable period of inactivity.

The wide area controller will be capable of interfacing other wide area controllers.

| The wide area controller will also interface with, or be expandable to accommodate, multiple Project 25 conventional radio sites, multiple conventional radio channels, multiple dispatch consoles, centralized telephone interconnect system, DSS and Higher Ground voice logging recorder, Tiburon Computer Aided Dispatching System, Cassidian 911 Telephone system and system management computers. The proposer will provide all software and hardware needed for the interfacing.

Complete control over the wide area controller will be provided to authorize persons through the system management computers.

The wide area controller will include a hot standby backup controller that is geographically separated.

System Management

The system will include at least one system management console, which provides system management of the entire system.

The system will be capable of supporting multiple system management operator consoles operating concurrently at different locations within the wide area network.

Polling and Alarms

The system management computer will support polling and alarms.

System devices, which detect changes in status or operations below specification, will automatically transmit an alarm to the system management computer and the dispatch center with audio and visual indicators. In some cases device failure will prevent the transmission of an alarm; these situations will be detected through polling.

The system management computer will automatically and routinely poll system devices to determine status. The system management computer, to avoid unnecessary polling, should automatically adjust the polling interval. For example, if the device has just reported a change in status through the alarm mechanism.

At minimum, detection of the following alarms must be included:

- RF Power Failure
- Excessive VSWR
- Shelter Door Alarms
- Cabinet Door Alarms
- Line Power Failure
- UPS Power Failure
- Generator Failure
- Smoke Detection
- Humidity Detection
- HVAC Failure
- Low Generator fuel
- Low Battery

The system management computer will provide a hierarchical network topology map, showing all managed devices using color-coding to represent device status.

Through the network topology map it will be possible for the operator to determine the current detailed status of a managed object, by double clicking on the object.

The system management computer will provide a scrollable, time-sorted list of alarm messages sent by managed objects.

It is expected that due to the high reliability of the system, the system management computer console will be unattended most of the time with the operator working in the area on other tasks. The management computer will provide a programmable audible alert, message alert and email alert to notify the operator of changes in the system

Data Base Partitioning and System Security

The system management function will be capable of partitioning the database such that different managers have control only over the units and groups for which they have been authorized.

The system management function will have multiple levels of security access.

The system management computer will support establishing and updating repeater site parameters and remotely enabling and disabling radios.

The system management computer will support the registration of new voice users in the system and assigning voice group membership.

The system management computer will collect and save the following statistics for later analysis;

- Voice traffic volume by subscriber unit per hour
- Voice traffic volume by repeater per hour
- Wide area controller voice traffic volume per hour
- Call activity log with a minimum of;
 - Date, time, and duration of call
 - Type of call (group, unit to unit, emergency)
 - Unit initiating call and voice group number
 - Unit initiating call and target unit number
 - Repeaters and console participating in the call
 - Usage time for each repeater at a site
 - The number of minutes by site that all of the channels at the site are busy

The system management function will permit the operator to run remote diagnostics on managed devices to isolate and trouble shoot faults.

Dispatch Consoles

The proposed system will support dispatch console operation over a district, region, and system wide basis.

Console connectivity to the network controller will use a direct IP interface, allowing consoles to locate wherever IP network connectivity is present. Optional software features for the dispatch console will be field programmable through changes in firmware or software. Adding or deleting of modules and changing module names will be software programmable. The modules must to be configurable by the dispatcher at any given moment.

A dual headset jack will be included for supervisor and operator.

A single footswitch with high durability will be included to provide PTT for the headset. The footswitch will be heavy duty and non-skidding.

The console will support one select audio speaker and one unselect audio speaker.

The supervisory console will have the same features as a normal dispatch console, with the following additions:

- The supervisory console will be able to listen to any of the programmed individual entity radio calls
- The supervisory console will be able to display an emergency declared on an unprogrammed talk group.
- The supervisory console will be able to disable a non-supervisory console
- The supervisory console will physically be the same as other consoles except that it has been programmed to have supervisory capabilities.

The console application will run on the Windows-based operating system, Windows 7 or later. The console will be software driven to allow for access to future features and technologies.

The console will be easy for a properly trained dispatcher to use. It shall enable the dispatcher to perform dispatch tasks efficiently and with minimal confusion due to screen clutter. The displays on the monitor will have clearly distinguishable words so that there is no confusion over the operation function of a particular button. The process of maneuvering through functions on the screen will be possible through the mouse.

The dispatching screen will be able to display the following:

- Talkgroups and Conventional Channels will be pre-configurable and selectable by the dispatcher
- The clock will display in 12 or 24-hour format.
- The console will be a dedicated display
- Emergency calls
- Patches
- Simulselect
- Individual unit alias
- Trunking Talkgroups
- Individual Call
- Conventional Channel
- Another Console
- Status (inbound data message)
- Paging (outbound data messaging)

The console will support up to 100 different modules/talkgroups and will show a busy indicator if the talkgroup is being used, either by subscriber or another console. The console will also allow the dispatcher to mute or route any audio to a select or unselect speaker.

All buttons, modules, or tab labels will be displayed with distinguishable text.

The console will be able to display a call history of select or unselected modules. The call history display will place the most recent call on top of the list.

The console will support patches, which involves temporarily combining two or more modules. The patch merges the entities into a super group, such that each member hears every other member. The console will be able to support up to five patches with up to 15 talkgroups/modules/groups. The console will support pre-configured patch buttons, easily modified by dispatcher.

The console will support simselect, which involves temporarily summing two or more modules at the console. Simselect merges the entities for the benefit of the dispatcher, however does not create a super group. Only the dispatcher can hear all simselect members. The console will support 4 pre-configured simselect buttons with up to 15 different entities/modules/talkgroups/groups.

During emergencies, consoles will give both visual and audible alerts. The module and page with the emergency will be displayed in red. The module and call history will display the alias of the unit declaring the emergency. If an emergency is declared and another emergency already exists, the console will display the number of emergencies on the same talk group/module. If an emergency is declared on a separate talkgroup/module during an emergency, then both talk groups/modules will display red. Both emergencies will display in the call history. The dispatcher will be able to declare an emergency and clear an emergency at the console.

The console will be able to interface to equipment to support a telephone patch. The audio will be routed to a headset. The audio will be routed to the selected speaker with all other audio routed to the unselect speaker during the call. The console will be able to display whether or not the console is involved in a phone conversations. The current phone system being used is Cassidian Patriot System. The proposer will include a block diagram of the phone patching system, including the interface to the P25 radio system.

The console will be able to interface with the voice-logging recorder, DSS and Higher Ground. All input and output console audio must be recorded. The Proposer will provide a block diagram of the logging recorder system, including the interface to the P25 radio system. The Proposer will identify all of the logging recorder vendors that are supported.

The audio levels of the telephone and the radio systems should be compatible.

The console will be able to control conventional channels and provide the following functions:

- Select the station transmit/receive from a pre-defined list.
- Enable the base station to repeat radio audio.
- Enable scan of selected channels
- Enable toggling between main conventional base stations and standby conventional stations.

The City is not opposed to creative alternatives to the proposed P25 simulcast system. List any features not covered in the proposal that you feel are desirable to the city. Please list these features as Advance System Features, so that we know they are features that were not requested, but you feel are of benefit to the City.

Any proposed system not including what the city requested (a 4-site simulcast system within city limits and two 3 channel multi sites in the county), must be on a separate proposal. Please label this proposal as alternative P25 radio system.

3.4 Implementation Plan

The integrated network will be proposed as a complete system with firm prices for all of the equipment, software and services required by these specifications.

Project schedule

The final system acceptance and all related documentation will be completed no later than 18 months after receipt of order.

The proposer will provide a detailed project schedule showing key tasks and milestones. The schedule will include, but is not limited to:

- Final design review date
- System manufacture and integration time frames
- Pre-shipment system acceptance test date
- Shipping dates
- System installation and optimization dates
- Field acceptance test dates
- Installation configuration audit dates
- Coverage testing dates
- Training dates

Project organization

The proposers will provide details on the project organization.

Project Management

The proposer will appoint one individual to act as project manager and serve as the primary point of contact between the City of Midland and proposer on contractual matters. Project management will be provided throughout the implementation of the system by the proposer. At a minimum the services will include;

- Monthly project status reports
- System design and final design reviews
- Implementation planning, scheduling, and coordination
- Management of all system integration activities
- Installation and optimization
- Acceptance testing
- Migration and cutover planning

- Maintenance support
- Subcontractor management to include contractors that may be awarded portions of the project. (Such as shelters, Generators, towers, etc)

Project engineering

The proposer will appoint one individual to act as project engineer and serve as the chief technical authority on the project and primary point of contact between the City of Midland and Proposer on technical issues. Project engineering services will be provided from the final system design through the completion of system acceptance and the warranty period. At a minimum the services will include:

- Final system design and review
- Frequency analysis and planning
- Coverage prediction and acceptance testing
- Fleet map planning
- Implementation support
- Final system documentation
- Resolution of technical problems

The City reserves the right to replace the project engineer if in its sole opinion the project engineer is hampering the project.

Installation Plan

Proposers will provide a detailed plan of installation schedule and procedures to ensure that equipment is installed in a timely logical sequence and in a workmanship like manner.

3.5 Acceptance and Testing

This plan must be comprehensive to prove to the City that the proposed solution has been properly implemented and that the installed equipment is performing to manufacturer and City defined specifications; and that the proposed Solution is ready to be accepted by the City. Acceptance testing will comprise of operational performance test and RF coverage performance tests.

Operational Performance Tests

The operational performance tests will include the following basic test procedures:

- Verify that all equipment is delivered and installed in a workmanship like manner in accordance with the contract.
- Demonstrate that all equipment performs as specified by examination of test data and the rerunning of specific tests if deemed appropriate.
- Proposer will submit with the proposal a sample operational performance test plan.

The proposer will submit with the proposal a sample operational performance test plan. The selected contractor will provide a detailed operational performance test plan to the City for approval least 90 days prior to the planned start of the acceptance test. This acceptance test plan will define the tests to be performed by the contractor for each phase to verify that the equipment and system performs in accordance with the contract specifications.

RF Coverage Performance Tests

The RF Coverage Performance test will be performed independently of the Operational Performance Tests and in accordance with the following basic procedures:

- A test will be performed by traveling over selected routes, which have been previously agreed upon. The test will measure the Bit Error Rates (BER) to predict the Deliverable Audio Quality (DAQ). An independent consulting group will be hired to perform this task. The results will be compared to previous DAQ maps completed in 2010.
- The proposer will submit a proposed coverage acceptance test plan with proposal for verifying radio coverage meets stated requirements. A final coverage acceptance test plan will be agreed upon by City of Midland and proposer prior to contract award to minimize any potential misunderstanding in the interpretation of contractual commitments for system design and delivery.

Radio coverage from an installed site will be demonstrated by measuring the BER in the defined service area surrounding the site. The radio coverage will be measured with an automated mobile test system. The test system measures and records BER, vehicle position, distance traveled, time and frequency. After measuring radio coverage, the recorded data is processed to produce a drive test plot and a statistical distribution of DAQ.

Radio coverage will be verified by measuring talk out signal strength and BER throughout the defined service areas described in section 3.3 Proposed System Description requirements and calculating the percentage of measurements that exceed the required levels for acceptable simulcast performance. The test will be considered to pass if this percentage equals or exceeds the percentage guaranteed within the service area.

A drive route plan will be developed to gather a collection of data points evenly distributed throughout the defined service areas and provide a statically accurate determination of radio coverage performance. The service area will be divided into grids (for example one mile square) to obtain an even or uniform distribution of test locations. The grids will be overlaid onto street maps and a drive test route determined that passes through each grid at least once but not more than twice, as much as is practically possible. Proposer will recommend an appropriate grid size in his proposal.

The test receiver used for coverage acceptance will be reliable, accurate test gear that produces repeatable measurement results and is in conformance with industry standards. The test receiver will perform talk-out signal level, Bit Error Rate measurements at an equal distance interval throughout the entire drive route.

The data records collected from the drive test will be processed for each service area using all mean measurement within the defined service area boundary. The minimum acceptable signal level at the mobile or portable antenna terminals will be adjusted to the measurement reference point using loss factors associated with the mode of operation. A comparison will be made between the mean measurement points in the service area and this adjusted minimum level. Points that meet or exceed the adjusted threshold value are recorded as passed and those below are recorded as failed. The installed radio system coverage is deemed to meet the coverage requirements if, for each service area the ratio of the number of pass points to the total number of points in the service area equals or exceeds the guaranteed signal quality.

3.6 Support Services

Warranty

The basic system pricing will be based on a minimum of 12-month parts and labor warranty from date of system acceptance.

Training

The proposer will provide a description of the cost for training on the operation and maintenance of all equipment provided with the radio system. In general, the proposer will support training as follows:

- Overview training of Project 25 trunked system technology and setting user expectations using a train the trainer methodology.
- Management training of Project 25 trunked system technology and setting user expectations for non-technical personnel using a train the trainer methodology..
- Management training for administrative and management personnel who will be responsible for defining and maintaining the system's configurable parameters.
- Console equipment operator training for dispatchers and their supervisors.
- Maintenance training for technicians on maintaining and troubleshooting all equipment to the unit, board or component level as appropriate.

The proposer will provide a description of each course including the material to be covered, number of hours or days of training per course, prerequisites and the proposer will indicate whether training can be done on premises or proposer's facility. The proposer will bear all travel and living costs for any training at the contractor's facility.

Software Updates

Proposer will quote pricing for software updates, which will extend the life of the system beyond today's technology. Software updates will be released on a regular basis after system acceptance by the proposer for the licensed software programs contained within their proposed system and will include the following:

- Enhancements and or corrections to existing features for all designated systems backbone components.
- New features implemented via the system components already contained within the system
- Software for product migrations where a new generation of software is developed for the designated system component, rather than the older generation of software being updated.

The proposer will offer software service enrollment options and flexible payment plans with cost.

Spare Parts

The proposer will quote, as an option, a complete recommended spare parts package, which will support the maintenance by the City during the first year following system acceptance. Maintenance during the first year will be at the unit or board replacement level with return of units or boards to proposer's service facilities for repair and return. Spare parts will be broken down by types of equipment, i.e., repeater equipment, console equipment, etc.

Test Equipment

Proposer will include a complete itemized list of test equipment needed by the city technicians to support the proposed radio system.

Documentation

Contractors will provide complete operational and maintenance documentation. In addition to user and technical manuals for each piece of equipment, the contractor will supply at least 1 complete set of system manuals for each TX/RX site, dispatch site, local support provider and city communication shop (digital format is acceptable). The manuals will include the following but not limited to:

- System operational overview
- System interconnection and block diagrams
- System trouble shooting procedures
- As built drawings
- RF Control Stations
- Consoles
- RF Control Stations

Maintenance

The proposer will quote annual maintenance pricing for a period of five years following warranty. All costs that are deemed mandatory by the vendor for maintenance support, such as software updates or technology refreshment costs must be included.

4. REQUIREMENTS

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

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

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

Feature	Included In Package*	Will Add or Modify**	Exception Detail
4.1. REQUIRED FEATURES			
4.1.2. Additional frequencies if needed per section 3.3 Radio Frequencies.	☐	☐	
4.1.3. Tower Top Amplifiers per section 3.3	☐	☐	

4.1.4	Extra bandwidth between linking up the radio towers per section 3.3 Wide Area Communications.	☐	☐
4.1.5	Roaming and Handoff per section 3.3	☐	☐
4.1.6.	Voice and Control per section 3.3 Indicate if proposed system is Phase 1 or Phase 2 LMR system	☐	☐
4.1.7.	Radio Disable per section 3.3	☐	☐
4.1.8.	Caller Disable per section 3.3	☐	☐
4.1.9	Caller Identification per section 3.3	☐	☐
4.1.10	System Access by Unauthorized Devices per section 3.3	☐	☐
4.1.11.	Over the air programming per section 3.3	☐	☐
4.1.12.	Encryption and OTAR per section 3.3	☐	☐
4.1.13.	Basic P25 Trunked Operation per section 3.3	☐	☐
4.1.14.	Call Queuing per section 3.3	☐	☐
4.1.15.	Voice Group Priority per section 3.3	☐	☐
4.1.16.	Group Busy Lockout per section 3.3	☐	☐
4.1.17.	Dispatcher Override per section 3.3	☐	☐
4.1.18.	Individual Call per section 3.3	☐	☐
4.1.19.	Emergency Alert and Emergency Call per section 3.3	☐	☐
4.1.20.	Late Call Entry per section 3.3	☐	☐
4.1.21.	Anti-Cloning of Radios per section 3.3	☐	☐
4.1.22.	Interoperability per section 3.3	☐	☐
4.1.23.	City's Interoperability per section 3.3	☐	☐
4.1.24	System Reliability and Fault Tolerance per section 3.3	☐	☐
4.1.25.	Network security and information assurance this includes all information under security per section 3.3	☐	☐
4.1.26.	Network Interoperability per section 3.3	☐	☐
4.1.27.	Continuity and disaster recovery per section 3.3	☐	☐
4.1.28.	Computer security per section 3.3	☐	☐
4.1.29.	LMR life cycle of all proposed equipment per section 3.3	☐	☐
4.1.30	System performance requirements under section 3.3 to include Voice, expansion capability, failover, interoperability, repeaters.	☐	☐
4.1.31	Project 25 Trunked repeater stations per section 3.3	☐	☐
4.1.32.	Physical and Environmental standards per section 3.3	☐	☐

4.1.33. Antenna System requirements per section 3.3	☐	☐
4.1.34. Provide all Site Alarms mentioned in section 3.3	☐	☐
4.1.35. Provide description of Simulcast System per section 3.3	☐	☐
4.1.36. Wide area controller interface with described systems in section 3.3, Wide Area Controller.	☐	☐
4.1.37. System Management computer will meet all requirements under System Management, Polling and Alarms, and data base partitioning in section 3.3	☐	☐
4.1.38. Meet all console requirements under section 3.3 Dispatch Consoles	☐	☐
4.2.1. IMPLEMENTATION PLAN	☐	☐
4.2.2. Can meet all requirements under Implementation plan in section 3.4 to include, Project schedule, Project organization, Project Management, Project engineering, and installation plan.	☐	☐
4.3.1 SUPPORT SERVICES	☐	☐
4.3.2. Warranty per section 3.6	☐	☐
4.3.3. Training per section 3.6	☐	☐
4.3.4. Pricing for software updates per section 3.6	☐	☐
4.3.5. Spare equipment and parts per section 3.6	☐	☐
4.3.6. Test equipment per section 3.6	☐	☐
4.3.6. Documentation per section 3.6	☐	☐
4.3.7. Maintenance per section 3.6	☐	☐

5. VENDOR QUALIFICATIONS

5.1. INFORMATION VERIFICATION

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

5.2. RIGHT TO REJECT

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

5.3. VENDOR CAPABILITIES

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

5.3.1. References

- 5.3.1.1. Offeror shall provide a minimum of 5 references within the state of Texas 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's telephone number, a complete description of the service type, and dates the services were provided. The City reserves the right to use any information or additional references deemed necessary to establish the ability of the offerors to perform the conditions of the contract. Negative references may be grounds for proposal disqualification.
- 5.3.1.2. These references should include City government where the offeror, preferably within the last 5 years, has successfully completed a new P25 implementation.

5.3.2. Vendor Stability

- 5.3.2.1. Offerors shall demonstrate their financial stability to supply, install and support the services specified.
- 5.3.2.2. Provide audited financial statements for the 5 consecutive years immediately preceding the issuance of this RFP.
- 5.3.2.3. Provide copies of any quarterly financial statements that have been prepared since the end of the period reported by your most recent annual report.
- 5.3.2.4. Offerors shall specify how long the company submitting the proposal has been in business (doing similar projects).

6. EVALUATION PROCESS

6.1. EVALUATION PROCEDURE

6.1.1. Committee Actions

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

6.2. EVALUATION CRITERIA

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

(Note: The percentage weight is shown next to the criteria)

6.2.1. Company References and Qualifications- 5%

6.2.2. Implementation Plan-5%

6.2.3. Cost Analysis-15%

6.2.4. Guaranteed radio coverage-30%

6.2.5. Interoperability with other systems-15%

6.2.6. Features and functions provided-10%

6.2.7. Fault tolerant design-10%

6.2.8. System redundancy-10%

If any proposal earns less than 70% of any single evaluation criteria, the proposal will be disqualified.

7. PROPOSAL CONTENTS

7.1. THE RFP

7.2. THE COST SUMMARY OR PROPOSAL FORM

THE COST SUMMARY WILL INCLUDE BUT NOT LIMITED TO THE FOLLOWING;

- PER SITE
 - COST OF TOWER
 - ENVIROMENTAL CONTORL UNIT
 - SHELTER
 - GENERATOR
 - UPS
 - FENCE
 - CONCRETE PAD
 - COST OF REPEATERS PER CHANNEL
 - MICROWAVE LINKS FROM EACH SITE
 - WIDE AREA CONTROLLER
 - COMPUTERS
 - SWITCHES
 - SOFTWARE TO INCLUDE ISSI
 - DISPATCH CONSOLES
- PROJECT MANAGER
- PROJECT ENGINEER
- TRAINING PER STUDENT
 - OVERVIEW TRAINING
 - MANAGEMENT TRAINING
 - ADMINISTRATIVE TRAINING
 - MAINTENANCE TRAINING
 - DISPATCHER TRAINING

- FUTURE SOFTWARE UPDATES
- SPARE PARTS
- TEST EQUIPMENT
- ANNUAL MAINTANCE COST PER YEAR
- PORTABLE AND MOBILE RADIO COST (ALL MODELS AVAILABLE THAT MEET THE FOLLOWING CRITERIA), TO INCLUDE RADIO SOFTWARE FOR THE RADIO TO OPERATE IN A P25 SIMULCAST TRUNKED RADIO SYSTEM, P25 SIMPLEX, OTAR, ENCRYPTION, INTRINSIC SAFE, SOFTWARE.

7.3. REQUESTED ATTACHMENTS

7.3.1. References

7.3.2. Resumes

7.3.3. Business Plan

7.3.4. Financial Information

7.3.5. Signed Execution of Offer

EXECUTION OF OFFER

Date:

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

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

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

This offer consists of pages number 1 through _____.

Offeror/ COMPANY: _____

SIGNATURE (INK): _____

NAME: (TYPED/PRINTED) _____

TITLE: _____

STREET: _____

CITY/STATE/ZIP: _____

TELEPHONE: _____ FAX: _____

E-MAIL ADDRESS: _____

**City of Midland, Texas
RFP #5246-12**

P25 800 Mhz Simulcast Trunked Land Mobile Radio System(LMR)

Per site	Cost
Tower cost and construction	
Environmental Control Unit	
Shelter	
Uninterrupted Power System	
Generator	
Fence	
Concrete Pad for shelter	
Cost of repeater per channel (each)	
Microwave Links from site	
Wide Area Controller	
Network switches	
Software to include ISSI	
Dispatch Consoles	
Installation and Implementation	
Project Manager	
Project Engineer	
Total cost per site	
Training cost per student	
Overview training	
Management training	
Administrative Training	
Maintenance Training	
Dispatcher Training	

Total cost for training

Spare Parts and Test Equipment

Spare Parts (if any)
Test Equipment

Total cost of spare parts and test equipment

Total cost of P25 simulcast LMR system

Annual Maintenance

Future cost of software upgrades for proposed system
Annual Maintenance cost per year for proposed system

Total Annual Maintenance cost

Cost of portable and mobile radios supplied by your company

Portable radio single unit cost (list all that meet requested software in section 7.2)
Mobile radios single unit cost (list all that meet requested software in section 7.2)

Company Name

Signature

Print Signature

EXHIBIT C

Bonding Requirements

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

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

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

BID BOND

THE STATE OF TEXAS §

SURETY NO. _____

COUNTY OF MIDLAND §

KNOW ALL MEN BY THESE PRESENTS, THAT _____

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

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

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

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

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

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

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

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

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

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

Principal

Surety

By _____

By _____

Address _____

Address _____

APPROVED AS TO FORM:

City Attorney

NOTE: ATTACH POWER OF ATTORNEY

IMPORTANT NOTICE

Conflict Of Interest Reporting Requirements

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

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

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

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

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

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

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

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

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

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

City of Midland

Attn: City Secretary

P. O. Box 1152

Midland, Texas 79702

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor or other person doing business with local governmental entity

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

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

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

OFFICE USE ONLY

Date Received

1 Name of person doing business with local governmental entity.

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

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

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

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

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: _____

**No-Bid
Response
For**

Request #: 5246-12 Mobile Radio Installation

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

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

Fax to: (432) 685-0523

or

Email: purchasing@midlandtexas.gov

Please Check all reasons below that apply:

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

Company Name: _____

Authorized Officer or Agent Signature: _____

Telephone Number: _____ Fax: _____

Email Address: _____

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



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 7/24/2012

TO: City Council / City Manager

FROM: Marv Esterly, Director of Airports

SUBJECT: Consider a resolution authorizing the execution of Land Lease Agreement for Airport Hangar Facility between COG REALTY LLC and the City of Midland, Texas in Lot 4B, Block 11, (Lease Tract 5) Midland International Airport, Industrial Park Addition, Section 6, Midland County, Texas.

Purpose:

Consider a resolution authorizing the execution of Land Lease Agreement for Airport Hangar Facility between COG REALTY LLC, and the City of Midland, Texas in Lot 4B, Block 11, (Lease Tract 5) Midland International Airport, Industrial Park Addition, Section 6, Midland County, Texas.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Total Annual Rent: \$26,438.85

Discussion:

COG Realty LLC. is requesting a Land Lease Agreement to Lease Tract #5 in the new hangar development area for the construction of a private hangar. The Airport Land Lease Agreement is our standard agreement recently approved for a term of 40 years with CIP adjustments every 36 months. Once this agreement is executed, COG Realty LLC. will submit building plans to both the Director of Airports and the City Building Official for approval. Once approved, a building permit will be issued and construction will begin. At the end of the 40-year term, all hangar improvements will revert to the City of Midland.

RESOLUTION NO.

**RESOLUTION AUTHORIZING THE EXECUTION OF A
LAND LEASE AGREEMENT WITH COG REALTY LLC
FOR HANGAR DEVELOPMENT LOCATED ON A 1.35
ACRE TRACT OF LAND LOCATED IN LOT 4B, BLOCK
11, MIDLAND INTERNATIONAL AIRPORT,
INDUSTRIAL PARK ADDITION, SECTION 6, AN
ADDITION TO THE CITY OF MIDLAND, MIDLAND
COUNTY, TEXAS**

WHEREAS, the City Council finds it to be in the public interest to authorize the execution of a land lease agreement with COG Realty LLC, to lease land from the City at the Midland International Airport, Industrial Park Addition, Section 6; and

WHEREAS, the Director of Airports and City Manager recommend that the Council approves this lease to develop the Midland International Airport, Industrial Park Addition, Section 6; and

WHEREAS, changes have been made to the City's standard lease but that Council accepts the Director of Airports recommendation to modify the City's standard lease in order to facilitate development;

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

THAT the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, the lease agreement with COG Realty LLC, in the form shown in Exhibit "A", attached hereto and made a part hereof for all legal purposes.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Marv Esterly, Director of Airports

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

MIDLAND INTERNATIONAL AIRPORT
LEASE AGREEMENT FOR AIRPORT HANGAR FACILITY

STATE OF TEXAS

COUNTY OF MIDLAND

THIS LEASE AGREEMENT (this “**Agreement**”) made and effective this 25th day of July, 2012, (the “**Commencement Date**”) by and between the CITY OF MIDLAND, TEXAS, a municipal corporation, (hereinafter referred to as “**City**”), and COG REALTY LLC, a limited liability company organized and existing under and by virtue of the laws of the State of Texas (hereinafter referred to as “**Lessee**”);

WITNESSETH:

WHEREAS, the City owns and operates the Midland International Airport, located in the City of Midland, Texas, hereinafter referred to as “**Airport**”; and

WHEREAS, Lessee desires to lease, use, develop, and/or operate on certain Airport land and/or improvements (the “**Airport Improvements**”) and/or engage in certain aeronautical activities including, without limitation, the landing, taking off, taxiing, parking, loading and unloading of aircraft of its choice and the repair, maintenance, conditioning and servicing of such aircraft and all activities reasonably necessary in connection therewith (“**Activity**” or “**Activities**”) at the Airport, as such permitted Activities are more particularly described in Article VIII of the Airport Minimum Standards (as hereinafter defined); and

WHEREAS, City desires to lease to Lessee and allow the use, development, construction and/or operation on certain Airport land and/or improvements and/or grant the privilege of engaging in certain Activities at the Airport to Lessee, in accordance with the terms herein and to grant access to Lessee to the Leased Premises, as such term is defined below.

NOW, THEREFORE, for and in consideration of the covenants and conditions herein stated, City and Lessee agree as follows:

ARTICLE 1.
DEFINITIONS

Definitions of the terms and phrases used in this Agreement are provided herein or in Exhibit A attached hereto.

ARTICLE 2.
GRANT OF LEASE

A. **Leased Premises**: City agrees to lease to Lessee certain City-owned land located at Midland International Airport, and being more particularly described on Exhibit B attached hereto and incorporated herein by reference; said land together with the improvements located

thereon, if any, hereinafter being referred to collectively as the “**Leased Premises.**” The rights granted herein to Lessee may be exercised by Lessee or by an affiliate of Lessee, or Lessee’s or such affiliate’s guests, employees and invitees.

B. **Easements**: This Agreement shall be subject to such easements, rights-of-way, drill sites, or other rights or reservations affecting the Leased Premises which are of record as of the date of this Agreement.

C. **Acceptance of Leased Premises**: Lessee accepts the Leased Premises, including all fixtures, apparatus and equipment located therein and BY EXECUTING THIS AGREEMENT THE LESSEE AGREES AND ACKNOWLEDGES THAT EXCEPT AS OTHERWISE SET FORTH IN THIS AGREEMENT, LESSEE IS LEASING THE LEASED PREMISES “**AS IS**” WITH ANY AND ALL LATENT AND PATENT DEFECTS AND THAT THERE IS NO WARRANTY, EXPRESS OR IMPLIED BEING MADE BY THE CITY THAT THE LEASED PREMISES ARE FIT FOR A PARTICULAR PURPOSE. LESSEE ACKNOWLEDGES THAT EXCEPT AS OTHERWISE SET FORTH IN THIS AGREEMENT, LESSEE IS NOT RELYING UPON ANY REPRESENTATION MADE BY THE CITY WITH RESPECT TO THE CONDITION OF THE LEASED PREMISES BUT IS RELYING UPON LESSEE’S EXAMINATION OF THE SITE. LESSEE ALSO RECOGNIZES BY EXECUTING THE LEASE, THAT EXCEPT AS OTHERWISE SET FORTH IN THIS AGREEMENT, THE LESSEE IS AGREEING TO LEASE THE LEASED PREMISES “**AS IS**” THAT LESSEE AGREES TO MAKE LESSEE’S OWN APPRAISAL OF THE LEASED PREMISES AND TO ACCEPT THE RISK THAT LESSEE MAY BE WRONG. THE CITY GIVES NO ASSURANCES, EXPRESS OR IMPLIED CONCERNING THE VALUE OR CONDITION OF THE LEASED PREMISES LEASED. IN NO EVENT SHALL LESSEE OR CITY HAVE A RIGHT TO RECOVER CONSEQUENTIAL DAMAGES. THEREFORE, EXCEPT AS OTHERWISE SET FORTH IN THIS AGREEMENT, THE LESSEE WILL TAKE THE LEASED PREMISES UNDER THE EXPRESS UNDERSTANDING THE LEASED PREMISES ARE ACCEPTED “**AS IS**” AND WITH ALL FAULTS.

D. **Design Guide and Standards (Exhibit C)**: Any and all improvements made upon the Leased Premises including, but not limited to, an aircraft hangar (the “**Lessee Improvements**”) must be in accordance with the Design Guide and Standards for Private Hangars (Exhibit C) attached and made a part of this agreement.

ARTICLE 3. TEMPORARY CONSTRUCTION EASEMENT

A. Upon Lessee’s request to the City, the approval of such request not to be unreasonably withheld, conditioned or delayed, City shall grant a temporary construction easement (“**Easement**”) to Lessee for construction storage and staging in connection with the construction of the Lessee Improvements, utilizing the form of Temporary Construction Easement attached hereto as Exhibit D. The Easement shall encompass only as much of the Airport as Lessee believes is reasonably necessary to accomplish construction of the Lessee Improvements, with rights of ingress and egress for the construction. Said Easement shall

automatically terminate upon completion of Lessee's construction of the Lessee Improvements on the Leased Premises.

B. In connection with any entry or work conducted by Lessee on the Leased Premises or on other Airport property, Lessee shall indemnify and hold City harmless from any loss or damage, including costs, expenses and reasonable attorney's fees resulting from such entry or work, except to the extent such loss or damage was due to the City's negligence or willful misconduct.

ARTICLE 4. USE OF LEASED PREMISES

A. **All uses allowed for a Privately Owned Non-Commercial Hangar Facility, as provided by the Airport Minimum Standards (Article VIII)**: Lessee shall be permitted to engage in the Activities at the Leased Premises and the Leased Premises shall be used in accordance with Article VIII, Section 8.01 of the Airport Minimum Standards entitled "**Privately Owned Non-Commercial Hangar And Aviation Fuel Dispensing Facilities**" (referred to hereafter as "**Airport Minimum Standards**"), a complete copy of which has been provided to Lessee is incorporated herein by reference. All other activities conducted upon the Leased Premises, shall be in conformance with Article VIII of the City's Airport Minimum Standards. Such standards may be duly amended from time to time by the Midland City Council in their reasonable discretion, provided that notwithstanding anything contained herein to the contrary, in no event shall such amendments to the Airport Minimum Standards materially increase Lessee's obligations under this Agreement or materially diminish Lessee's rights under this Agreement. City agrees to provide Lessee with written notice not later than thirty (30) days prior to adoption of changes to the Airport Minimum Standards which would apply to Lessee's Activities or operations. Any such changes shall apply to Lessee or the Leased Premises no sooner than sixty (60) days after written notice of final adoption of such change by the Midland City Council has been delivered to Lessee.

B. Lessee agrees not to engage in any other activity on the Leased Premises other than those uses or Activities specifically permitted under this Agreement, and agrees not to use, develop, or occupy the Leased Premises in any manner contrary to Article VIII of the Airport Minimum Standards for any purpose other than that specified in this Agreement, without the prior express written consent of City.

C. **Prohibited Products, Services, and/or Uses**: The following products, services, and/or uses are prohibited on the Leased Premises:

- a. Sale of commercial or retail products and/or services; and
- b. Any products, services, and/or uses prohibited by applicable law.

D. **Sponsor Grant Assurances**: In accordance with the Sponsor Grant Assurances (herein so called) required to be given pursuant to the Federal Airport Act of 1946 as a condition to receiving Federal and/or State funds, the granting of rights and/or privileges to engage in Activities shall not be construed in any manner as affording Lessee any exclusive rights, other than the exclusive use of the Leased Premises and any land and/or improvements that may be

leased to Lessee and then only to the extent provided in this Agreement. Accordingly, City reserves the right to grant to others the privilege to engage in or conduct a similar activity on other areas of the Airport property not encompassed by the Leased Premises.

E. **Use of Airport:** During the Term, Lessee may use, in common with others, the existing and future aeronautical and/or public facilities at the Airport (the “**Public Facilities**”), subject to and in full compliance with all applicable rules and regulations pursuant to this Agreement. The Public Facilities shall mean the landing areas, any extensions and additions to the landing areas, roadways, aprons, and any air navigation facilities or other conveniences for the flying, landing, and taking-off of aircraft. City shall maintain the Public Facilities in good condition and repair and in compliance with applicable law. Lessee shall be solely liable for and shall reimburse City for all costs incurred by City for the repair of any damage caused by Lessee to the Public Facilities, excluding ordinary wear and tear.

F. **Access to Airport:** City shall construct and thereafter maintain all roads on the Airport giving access to the Leased Premises in good condition and repair for use by cars and trucks and shall maintain free and uninterrupted access to the Leased Premises over said roads at all times.

G. **Right to Use Airport:** Lessee and Lessee’s employees, and guests shall have the right to use that part of the Airport and its facilities not included within the Leased Premises (including all parking areas and all roads providing access to the Leased Premises) in common with others authorized to do so. Such use shall be subject to any and all applicable federal, state or local laws, ordinances, statutes, rules, regulations, or orders of any governmental authority, lawfully exercising jurisdiction over the Airport or the activities of Lessee, including any limitations, restrictions or prohibitions affecting the aviation activities or operations of Lessee.

H. **Vehicular Operations on the Airfield:** No vehicles of Lessee, its employees, guests or invitees will be allowed to operate on, or cross, the runway and taxiway movement areas and their respective safety areas of the Airport. When necessary, Airport Operations Control Center personnel will provide Lessee escorted access to and from the airfield area.

I. **Airport Certification Rules and Regulations:** Lessee and Lessor shall each comply with such rules that pertain to its operation on the Airport under the Airport Certifications Rules of Federal Aviation Regulations Part 139, as amended [14 CFR Part 139], as amended.

J. **Airport Security Rules and Regulations:** Lessee, its employees, guests and contractors shall comply with all federal and local Airport security regulations adopted by the City or the Department of Airports as such rules and regulations exist or may hereafter be amended. LESSEE AGREES TO INDEMNIFY AND HOLD HARMLESS THE CITY, ITS OFFICERS AND EMPLOYEES, from any charges, fines or penalties that may be assessed or levied by the FAA and/or TSA by reason of the NEGLIGENT OR INTENTIONAL FAILURE OF LESSEE, ITS DIRECTORS, OFFICERS, EMPLOYEES, OR CONTRACTORS to comply with such Airport security regulations.

K. **14 C.F.R. Part 77 Requirements**: Lessee agrees to comply with the notification and review requirements set forth in Part 77 of the Federal Aviation Regulations [14 CFR Part 77] in the event any future structure, antenna or building is planned for the Leased Premises, or in the event of any planned modification of any present or future building, antenna or structure located on the Leased Premises.

L. **Control of Structures**: Lessee shall not erect nor permit the erection of any structure or object, nor permit the growth of any tree on the Leased Premises which highest point is above a mean sea level elevation established by the FAA and City as a height limitation on such structures or objects at the Leased Premises. City reserves the right upon reasonable advance written notice to Lessee and opportunity to cure to enter upon the Leased Premises and to remove the offending structure or object or cut the offending tree, at Lessee's reasonable expense.

M. **Aerial Approaches**: City reserves the right to take any action it considers reasonably necessary to protect the aerial approaches of the Airport against obstruction together with the right to prevent Lessee from erecting or permitting to be erected any building or other structure on or adjacent to the Airport which, in the reasonable opinion of the City (determined in accordance with applicable law), would limit the usefulness of the Airport or constitute a hazard to aircraft.

N. **Right of Over-flight**: There is hereby reserved to the City, for the use and benefit of the public, a right of flight for the passage of aircraft above the surface of the Leased Premises, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used for navigation of or flight in the air, using said airspace for landing at, taking off from or operating on the Airport.

O. **Ingress and Egress**: Lessee, its employees, guests, and invitees shall have the right of ingress and egress to and from the Leased Premises across the Public Facilities or other non-leased areas of the Airport. If the rights granted by this provision adversely affect Airport operations, City shall have the right, upon prior notice to Lessee, to restrict and/or limit hours in which such rights may be exercised, provided such restrictions do not unreasonably affect Lessee's ability to access and use the Leased Premises.

ARTICLE 5. TERM

Term: The primary term of this Agreement shall commence on the date hereof (the "**Commencement Date**"), with rent payments commencing on the 1st day of the month following the earlier of (i) 270 days from the "**Delivery Date**" (defined below) or (ii) the issuance of a Certificate of Occupancy for the Lessee Improvements constructed on the Leased Premises (the "**Rent Commencement Date**"), and shall expire on the fortieth (40th) anniversary date of the Rent Commencement Date, unless terminated at an earlier time as permitted by the terms of this Agreement (the "**Term**"). The pro rata Rent attributable to any partial month of occupancy by Tenant under (ii) above shall be paid with and in addition to the first rent payment. One Hundred Eighty (180) Days prior to the end of the Term, Lessee may by written notice request that the City begin negotiations to extend the Term of this Agreement. If Lessee is not

then in default of this Agreement, City shall promptly begin negotiations to extend the Term on market terms. From and after the Delivery Date, Lessee shall have possession of the Leased Premises for the exclusive purpose of construction of the Lessee Improvements pursuant to the terms contained hereinafter. The “**Delivery Date**” refers to the date which is the latter of (i) Lessee’s receipt of written notice from City that City has fulfilled City’s obligation to install (at its cost) all underground electric, water and sewer services and paved roads/access to the boundary of the Leased Premises and (ii) the Final Plans are approved by City, as evidenced by the issuance of a building permit by City.

ARTICLE 6. RENT

A. As rent for the Leased Premises, Lessee shall pay in lawful money of the United States of America the following amounts to City. Rent payments shall begin on the Rent Commencement Date as more fully described in Article 5.

- (1) During the Term, and subject to the provisions of paragraph B below, Lessee agrees to pay to City annual rent for the Leased Premises as follows: Forty Five Cents (\$0.45) per square foot (\$26,438.85 per year), payable monthly (\$2,203.24 per month), and due on the first day of each month. For purposes of calculating the amount of rent due under this Agreement, the amount of square footage for ground and facilities being rented is agreed by the parties to be 58,753 square feet.
- (2) Payments of rents shall be made to City monthly (in installments equal to 1/12 of the annual rent) in advance on the first (1st) day of each month without notice or demand. At its option, Lessee may pay the total annual rent due in advance on or before the anniversary of the Rent Commencement Date. Payment shall be absolutely net to City and shall be made without any abatement, deductions, reductions, set offs, or counterclaims of any kind, except as otherwise set forth herein. The rent for any partial month will be prorated.
- (3) A late charge of one-half of one percent (.5%) per month shall be automatically added to any installment of rent not received by City by the close of business fifteen (15) days following Lessee’s receipt of written notice of such late payment. The late charge shall become part of the rent due and owing to City. Additional late charges of one-half of one percent (.5%) shall be imposed for each thirty (30) day period any payment remains due and owing. Such charges shall also become part of the rent which is due and owing to City. If these charges ever exceed any legally authorized maximum rate, then the charges shall automatically be reduced to the maximum legal rate.

B. **Rental Adjustments**: It is agreed and understood that provision must be made herein for an adjustment of the rental rate every three years. Therefore, effective on the third (3rd) anniversary of the Rent Commencement Date (and each successive third (3rd) anniversary of the Rent Commencement Date), the monthly rent shall be increased only in the same proportion or percentage by which the cost of living has been increased as reflected by the Consumer Price Index for All Items, as maintained by the United States Government’s

Department of Labor, Bureau of Labor Statistics for the Dallas/Fort Worth SMA; such increase being measured by comparison with such cost-of-living indices at the end of the immediately preceding 36-month period of this Agreement, as compared with the indices at the commencement of the immediately preceding 36-month period of this Agreement; provided however, if such calculation results in a rental rate increase in excess of nine percent (9%) for the applicable time period, the rental adjustment shall be capped for such period at nine percent (9%). In no event shall the annual rent be less than \$0.45 per square foot (\$26,438.85). Any additional rent for applicable period shall be due within ten (10) days of Lessee's receipt from City of the calculation of the rental adjustment.

C. All payments shall be made to City of Midland and sent to the attention of the Director of Airports, at City's address stated in Article 40. The failure to make any payment when due may result in a termination of the Agreement as provided in Article 13.

ARTICLE 7. FEES

Lessee will pay any and all reasonable fees applicable with respect to Lessee's Activities and lease of the Leased Premises, but only to the extent such fees are charged to all tenants/users of the Airport. Lessee will obtain, at their sole cost, all building permits required by the City.

ARTICLE 8. IMPROVEMENTS AND ALTERATIONS

A. Within two hundred seventy days (270) days after the Delivery Date of this Agreement, Lessee shall commence construction of the Lessee Improvements in conformance with the applicable portions of Article VIII of the Airport Minimum Standards and the Design Guide and Standards For Private Hangar as shown on Exhibit C attached hereto and incorporated herein for all purposes, at its own cost and expense, subject to events of Force Majeure or a delay caused by the City (e.g. a delay in approving the Final Plans (defined below)).

B. Within one hundred twenty (120) days after the Commencement Date of this Agreement, Lessee shall submit to the Director of Airports and Building Official for City's approval the final plans and specifications ("**Final Plans**") for the proposed Lessee Improvements. Such submission shall include, at a minimum, a site plan showing the location of the Lessee Improvements and any off-site improvements in relation to the boundaries of Leased Premises, elevated views, architectural renderings, landscaping plans, and complete detailed construction plans, specifications, and related details and schedules, provided that City acknowledges its receipt of, and approves, the Site Plan. City agrees to use its good faith efforts to review Lessee's submission of its Final Plans and provide a response to Lessee as soon as possible, but in no event longer than fourteen (14) days after Lessee's submission of such Final Plans. In the event City rejects the Final Plans, City must send Lessee a written statement indicating the reasons such Final Plans were rejected together with a recommendation to Lessee of the types of changes that should be made in order for the revised Final Plans to be approved.

C. The size, scale, quality, and quantity of the Final Plans shall be in accordance with City ordinances. The Final Plans shall be consistent with any preliminary plans previously

submitted to the City and shall provide for construction and/or alterations which are first class, safe, fire resistant, and architecturally compatible with the character of the Airport.

D. The Lessee Improvements shown on the proposed Final Plans shall be designed such that the Lessee Improvements, once constructed, shall be in compliance with all applicable laws, ordinances, regulations, and codes of the City. In the event City and Lessee are unable to agree on the Final Plans by the date that is two hundred seventy (270) days following the Commencement Date, Lessee shall have a right to terminate this Agreement and the parties will be free of any and all rights and obligations under this Agreement except for any rights and obligations that expressly survive the termination of this Agreement.

E. Once the Final Plans have been approved by City, Lessee shall, at its own cost and expense, construct the Lessee Improvements in accordance with the Final Plans and requirements of this Agreement. Lessee shall be entitled to receive a certificate of occupancy when all Lessee Improvements are completed in accordance with City ordinances and regulations.

F. At any time construction activities are undertaken on the Leased Premises, Lessee shall require that its contractor or contractors keep in force insurance issued by a responsible insurance company or companies authorized to conduct business in the State of Texas insuring the Lessee Improvements during construction under Completed Builder's All Risk Insurance, including fire, extended coverage, vandalism and malicious mischief, in an amount equal to the full insurable value of such construction as the same progresses in order to insure continuity of construction and ultimate completion despite damage or destruction suffered during the course thereof. ALL PROPERTY INSURANCE SHALL PROVIDE FOR A WAIVER OF SUBROGATION IN FAVOR OF THE CITY. Lessee shall require all contractors performing construction work on the Leased Premises to provide payment and performance bonds issued by a responsible bonding company or companies authorized to conduct business in the State of Texas for the full amount of the cost of the construction to be performed on forms which are in compliance with Tex. Gov't Code Art. 2253, as amended with the City as a co-payee or protected party. The foregoing shall be made a part of any contract between Lessee and its contractor or contractor. In the event Lessee does not complete the construction work itself, it shall comply with the all-risk insurance provisions hereof.

G. The construction and/or alterations shall be performed by qualified, responsible and reputable contractors, subcontractors and suppliers, all of whom shall be subject to City's approval in advance of commencing work, which approval shall not be unreasonably withheld, conditioned or delayed, and all work shall be secured with payment and performance bonds, as set forth above. Such contractors, subcontractors and suppliers at all times shall cooperate with other employees and workers at the Airport so as to avoid the occurrence of any disturbance, disruptions, or conflict in all or any part of the Airport or in connection with its operations. The construction shall be completed in a good and workmanlike manner and in compliance with all applicable laws, ordinances, regulations, and codes.

H. Subject to subsection E above, Lessee shall, at its own expense, pay all costs associated with installation of water lines, sewer lines, telephone and telephone lines, gas lines, and any other utilities or equipment from the boundary of the Leased Premises to the Lessee

Improvements. It shall be the responsibility of City at its sole cost and expense to bring all paved roads/access, water lines, sewer lines, telephone and telephone lines, gas lines, and any other utilities or equipment underground to the boundary of the Leased Premises to enable Lessee to connect the Leased Premises to such services. Lessee shall construct any required security fencing around the Leased Premises in accordance with the Midland International Airport Security Program in existence as of the Commencement Date. Lessee shall, at its own expense, procure all governmental permits and approvals required for or in connection with the construction of the Lessee Improvements and Lessor shall assist and cooperate with Lessee in all reasonable respects in connection with obtaining same.

I. During the construction of the Lessee Improvements, Lessee shall store all materials, supplies, machinery and equipment associated therewith in a safe and orderly fashion so as to not interfere with the work and operations of City and any other Airport users. Lessee shall comply with the Design Guide and Standards for Private Hangars attached hereto as Exhibit C and the Midland International Airport Master Plan (last updated November, 2002) and all contractors, subcontractors, and suppliers shall comply with the applicable portions of Article VIII of the Airport Minimum Standards, Rules and Regulations and all other applicable Regulatory Measures. Upon completion of the Lessee Improvements and off-site improvements, if any, Lessee shall deliver one set of “as built” drawings to City. The building materials and design shall substantially conform to the graphic renderings submitted to the City during the approval process of the Final Plans.

J. In the event that Lessee fails to comply with any of the provisions of this Article 8 following the expiration of any notice and applicable cure period set forth in Article 13 hereof, including the failure to construct the Improvements substantially in accordance with the approved Final Plans unless otherwise agreed to by City, which agreement shall not be unreasonably withheld, conditioned or delayed, City may, in addition to any other remedies available to City, terminate this Agreement pursuant to Section 13.K hereof.

K. **Encumbrance of Leasehold Estate:** Lessee shall at no time encumber or attempt to encumber its leasehold interest in the Leased Premises by deed of trust, mortgage, security agreement or other security interest without the prior written consent of the City Council, which consent shall not be unreasonably withheld, conditioned or delayed.

L. **Ownership of the Improvements:** Ownership of the Lessee Improvements, free of any liens, encumbrances or back taxes, shall revert to City at no cost to City upon expiration of this Agreement. However, upon the expiration or earlier termination of this Agreement, to the extent of (a) any material nonstructural alterations to the Improvements, the construction of which had not been previously approved by City (to the extent such approval was required pursuant to the terms of this Agreement) or (b) any Improvements (or portions thereof) which shall be the subject of a continuing maintenance default (following the expiration of all applicable notice and cure periods), City shall have the right by delivering written notice to Lessee prior to said expiration or earlier termination of this Agreement, to require that Lessee (as Lessee’s election in Lessee’s sole discretion) either (i) demolish and/or remove said nonstructural alterations or Improvements (or portions thereof) not so approved or which shall be the subject of a continuing maintenance default, as applicable, or (ii) as to Improvements (or

portions thereof) which shall be the subject of a continuing maintenance default, repair same to a good and working condition, ordinary wear and tear excluded.

ARTICLE 9. RIGHTS AND PRIVILEGES OF LESSEE

In addition to the other rights granted to Lessee in this Agreement, City does hereby grant to Lessee and Lessee does lease from City the following rights and privileges:

Lessee may install in or upon the Leased Premises all such fixtures, machines, tools, equipment, or other items of personal property as it deems necessary in connection with the uses or Activities authorized in this Agreement. Any personal property belonging to Lessee located on the Leased Premises and/or in the Lessee Improvements located thereon shall be there at the sole risk of Lessee. City shall have no liability or responsibility for any theft, misappropriation or damage to any personal property belonging to Lessee. Lessee shall be entitled (but at its own risk of default of any other agreement whose terms may prohibit such removal) during the Term of this Agreement to remove from the Leased Premises, or any part thereof, all aircraft, tools, machinery, equipment, trade fixtures and non-structural improvements located thereon; provided, however, that all buildings from which any property is so removed shall be restored by Lessee in such manner that the buildings are not materially damaged (i.e., restored to same condition that existed before installation or placement of the property, normal wear and tear excepted) and that those items removed are not required by the applicable portions of Article VIII of the Airport Minimum Standards in order to engage in the authorized Activities. Lessee shall remove all equipment, fixtures, and personal property as specified in this Agreement within five (5) days of termination or expiration of this Agreement. Subject to the rights of any party holding a superior security interest in the equipment, fixtures, and systems, if Lessee fails to remove such property from the Leased Premises within five (5) days of termination or expiration of this Agreement, then the City retains the right to remove and store or have removed and stored at the reasonable expense of Lessee all equipment, fixtures, and systems and Lessee agrees to pay City for such expense within thirty (30) days after receipt of an invoice from City.

ARTICLE 10. RIGHTS AND PRIVILEGES OF CITY

In addition to all other rights and privileges reserved by City including those outlined under the Sponsor Grant Assurances, City reserves the following rights and privileges.

A. **City Authority**: While the Airport Director has the authority to manage the Airport (including the authority to interpret, administer, and enforce this Agreement and policies and the authority to permit temporary, short-term occupancy/use of Airport land and/or Airport Improvements so long as such uses don't unreasonably interfere with Lessee's use of the Leased Premises), the ultimate authority to grant the occupancy/use of Airport land and/or Airport Improvements and/or the right to engage in an Activity at the Airport, and to approve, adopt, amend, or supplement any Agreement, policy, or practice relating thereto is expressly reserved to City through the City Council.

B. **Airport Development**: City reserves the right, but shall not be obligated to Lessee, except as required by this Agreement and/or applicable law, to develop and/or improve the landing areas and/or other portions of the Airport as it sees fit. City reserves the right to close any portion of the Airport and/or any of the facilities located thereon when it deems that such action is reasonably necessary to maintain, repair, or develop the Airport and/or facilities located thereon and/or for the safety of the general public; provided, however, that other than in times of temporary emergency, adverse weather conditions, or public calamity, City shall use its best efforts at all times to keep the Airport open with sufficient access to, and use of, the Public Facilities by Lessee, and its sublessees and assigns, to enable the permitted uses of the Leased Premises. City shall provide reasonable advance notice of any closures to the extent possible. In addition to Lessee's rights contained in Article 14 below, during any period of closure when Lessee is unable to access the Leased Premises and/or utilize the Public Facilities for a period in excess of three (3) days (except to the extent City makes alternative facilities available for Lessee's use), all rent under this Agreement shall abate until such time that City has restored Lessee's access to the Leased Premises and the Public Facilities so that Lessee can conduct its operations and Activities therefrom.

C. **Aerial Approaches**: City reserves the right, subject and pursuant to the terms and provisions of Part 77 of the Federal Aviation Regulations [14 CFR Part 77], to take any action it considers necessary to protect the aerial approaches and/or transition surfaces of the Airport against obstruction.

D. **War, National Emergency, Riot, or Natural Disaster**: During time of war, national emergency, riot or natural disaster, City shall have the right to lease the Airport or any part thereof to the United States or the State of Texas for government or military use. In this case, any provisions of this Agreement which are inconsistent with the provisions of any lease with a government entity shall be suspended for the term of the lease with the government entity. In addition to Lessee's rights contained in Article 14 below, during any such period of war, national emergency, riot or natural disaster, in the event Lessee is unable to access the Leased Premises, utilize the Public Facilities and/or otherwise exercise the rights of Lessee set forth in this Agreement, all rent under this Agreement shall abate until such time that City has restored Lessee's access to the Leased Premises and use of the Public Facilities so that Lessee can conduct its operations and Activities therefrom.

E. **Access to the Premises**: City and/or its representatives shall have the right to enter the Leased Premises including all buildings, structures and Lessee Improvements, at all times and for any purpose necessary, incidental to, or connected with the performance of Lessee and/or City's obligations under this Agreement, provided that the City and/or its representatives shall use their best efforts to minimize the disturbance or interference with Lessee's operations at the Leased Premises. City shall provide at least twenty-four (24) hours advance written notice (which shall include email transmission) prior to entering the Leased Premises except when City determines that emergency circumstances due to safety concerns require immediate entry without prior notice.

F. **Performance of Acts**: All acts performable under this Agreement by City or City Council may, at the option of City and without right of objection by Lessee, be performed by a representative or delegate of City.

G. **Exercising Rights**: Except as expressly provided herein to the contrary, no exercise of any rights reserved by City herein shall be deemed or construed as an eviction of Lessee nor shall such exercise be grounds for any abatement of rents, fees or charges nor serve as the basis for any claim or demand for damages of any nature whatsoever, unless such exercise materially and substantially interferes with the rights granted Lessee in this Agreement.

ARTICLE 11. OBLIGATIONS OF LESSEE

Except as otherwise specifically provided, Lessee shall have the following obligations:

A. **Conduct**: Lessee shall take all reasonable measures to control the conduct, demeanor and appearance of its employees, invitees, suppliers, vendors and customers. Upon receipt of a valid complaint, Lessee shall take all reasonable steps necessary to resolve or remove the cause of the complaint in a timely manner.

B. **Disturbance**: Lessee shall conduct its Activities and operations in an orderly and proper manner so as to not unreasonably disturb or interfere with others conducting business or other operations at the Airport. Lessee agrees that it will not intentionally interfere with the landing and taking off of aircraft at the Airport or otherwise intentionally cause a hazard.

Lessee agrees that it will not intentionally or knowingly disturb City or any tenant of the Airport by knowingly creating or permitting any disturbance or any unusual or excessive noise, vibration, electromagnetic emission or other undesirable condition on or about the Airport which is inconsistent with the Activities or other uses permitted by this Agreement. Lessee shall not cause or permit to be caused by any act or practice, by negligence, omission or otherwise that would violate any Regulatory Measure (including the Primary Guiding Documents) (defined below). Lessee shall utilize commercially reasonable efforts to minimize the escape of fumes, odors, smoke, gas or other substances from the Leased Premises that would otherwise constitute a nuisance or violate applicable law and shall neither use, allow the use of, nor occupy Leased Premises for any improper, immoral or unlawful purpose.

C. **Hazardous Materials**: All Hazardous Materials shall be placed, stored, generated, used, released or disposed of in accordance with applicable Environmental Law. Lessee shall not cause or suffer any Hazardous Material to be placed, stored, generated, used, released or disposed of, in, on, under, about, or transported from the Leased Premises in violation of applicable Environmental Law. In addition, Lessee shall comply with the following:

- a. Lessee shall limit the presence of such Hazardous Material to the minimal amount reasonably necessary for Lessee's use of the Leased Premises as authorized by this Agreement.
- b. Upon the request of City, Lessee shall furnish reports, assessments or other evidence reasonably satisfactory to City showing that the Leased Premises are not being used nor have the Leased Premises been used by Lessee for any activities involving, directly or indirectly, the use, generation, treatment, storage or disposal of any Hazardous Materials

other than those Hazardous Materials permitted by this Agreement or otherwise authorized by City.

- c. If at any time a release or danger of a release of Hazardous Materials is discovered on, at, or in the Leased Premises, the Airport, City's sewage or storm drainage system, soil, air, groundwater or any Airport Improvements in violation of applicable Environmental Law, which was directly caused or permitted by Lessee or Lessee's officers, agents, employees, contractors, permittees, or invitees in connection with their activities at the Airport, or there is the imminent danger of such release of Hazardous Materials in violation of applicable Environmental Law, Lessee, at its sole cost and expense, shall take all actions required by applicable Environmental Law in connection with such release or threatened release.
- d. In addition to notification of proper governmental authorities, Lessee shall immediately notify the Airport Director of any release of Hazardous Materials in violation of applicable Environmental Law.
- e. Upon discovery of any Hazardous Materials in violation of applicable Environmental Law that are a direct result of Lessee's activities on, in, under or emanating from the Leased Premises, any release or threat of release of Hazardous Materials in violation of applicable Environmental Law, and/or any illness caused by exposure thereto, Lessee shall immediately, and at its sole cost and expense, take all actions required by applicable Environmental Law to remediate, abate, and/or rectify any such conditions at or upon the Leased Premises. Provided, however, that Lessee shall have no liability for pre-existing or subsequently discovered Hazardous Materials.
- f. In addition to all other rights and remedies of City, if the removal of such Hazardous Materials caused by Lessee from the Leased Premises, the Airport, City's sewage or storm drainage system, soil, air, groundwater, or any Airport Improvements, to the extent such removal is required by applicable Environmental Law, is not commenced by Lessee within the time period required pursuant to applicable Environmental Law and continuously pursued using commercially accepted methods and in accordance with standards promulgated by the State of Texas or the United States Environmental Protection Agency ("EPA"), City, in its discretion, may pay to have same removed and Lessee shall reimburse City for the reasonable costs incurred within thirty (30) days of City's written demand for payment. If City is required by applicable Environmental Law to remediate and/or abate any such conditions caused by Lessee on or upon the Leased Premises and/or the Airport, Lessee shall reimburse City for all reasonable costs and expenses incurred in so doing within thirty (30) days of City's written demand for payment.

- g. Promptly following receipt thereof, Lessee shall provide City with copies of any claims, complaints, demands, lawsuits, hearings, investigations, or governmental requests for information relating to the environmental condition on or of the Leased Premises and/or Hazardous Materials on, in, under or emanating from the Leased Premises during Lessee's occupancy thereof.
- h. City acknowledges that prior to commencement of construction (including, but not limited to, site work at the Leased Premises), Lessee intends to obtain a Phase II environmental site assessment of the Leased Premises (the "**Phase II**") from a third party environmental consultant. Upon Lessee's receipt of the final Phase II, a copy of same will be delivered to the City, which Phase II shall establish the initial environmental baseline conditions for the Leased Premises (the "**Baseline**") for purposes of Lessee's obligations under this Agreement, including, without limitation, this Section 11.C. City acknowledges that with respect to any Hazardous Materials that are pre-existing conditions identified in the Baseline, Lessee shall have no obligation (including, but not limited to, the obligation to remediate) or liability to City with respect to such pre-existing conditions and City hereby releases Lessee from any and all claims or causes of action whatsoever which City might otherwise now or hereafter possess resulting in or from or in any way associated with the pre-existing conditions identified in the Baseline. To the extent the Baseline is not satisfactory in Lessee's sole discretion, Lessee shall have the right to terminate this Agreement by delivering written notice to City and the parties will be free of any and all rights and obligations under this Agreement except for any rights and obligations that expressly survive the termination of this Agreement.

D. **Storage, Handling, Dispensing of Fuels, Gasoline and Lubricants:** Lessee shall have the full right to purchase at the Airport, or elsewhere, from any person, or company of its choice, the requirements of aviation fuel, ground vehicle fuel, lubricating oil, greases and all other such materials and supplies and services; and no charges, fees, licenses, excise taxes, tolls or other charges upon any such purchases shall be charged, or collected by City from Lessee, or from any other person, except as otherwise set forth in the Airport Fueling Agreement for Corporate Non-Commercial Hangar Tenants dated as of even date herewith, by and between the City and Lessee. The storage of fuels, gasoline, and lubricants in bulk quantities shall be limited to a City approved (such approval not to be unreasonably withheld, conditioned or delayed) fuel/lubricants storage facility and only in an amount reasonably necessary to engage in the Activities authorized in this Agreement. Lessee's installation, operation and maintenance of a fuel/lubricants storage facility must be in accordance with the manufacturer's instructions. In addition, Lessee must abide by all applicable Regulatory Measures (including the Primary Guiding Documents) pertaining to the storage, handling, and dispensing of aviation fuels, gasoline and lubricants.

E. **Utilities:** Lessee shall directly procure and timely pay for all utilities and utility services including, but not limited to, electricity, sewer, water, natural gas and telephone charges

provided to the Leased Premises during the Term of this Agreement. Lessee shall be solely responsible for the payment of all utilities provided to the Leased Premises and the payment of utilities shall be in addition to any rental payments due hereunder.

F. **Taxes, Assessments, and Fees:** Lessee shall pay and discharge all taxes, of any kind, assessments or other fees whether general or special, ordinary or extraordinary, charged by any government or quasi-governmental entity relating directly to the Leased Premises, the Lessee Improvements located thereon and/or the Activities conducted at the Airport including leasehold (or possessory interest tax), personal property, income, excise, or any other business tax, assessment, or fee, as applicable which is charged to Lessee. Lessee acknowledges and understands that it holds record title to the Lessee Improvements on the Leased Premises, and the Lessee Improvements shall be taxed under Lessee's account in a manner designed to determine the market value of the Lessee Improvements as of January 1st of each tax year. The foregoing notwithstanding, Lessee shall have the right, before delinquency occurs, of protesting, contesting, objecting to or opposing the legality or amount of any such tax, assessment or fee which Lessee deems, in good faith, are illegal or excessive; and in the event of such contest, Lessee may, to the extent provided by law, defer the payment of any such tax, assessment or fee. However, to the extent required by applicable law, Lessee shall deposit with the tax appraisal district that amount of any taxes that are not the subject of any contest and which are not in dispute to be held by the tax appraisal district, in trust, until the conclusion of any tax contest and payment of any final determination. The Lessee shall be solely responsible for the payment of all of the above-described taxes and the payment of such taxes shall be in addition to any rental payments due hereunder.

G. **Costs, Expenses, and Other Charges:** Lessee shall pay all required costs, expenses and other charges or obligations of every kind and nature whatsoever relating to the Leased Premises, the Improvements and/or the Activities conducted by Lessee, which may arise or become due during the Term of this Agreement, to the extent such costs, expenses and other charges or obligations are expressly set forth in this Agreement.

H. **Maintenance:** Except as otherwise specifically provided in this Agreement, Lessee, at its own cost and expense, shall keep the interior and exterior (including all structural and non-structural) portions of the Lessee Improvements including, but not limited to, plumbing, heating, lighting, air conditioning and any other systems in connection therewith and all other parts of the Leased Premises in good order and condition (ordinary wear and tear excluded) and will make all necessary repairs to the Leased Premises both ordinary and extraordinary, foreseen and unforeseen and will make all necessary replacements of like quality when beyond repair. The cost of any repairs necessitated by the acts of City or City's agents, employees or contractors shall be paid by City (either directly or by reimbursement to Lessee). Lessee shall be responsible for all cleaning, custodial, janitorial and landscaping services in connection with the Leased Premises. Lessee shall keep the Leased Premises in neat, safe, sanitary, orderly and sightly condition and in good working order at all times (ordinary wear and tear excluded), and shall remove snow and ice as required for Lessee to conduct Lessee's operations during hours that the Airport is open.

In the event Lessee fails to comply with this paragraph, City may notify Lessee in writing that such maintenance, repair or cleaning shall be performed and in the event that Lessee fails to

correct the condition within thirty (30) days of City's written notice, or in the event such repair or replacement cannot be done within such time, Lessee fails to commence such repair or replacement within thirty (30) days and diligently pursue it to completion using commercially reasonable methods, City or its authorized designee may enter the Leased Premises and provide the necessary maintenance or repair services and Lessee agrees to pay City such reasonable expenses within thirty (30) days upon receipt of an invoice. This shall not be construed as a duty or obligation of City to make any repair or perform any work or cleaning which Lessee is required to make or perform.

I. **Refuse Disposal**: Lessee shall promptly clean up all refuse, rubbish, scrap material and debris caused or generated by its Activities, so that the Leased Premises shall at all times present a clean, neat, sanitary and orderly appearance. Lessee shall provide and use covered receptacles for all garbage, trash and other refuse at the Leased Premises. Lessee shall not allow boxes, cartons, barrels, or other items to accumulate in or upon the Leased Premises in an unsightly manner or in a manner that may pose a safety hazard of any kind. Lessee shall ensure the proper storage and removal from the Airport of all garbage, debris and other waste materials, whether solid or liquid, generated by or arising out of its operations and activities at the Airport.

J. **Based Aircraft Report**: Lessee shall maintain and furnish by the 1st of August each year and at any time, upon request of the Airport Director (provided such requests are not more often than monthly), a report identifying all aircraft based at or on the Leased Premises. The report shall identify the owner, the owner's billing address, the year of manufacture, make and model of the aircraft, the Gross Takeoff Operating Weight, Maximum Gross Landing Weight and Aircraft Registration Number.

K. **Signage**: Lessee shall not erect, paint upon, attach, exhibit or display in, on, or about said Leased Premises any sign other than as shown on the Final Plans and/or the Site Plan without the prior express written consent of the Airport Director, such consent not to be unreasonably withheld, conditioned or delayed.

L. **Special Events**: Lessee shall not conduct or hold air shows or any other special events, including any non-aeronautical event, at the Airport without the prior express written consent of the Airport Director.

ARTICLE 12. OBLIGATIONS OF CITY

A. **Maintenance and Operations**: City covenants and agrees that at all times it will maintain and operate the Airport as a public Airport in at least as good a condition as existed on the Commencement Date (ordinary wear and tear accepted) and consistent with and pursuant to the Sponsor Grant Assurances. City agrees to keep runways, taxiways and public ramp areas reasonably free and clear of foreign objects that may be harmful to aircraft and aircraft engines.

B. **Encumbrance of Fee Title**: If City encumbers (whether prior to or after the date of this Agreement) by mortgage, deed of trust, security agreement, or other instrument in the nature thereof, any of City's right, title or interest in the Leased Premises, any such mortgage,

deed of trust, or other instrument will at all times be, and will expressly state that it is, subject and subordinate to this Agreement and the rights, titles and interests of Lessee and any Leasehold Mortgagee (defined below) arising by virtue of this Agreement. City represents that as of the date of this Agreement no mortgage, deed of trust, security agreement, or other instrument in the nature thereof encumbers the Leased Premises.

ARTICLE 13. DEFAULTS AND REMEDIES

The occurrence of any one or more of the following events shall constitute a material default and breach of this Agreement by Lessee.

- A. The filing by Lessee of a voluntary petition in bankruptcy.
- B. The assignment of all or substantially all of Lessee's assets for the benefit of Lessee's creditors.
- C. A court making or entering any decree or order that is not vacated or otherwise removed within sixty (60) days thereafter:
 - (i) adjudging Lessee to be bankrupt or insolvent;
 - (ii) approving as properly filed a petition seeking reorganization of Lessee or an arrangement under the bankruptcy laws or any other applicable debtor's relief law or statute of the United States or any state thereof;
 - (iii) appointing a receiver, trustee or assignee of Lessee in bankruptcy or insolvency or for its property;
 - (iv) directing the winding up or liquidation of Lessee.
- D. The filing of any non-consensual lien against the Leased Premises resulting from any act or omission of Lessee which is not discharged or contested in good faith (as reasonably determined by City) within sixty (60) days of receipt of actual notice by Lessee, unless Lessee causes same to be released or posts a bond within this time period equal to the amount of the lien.
- E. The voluntary abandonment by Lessee of the Leased Premises for a period of thirty (30) consecutive days or more, coupled with the failure to pay rent as provided in Article 6.
- F. The transfer of Lessee's interest in this Agreement or the Leased Premises in a manner not authorized herein.
- G. Lessee becomes in arrears in the payment of the whole or any part of the amount(s) agreed upon herein for a period of fifteen (15) days after the receipt by Lessee of written notice of such delinquency.

H. Intentional falsification by Lessee of any record which results in the deprivation of any rent, fee or other charge from the City granted under this Agreement.

I. The failure by Lessee to perform any of the covenants, conditions or obligations imposed on it by this Agreement or any other agreement between Lessee and City relating to the Leased Premises and/or the Activities where the failure continues for a period of thirty (30) days after Lessee's receipt of written notice from City; provided, however, in the event such obligations cannot reasonably be completed within thirty (30) days, Lessee shall not be in default hereunder in the event that Lessee shall have commenced performance of such obligations and diligently pursues it to completion using commercially reasonable methods.

J. Except as otherwise permitted herein, the transfer or assignment of this Agreement by Lessee, without securing prior written approval of City, such approval not to be unreasonably withheld, conditioned or delayed.

K. In the event of a default by Lessee that is not cured within the time allowed by this Agreement, City may, in addition to any other remedies available to City, terminate this Agreement.

L. Notwithstanding the foregoing, no failure of either party to perform or delay in performance which is caused by any war, civil disorder or other national emergency or which is due to an intervening act of God shall be deemed an event of default.

M. In addition to the termination right described above, City shall have the following rights and remedies upon default by Lessee:

- (i) The recovery of any unpaid rent, fees and other payments due and owing at the time of termination, plus any unpaid rent and fees hereunder that would have been earned and other payments that, would have been made if the Agreement had not been breached by Lessee, subject, however to the City's duty to mitigate its damages, and only to the extent such amounts may be recovered by the City pursuant to and in accordance with applicable law.
- (ii) The recovery of any damages, costs, fees and expenses incurred by City as a result of the breach of the Agreement by Lessee, but expressly excluding special, punitive or consequential damages, lost profits or attorneys' fees and expenses.
- (iii) The removal of all persons from the Leased Premises and the removal and storage at Lessee's expense of all property on the Leased Premises, in accordance with the law.
- (iv) Any other right or remedy, legal or equitable, that City is entitled to under applicable law, whether stated in this Agreement or not, subject however, to the limitations set forth in this Agreement.

N. No termination shall relieve Lessee of the obligation to deliver and perform on all outstanding obligations and requirements prior to the effective date of the termination and Lessee liabilities under this Agreement shall continue until such effective date.

O. In the event of any such termination as above enumerated, City shall have the right at once and without further notice to Lessee to enter and take full possession of the Leased Premises occupied by Lessee under this Agreement in accordance with the law. Upon the termination of this Agreement for any reason, Lessee shall yield up said Leased Premises, facilities and fixtures to City in good condition and repair, reasonable and ordinary wear and tear and damage caused by casualty excepted.

P. In the event of the failure of Lessee upon termination of this Agreement to remove from the Leased Premises all property owned by Lessee within the time period set forth herein, City may effect such removal and store said property at Lessee's expense. Upon termination of this Agreement, Lessee covenants and agrees to pay and discharge all reasonable costs, attorney's fees and expenses that may be incurred by City in enforcing the covenants, conditions and agreements of this Agreement, re-entering and/or repossessing the Leased Premises, restoring the Leased Premises and Airport Improvements to the condition required by this Agreement, and protecting the Leased Premises.

Q. The failure of City to declare this Agreement terminated for any of the reasons set out above shall not bar the right of City to subsequently terminate this Agreement for any of the reasons set out above. Further, the acceptance of rents, fees or other payments due and owing to City for any period after a default of any of the terms, covenants or conditions by Lessee shall not be deemed a waiver of any right on the part of City to terminate this Agreement with respect to any default not cured by the payment of such rents, fees or other payments.

ARTICLE 14. TERMINATION BY LESSEE

Lessee, if not in default of any provision of this Agreement, may terminate this Agreement after the occurrence of one or more of the following events:

A. Permanent closure of the Airport.

B. Curtailment of Airport operations, including the tower, instrument landing systems and U.S. Customs service for a period in excess of thirty (30) days, save and except curtailment which occurs as the result of Force Majeure, necessary construction and repair under rights granted herein, or during any period of involuntary suspension or termination of such Airport operations by any regulatory authority and during which period the City contests such suspension or termination until a final decision is rendered; however not during any appeals therefrom.

C. The lawful assumption by the United States Government, or any authorized agency thereof of the operation, control or use of the Airport and/or facilities, or any substantial part of parts thereof, in such manner as to substantially restrict Lessee's Activities and/or operations at the Airport for a period of at least thirty (30) days.

D. The default by City in the performance of any covenant or agreement herein required to be performed by City and the failure of City to remedy such default within thirty (30) days after receipt from Lessee of written notice to remedy same, or if such default is incapable of being remedied within such thirty (30) day period, City shall not commence such performance within the thirty (30) day period and diligently pursue the same to completion.

E. Final decision by a Court of competent jurisdiction adjudicating a violation of a federal, state or local law, rule, regulation or order which suspends or terminates operations at the Airport and which suspension or termination materially affects the operations or rights of Lessee hereunder.

F. Substantial damage to the Airport Improvements or Lessee Improvements which will prevent Lessee from utilizing the Leased Premises as contemplated under this Agreement for a period of one hundred eighty (180) days or longer or total destruction of the Improvements located on the Leased Premises resulting from any cause whatsoever.

Lessee shall exercise such right of termination by written notice to City at any time after the occurrence of any such events and the Agreement shall terminate as of the date notice is received by City.

ARTICLE 15. REMEDIES CUMULATIVE

All of the rights and remedies given to a party in this Agreement are cumulative and no one is exclusive of any other. Each party shall have the right to pursue any or all remedies provided by any applicable Regulatory Measures, whether legal or equitable in nature, whether stated in this Agreement or not; provided however, any award of damages to Lessee shall be limited to all damages allowed under Section 271.153 of the Texas Local Government Code, but specifically excluding attorney's fees.

ARTICLE 16. NO WAIVER

No failure on the part of either party to enforce any of the terms and/or conditions set forth in this Agreement shall be construed as or deemed to be a waiver of the right to enforce such terms and/or conditions. The acceptance by City of any rent, fee or other payment shall not be construed as or deemed to be a waiver by City of any breach by Lessee of any covenant, condition or obligation that is not cured with such payment of rent, fee or other payment.

ARTICLE 17. COMPLIANCE WITH LAWS

At its own expense, Lessee shall comply with all applicable Federal, State and/or local Regulatory Measures, including, without limitation, the regulations of the United States Department of Transportation, FAA and City, including all applicable local ordinances, and all rules and regulations of any law enforcement, fire department or other municipal agency; all as may be promulgated and in effect from time to time. Any penalties, fines or costs levied as a result of Lessee's failure to comply with any of the above shall be borne by Lessee.

ARTICLE 18.
LICENSES, CERTIFICATES, AND PERMITS

At its own expense, Lessee shall obtain any and all licenses, certificates and permits required by applicable law to construct the Lessee Improvements on the Leased Premises and/or to engage in any Activity at the Airport. Lessee shall not do or allow to be done anything on the Leased Premises which is in violation of or prohibited by any law, ordinance, rule, requirement, license, certificate or permit. If the attention of Lessee is called to any such violation, Lessee shall immediately cease and desist from such violation or cause it to be corrected. In addition, Lessee shall pay all fines associated with any such violation.

ARTICLE 19.
INSURANCE

A. Lessee shall keep and maintain all insurance required by law including, for example and without limitation, all insurance as required by the workers compensation laws of the State of Texas with Employers Liability limits of \$500,000 Each Accident, \$500,000 Disease Policy Limit, and \$500,000 Disease Each Employee. All liability insurance required pursuant to this Agreement, except for Worker's Compensation Insurance, shall name the City as an additional insured on a claims occurred basis. All insurance required pursuant to this Article 19, including Worker's Compensation Insurance, shall provide for a waiver of subrogation as to the City, as set forth below.

B. Lessee shall also, at its sole cost and expense, procure and maintain insurance in full force and effect during the Term of this Agreement in the minimum coverages and amounts specified in the applicable portions of Article VIII of the Airport Minimum Standards; provided however, notwithstanding anything to the contrary in Article VIII of the Airport Minimum Standards, (i) the minimum amount of Aircraft Liability Insurance Lessee shall maintain shall be Five Million Dollars (\$5,000,000) per occurrence and Five Million Dollars (\$5,000,000) in the aggregate (including non-owned aircraft liability with a minimum limit of Five Million Dollars (\$5,000,000)) with commercially reasonable deductibles, if any, (ii) Lessee shall have no obligation to procure or maintain the Commercial General Liability Insurance coverage described in Section 8.01(a)(vii)(1) of Article VIII of the Airport Minimum Standards and (iii) prior to the installation of any underground fuel tanks, Lessee shall procure and maintain throughout the Term of this Agreement, pollution coverage with a minimum Per Incident Limit of \$1,000,000 with an \$1,000,000 Policy Aggregate Limit. The insurance company underwriting the required policy(s) shall be licensed or admitted to write such insurance in the State of Texas or otherwise be approved in writing by City.

C. All insurance which Lessee is required by this Agreement to carry and keep in force shall name City of Midland, its City Council (individually and collectively), and its representatives, officials, officers, employees, agents, and volunteers as additional named insureds which includes the Airport Board of the Midland International Airport.

D. Lessee shall give written notice of any material changes affecting the coverage or policy of insurance required by this Agreement on the Leased Premises and Lessee

Improvements and shall supply City with new certificates of insurance within thirty (30) days of any such change.

E. The applicable insurance coverage shall be in full force prior to construction and Lessee shall provide certificates and/or policy endorsements, as applicable, to City (including certificates and/or policy endorsements of Lessee's contractors that have been engaged to construct the Improvements) to document that required insurance is in effect.

F. Lessee shall, at its sole cost and expense, insure the Leased Premises continuously against loss or damage. The Lessee Improvements shall be insured (100% of current replacement cost with no depreciation) against the perils of fire, lightning, wind, hail, flood (for any structure located in an "A" or "B" flood zone), explosion, riot, smoke and vandalism.

G. The proceeds of any such insurance paid on account for any of the aforementioned perils, shall be used to defray the cost of repairing, restoring or reconstructing said Lessee Improvements to the condition and location existing prior to the casualty causing the damage or destruction, unless a change in design or location is approved by City, in writing, such approval not to be unreasonably withheld, conditioned or delayed.

H. Lessee shall procure an appropriate clause in or endorsement to insurance required to be maintained by Lessee pursuant to this Article 19, wherein the insurer waives subrogation or consents to a waiver of right of recovery, and Lessee agrees not to make any claim against, or seek to recover from, the other for any loss or damage to the extent covered by the insurance actually carried or that was required to be carried (whether or not actually carried) by Lessee under the terms of this Article 19.

ARTICLE 20.

DAMAGE TO LEASED PREMISES AND PROPERTY

A. **Damages to Leased Premises**: Subject to the option to terminate this Agreement under Article 14 Section F, if any part of the Leased Premises and any related property is damaged resulting from any cause whatsoever (including, but not limited to, fire, earthquake, tornado, windstorm, other casualty or by any act or omission of Lessee, its agents, officers, employees, patrons, guests, contractors, sub-lessees and subcontractors), Lessee, at its own cost and expense, shall promptly commence and complete restoration as nearly as possible to the value and substantially to the condition and character of the Leased Premises immediately prior to such damage ("**Restoration**"). Lessee shall use all insurance proceeds not payable to any Leasehold Mortgagee to defray the cost of repairing, restoring, or reconstructing the Lessee Improvements.

If at any time during the Term of this Agreement, any part of the Leased Premises is damaged or destroyed, City shall be under no obligation to rebuild or repair the damaged or destroyed portion of the Leased Premises unless such damage or destruction was caused by the City's gross negligence or willful misconduct.

If Lessee opts to terminate this Agreement and not restore the Lessee Improvements in accordance with this Agreement, Lessee shall pay to City, upon demand, all property insurance proceeds actually received by Lessee (less any amounts due any Leasehold Mortgagee) not

previously disbursed to defray the cost of repairing, restoring, or reconstructing the Lessee Improvements.

B. If Lessee opts to continue this Agreement and restore the Lessee Improvements, upon completion of the Restoration Lessee shall provide City:

- (i) A certification of an independent engineer or an independent architect designated by Lessee and approved by City and by the Leasehold Mortgagee(s), if any and if required, stating that the Restoration has been finally completed in accordance with the plans and specifications therefor and in accordance with all laws, ordinances, rules regulations, specifications and standards of all governmental authorities; and
- (ii) Evidence satisfactory to City that the cost of all work and materials incorporated into the Restoration has been paid in full or will be paid in full (which evidence may include fully executed and acknowledged waivers or releases of mechanic's liens, in form reasonably satisfactory to the party requesting the same, executed by all contractors, sub-contractors and materialmen which engaged in the Restoration).

ARTICLE 21. INDEMNIFICATION

SUBJECT TO THE REMAINING TERMS AND PROVISIONS OF THIS AGREEMENT, LESSEE WILL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT AND TO THE EXTENT OF ANY NEGLIGENT ACT OF LESSEE, its agents or employees, or any subcontractor, arising out of, or resulting from, Lessee's use of, or activities on, the Leased Premises.

ARTICLE 22. SUBLEASE AND SUBCONTRACTS

A. Lessee shall not sublease the Leased Premises (or any part of the Leased Premises) or subcontract the use of the Leased Premises to any person or entity without the prior written consent of the City Manager, which consent shall not be unreasonably withheld, conditioned or delayed.

B. A lease or sublease made contrary to the requirements of this section shall be null and void.

ARTICLE 23. ASSIGNMENT

A. This Agreement may not be assigned, nor may any part of it be assigned, without the prior express written consent of the City Manager, which consent shall not be unreasonably withheld, conditioned or delayed. Upon assignment pursuant to this Article 23, the assignee shall assume all obligations of Lessee under this Agreement and Lessee shall be relieved of all obligations to City for the remainder of the Term of the Agreement. The assignee shall not assign the Agreement without the prior express written consent of the City Manager and any assignment by Lessee shall contain a provision to this effect. Further, any assignee of Lessee shall be bound by the terms and conditions of this Agreement. Any assignment without the City Manager's prior express written consent shall be null and void and, at City's election, shall constitute a default. No assignment shall be approved unless all rent and municipal taxes are current.

B. Notwithstanding anything to the contrary contained herein, Lessee may assign this Agreement or sublet the Leased Premises or any part thereof to (i) an Affiliate (as defined below) of Lessee, (ii) an entity into which Lessee is merged, consolidated or converted (or the resulting entity in any merger of any other entity into or with Lessee), or (iii) to an entity to which substantially all of Lessee's assets are transferred, without the prior consent of City and/or City Council; provided, however, (A) in the event of an assignment or sublease, Lessee shall remain liable for all obligations of Lessee hereunder following said assignment or sublease and (B) Lessee shall give City written notice (which shall specify the nature of the proposed transaction, the assignee or subtenant, if applicable, the duration of the sublease, if applicable, and the exact location of the space affected thereby) of such transaction prior to or within a reasonable period of time after the consummation of same. As used herein, (a) the term "**Affiliate**" means any person or entity controlled by, under common control with, or which controls, the affiliated entity or any entity in which the affiliated entity owns at least a fifty percent (50%) beneficial ownership interest, and (b) the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the entity referred to, whether through ownership of voting securities, by contract or otherwise, and the terms "controlling" and "controls" have meanings correlative to the foregoing.

ARTICLE 24. ENCUMBRANCES

Lessee shall have no authority, express or implied, to create any lien, charge or encumbrance upon the Leased Premises and Lessee shall not suffer the Leased Premises, to be or become subject to any non-consensual lien (including mechanic's liens, subject to Lessee's right to contest same, as set forth herein), charge or encumbrance whatsoever.

ARTICLE 25. MORTGAGE

Lessee shall not mortgage, pledge, assign (except as otherwise permitted herein) as collateral or encumber, voluntarily or otherwise, its interest in this Agreement or the Leased

Premises without the prior express written consent of the City Council, which consent shall not be unreasonably withheld, conditioned or delayed.

ARTICLE 26. HOLDOVER POSSESSION

In the event that Lessee should hold over and remain in possession of the Leased Premises after the expiration of the Term of this Agreement or termination for any other cause, such holding over shall be deemed not to operate as a renewal or extension of this Agreement and shall create a tenancy from month to month which may be terminated at any time by the Airport Director or Lessee by providing written notice. The rents, fees, and/or other charges paid during the holding over period shall be equal to 110% of the monthly rents, fees, and/or other charges that were being charged by City hereunder at the time the Agreement expired.

ARTICLE 27. INDEPENDENT CONTRACTOR

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

ARTICLE 28. SECURITY DEPOSIT

Upon execution of this Agreement, Lessee shall deposit with City the sum equal to three (3) month's rent to be held by City as security for the faithful performance of the terms of this Agreement by Lessee. Unless it is used as permitted herein, this security deposit shall be returned to Lessee following the completion and/or payment of all of its obligations under this Agreement.

If in each instance, following the expiration of all applicable notice and cure periods, Lessee fails to make any payment to City required by this Agreement, including charges for

maintenance, repair and/or damage to property, or if Lessee otherwise defaults with respect to any provision of this Agreement, City may use, apply or retain so much of the security deposit as necessary to fulfill the payment obligation, cure the default or otherwise compensate City for damage or loss sustained by it resulting from Lessee's default. Such use of the security deposit by City in no way limits its right to pursue the remedies given to it by this Agreement.

ARTICLE 29. BINDING EFFECT

This Agreement shall be binding on and shall inure to the benefit of the heirs, legal representatives, successors and assigns of the parties hereto.

ARTICLE 30. SUBORDINATION

This Agreement is subject and subordinate to the provisions of any existing or future agreements between City and the United States or the State of Texas pertaining to the operation, management, maintenance, planning, and/or development of the Airport the terms and execution of which have been (or may be) required as a condition precedent to receiving federal and/or state funds for the development of the Airport and Lessee further agrees to conduct its operations under this Agreement in accordance with and be subject to all obligations (including the Sponsor Grant Assurances), existing and future, of City to any regulatory authority. Should this Agreement contain provisions in conflict therewith, the latter shall control, and the terms of this Agreement shall be modified accordingly. Notwithstanding the foregoing, should the terms of any such current or future agreements prevent or otherwise materially interfere with Lessee's use and operation of the Leased Premises for the purposes contemplated in this Agreement, Lessee shall have the right to terminate this Agreement by delivering written notice to City.

ARTICLE 31. GOVERNING LAW

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

ARTICLE 32. SEVERABILITY

In the event that any provision in this Agreement is held to be invalid by any court of competent jurisdiction, the invalidity of any such provision shall in no way affect any other provision in this Agreement, provided that the invalidity of any such provision does not materially prejudice either City or Lessee in their respective rights and obligations contained in the valid provisions of this Agreement.

**ARTICLE 33.
COUNTERPARTS**

This Agreement has been executed in several counterparts, each of which shall be deemed an original and all of which when combined shall constitute one agreement.

**ARTICLE 34.
MODIFICATION**

Any modification, alteration, or amendment to the Agreement shall be made in writing, agreed to, and approved by both parties.

**ARTICLE 35.
ENTIRE AGREEMENT**

This Agreement embodies the entire agreement between the City and Lessee, and supersedes all prior agreements and understandings, whether written or oral, and all contemporaneous oral agreements and understandings relating to the subject matter hereof. This Agreement shall not be changed modified, discharged or extended, except by written instrument duly executed by City and Lessee. The parties agree that no representations or warranties shall be binding upon either party unless expressed in writing in the aforesaid Agreement.

**ARTICLE 36.
ATTORNEY'S FEES**

BY EXECUTING THIS AGREEMENT, EACH OF CITY AND LESSEE AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST THE OTHER, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE AGREEMENT. EACH OF CITY AND LESSEE SPECIFICALLY AGREES THAT IF THE OTHER BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET SEQ., AS AMENDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, EACH OF CITY AND LESSEE, AS APPLICABLE, AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH SUCH PARTY MIGHT OTHERWISE BE ENTITLED. EACH OF CITY AND LESSEE AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING KNOWN RIGHT. EACH OF CITY AND LESSEE ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THE AGREEMENT. EACH OF CITY AND LESSEE FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN THE CITY AND THE LESSEE. THIS SECTION SHALL NOT BE CONSTRUED

OR INTERPRETED AS A WAIVER OF SOVEREIGN IMMUNITY. THE LESSEE AND CITY ARE RELYING ON THEIR OWN JUDGMENT. EACH PARTY HAD THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

ARTICLE 37. SOVEREIGN IMMUNITY

By executing this Agreement the City is not waiving its right of sovereign immunity except to the extent expressly provided by the Texas Tort Claims Act and Section 271.152 of the Texas Local Government Code. The City is retaining its immunity from any suit which does not arise from the rights and privileges granted to Lessee under this Agreement. The City is not granting consent to be sued by legislative resolution or action. The City does not waive any defense or limitation on damages available to a party to a contract, other than a bar against suit based on sovereign immunity as provided in Section 271.155 of the Texas Local Government Code. The City does not waive sovereign immunity to suit for a cause of action for a negligent or intentional tort except as expressly provided by the Texas Tort Claims Act.

ARTICLE 38. THIRD-PARTY BENEFICIARY

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

ARTICLE 39. NOTICE OF ALLEGED BREACH; STATUTORY PREREQUISITES

As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, Lessee or his legal representative, shall give the City Manager, or any other reasonable official of the City, notice in writing (consisting of one original and seven copies of notice attached to a copy of this agreement) of such damages, duly verified, within one hundred and eighty (180) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which the Lessee will settle, the physical and mailing addresses of Lessee at the time and date the claim was presented and the physical and mailing addresses of Lessee for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Lessee relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except the City from any liability whatsoever. The City is under no obligation to provide notice to Lessee that Lessee's notice is insufficient. City reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice. The statutory prerequisites outlined herein constitute jurisdictional requirements pursuant to Section 271.154 of the Texas Local Government Code and Section 311.034 of the Texas Government Code. Notwithstanding any other provision, Lessee's failure to comply with the requirements herein shall perpetually bar Lessee's claim for damages under

Chapter 271 of the Texas Local Government Code, and Section 311.034 of the Texas Government Code, regardless if City has actual or constructive notice or knowledge of said claim or alleged damages. Lessee agrees that the requirements of this entire agreement are reasonable.

ARTICLE 40. NOTICES

Whenever any notices required by this Agreement are to be made, given or transmitted to the parties, such notice shall be hand delivered, sent by overnight courier or sent by certified mail, postage prepaid, and addressed to:

City:

Mr. Courtney Sharp
City Manager
City of Midland
300 N Loraine St.
Midland, Texas 79701

with a copy to:

Mr. Marv Esterly
Director of Airports
Midland International Airport
P.O. Box 61391
Midland, Texas 79711

Lessee:

COG Realty LLC
550 West Texas Avenue, Suite 100
Midland, Texas 79701
Attention: Kyle G. Rose

with a copy to:

Concho Resources Inc.
550 West Texas Avenue, Suite 100
Midland, Texas 79701
Attention: C. William Giraud

Any such notice or demand shall be deemed to have been given on the date of receipted delivery, refusal to accept delivery or when delivery is first attempted but cannot be made due to a change of address for which no notice is given or three (3) business days after it shall have been mailed as provided in this Article, whichever is earlier. Notices may be given on behalf of City or Lessee, as applicable, by counsel representing City or Lessee, as applicable.

All payments shall be made payable to City of Midland and sent to the attention of the Director of Airports.

The parties may, from time to time, designate to each other in writing a different address or different entity or entities to which all such notices, communications, or payments shall be given or made.

ARTICLE 41. MISCELLANEOUS

A. **Quiet Enjoyment**: Upon the performance of the covenants and agreements on the part of the Lessee to be performed hereunder, the Lessee shall peaceably have and enjoy the Leased Premises, appurtenances, facilities, licenses and privileges granted in this Agreement.

B. **Force Majeure**: Neither the City nor Lessee shall be deemed in violation of this Agreement if it is prevented from performing any of its obligations hereunder except the obligation to pay rent by reason of strikes, boycotts, labor disputes, embargoes, shortages of materials, act of God, acts of the public enemy, act of superior governmental authority, weather conditions, floods, riots, rebellions, acts of sabotage or any other circumstances for which it is not responsible or which are not in its control (“**Force Majeure**”).

ARTICLE 42.
EXHIBITS AND APPENDICES

Exhibits and Appendices attached hereto are expressly made a part hereof.

- A. Definitions
- B. Description of Leased Premises
- C. Design Guide and Standards for Private Hangars
- D. Form of Temporary Construction Easement

WITNESS WHEREOF, the parties hereto have caused this Agreement to be legally executed in duplicate on the Commencement Date.

THE CITY OF MIDLAND, TEXAS

COG REALTY LLC,
a Texas limited liability company

By: _____
Courtney Sharp, City Manager

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

By: _____
Kyle G. Rose
Vice President, Administration

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

APPROVED AS TO CONTENT
AND COMPLETENESS:

Marv Esterly, Director of Airports

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he/she executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of CITY OF MIDLAND, TEXAS.

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

Notary Public, State of Texas

My Commission Expires: _____

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared Kyle G. Rose, Vice President, Administration of GOG Operating LLC, the sole member of COG Realty LLC, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of said entities.

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

Notary Public, State of Texas

My Commission Expires: _____

EXHIBIT A

Definitions

1. **“Airport”** means the Midland International Airport, located at 9506 La Force Blvd., Midland, Texas 79706.
2. **“City”** means the City of Midland, an incorporated home-rule Texas municipality.
3. **“Environmental Law”** means any applicable federal, state or local statute, law (including common law tort law, common law nuisance law and common law in general), rule, regulation, ordinance, code, permit, concession, grant, franchise, license, policy or rule of common law now in effect or adopted in the future, and in each case as may be amended or replaced, and any judicial or administrative interpretation thereof (including any judicial or administrative order, consent decree or judgment) relating to (i) the environment, health, safety or Hazardous Materials, (ii) the storage, handling, emission, discharge, release and use of chemicals and other Hazardous Materials, (iii) the generation, processing, treatment, storage, transport, disposal, investigation, remediation or other management of waste materials of any kind, and (iv) the protection of environmentally sensitive areas, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.; the Hazardous Materials Transportation Act, as amended, 49 U.S.C. §§ 5101 et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq.; the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq.; the Clean Air Act, 42 U.S.C. §§ 7401 et seq.; the Safe Drinking Water Act, 42 U.S.C. §§ 300f et seq.; the Endangered Species Act, as amended, 16 U.S.C. §§ 1531 et seq.; the Texas Solid Waste Disposal Act, Tex. Health & Safety Code Ann. Ch. 361 (Vernon 1990); the Texas Clean Air Act, Tex. Health & Safety Code Ann. Ch. 382 (Vernon 1990); the Texas Water Code, Tex. Water Code Ann. (Vernon 1988 and Supp. 1990); the Texas Hazardous Substances Spill Prevention and Control Act, Tex. Water Code Ann. (Vernon 1988 and Supp. 1990); the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136 et. seq.; and the Emergency Preparedness and Response Community Right-to-Know Act, 42 U.S.C. § 11001.
4. **“Hazardous Materials”** is defined herein as (a) any petroleum or petroleum products, metals, gases, chemical compounds, radioactive materials, asbestos, urea formaldehyde foam insulation, transformers or other equipment that contain dielectric fluid containing polychlorinated biphenyls, lead paint, putrescible and infectious materials, and radon gas; (b) any chemicals or substances defined as or included in the definition of “hazardous substances”, “hazardous wastes”, “hazardous materials”, “extremely hazardous wastes”, “restricted hazardous wastes”, “toxic substances”, “toxic pollutants”, “contaminants” or “pollutants”, or words of similar import, under any applicable Environmental Law; and (c) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any applicable Environmental Law or governmental authority or which is regulated because of its adverse effect or potential adverse effect on health and the

environment including soil and construction debris that may contain any of the materials described in this definition.

5. **“Leased Premises”** shall have the meaning stated in Article 2(A).
6. **“Leasehold Mortgagee”** means the holder of a mortgage interest (including for these purposes an interest created by a deed of trust) in the Leased Premises created by through or under Lessee.
7. **“Lessee Improvements”** shall have the meaning stated in Article 2(D).
8. **“Primary Guiding Documents”** is defined to include the Airport Certification Manual, the Airport Minimum Standards and the Airport Security Program, copies of which have been provided to Lessee.
9. **“Regulatory Measures”** means all applicable Federal, State and Local regulations.
10. **“Site Plan”** means, for purposes of this Agreement, the site plan for the proposed Lessee Improvements, as shown on the site plan (Job Number 10031, Sheet Number A110) entitled Hangar Lot C-D, issued June 20, 2012, by DCC Architects, LLC, provided that any changes to the Site Plan shall be subject to City’s approval, such approval not to be unreasonably withheld, conditioned or delayed.
11. **“Sponsor”** means the City of Midland, Texas.

EXHIBIT B
Leased Premises (legal description)

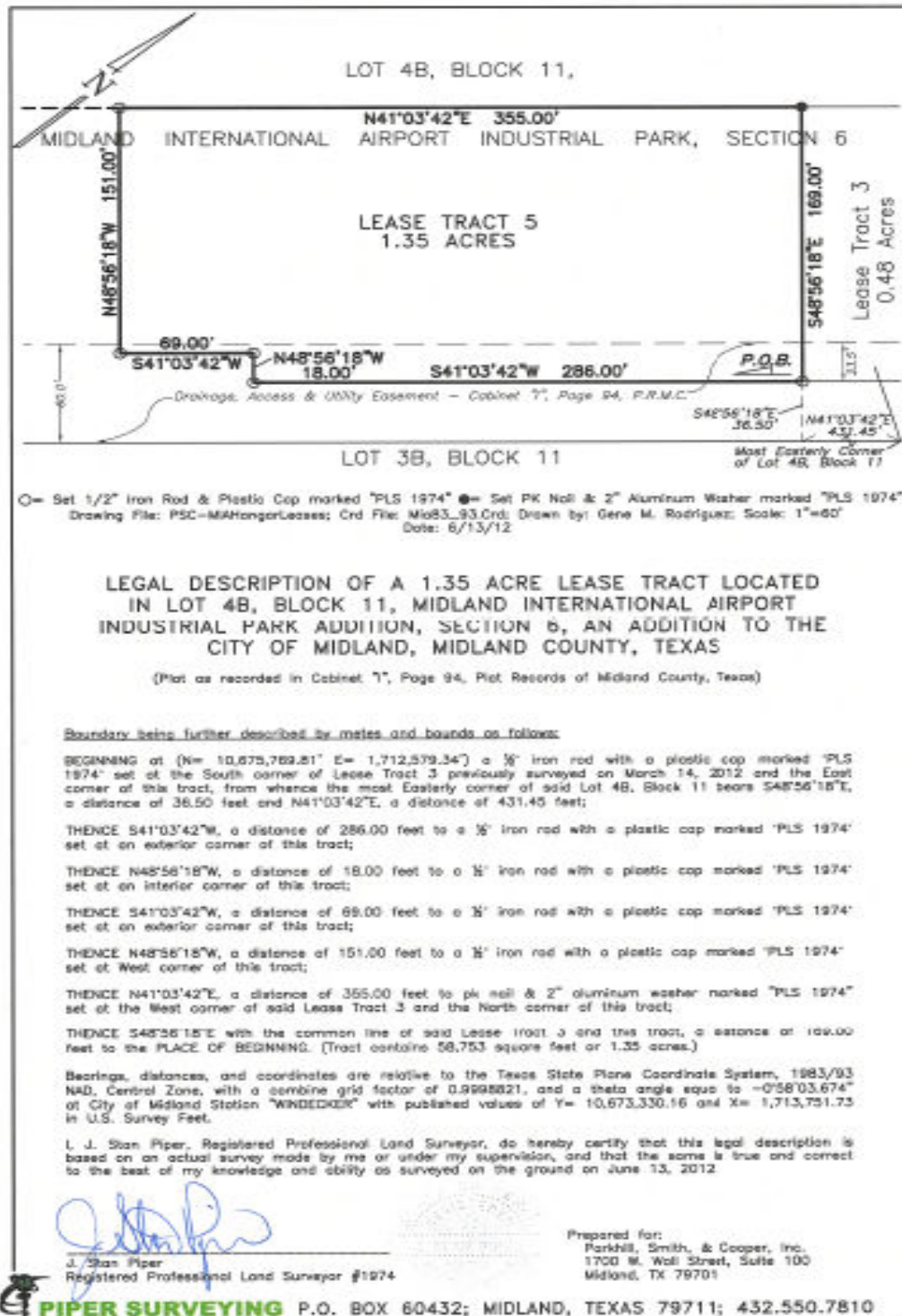


EXHIBIT C

Design Guide and Standards for Private Hangars in Northwest Hangar Development Area

A. ARCHITECTURAL RESTRICTIONS

- 1.01 Style Design. Unless otherwise approved by the Director of Airports in writing, such approval not to be unreasonably withheld, conditioned or delayed, all buildings constructed upon the Property shall be contemporary in style. Elevations of all sides of the building shall be approved by the Director in writing, such approval not to be unreasonably withheld, conditioned or delayed.
- 1.02 Code Requirements. Must meet all local (Midland), State, Federal, Energy Code and Zoning Requirements.
- 1.03 Drawing 1 – Standard Site Layout. Refer to attached Drawing 1 for additional site information.
- 1.04 Building Setbacks. The following yard or building setback requirements shall apply to all leased parcels that are located within the hangar development at the Airport.
- a. Front setback shall be a minimum of 28’-6” from lease line for large hangars and 23’-0” from lease line for small hangars.
 - b. Airside Setback shall be zero (0) feet from airside lease line.
 - c. Side Setback from lease line shall be a minimum of five (5) feet from the side of the building. Building size shall be determined by lease agreement and site plan submitted to Director of Airports for review and approval in writing, such approval not to be unreasonably withheld, conditioned or delayed. The side setback area shall be concrete paving.
- 1.05 Building Area. Must achieve a density of development which will preserve the property’s design characteristics.
- 1.06 Building Materials. The exterior side walls shall be 24 GA prefinished metal panels with Kynar (20-year finish) with a 2-hour rating (metal-span “thermalsafe” or equal). The exterior airside walls shall be 24 GA prefinished metal panels with Kynar (20-year finish) with a minimum (0)-hour rating. The front public side of building exterior walls shall be 24 GA prefinished metal panels with Kynar (20-year finish) with a 2-hour rating and shall have a 4’-0” high, 4” thick stone or other approved stone material.
- 1.07 Building Roofs. Building roofs shall be 22 GA structural standing seam prefinished (Kynar finish with 20-year warranty). The Specular Gloss shall be a value of 30 plus or minus 5 at an angle of 60 degrees and meet ASTM D 5423 Specular Gloss. Roof shall be designed to meet UL90. Roof shall have gutters, downspouts and snow guards.

- 1.08 Building Elevations. All elevations of the building shall be designed in a consistent and coherent architectural manner. Changes in material, color and/or texture shall occur at points relating to the massing, fenestration and overall design concept of the building.
- a. Front Elevation of Building. There shall be a concrete walk to front door with open air canopy with stone columns.
- 1.09 HVAC Units and Miscellaneous Equipment. Cooling towers, rooftop and ground-mounted mechanical and electrical units and other miscellaneous equipment shall either be integrated into the design of the building or screened from view. No rooftop units are allowed.
- 1.10 Utilities. All utilities serving any building or site shall be underground. No building or other improvement, or trees shall be erected, placed or planted within any utility easement.
- 1.11 Temporary Buildings. No building or structure of a temporary or prefabricated character shall be used on any lot at any time, either temporarily or permanently except for construction trailers during the period of construction.
- 1.12 Fencing. Fences shall not be allowed, except for fence shown on attached Drawing 1 and all fencing must have screening of service areas.
- 1.13 Maintenance and Landscaping. Every site on which a building shall have been placed shall be landscaped in accordance with the final development plan submitted to and approved by the Director of Airports, such approval not to be unreasonably withheld, conditioned or delayed. The setback area abutting streets should be landscaped with a combination of deciduous canopy trees, ground cover and shrubbery. All unpaved areas not utilized for parking shall be landscaped in a similar manner. Undeveloped areas proposed for future expansion shall be maintained in a weed-free condition. Approved landscaping shall be installed within ninety (90) days of occupancy or completion of the building, whichever occurs first, unless the Director of Airports approves in writing another completion date. After completion, such landscaping shall be maintained in excellent condition by cutting, trimming, fertilizing, watering and weeding.
- Lessee shall landscape and provide irrigation to the area as shown on attached Site Layout (attached Drawing 1).
- 1.14 Hangar Doors. Outrigger Hangar doors are not allowed.

B. STANDARDS FOR LANDSCAPE DESIGN

- 1.01 Plants having similar water needs shall be grouped together.
- 1.02 Landscaped areas shall be designed so that trimming is easy and minimizes damage to plants and property.

- 1.03 Plants shall be selected based on use, soil and sun/shade conditions, adaptability to geographic and climatic conditions, and upon ability to survive, once established, on normal rainfall or minimal irrigation.
- 1.04 Preservation of native plants that have been identified as desirable is encouraged. Such plants shall include, but not be limited to:
 - a. Plants that are threatened or endangered.
 - b. Specimen plants or exceptional examples of particular species.
- 1.05 Plants that readily survive relocation and are useful in new or existing landscapes.
- 1.06 Irrigated turf shall be used sparingly and only in circumstances where other landscaping media will not satisfy the site's needs.
- 1.07 Use of long, narrow strips of turf is strongly discouraged.
- 1.08 Only trees of less than 12 feet in height at maturity shall be used.
- 1.09 Intentionally deleted.
- 1.10 In planted areas, mulches or decomposed granite of two inches or more shall cover most soil surfaces.

C. STANDARDS FOR IRRIGATION DESIGN

- 1.01 Irrigation shall be designed to avoid run-off, over-spray, and under-spray.
- 1.02 Irrigation shall employ drip, trickle, micro, low-arching, low-gallage, or other water-conserving technology when possible.
- 1.03 Irrigation shall be separated into zones according to water requirements of plants.
- 1.04 Rain and moisture sensing technology shall be used wherever possible.

D. STANDARDS FOR LANDSCAPE INSTALLATION

- 1.01 All installations shall conform to currently recommended horticultural practices.
- 1.02 All plants, materials, and equipment shall be of good quality according to current industry standards. Sources for standards shall include the latest edition of the American Standard for Nursery Stock, by the American Association of Nurserymen, and recommendations from the American Sod Producers Association.
- 1.03 To minimize water use, fall installation of landscapes is highly recommended, with winter and spring installations acceptable. Summer installation is strongly discouraged.

- 1.04 To reduce transplant shock, use of container grown trees and shrubs is recommended where possible.

E. STANDARDS FOR LANDSCAPE MAINTENANCE

- 1.01 Owner, operator, or other entity in control shall be required to keep all landscaping material in good health or repair at all times.
- 1.02 Maintenance shall begin at the commencement of installation.
- 1.03 Regular maintenance shall include checking, adjusting, and repairing irrigation systems. This includes adjusting run-time schedules based on seasons and moisture levels.
- 1.04 Regular maintenance shall include replenishing mulch.
- 1.05 Natural plant form is encouraged.
- 1.06 To minimize mechanical damage to young trees and shrubs, planting areas shall be free of weeds and shall be mulched regularly.

F. DESIRABLE PLANT SPECIES

- 1.01 Plants recommended by the local Texas Agricultural Extension offices and those listed in the following publications shall be considered desirable:
 - a. “Landscape Water Conservation - Xeriscape”, Texas Extension service
 - b. “A directory of water saving plants - Trees for Texas”, Texas Water Development Board
 - c. “Outstanding Landscape Plants of Texas”, Texas Association of Nurserymen
 - d. Plants for Dry Climates, Mary Rose Duffield and Warren B. Jones; HP Books
- 1.02. These references are provided as guides and are not intended to be exclusive. Any plant that is hardy, long-lived, and will survive on normal rainfall or minimal irrigation, and that does not pose a risk to life, health, or property, is considered desirable.

G. STANDARDS FOR SELECTION AND INSTALLATION OF TURF

- 1.01 Turfgrass selection shall be determined by facility need and geographic location. Use of different types of turf for distinctive purposes is encouraged.
- 1.02 The use of turf that can be maintained on natural rainfall is encouraged.
- 1.03 Sections of turf of high visibility and limited area can be irrigated with automatic systems using latest technologies.
- 1.04 Turf shall be irrigated separately from other plantings.

H. USE RESTRICTIONS

1.01 SIGNS

- a. No billboard or advertising media such as signs, shades, awnings, searchlights, loudspeakers, amplifiers or similar devices shall be permitted other than signs identifying the name, business and products of the person or firm occupying the premises, and those offering the premises for sale or lease. The size and style of all permitted signs shall be approved by the Director of Airports in writing, such approval not to be unreasonably withheld, conditioned or delayed.
- b. Sign locations shall be governed by the setback requirements unless written permission is given by the Director of Airports for non-conforming location.
- c. Permitted signs and identifying markings on buildings or building sites shall only be of such size, design and color as is specifically approved by the Director of Airports in writing, such approval not to be unreasonably withheld, conditioned or delayed.
- d. One (1) on-site temporary sign for the purpose of describing a construction project or advertising the sale or lease of a site or building will be permitted, provided the sign is no longer than thirty-two (32) square feet and is not permitted to remain on the site beyond the completion of such construction sale or lease.

1.02 STORAGE

Outdoor storage or operations shall not be permitted without the prior written approval of the Director of Airports.

1.03 REFUSE

No lot shall be used or maintained as a dumping ground for rubbish. Trash, Garbage, and other waste shall be kept in enclosed sanitary containers. All trash areas shall be screened so as not to be visible from any street of adjacent lots.

1.04 NUISANCES

No noxious, dangerous or offensive activity shall be conducted upon any land, lot or portion of any lot, nor shall anything be done thereon which may be or may become a hazard of nuisance to abutting properties or the area or neighborhood in general.

1.05 RESERVED

1.06 PARKING

All pavement and parking areas will be installed by Lessor within the front setback of the building. No parking will be allowed on airside of building. No parking will be allowed

in side setbacks unless approved by the Director of Airports. Markings and ADA marking signs ramps shall be installed in compliance with applicable law.

1.07 VARIANCES

The Director of Airports is authorized to grant variances from any provision of this Design Guide and Standards For Private Hangars where such variations will assist in carrying out the intent and spirit of this Design Guide and Standards For Private Hangars and where strict application of the provision would result in a particular hardship to the person seeking the variance and/or such requested variance is otherwise determined to be reasonable by the Director of Airports (using the Director of Airports' reasonable discretion).

EXHIBIT D

Form of Temporary Construction Easement

[See attached eight (8) pages]



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 7/24/2012

TO: City Council / City Manager

FROM: Marv Esterly, Director of Airports

SUBJECT: Consider a resolution authorizing the execution of Airport Fuel Service Agreement Facility between COG REALTY LLC and the City of Midland, Texas in Lot 4B, Block 11, (Lease Tract 5) Midland International Airport, Industrial Park Addition, Section 6, Midland County, Texas.

Purpose:

Consider a resolution authorizing the execution of Airport Fuel Service Agreement between COG REALTY LLC and the City of Midland, Texas in Lot 4B, Block 11, (Lease Tract 5) Midland International Airport, Industrial Park Addition, Section 6, Midland County, Texas.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$.04 per gallon

Discussion:

COG Realty LLC. has requested to enter into an Airport Fuel Service Agreement to provide fuel to their aircraft in the new hangar development area. The Airport Fuel Service Agreement is our standard agreement which allows the tenant and their employees to provide maintenance and service their own aircraft, as well as to store, transport, and dispense all forms of aviation propellants and fuels from mobile dispensers at the Airport. The tenant will also have to abide by the Minimum Standards for Aeronautical Activities that are attached to and made a part of the Agreement. These standards are in place to govern the aviation activities at Midland International Airport.

RESOLUTION NO.

**RESOLUTION AUTHORIZING THE EXECUTION OF
AN AIRPORT FUELING AGREEMENT WITH COG
REALTY LLC IN ORDER TO STORE AND DISPENSE
ALL FORMS OF AVIATION PROPELLANTS AND
FUELS FROM FIXED DISPENSERS ONLY TO COG
REALTY LLC'S AIRCRAFT AT THE MIDLAND
INTERNATIONAL AIRPORT, MIDLAND, MIDLAND
COUNTY, TEXAS**

WHEREAS, the City Council finds it to be in the public interest to authorize the execution of an airport fueling agreement with COG Realty LLC, in order to store and dispense all forms of aviation propellants and fuels from fixed dispensers only to COG Realty LLC's Aircraft at the Midland International Airport;

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

THAT the Mayor and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, the airport fueling agreement with COG Realty LLC, in the form shown in Exhibit "A", attached hereto and made a part hereof for all legal purposes.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Marv Esterly, Director of Airports

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

AIRPORT FUELING AGREEMENT
FOR CORPORATE NON-COMMERCIAL HANGAR TENANTS

THIS AIRPORT FUELING AGREEMENT FOR CORPORATE NON-COMMERCIAL HANGAR TENANTS (this “**Agreement**”) is made and effective this 25th day of July, 2012 (the “**Effective Date**”), by and between the CITY OF MIDLAND, TEXAS, a municipal corporation, (hereinafter referred to as “**City**”), and COG REALTY LLC, a Texas limited liability company (hereinafter referred to as “**Lessee**”), wherein the City hereby grants to Lessee, the hereinafter described rights at the Midland International Airport, hereinafter called the “**Airport**”, in accordance with and subject to the following terms and conditions:

LESSEE:	COG REALTY LLC
LESSEE’S ADDRESS:	550 West Texas Avenue, Suite 100 Midland, Texas 79701
PRIVILEGE:	To store and dispense all forms of aviation propellants and fuels from fixed dispensers on Lessee’s Premises on the Airport only to Lessee’s own aircraft.
FEES:	See <i>Schedule A</i> attached hereto

COVENANTS AND CONDITIONS

1. This Agreement shall be coterminous with that certain Lease Agreement for Airport Hangar Facility by and between Lessee and the City (the “**Hangar Lease**”). Accordingly, this Agreement shall automatically terminate upon the expiration or earlier termination of said Hangar Lease.
2. From time to time during the term of this Agreement, the City, upon not less than sixty (60) days prior written notice to Lessee shall have the right to make reasonable modifications to the fees and conditions hereof so long as such modifications are

consistent with the fees and conditions being imposed by the City upon all other operators at the Airport whose operations at the Airport are similar to those of Lessee.

3. Lessee shall not operate mobile refueling equipment on the Airport, but shall utilize fixed fuel dispensing hose equipment only. The use and operation of such equipment is subject to all safety regulations and requirements of applicable safety codes, as well as the rules and regulations duly adopted from time to time by the City's Department of Airports, plus any ordinances or resolutions adopted by the City pertaining to the conduct of aviation fueling activities.
4. This Agreement shall not be assigned, sold, conveyed, mortgaged, or pledged without the prior written consent of the Director of Airports, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, without having the obligation to obtain such prior consent, Lessee shall have the right to assign this Agreement in connection with a permitted assignment of the Hangar Lease.
5. In addition to the fueling and defueling regulations set forth herein, Lessee shall comply with all applicable standards and recommendations of the National Fire Protection Association (the "NFPA"), including the following, among others: "Standard for Aircraft Fuel Servicing" and "Standard on Airport Ramp Fire Hazard Classifications and Precautions", or any subsequent replacement publications. Lessee shall also comply with all applicable Advisory Circulars, rules, regulations, and orders of the Federal Aviation Administration (FAA) and City relating to aviation fueling activities, and shall consent to inspections of its facilities and personnel by the Federal Aviation Administration and City.

6. Personnel engaged in aviation fueling activities on behalf of Lessee shall be properly trained with regard to safety procedures attendant to such activities, as required by applicable law.
7. Lessee shall store all fuels in a fuel storage facility located in an area approved by City, such approval not to be unreasonably withheld conditioned or delayed. The fuel storage facility shall at all times meet all requirements as to safety, operation, environmental protection, maintenance, construction, and quality control in accordance with Airport, City, County, State, and Federal rules, regulations, laws, resolutions, ordinances, and orders as well as standards of the National Fire Protection Association, and any requirements of the fuel supplier. Lessee shall operate and maintain at its sole expense all of its fueling facilities and equipment.
8. Lessee shall comply with all insurance, operational, quality control, equipment standards, and any other requirements of the Lessee's fuel supplier.
9. Lessee shall conduct its fueling operations in such a manner so as not to annoy, disturb, or be offensive to others at the Airport, or in such a manner as to create a public safety or environmental hazard. Lessee, at Lessee's sole expense, shall conduct any cleanup required by applicable law of any fuel, hazardous material, or hazardous waste resulting from the spilling, dumping, leaking, or disposal of said fuel, material, or waste onto or under any property owned by City from any equipment, barrel, tank container or fuel storage facility owned or operated by Lessee.
10. Lessee shall furnish fixed fueling dispensers having a minimum capacity of 750 gallons of 100 Octane and/or 2,000 gallons of Jet A, provided that City acknowledges that the capacity of Lessee's fixed fueling dispensers may have capacity in excess of such

minimums. Each dispenser shall carry and dispense only one (1) grade of fuel, and be clearly identified to that fuel. Each dispenser shall be equipped (including fire suppression systems required by applicable law), operated and maintained in compliance with applicable law.

11. Lessee shall promptly, upon written demand, repair or replace any property of City damaged by Lessee's operations hereunder.
12. Lessee shall procure all licenses, certificates, permits or other authorization from all governmental agencies, if any, lawfully having jurisdiction over the operations of Lessee at the Airport with regard to aviation fueling activities.
13. Lessee shall pay all taxes, licenses, certifications, permits, examination fees, and excises, which may be lawfully assessed, levied, exacted or imposed on its property or operations hereunder, and shall make all applications, reports and returns required in connection therewith.
14. Lessee shall promptly comply with all present and future laws, ordinances, resolutions, rules, regulations, requirements, orders, and directions which may lawfully apply or pertain to its fueling and fuel storage operations at the Airport, as governed by Airport, City, County, State or Federal authorities.
15. Upon the City's providing Lessee reasonable advance written notice, City shall have the right at any reasonable time to inspect Lessee's equipment, personnel, services rendered, and other activities pursuant to this Agreement.
16. If following the expiration of any applicable notice and/or cure periods hereunder, the City is required or elects to pay any sum or sums or incurs any obligations, fees or expenses by reason of the failure, neglect or refusal of Lessee to perform or fulfill any of

the conditions, covenants or agreements contained in this Agreement, or as a result of an act or omission of Lessee contrary to said conditions, covenants and agreements, Lessee agrees to pay promptly to City, upon written demand, the sum or sums so paid or the penalties so incurred, including all interest, costs, damages, reasonable attorneys' fees and penalties.

17. Lessee agrees to obey the rules and regulations of the Airport as may be duly enacted from time to time by the City's Department of Airports, provided that such rules and regulations apply to all operators at the Airport whose operations at the Airport are similar to those of Lessee.
18. Lessee is, and shall be, deemed to be an independent contractor and operator responsible to all parties for its respective acts or omissions, negligent or otherwise, and City shall in no way be responsible therefor.
19. Lessee covenants and agrees to indemnify, hold harmless, and defend City, its officers, agents and employees from and against any and all claims for damages or injury to persons or property arising out of or in connection with the conduct of aviation fueling activities by Lessee, its employees, patrons, contractors or subcontractors. Lessee shall indemnify City against any and all mechanics' and materialmen's liens or any other types of liens imposed upon the Premises arising as a result of Lessee's aviation fueling activities. Lessee shall procure and maintain the insurance as specified in the Hangar Lease.
20. FUELING AND DEFUELING REGULATIONS: The following rules shall govern refueling, defueling and oil servicing of aircraft, and the placing of fuels in storage tanks or dispensers:

- (a) No person shall smoke or carry lighted cigars, cigarettes, pipes, matches, or any open flame within one hundred (100) feet of an aircraft being fueled or defueled, or within one hundred (100) feet of the site of a flammable liquid spill, unless such person is in a building or other enclosed area where smoking is specifically permitted.
- (b) No person shall perform or allow performance of any refueling or defueling operation during an electrical storm.
- (c) All hoses, funnels, and appurtenances used in fueling and defueling operations shall be equipped with a positive grounding device in good order to prevent ignition of flammable liquids, due to static spark.
- (d) No aircraft shall be fueled or defueled unless the aircraft and the fuel dispensing apparatus shall both be electronically grounded as required by Federal Aviation Regulations and National Fire Protection Association standards.
- (e) The use of any material which may cause a static spark is prohibited within one hundred (100) feet of any aircraft being fueled or defueled.
- (f) The fueling and defueling of aircraft and the maintenance of aircraft fueling systems shall not be conducted within twenty-five (25) feet of any hangar or other building, unless conducted in compliance with applicable NFPA standards.
- (g) Airborne radar equipment shall not be operated or ground tested on any areas wherein the directional beam of high intensity radar is within three hundred (300) feet, or low intensity beam is within one hundred (100) feet, of another aircraft, an aircraft fueling operation, an aircraft fueling truck, or aircraft fuel or flammable liquid storage facility.
- (h) It is prohibited to fuel or defuel an aircraft with any equipment or apparatus which is not in a safe, sound and non-leaking condition.
- (i) When a malfunction of fueling equipment is detected, all fueling operations shall cease immediately and the malfunction remedied or entire unit replaced by another. Any malfunctions or irregularities detected on or with an aircraft being serviced will be brought to the attention of the aircraft owner or operator immediately.
- (j) In no event shall fueling or defueling operations resume following a fuel spill until all areas upon which fuel has spilled or flowed over are thoroughly flushed.
- (k) Starting the engine of an aircraft when there is any flammable liquid on the ground in the vicinity of the aircraft is prohibited.

21. FAA AIRPORT LEASE AND AGREEMENT REQUIREMENTS:

- (a) It is hereby specifically understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right to provide aeronautical services to the public as prohibited by Section 308(a) of the Federal Aviation Act of 1958, as amended and the City reserves the right to grant to others the privilege and right of conducting any one or all activities of an aeronautical nature.
- (b) Lessee, for itself, its personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (1) no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of or be otherwise subjected to discrimination in the use of the Premises or any facilities constructed thereon, (2) that in the construction of any improvements on, over or under the Premises and the furnishings of services thereon, no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Lessee shall use the Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended. In the event of breach of any of the above nondiscrimination covenants, City shall have the right to terminate this Agreement and to re-enter and repossess the Premises and the facilities thereon, and hold the same as if said Agreement had never been made or issued.
- (c) Lessee agrees to furnish services on a fair, equal and not unjustly discriminatory basis to all users thereof, and to charge fair, reasonable and not unjustly discriminatory prices for each unit of sale or service; provided that the Lessee may be allowed to make reasonable and non-discriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

22. In the event that any party defaults in its obligations hereunder (the “**Defaulting Party**”), the other party (the “**Non-Defaulting Party**”) may give notice of such default hereunder to the Defaulting Party and the Defaulting Party shall thereupon (if the default is capable of being cured) have thirty (30) days (or such longer period as may reasonably be required under the circumstances, in the event such cure cannot reasonably be accomplished within such thirty (30) day period) to commence correction of such default, and diligently and continuously pursue such correction until completion. In the event

correction of such default has not commenced within such thirty (30) day period (or such longer period as may reasonably be required under the circumstances) or in the event the Defaulting Party has not diligently and continuously pursued the correction of such default, the Non-Defaulting Party, after notifying the Defaulting Party, shall have the right, but not the obligation, to terminate this Agreement upon ten (10) days prior written notice.

23. This Agreement shall be subordinate to the provisions of any existing or future agreements between the City and the United States relative to the operation, maintenance, or development of the Airport.
24. By executing this Agreement, LESSEE AND CITY AGREE TO WAIVE AND DO HEREBY WAIVE ANY CLAIM THEY HAVE OR MAY HAVE AGAINST THE OTHER PARTY, REGARDING THE AWARD OR ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THIS AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THIS AGREEMENT. THE LESSEE AND THE CITY SPECIFICALLY AGREE THAT IF THE LESSEE OR CITY BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET. SEQ., AS AMENDED), THE LESSEE AND CITY AGREE TO WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH THAT PARTY MIGHT OTHERWISE BE ENTITLED.

25. Any notices to the City required under this Agreement shall be sent by registered or certified mail, postage prepaid, addressed: City of Midland, Texas, Director of Airports, P. O. Box 60305, Midland, Texas 79711. All payments shall be made to the above address by mail, or in person to the office of the Director of Airports in the Airport Passenger Terminal Building. Any notices to the Lessee required under this Agreement shall be sent by registered or certified mail, postage prepaid, addressed as follows:

Lessee:

with a copy to:

COG Realty LLC
550 West Texas Avenue, Suite 100
Midland, Texas 79701
Attention: Kyle G. Rose, Vice President,
Administration

Concho Resources Inc.
550 West Texas Avenue, Suite 100
Midland, Texas 79701
Attention: C. William Giraud, Senior Vice
President - General Counsel

26. This Agreement, when taken in conjunction with the Hangar Lease, shall constitute the entire agreement of the parties as to the subject matter contained and may not be changed, modified, discharged or extended, except by written instrument duly executed on behalf of the parties.

[END OF TEXT]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be legally executed in duplicate as of the Effective Date.

THE CITY OF MIDLAND, TEXAS

By: _____
Wesley Perry, Mayor

ATTEST:

Amy Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

**APPROVED AS TO CONTENT
AND COMPLETENESS:**

Mary Esterly, Director of Airports

COG REALTY LLC, a Texas limited liability company

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

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

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he/she executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of CITY OF MIDLAND, TEXAS.

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

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared Kyle G. Rose, Vice President, Administration of GOG Operating LLC, the sole member of COG Realty LLC, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of said entities.

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

Notary Public, State of Texas

SCHEDULE A

ITEM NO. 1: **FLOWAGE FEE FOR ALL TYPES OF AVIATION FUELS AND PROPELLANTS**

Lessee shall pay to the city a flowage fee of FOUR CENTS (\$.04) PER GALLON for all types of aviation fuels and propellants delivered to the Premises. Payment of the flowage fee is to be made by the Lessee monthly, on or before the TENTH (10th) DAY of each month for the previous month's purchases. Lessee shall furnish to the City copies of all fuel delivery invoices from fuel suppliers monthly at the same time that the monthly flowage fee is paid. A flowage fee shall not be due from Lessee for any aviation fuels purchased from any other fuel vendor on the Airport, which is paying a flowage fee to the City. Upon reasonable advance written notice, Lessee agrees to allow City access to his books and records of fuel purchases/dispensing at any time for audit purposes. At the same time the monthly flowage fee is paid, Lessee shall also provide to city a statement in a form approved by City which provides a breakdown of all aviation fuels dispensed by Lessee during the previous month.

ITEM NO. 2: **DELINQUENT PAYMENTS**

Lessee agrees that in the event payments to the City for fuel-flowage fees are not received by the City by the TENTH (10th) DAY of each month, Lessee shall pay to the City a DELINQUENCY CHARGE of ONE PERCENT (1%) or maximum amount allowed by law, whichever is less, of the amount due to City, for each month, calculated daily, that the amount due remains unpaid. Payments due the City shall be received by the City only on normal business days of Monday through Friday, and shall not be considered late if the date due falls on a weekend or legal City holiday. A yearly schedule of City holidays shall be provided to Lessee upon request. Payment by Lessee and acceptance by City of a Delinquency Charge shall not be construed as a waiver or forfeiture of any other rights or remedies of the City contained elsewhere in this Agreement, or as provided by law. For the purposes of this Item, the date payments are received by the City shall be the U.S. Postal Service cancellation date on the envelope transmitting the payment, or the date such payment is received by an authorized representative of the City if the payment is hand delivered. In the event of a dispute as to the amount to be paid, the City may accept without prejudice the sum tendered and, if a deficiency is later determined, the foregoing Delinquency Charge shall apply only to such deficiency. The City may waive, for good cause any Delinquency Charge upon written application of Lessee.

ITEM NO. 3: AUDIT

Upon reasonable advance written notice, City and its agents shall have the right at all reasonable times and at all ordinary business hours of the day to examine and inspect such books, records, receipts and other data as required to confirm fuel deliveries to Lessee. All such books, records, receipts and other data are required to be kept for a minimum of two (2) years. The cost of such an audit shall be borne by the City unless the audit reveals a discrepancy of more than five percent (5%) between the amounts due as reported by Lessee in accordance with this Agreement, and the amounts due as determined by the audit. In case of a discrepancy of more than five percent (5%) the reasonable, out-of-pocket third party cost of the audit shall be paid by the Lessee, provided that in no event shall such cost exceed an amount equal to One Thousand Five Hundred and No/100 Dollars (\$1,500.00). Any additional payments due from Lessee, as a result of the audit, shall forthwith be paid to the City, with interest thereon at the rate of twelve percent (12%) per annum or the highest maximum amount allowed by law, whichever is lowest, calculated daily, from the date such amounts originally became payable to the City until the date paid. Any overpayment by the Lessee shall be credited against further payments due to City, or will be refunded to Lessee, at the City's option.



City Council Agenda

Approved for Agenda:
csharp
City Manager's Office

MEETING DATE: 7/24/2012

TO: City Council / City Manager

FROM: Tina Jauz / Community Services Director

SUBJECT: Consider a resolution accepting \$21,500 in grant funds from the Permian Basin Area Foundation for improvements to the porch and decking at the Scarborough Linebery House; and appropriating said funds to Project No. 7088

Purpose:

To accept grant funds from the Permian Basin Area Foundation and appropriate the funds to a project to be used for the purpose of making improvement to the porch and decking at the Scarborough Linebery House.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$21,500

Discussion:

This spring, the City made application to the Permian Basin Area Foundation for grant funds to improve the porch and decking at the Scarborough Linebery House. The wrap around wood porch is in need of repair and or replacement. The funds will be used to make the improvements to Midland's second oldest home.

RESOLUTION NO.

RESOLUTION AUTHORIZING THE CITY OF MIDLAND TO ACCEPT \$21,500.00 IN GRANT FUNDS FROM THE PERMIAN BASIN AREA FOUNDATION FOR IMPROVEMENTS TO THE PORCH AND DECKING AT THE SCARBOROUGH LINEBERY HOUSE; AND APPROPRIATING FUNDS

WHEREAS, the City of Midland has been awarded a grant in the amount of \$21,500.00 from the Permian Basin Area Foundation for improvements to the porch and decking at the Scarborough Linebery House; and

WHEREAS, the Council finds it to be in the public interest to accept the grant award thereof;

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

SECTION ONE. That the grant in the amount of \$21,500.00 from the Permian Basin Area Foundation for improvements to the porch and decking at the Scarborough Linebery House is hereby accepted and directed to be deposited in the General Fund (001) of the City.

SECTION TWO. That the sum of \$21,500 is hereby appropriated from General Fund (001) Unappropriated Fund Balance (5650) to the Scarborough Linebery House Porch/Decking Improvements Project (7088).

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



PERMIAN BASIN AREA *Foundation*

200 North Loraine, Suite 500 • Midland, Texas 79701

BOARD OF GOVERNORS

Larry Edgerton
Chairman
Michael Canon
Vice Chairman
Cathy Eastham
Secretary
Mark Nicholas
Treasurer
Steve Barron
Immediate Past Chairman
Stacey Gerig
Trey Grafa
Jack Harper
Patty Herd
Scott Kidwell
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Nancy Anguish
Joan Baskin
Spencer Beal
John Bergman
Grant Billingsley
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A. J. Brune III
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Tracy Elms
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Grace King
LaDoyce Lambert
Bobby McKnight
Richard T. McMillan
J. E. Mendez, M.D.
Gregg Owens
Jess Parrish
Lorraine Perryman
Beverly Pevehouse
Rodney M. Robinson
W. Scott Ryburn
Clarence Scharbauer III
Jess Sellars
Tulsi Singh, M.D.
Jimmy Stallings
Ray Stoker, Jr.
Georgia Trobaugh
Jack Wood

STAFF

Guy McCrary
President & CEO
Cyndi Vara, CPA
Controller
Vicki Rice
Scholarships & Development
Lauren Young
Grants & Administration
Cari Whitaker
Finance & Accounting Assistant

June 28, 2012

Heritage Midland - Scarborough/Linebery House
Ms. Frances N. Stapp
802 S. Main
Midland, Texas 79701

Dear Frances,

We are pleased to notify you that Permian Basin Area Foundation has awarded a grant to Heritage Midland - Scarborough/Linebery House in the amount of \$21,500 for use as described in your grant application. The award is made conditional upon your compliance with the Grantseeker's Guidelines under which your grant application was submitted.

This grant is made possible through the Tom and Evelyn Linebery Fund and the Tighe Family Charitable Fund, both component funds of Permian Basin Area Foundation.

Any public acknowledgement of this grant award should appear as:

- Tom and Evelyn Linebery Fund of Permian Basin Area Foundation
- Tighe Family Charitable Fund of Permian Basin Area Foundation

We will announce this grant at an upcoming news conference and request that a representative of your organization be in attendance, preferably a member of your governing board. Your representative will be asked to briefly share a few words about your organization and your grant project. The news conference is scheduled for 1:00 p.m. on Monday, July 9, 2012, at Sibley Nature Center, located at 1307 E. Wadley, Midland.

We strongly encourage all organizations receiving funding from the Foundation to embrace Accountability Indicators for Nonprofit Organizations, as developed by the Nonprofit Management Center of the Permian Basin. The Indicators can be found on the Center's website www.nmc-pb.org.

If you have any questions or need additional assistance, please contact Lauren Young at the Foundation office, 432.617.3213.

Sincerely,


Guy McCrary

cc: Mr. and Mrs. Charles Tighe
1509 Princeton
Midland, Texas 79701



Confirmed in Compliance
with National Standards for
U.S. Community Foundations



City Council Agenda

Approved for Agenda:
jnichols
City Manager's Office

MEETING DATE: 7/24/2012

TO: City Council / City Manager

FROM: Sylvester Cantu, Community Development Manager

SUBJECT: Reallocation of Community Development Block Grant funds

Purpose:

Consider a resolution authorizing a reallocation of certain Community Development Block Grant funds from previous program years to the Community Development Block Grant fund 2012-2013 program year; the grant funds from previous program years to be reallocated total \$22,326.00

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

None

Discussion:

As part of the 2012/2013 Community Development Block Grant (CDBG) program development process, we have identified funds in current CDBG projects/grants that may be programmed into program year 2012/2013. At total of \$22,326 is proposed for reallocation as identified below. These funds will be added to the 2012/2013 grant for distribution within program guidelines.

From Project #	Amount
7028	\$ 3,883.00
7044	\$ 4,549.00
7045	\$ 10,791.00
7047	\$ 3,034.00
7051	\$ 69.00
Total	\$ 22,326.00

RESOLUTION NO.

**RESOLUTION AUTHORIZING A REALLOCATION OF
CERTAIN COMMUNITY DEVELOPMENT BLOCK
GRANT FUNDS FROM PREVIOUS PROGRAM YEARS
TO THE COMMUNITY DEVELOPMENT BLOCK
GRANT FUND PROGRAM YEAR 2012-2013 IN THE
AMOUNT OF \$22,326.00**

WHEREAS, there are certain unused and unexpended Community Development Block Grant Funds from prior program years which could be used and allocated to the Community Development Block Grant Funds for the program year 2012-2013; and

WHEREAS, the Council desires to file the City of Midland's application with the United States Department of Housing and Urban Development for Community Development Block Grant Funds for the program year 2012-2013; and

WHEREAS, such application shall set forth how funds from prior program years would be reallocated and used during the program year for 2012-2013; and

WHEREAS, the Council finds it to be in the public interest to authorize the reallocation of unused and unexpended Community Development Block Grant Funds from prior program years to the program year for 2012-2013;

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

SECTION ONE. That the unused and unexpended Community Development Block Grant Funds from prior program years which are available for reallocation are as follows:

Account No.	Name	Amount
060-075-7028	Target Area Land Purchase 10	\$ 3,883.00
061-075-7044	Contingency 11	\$ 4,549.00
061-075-7045	Senior Nutrition 11	\$ 10,791.00
061-075-7047	Local March Program Child Care 11	\$ 3,034.00
061-075-7051	Washington Park Improvements 11	\$ 69.00
	Total	\$ 22,326.00

and are hereby reallocated to be used with the Community Development Block Grant Funds for the program year 2012-2013.

SECTION TWO. That the City Treasurer is hereby authorized and directed to make the appropriate accounting transfers to indicate the reallocation of the above described funds to the Community Development Block Grant Fund program for the year 2012-2013.

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

Sylvester Cantu, Community Development
Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

***Community Development Block Grant
Building Communities***

**October 2012 to September 2013
ACTION PLAN**

to the

**CITY OF MIDLAND
CONSOLIDATED PLAN
FOR COMMUNITY DEVELOPMENT
AND HOUSING FUNDS
October 2010 - September 2015**

Prepared for the U.S. Department of Housing and Urban Development





City of Midland
Action Plan for 2012/13 Community Development
and Housing Funds

The City of Midland has prepared the 2012/13 (October 1, 2012 to September 30, 2013) Action Plan to the Consolidated Plan. The Consolidated Plan establishes Midland's long range strategy for investment of its U.S. Department of Housing and Urban Development (HUD) Community Development Block Grant (CDBG) resources and other service needs linked to activities directed at community development, housing and homeless service needs. The Consolidated Plan covers a five-year period beginning October 1, 2010 and ending September 30, 2015.

The Action Plan may be examined at the following locations from June 18 to July 17, 2012 (a 30-day public review period) or on the City Website (www.midlandtexas.gov):

City Secretary's Office 300 N Loraine, Room 340, City Hall	Casa de Amigos 1101 E Garden Lane
Midland County Branch Library Centennial Branch, 3211 W Wadley	SE Community Senior Center 1803 E Indiana
Midland Senior Center 3303 W Illinois, Kingsway Mall	Midland County Housing Authority 1710 Edwards
City Housing Authority 700 W Scharbauer Drive	Midland County Public Library 301 W Missouri

The purpose of the 2012/13 Action Plan is to identify the HUD resources that will be used in the coming year to address the various housing, homeless and community development needs in the City. This Action Plan represents Year Three of the Consolidated Plan. The primary funding source is the City's 2012/13 CDBG entitlement allocation of \$699,035. The City also expects to receive \$104,400 in program income and \$22,336 reprogrammed from prior year's fund. Specific projects to be undertaken with the total \$825,771 CDBG

funds are:

	<u>Amount</u>
Housing Needs	
Owner Housing Major Projects Program	\$420,000*
Owner Housing Minor Repairs Program	\$ 80,000
Homebuyer Assistance Program	\$ 40,000
Community Development Needs	
SE Senior Nutrition Program	\$ 45,000
Home Cleaning Program	\$ 25,000
Lot Clearing Program	\$ 35,000
CDBG Administration	\$160,000
Contingency	<u>\$ 20,771</u>
Total	\$825,771

* includes \$104,400 in program income.

The Action Plan provides information on the locations of the proposed activities. The City anticipates that 96% of funds will benefit low and moderate income persons. The Plan includes a narrative addressing a variety of issues and required certifications. The agency responsible for development of the Plan is the Community Development Division of the City's Development Services Department.

Please direct any **written comments** to the City's Community Development Division, PO Box 1152, Midland, Texas, 79702, **by July 17, 2012**. The Midland City Council will consider approval of the plan during the regular Council meeting on July 24, 2012. The Plan will be forwarded to HUD by August 15, 2012.

For more information, call the City's Community Development Office at 685-7408 or 685-7472.

Fair Housing – it's the Law.



City of Midland

THIRD YEAR ACTION PLAN October 2012 to September 2013

Consolidated Plan for Community
Development and Housing Funds
October 2010 to September 2015

Mayor:

W. Wesley Perry

City Manager:

Courtney Sharp

City Council Members:

District 1: Jeff Sparks
District 2: Vicky Hailey
District 3: John James
District 4: Michael B. Trost
At-Large: Scott Dufford
At-Large: Jerry Morales

Deputy City Manager:

Tommy Hudson

Assistant City Manager:

Jim Nichols

Community Development Office Staff:

Sylvester Cantu, Community Development Administrator
Wanda Valles, Program Coordinator

Special thanks to Steve Baker, GIS Specialist for maps included in the Plan

LIST OF CONTENTS

	<u>Page</u>
Executive Summary	4
Standard Form 424 - Application for Federal Assistance	6
City Council Resolution	8
Action Plan Narrative	11
Project Tables	19
Maps	28
2000 Census Tracts	
2010 Census Tracts	
Low-Income Areas – 2000 Census Tracts	
Non-white Population – 2010 Census Tracts	
Hispanic Population – 2010 Census Tracts	
Substandard Housing – 2000 Census Tracts	
Locations of Proposed 2012 Projects	
Tables 3A – Summary of Specific Annual Objectives	35
Table 3B – Annual Housing Completion Goals	42
Funding Sources Table	43
Support Other Applications Report	44
Consolidated Plan Specific Community Development Objectives Table	45
CERTIFICATIONS	46
CITIZEN PARTICIPATION	52

**CITY OF MIDLAND CONSOLIDATED PLAN
FOR COMMUNITY DEVELOPMENT AND HOUSING FUNDS**

ACTION PLAN for the 2012/13 PROGRAM YEAR

EXECUTIVE SUMMARY

The Consolidated Plan establishes Midland's long-range strategy for investment of its U.S. Department of Housing and Urban Development (HUD) resources and other resources linked to activities directed at community development, housing and homeless services needs. The Plan covers a five-year period, beginning October 1, 2010 and ending September 30, 2015.

The purpose of the 2012/2013 Action Plan is to identify the HUD resources that will be used in the coming year to address the various housing, homeless and community development needs in the City. This Action Plan represents Year Three of the Consolidated Plan. The sole funding source is the City's 2012/2013 Community Development Block Grant (CDBG) program entitlement allocation of \$699,035. Additionally, the City expects to receive \$104,400 in program income and reprogrammed \$22,326 from prior grant year's fund for a total of \$825,761.

Priority housing needs to be addressed are those of owner households in the 0% to 80% of median income range, and renter households in the 31% to 80% of median income range who will be making home purchases. The City will also address public services (senior citizens and child care) and other community development needs. Specific objectives with intended outcomes to be addressed are:

- reconstruct 4 homes and perform 28 minor repairs on homes occupied by low-income homeowners
- assist 7 low-income first time homebuyers with home purchases
- support meals program and home cleaning program for seniors (450 persons)
- clearing and mowing on 333 unsightly properties
- CDBG program administration

The Action Plan provides information as to the locations of the proposed activities. The City anticipates that 95.8% of funds will benefit low and moderate income persons.

In summary, the Action Plan was developed through the following citizen participation and consultation process: public organizations and affected groups were informed of the 2012/2013 plan development process and schedule, one community meeting was held, formal project proposals were accepted, two public hearings were held, media outreach was conducted, and public notification including direct mail-outs. The draft plan was made available for a 30-day review period (June 18 to July 17, 2012).

Concerning progress on the 2010-2014 Consolidated Plan, the City is eight months into the Second Year Action Plan. Specifically, public service activities and the owner housing assistance programs are progressing well towards their respective goals.

Several projects including public improvement activity, demolition and the homebuyer assistance program are experiencing slower progress. Greater detail is provided on Table 3A. The City's Consolidated Annual Performance and Evaluation Report that is generally published in December should also be reviewed for past performance.

The Plan includes narrative responses on a variety of issues posed as part of the Consolidated Plan. CDBG program specific requirements including required certifications are contained in the Action Plan. The agency responsible for development of the Plan is the Community Development Division of the City's Development Services Department.

Specific projects proposed to be undertaken with the total \$825,761 CDBG funds are:

<u>Project</u>	<u>Funds</u>
1 CDBG Program Administration	\$160,000
2 Lot Clearing Program	\$35,000
3 SE Senior Nutrition Program	\$45,000
4 Citywide Community Services Home Cleaning Program	\$25,000
5 Owner Occupied Major Project Program	\$420,000*
6 Owner Occupied Minor Repair Program	\$80,000
7 Homebuyer Assistance Program	\$40,000
Contingency	<u>\$20,761</u>
TOTAL	\$825,761

* = includes \$104,400 in program income.



SF 424

The SF 424 is part of the CPMP Annual Action Plan. SF 424 form fields are included in this document. Grantee information is linked from the 1CPMP.xls document of the CPMP tool.

SF 424

Complete the fillable fields (blue cells) in the table below. The other items are pre-filled with values from the Grantee Information Worksheet.

Date Submitted	Applicant Identifier	Type of Submission	
Date Received by state	State Identifier	Application	Pre-application
Date Received by HUD	Federal Identifier	☐ Construction	☐ Construction
		☐ Non Construction	☐ Non Construction
Applicant Information			
City of Midland, Texas		TX483564 MIDLAND	
300 N Loraine		73186579	
PO BOX 1152			
Midland	Texas	Development Services	
79702	Country U.S.A.	Community Development	
Employer Identification Number (EIN):		Midland	
75-6000608		Program Year Start Date (10/01)	
Applicant Type:		Specify Other Type if necessary:	
Local Government: City			
Program Funding		U.S. Department of Housing and Urban Development	
Catalogue of Federal Domestic Assistance Numbers; Descriptive Title of Applicant Project(s); Areas Affected by Project(s) (cities, Counties, localities etc.); Estimated Funding			
Community Development Block Grant		14.218 Entitlement Grant	
CDBG Project Titles 2012/13 Community Development Program for Neighborhood Revitalization		Description of Areas Affected by CDBG Project(s)	
\$699,035	\$Additional HUD Grant(s) Leveraged	Describe	
\$Additional Federal Funds Leveraged		\$Additional State Funds Leveraged	
\$Locally Leveraged Funds		\$Grantee Funds Leveraged	
Anticipated Program Income \$104,400		Other (Describe)	
Total Funds Leveraged for CDBG-based Project(s)			
Home Investment Partnerships Program		14.239 HOME	
NOT APPLICABLE		Description of Areas Affected by HOME Project(s)	
\$HOME Grant Amount \$0	\$Additional HUD Grant(s) Leveraged	Describe	
\$Additional Federal Funds Leveraged		\$Additional State Funds Leveraged	
\$Locally Leveraged Funds		\$Grantee Funds Leveraged	

\$Anticipated Program Income		Other (Describe)	
Total Funds Leveraged for HOME-based Project(s)			
Housing Opportunities for People with AIDS		14.241 HOPWA	
NOT APPLICABLE		Description of Areas Affected by HOPWA Project(s)	
\$0	\$Additional HUD Grant(s) Leveraged	Describe	
\$Additional Federal Funds Leveraged		\$Additional State Funds Leveraged	
\$Locally Leveraged Funds		\$Grantee Funds Leveraged	
\$Anticipated Program Income		Other (Describe)	
Total Funds Leveraged for HOPWA-based Project(s)			
Emergency Shelter Grants Program		14.231 ESG	
NOT APPLICABLE		Description of Areas Affected by ESG Project(s)	
\$ 0	\$Additional HUD Grant(s) Leveraged	Describe	
\$Additional Federal Funds Leveraged		\$Additional State Funds Leveraged	
\$Locally Leveraged Funds		\$Grantee Funds Leveraged	
\$Anticipated Program Income		Other (Describe)	
Total Funds Leveraged for ESG-based Project(s)			
Congressional Districts of:		Is application subject to review by state Executive Order 12372 Process?	
11	11		
Is the applicant delinquent on any federal debt? If "Yes" please include an additional document explaining the situation.		☐ Yes	This application was made available to the state EO 12372 process for review on DATE
		☐ No	Program is not covered by EO 12372
		☐ N/A	Program has not been selected by the state for review
☐ Yes	☐ No		

Person to be contacted regarding this application		
Sylvester	C	Cantu
Community Dev. Administrator	432-685-7408	432-686-1609
scantu@midlandtexas.gov	www.midlandtexas.gov	Other Contact
Signature of Authorized Representative		Date Signed

Resolution

Resolution page 2

Third Program Year Action Plan Narrative

GENERAL

Executive Summary

An **Executive Summary** is located at the beginning of the Action Plan.

General Questions

1. Describe the geographic areas of the jurisdiction (including areas of low income families and/or racial/minority concentration) in which assistance will be directed during the next year. Where appropriate, the jurisdiction should estimate the percentage of funds the jurisdiction plans to dedicate to target areas.
2. Describe the basis for allocating investments geographically within the jurisdiction (or within the EMSA for HOPWA) (91.215(a)(1)) during the next year and the rationale for assigning the priorities.
3. Describe actions that will take place during the next year to address obstacles to meeting underserved needs.
4. Identify the federal, state, and local resources expected to be made available to address the needs identified in the plan. Federal resources should include Section 8 funds made available to the jurisdiction, Low-Income Housing Tax Credits, and competitive McKinney-Vento Homeless Assistance Act funds expected to be available to address priority needs and specific objectives identified in the strategic plan.

The geographic areas in which CDBG funds will be directed are shown on the **Locations of Proposed 2012 Projects Map**. The Map also identifies the location criteria for beneficiaries of each proposed project. The reader should also refer to the census tract boundaries, minority population and low-income area maps. The minority population maps are based on 2010 Census Tracts boundaries and data. The low income areas map relies on the 2000 Census.

The City's rationale for its geographic distribution of CDBG funds is based on compliance with the CDBG Primary Objective - the development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income. Generally, CDBG supported public services are available on a citywide basis to income eligible households or persons. However, public capital improvements and other development projects are directed at sites within low- and moderate-income neighborhoods.

Housing assistance, elderly and childcare programs specifically target underserved populations. The targeting techniques include providing higher levels of assistance for lower income applicants and limiting assistance to low income areas.

As per the **Funding Sources Report**, the City will receive \$699,035 in CDBG Entitlement Grant funds for the 2012/2013 program. A total \$104,400 is estimated as CDBG program income for

2012/2013. Additionally \$22,326 will be reprogrammed from prior year's funds. Altogether, \$825,761 in CDBG funds will be available in 2012/2013. The City anticipates that 95.8% of CDBG funds will benefit low and moderate income persons.

As it relates to other HUD programs, the City shall support applications by other entities as reported in the **Support Other Applications Report**. It is hoped that the State of Texas will continue to offer HUD HOME funds on a competitive application basis. The City and the various housing providers should apply for these HOME funds as well as access the State's HOME Reservation System Participant program component. Low-Income Housing Tax Credit applications for Midland are currently under consideration. The City does encourage local providers to seek suitable federal resources such as the Emergency Shelter Grants (ESG) and federal weatherization funds.

Private funds to be used in conjunction with CDBG funding include United Way funds received by CDBG subrecipients. The City will also use non-federal funds for its lot clearing and demolition programs and for project management performed by city departments. Organizations like Christmas in Action and Habitat for Humanity rely on private donations for their programs.

Managing the Process

1. Identify the lead agency, entity, and agencies responsible for administering programs covered by the consolidated plan.
2. Identify the significant aspects of the process by which the plan was developed, and the agencies, groups, organizations, and others who participated in the process.
3. Describe actions that will take place during the next year to enhance coordination between public and private housing, health, and social service agencies.

The lead agency for administering the Action Plan is the City of Midland's Department of Development Services through its Community Development (CD) Division. Major public and private agencies responsible for administering programs covered by the Consolidated Plan are the City of Midland, local housing authorities and numerous housing (Midland Community Development Corporation, Midland Habitat for Humanity) and social service non-profits (Casa de Amigos, Community and Senior Services of Midland, the local Workforce Network).

The process for developing the Action Plan includes public notification, citizen input situations and target area selection. Public notification consisted of informing over 100 public organizations, non-profits and key target organizations about the upcoming Action Plan cycle was made on February 3, 2012. Proposals from outside organizations and city departments for the use of funds were accepted on April 12, 2012. A community meeting and two public hearings were conducted and the above groups were encouraged to attend. The City communicates and coordinates with other Midland governmental entities, local housing authorities, the City of Odessa and various State departments on an as needed basis. The City

provided copies of the Action Plan to the following governmental entities: Permian Basin Regional Planning Commission, local housing authorities and Midland County. Midland is not adjacent to another municipal government.

The City will continue to participate in local, regional and state efforts that serve to enhance coordination among public and private housing, health, and social service agencies. Such efforts include those of the Midland Affordable Housing Alliance, the Midland Homeless Coalition, the Midland Asset Building Coalition, the United Way, Board of Realtors, home builders association, and social service case managers among others.

Citizen Participation

1. Provide a summary of the citizen participation process.
2. Provide a summary of citizen comments or views on the plan.
3. Provide a summary of efforts made to broaden public participation in the development of the consolidated plan, including outreach to minorities and non-English speaking persons, as well as persons with disabilities.
4. Provide a written explanation of comments not accepted and the reasons why these comments were not accepted.

As per the Citizen Participation Plan for the City's Community Development program, the citizen participation process consists of providing notification and having formal opportunity for citizen input. The City informs the public through various means of upcoming input opportunities such as community meeting or public hearings. Specifically, the City conducted a neighborhood/ community meeting at Casa de Amigos on March 8, 2012 to solicit citizen input on priority community development and housing needs. Two public hearings (May 8, 2012 and June 12, 2012) at City Hall were also held to solicit citizen input. Spanish interpretation was available at the meetings. Minutes of the public hearings are maintained by the City Secretary Office. Copies of the draft plan were made available at several locations including the housing authorities as part of the 30-day review period (that occurred from June 18 to July 17, 2012). Comments received on the proposed Action Plan are included in the **Citizen Participation section**. This section also contains copies of published notices of the above meeting and public hearings.

Institutional Structure

1. Describe actions that will take place during the next year to develop institutional structure.

Major changes to the institutional structure described in the Consolidated Plan are not anticipated in the coming year. The City will continue to support activity by the various providers and encourage them to seek other funding sources to enhance the service delivery system in Midland. City staff and/or elected officials will continue to be involved in housing

and homeless concerns that seek to improve service delivery. Examples can be seen in the existence of the Midland Affordable Housing Alliance and the Midland Homeless Coalition among others.

Monitoring

1. Describe actions that will take place during the next year to monitor its housing and community development projects and ensure long-term compliance with program requirements and comprehensive planning requirements.

The City's Community Development Office has the responsibility of monitoring plan implementation. For its CDBG activity, monitoring will be done on a continuous basis regardless of whether a project is undertaken by a subrecipient or City staff. The **Summary of Specific Annual Objectives Tables** are used to track progress of individual activities toward addressing the broader Program objectives. All CDBG projects will be monitored monthly for progress in expenditure of funds. Public service programs also report performance monthly. Technical assistance to project managers by the CD Office is available throughout the year. Written agreements with subrecipients contain provisions on complying with HUD requirements that will be enforced. The City will perform on-site monitoring of such projects. Program objectives will be stated in measurable terms in the agreements. Any project involving development must conform to City development standards and other City Master Plan Objectives. Housing reconstruction homes and units under homebuyer assistance programming will meet HUD's housing quality standards. The City has a performance manual that is used on the reconstruction program. City staff will strive to attend HUD sponsored training to help maintain the capacity needed to monitor programs effectively.

Although the City is not responsible for monitoring HUD funds it does not directly receive, the City will issue certificates of consistency with the Consolidated Plan on the condition that receiving agencies provide periodic reports to the City. In this manner, the City can better track progress related to the implementation of the plan. The City will seek information on the number and categories of households served by such projects. To obtain a certificate, an agency must provide information on its ability to implement the proposed program, the proposal's measurable objectives and time frames for completion, and the responsible officials.

Lead-based Paint

1. Describe the actions that will take place during the next year to evaluate and reduce the number of housing units containing lead-based paint hazards in order to increase the inventory of lead-safe housing available to extremely low-income, low-income, and moderate-income families, and how the plan for the reduction of lead-based hazards is related to the extent of lead poisoning and hazards.

The City will implement its CDBG-aided activities consistent with the lead-based paint hazard reduction objective. Specifically, prospective households shall be made aware of the potential

hazard and appropriate evaluation and reduction steps will be pursued in rehabilitation programs. Referrals to services for testing of children by local health and child welfare agencies will be made as needed.

HOUSING

Specific Housing Objectives

*Please also refer to the Housing Needs Table in the Needs.xls workbook.

1. Describe the priorities and specific objectives the jurisdiction hopes to achieve during the next year.
2. Describe how Federal, State, and local public and private sector resources that are reasonably expected to be available will be used to address identified needs for the period covered by this Action Plan.

Available resources for the coming year will consist of the 2012/2013 CDBG funds budgeted for housing and the program income generated by the owner occupied housing program. The City anticipates housing programming to address priority housing needs of owner households, principally in the 0% to 50% of median income range and first time homebuyers in the 40% to 80% of median income range. As shown in the **Project Tables**, it is expected that homebuyer assistance, owner housing major projects, and owner housing minor repairs will be undertaken. The Project Tables contain information on outcome measurements. Privately funded Christmas in Action should annually achieve 300 minor repair projects. West Texas Opportunities is responsible for weatherization projects funded by DOE. **Table 3B Annual Housing Completion Goals** of the Action Plan also identifies the specific housing goals including resources to be used.

Needs of Public Housing

1. Describe the manner in which the plan of the jurisdiction will help address the needs of public housing and activities it will undertake during the next year to encourage public housing residents to become more involved in management and participate in homeownership.
2. If the public housing agency is designated as "troubled" by HUD or otherwise is performing poorly, the jurisdiction shall describe the manner in which it will provide financial or other assistance in improving its operations to remove such designation during the next year.

The only public housing project in Midland is for the elderly and is in good condition but was built in 1976. The City will remain receptive to assisting the PHAs, upon request, on their "resident initiative" activity and will continue to provide information on homeownership opportunities to households assisted by the PHAs. The CD Office provides its housing brochure to the PHAs for distribution at its offices, and the PHAs reciprocate. Currently, the PHAs are not designated as "troubled" or otherwise performing poorly.

Barriers to Affordable Housing

1. Describe the actions that will take place during the next year to remove barriers to affordable housing.

The City shall continue to be receptive to cases supporting the objective. Often, favorable outcomes can be achieved when re-zoning cases, mobile home occupancy permit and sidewalk waivers are considered. The City shall also strive to reduce or waive certain development and building fees for affordable housing projects and use local funds to pay for public improvements and the disposal of site clearance debris on affordable housing sites. Services such as platting and surveying aspects can also be considered for non-profit developers. The City uses its Street Fund that is generated from each building permit for street improvements primarily within the city's low income areas. The City shall strive to use City resources for street improvements, primarily in Midland's south and east sides. Continuation of CDBG funding for the housing reconstruction program contributes toward this objective. These actions also have the effect of fostering and maintaining affordable housing.

The City of Midland is not a HOME/ADDI participating jurisdiction.

HOMELESS

Specific Homeless Prevention Elements

*Please also refer to the Homeless Needs Table in the Needs.xls workbook.

1. Sources of Funds—Identify the private and public resources that the jurisdiction expects to receive during the next year to address homeless needs and to prevent homelessness. These include the McKinney-Vento Homeless Assistance Act programs, other special federal, state and local and private funds targeted to homeless individuals and families with children, especially the chronically homeless, the HUD formula programs, and any publicly-owned land or property. Please describe, briefly, the jurisdiction's plan for the investment and use of funds directed toward homelessness.
2. Homelessness—In a narrative, describe how the action plan will address the specific objectives of the Strategic Plan and, ultimately, the priority needs identified. Please also identify potential obstacles to completing these action steps.
3. Chronic homelessness—The jurisdiction must describe the specific planned action steps it will take over the next year aimed at eliminating chronic homelessness by 2012. Again, please identify barriers to achieving this.
4. Homelessness Prevention—The jurisdiction must describe its planned action steps over the next year to address the individual and families with children at imminent risk of becoming homeless.
5. Discharge Coordination Policy—Explain planned activities to implement a cohesive, community-wide Discharge Coordination Policy, and how, in the coming year, the community will move toward such a policy.

Not counting the CDBG program, the City does not receive any funds to carryout homeless

programs. Therefore, the City relies on other organizations to pursue funds to serve homeless needs. For 2012/2013, the City does not anticipate using CDBG funds that will directly assist in programs that serve the homeless or on projects involving homeless facilities.

By being an active partner in the Midland Homeless Coalition, the Midland Asset Building Coalition, and the Midland Affordable Housing Alliance, the City aims to work toward addressing gaps within the Midland continuum of care for the homeless and eliminating chronic homelessness. As required, partners in the Homeless Coalition are still considering an appropriate discharge coordination policy. Collaborations with the United Way and local foundations are vital in efforts to ensure current funding levels are sustained and that federal/state funding opportunities are not missed in order to apply for shelter and transitional housing needs.

Nonetheless, the current system of support services and facilities through the Salvation Army, Midland Fair Havens, Safe Place, local churches and social service agencies, and agencies dealing with offenders will continue. This system intends that extremely low income individuals and families can be prevented from becoming homeless and that homeless persons can be aided in their transition to permanent housing and independent living.

Emergency Shelter Grants (ESG)

The City of Midland does not receive an ESG allocation.

COMMUNITY DEVELOPMENT

Community Development

*Please also refer to the Community Development Table in the Needs.xls workbook.

1. Identify the jurisdiction's priority non-housing community development needs eligible for assistance by CDBG eligibility category specified in the Community Development Needs Table (formerly Table 2B), public facilities, public improvements, public services and economic development.
2. Identify specific long-term and short-term community development objectives (including economic development activities that create jobs), developed in accordance with the statutory goals described in section 24 CFR 91.1 and the primary objective of the CDBG program to provide decent housing and a suitable living environment and expand economic opportunities, principally for low- and moderate-income persons.
*Note: Each specific objective developed to address a priority need, must be identified by number and contain proposed accomplishments, the time period (i.e., one, two, three, or more years), and annual program year numeric goals the jurisdiction hopes to achieve in quantitative terms, or in other measurable terms as identified and defined by the jurisdiction.

With 2012/2013 CDBG funds, the City will address the following non-housing community development needs: public services (senior care) and other community development needs (lot

clearing). Specifically as shown in the **Project Tables**, the City will address the following Community Development Objectives:

- Fund meals and home cleaning programs that benefit the elderly.
- Clear and mow unsightly properties in slum and blighted areas.
- The City will also use CDBG funds for proper administration of the CDBG program including citizen participation and fair housing programming.

The individual Project Tables contain information on outcome measures.

No changes to the Consolidated Plan were made during the past year.

Antipoverty Strategy

1. Describe the actions that will take place during the next year to reduce the number of poverty level families.

The City will continue its overall anti-poverty strategy that revolves around economic development – using the economic development sales tax to create jobs for Midland. Fortunately, the current oil based economic boom has resulted in the generation of jobs in all sectors of the local economy. The Midland Asset Building Coalition has the mission of enabling low income households to better their economic status and is working on developing new initiatives to do so. Other aspects of the local strategy are to continue to direct assistance programs towards the neediest households, employment-training programs and the hiring of low income individuals on federally supported contracts. Small businesses that hire low income persons typically are vendors in housing assistance programs. Adherence to HUD's Section 3 requirements is another way to help eliminate poverty.

NON-HOMELESS SPECIAL NEEDS HOUSING

Non-homeless Special Needs (91.220 (c) and (e))

*Please also refer to the Non-homeless Special Needs Table in the Needs.xls workbook.

1. Describe the priorities and specific objectives the jurisdiction hopes to achieve for the period covered by the Action Plan.
2. Describe how Federal, State, and local public and private sector resources that are reasonably expected to be available will be used to address identified needs for the period covered by this Action Plan.

While the City does not anticipate having any resources that will be devoted to the non-homeless special needs objectives of the Consolidated Plan, the public services to be funded by CDBG do serve special needs populations – the elderly, frail elderly and persons with

Housing Opportunities for People with AIDS

The City of Midland is not a direct HOPWA grantee.

Specific HOPWA Objectives

The City of Midland is not a direct HOPWA grantee.

PROJECT TABLES

**CITY OF MIDLAND, TEXAS
PROJECT DESCRIPTION TABLE
Program Year 3 – Begins October 1, 2012**

Project #:	1		Project Name:	CDBG Administration	
Project Description:	General oversight and management of the CDBG Program to be conducted by the City's Community Development Office. Activities include fair housing program and affordable housing application costs. Independent audit of the Program would also be paid with CDBG funds.				
Location:	Not Applicable			Expected Completion Date:	09/30/2013
Eligibility Matrix Code:	21A General Program Administration 570.206		National Objective:	Not Applicable	
Consolidated Plan Priority Need Category:	Not Applicable		Explanation:	Not Applicable	
HUD Specific Objectives:	Not Applicable				
HUD Objective Category:		<i>Decent Housing</i>		<i>Suitable Living Environment</i>	
HUD Outcome Category:		<i>Availability/Accessibility</i>		<i>Affordability</i>	
Local Specific Objective:					
Local Proposed Outcome:					
Performance Measure:			Accomplishments Goal and Type:		
FUNDING SOURCE	CDBG			Amount:	\$160,000
FUNDING SOURCE	HOME			Amount:	\$0
FUNDING SOURCE	Other			Amount:	\$0
TOTAL					\$160,000

**CITY OF MIDLAND, TEXAS
PROJECT DESCRIPTION TABLE
Program Year 3 – Begins October 1, 2012**

Project #:	2		Project Name:	Lot Clearing Program	
Project Description:	Program includes the removal and disposal of debris and mowing of properties that are violating City Code. Activity will occur within slum/blight areas and will be conducted by the City's Code Administration Office. Some minor program revenue may be earned during the year and will be used for same activity.				
Location:	Slum/Blighted Areas: Generally Census Tracts 1,9,11,14,15,16,17 in Midland Texas			Expected Completion Date:	09/30/2013
Eligibility Matrix Code:	05 Public Services (General) 570.201(e)		National Objective:	570.208(b)(1) Prevent/Eliminate Slum/Blight on Area Basis	
Consolidated Plan Priority Need Category:	Public Services		Explanation:	Other Needs – High Priority	
HUD Specific Objectives:	Improve the quality of services to low moderate income persons				
HUD Objective Category:	<i>Decent Housing</i>	X	<i>Suitable Living Environment</i>		<i>Economic Opportunity</i>
HUD Outcome Category:	<i>Availability/Accessibility</i>		<i>Affordability</i>	X	<i>Sustainability</i>
Local Specific Objective:	SL3.2: Clearing of unsightly properties by the City in slum/blighted areas.				
Local Proposed Outcome:	Eliminate fire and health hazards				
Performance Measure:	Mowed and cleared un-kept properties		Accomplishments Goal and Type:	333 People	
FUNDING SOURCE	CDBG			Amount:	\$35,000
FUNDING SOURCE	HOME			Amount:	\$0
FUNDING SOURCE	Other			Amount:	\$0
TOTAL					\$35,000

**CITY OF MIDLAND, TEXAS
PROJECT DESCRIPTION TABLE
Program Year 3 – Begins October 1, 2012**

Project #:	3	Project Name:	SE Senior Nutrition Program		
Project Description:	This is the nutrition program at the Southeast Community Senior Citizen Center that provides a noon time meal Monday through Friday for the elderly. Kitchen for the year-long program is at 3301 Sinclair. This activity will be performed by Community and Senior Services of Midland, a non-profit.				
Location:	1803 E Indiana, Midland Texas 79701		Expected Completion Date:	09/30/2013	
Eligibility Matrix Code:	05A Senior Services 570.201(e)		National Objective:	570.208(a)(2)Limited Clientele – Presumed Low/Moderate Income	
Consolidated Plan Priority Need Category:	Public Services		Explanation:	Senior Services – High Priority	
HUD Specific Objectives:	Improve the quality of services to low moderate income persons				
HUD Objective Category:		<i>Decent Housing</i>	X	<i>Suitable Living Environment</i>	<i>Economic Opportunity</i>
HUD Outcome Category:	X	<i>Availability/Accessibility</i>		<i>Affordability</i>	<i>Sustainability</i>
Local Specific Objective:	SL1.4: Public Services – Senior services – support senior citizen center meal program and home cleaning program.				
Local Proposed Outcome:	Better mental and physical health of seniors				
Performance Measure:	Seniors Served		Accomplishments Goal and Type:	250 People	
FUNDING SOURCE	CDBG		Amount:	\$45,000	
FUNDING SOURCE	HOME		Amount:	\$0	
FUNDING SOURCE	Other		Amount:	\$0	
TOTAL				\$45,000	

**CITY OF MIDLAND, TEXAS
PROJECT DESCRIPTION TABLE
Program Year 3 – Begins October 1, 2012**

Project #:	4	Project Name:	Citywide Home Cleaning Program		
Project Description:	This is the home cleaning service for low income elderly and/or handicapped residents of Midland. Service enables recipients to continue independent safe and sanitary living in their own home. This activity will be performed by Casa de Amigos, a non-profit.				
Location:	Citywide, Midland Texas			Expected Completion Date:	09/30/2013
Eligibility Matrix Code:	05A Senior Services 570.201(e)		National Objective:	570.208(a)(2)Limited Clientele – Presumed Low/Moderate Income	
Consolidated Plan Priority Need Category:	Public Services		Explanation:	Senior Services – High Priority	
HUD Specific Objectives:	Improve the quality of services to low moderate income persons				
HUD Objective Category:		<i>Decent Housing</i>	X	<i>Suitable Living Environment</i>	<i>Economic Opportunity</i>
HUD Outcome Category:	X	<i>Availability/Accessibility</i>		<i>Affordability</i>	<i>Sustainability</i>
Local Specific Objective:	SL1.4: Public Services – Senior services – support senior citizen center meal program and home cleaning program.				
Local Proposed Outcome:	Safe and sanitary living conditions for seniors				
Performance Measure:	Persons Served		Accomplishments Goal and Type:	200 People	
FUNDING SOURCE		CDBG		Amount:	\$25,000
FUNDING SOURCE		HOME		Amount:	\$0
FUNDING SOURCE		Other		Amount:	\$0
TOTAL					\$25,000

CITY OF MIDLAND, TEXAS
PROJECT DESCRIPTION TABLE
Program Year 3 – Begins October 1, 2012

Project #:	5		Project Name:	Owner Occupied Major Project Program		
Project Description:	Financial assistance to low and moderate income homeowners for reconstruction of substandard homes. Program will be available for single family dwellings on a loan basis. An estimated \$104,400 in program income will also be used. Funds will also pay for program delivery costs incurred by the City's Community Development Office.					
Location:	Generally Census Tracts 1,9,11,14,15,16,17 in Midland Texas				Expected Completion Date:	12/31/2013
Eligibility Matrix Code:	14A Rehabilitation – Single Unit Residential 570.202		National Objective:	570.208(a)(3) Housing–Low/Moderate Income		
Consolidated Plan Priority Need Category:	Owner Households		Explanation:	Low/Moderate Income Owner Households		
HUD Specific Objectives:	Improve the quality of owner housing					
HUD Objective Category:	X	<i>Decent Housing</i>		<i>Suitable Living Environment</i>		<i>Economic Opportunity</i>
HUD Outcome Category:		<i>Availability/Accessibility</i>	X	<i>Affordability</i>		<i>Sustainability</i>
Local Specific Objective:	DH1.4: Housing – Rehabilitation or reconstruction of homes occupied by low-income homeowners.					
Local Proposed Outcome:	Affordable safe, sanitary standard homes					
Performance Measure:	Homes reconstructed		Accomplishments Goal and Type:	4 Households		
FUNDING SOURCE		CDBG		Amount:	\$315,600	
FUNDING SOURCE		HOME		Amount:	\$0	
FUNDING SOURCE		Other – CDBG Income		Amount:	\$104,400	
					TOTAL	\$420,000

CITY OF MIDLAND, TEXAS
PROJECT DESCRIPTION TABLE
Program Year 3 – Begins October 1, 2012

Project #:	6	Project Name:	Owner Occupied Minor Repairs Program			
Project Description:	Minor repair assistance will be available to low income owner households. Generally, eligible repairs will be plumbing, electrical, roofing and heating. Some minor program revenue will be earned and will be used for same activity. Funds will also pay for the program delivery administrative costs by the City’s Community Development Office.					
Location:	Generally Census Tracts 1,9,11,14,15,16,17 in Midland Texas			Expected Completion Date:	10/31/2013	
Eligibility Matrix Code:	14A Rehabilitation – Single Unit Residential 570.202		National Objective:	570.208(a)(3) Housing–Low/Moderate Income		
Consolidated Plan Priority Need Category:	Owner Households		Explanation:	Low/Moderate Income Owner Households		
HUD Specific Objectives:	Improve the quality of services to low moderate income persons					
HUD Objective Category:	X	Decent Housing		Suitable Living Environment		Economic Opportunity
HUD Outcome Category:	X	Availability/Accessibility		Affordability		Sustainability
Local Specific Objective:	DH1.5: Housing – Minor repair services to low-income homeowners by City and other non-profits.					
Local Proposed Outcome:	Affordable safe, sanitary standard homes					
Performance Measure:	Minor repairs completed		Accomplishments Goal and Type:	28 Households		
FUNDING SOURCE		CDBG		Amount:	\$80,000	
FUNDING SOURCE		HOME		Amount:	\$0	
FUNDING SOURCE		Other		Amount:	\$0	
TOTAL					\$80,000	

**CITY OF MIDLAND, TEXAS
PROJECT DESCRIPTION TABLE
Program Year 3 – Begins October 1, 2012**

Project #:	7	Project Name:	Homebuyer Assistance Program		
Project Description:	Closing costs and downpayment financial assistance to low and moderate income first time home buyers. Only single family homes will be eligible. Funds will also pay for the program delivery costs incurred by the City's Community Development Office.				
Location:	Citywide, Midland Texas			Expected Completion Date:	10/31/2013
Eligibility Matrix Code:	13 Direct Homeownership Assistance 570.201(n)		National Objective:	570.208(a)(3) Housing–Low/Moderate Income	
Consolidated Plan Priority Need Category:	Renter Households		Explanation:	Low/Moderate Income Renter Households	
HUD Specific Objectives:	Improve the quality of services to low moderate income persons				
HUD Objective Category:	X	<i>Decent Housing</i>		<i>Suitable Living Environment</i>	
HUD Outcome Category:		<i>Availability/Accessibility</i>	X	<i>Affordability</i>	
Local Specific Objective:	DH2.1: Housing – Financial assistance by non-profit entities and the City from CDBG, HOME and other sources to low-income homebuyers.				
Local Proposed Outcome:	Affordable safe, sanitary standard homes				
Performance Measure:	Households assisted in purchase of homes		Accomplishments Goal and Type:	7 Households	
FUNDING SOURCE	CDBG			Amount:	\$40,000
FUNDING SOURCE	HOME			Amount:	\$0
FUNDING SOURCE	Other			Amount:	\$0
TOTAL					\$40,000

**CITY OF MIDLAND, TEXAS
PROJECT DESCRIPTION TABLE
Program Year 3 – Begins October 1, 2012**

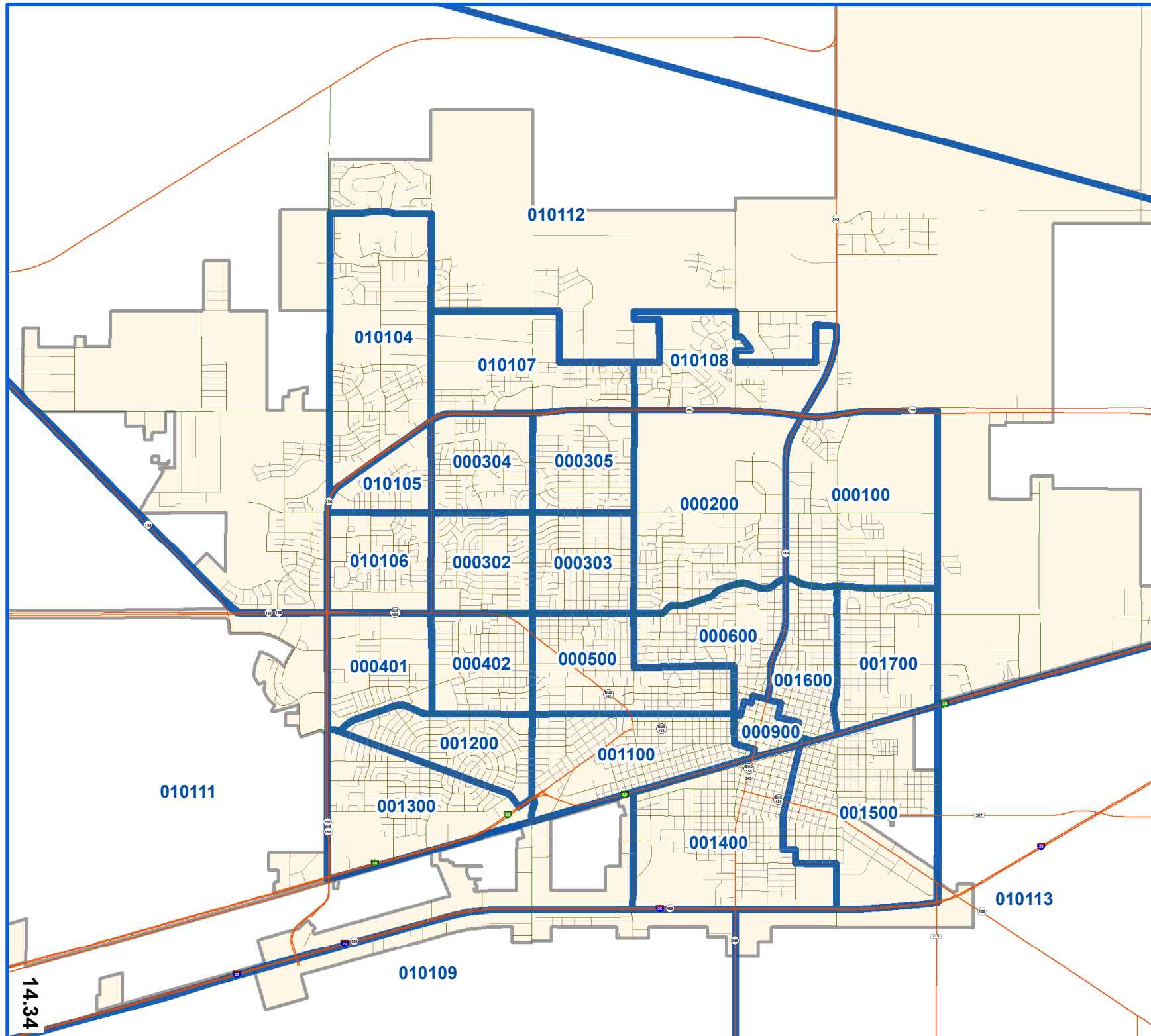
Project #:	8	Project Name:	Contingency		
Project Description:	This project consists of un-allocated funds that are reserved in the event an establishd CDBG project will need added funding due to cost overruns.				
Location:	N/A			Expected Completion Date:	N/A
Eligibility Matrix Code:	22 Unprogrammed Funds		National Objective:		
Consolidated Plan Priority Need Category:	N/A		Explanation:		
HUD Specific Objectives:					
HUD Objective Category:		<i>Decent Housing</i>		<i>Suitable Living Environment</i>	
HUD Outcome Category:		<i>Availability/Accessibility</i>		<i>Affordability</i>	
Local Specific Objective:					
Local Proposed Outcome:					
Performance Measure:			Accomplishments Goal and Type:		
FUNDING SOURCE	CDBG			Amount:	\$20,761
FUNDING SOURCE	HOME			Amount:	\$0
FUNDING SOURCE	Other			Amount:	\$0
TOTAL					\$20,761

2000 CENSUS TRACTS FOR CITY OF MIDLAND



Legend

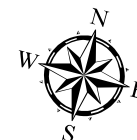
- Arterial
- Collector
- Interstate & State Highway
- Residential
- Census Tract 2000
- City Limit



JUNE 1, 2011
STEVE BAKER

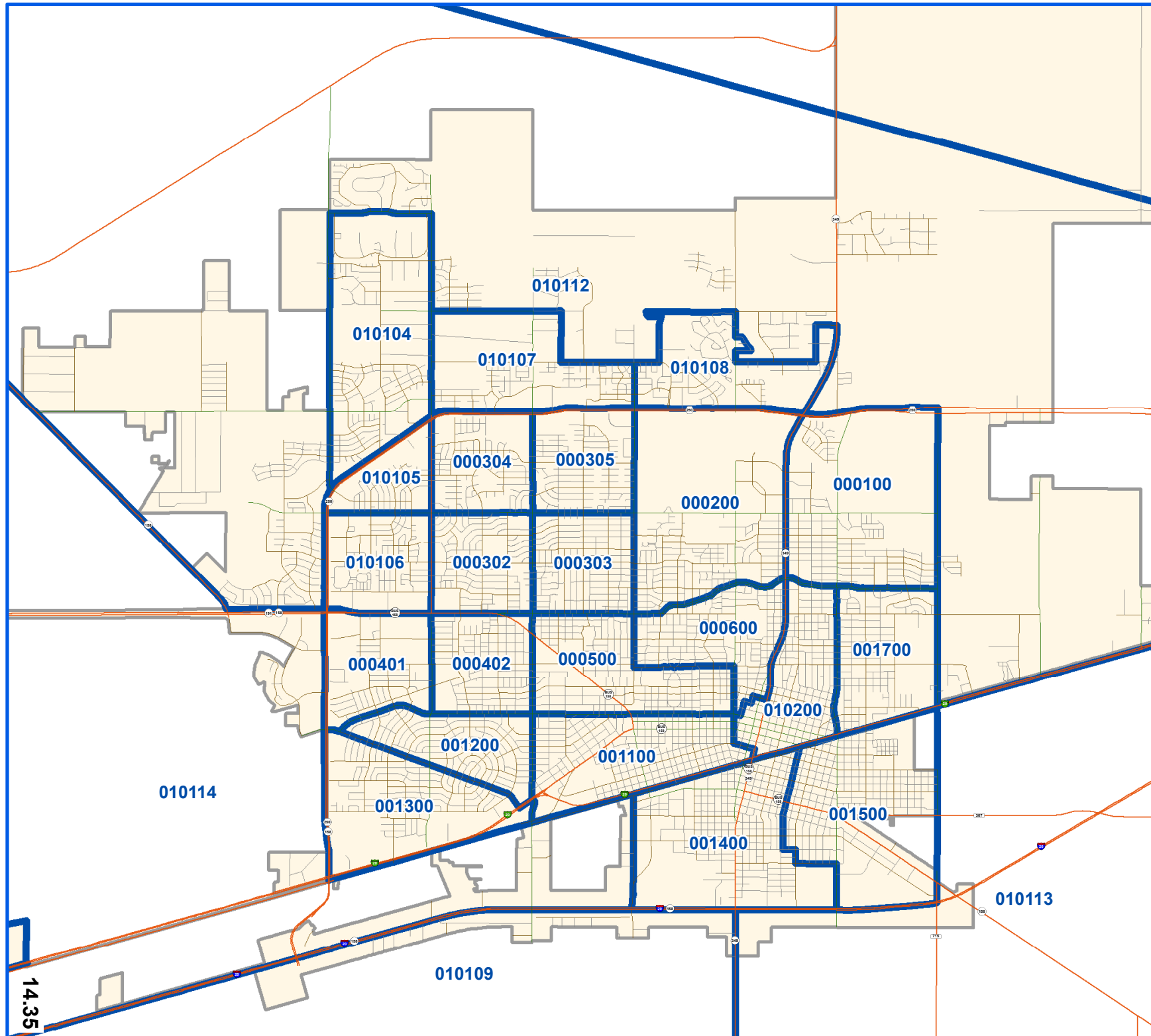
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2010 CENSUS TRACTS FOR CITY OF MIDLAND



Legend

- Arterial
- Collector
- Interstate & State Highway
- Residential
- Census Tract 2010
- City Limit



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PERCENTAGE OF LOW INCOME POPULATION BY CENSUS TRACT



Legend

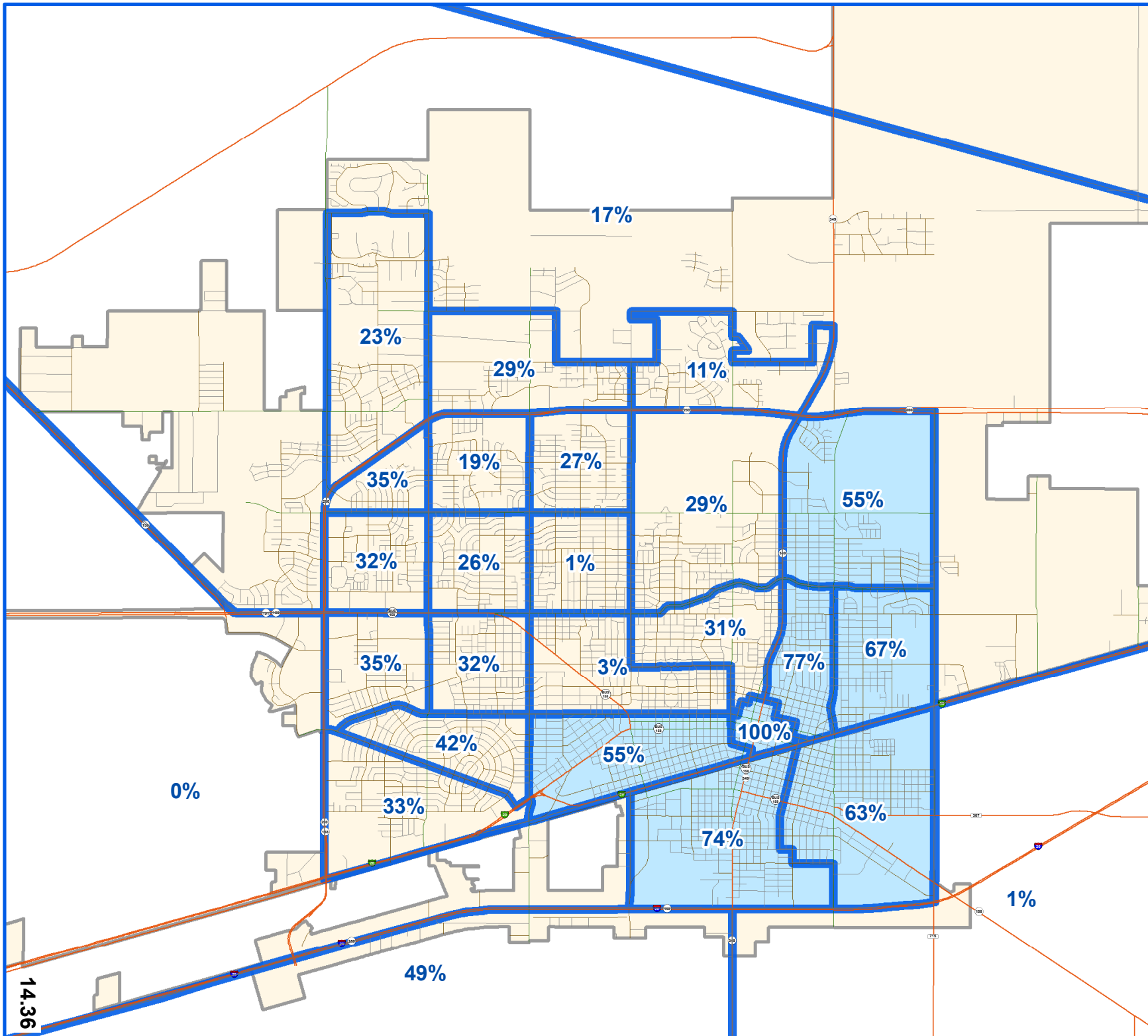
- Arterial
- Collector
- Interstate & State Highway
- Residential
- Census Tract 2000
- Low to Moderate Income
- City Limit

**CITYWIDE
PERCENTAGE
IS 36.1%**

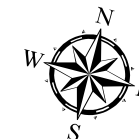


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PERCENTAGE OF NON-WHITE POPULATION BY 2010 CENSUS TRACT



Legend

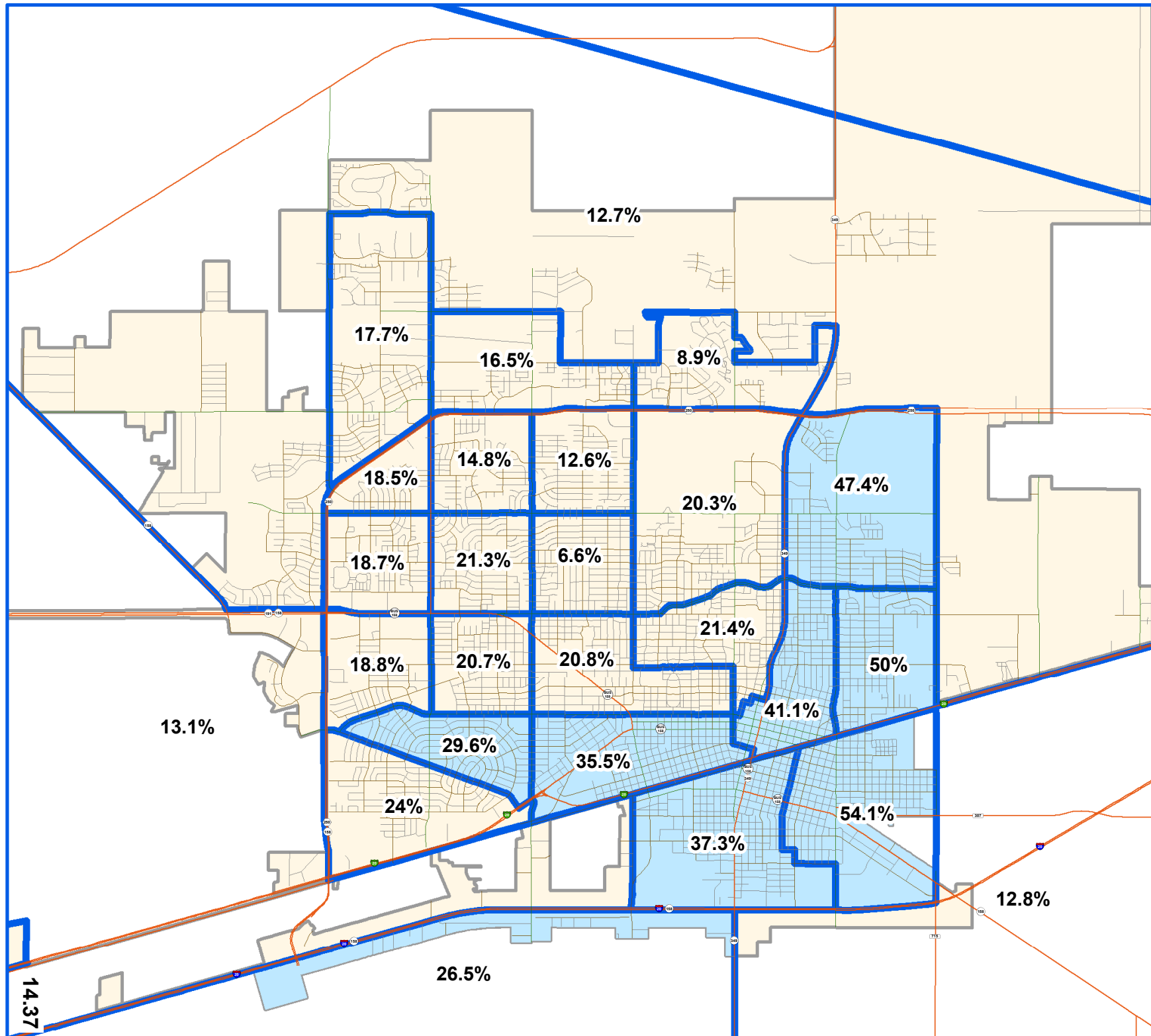
- Arterial
- Collector
- Interstate & State Highway
- Residential
- Census Tract 2010
- Above City Average
- City Limit

CITYWIDE PERCENTAGE IS 24.5%



JUNE 2, 2011
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PERCENT OF HISPANIC POPULATION BY 2010 CENSUS TRACT



Legend

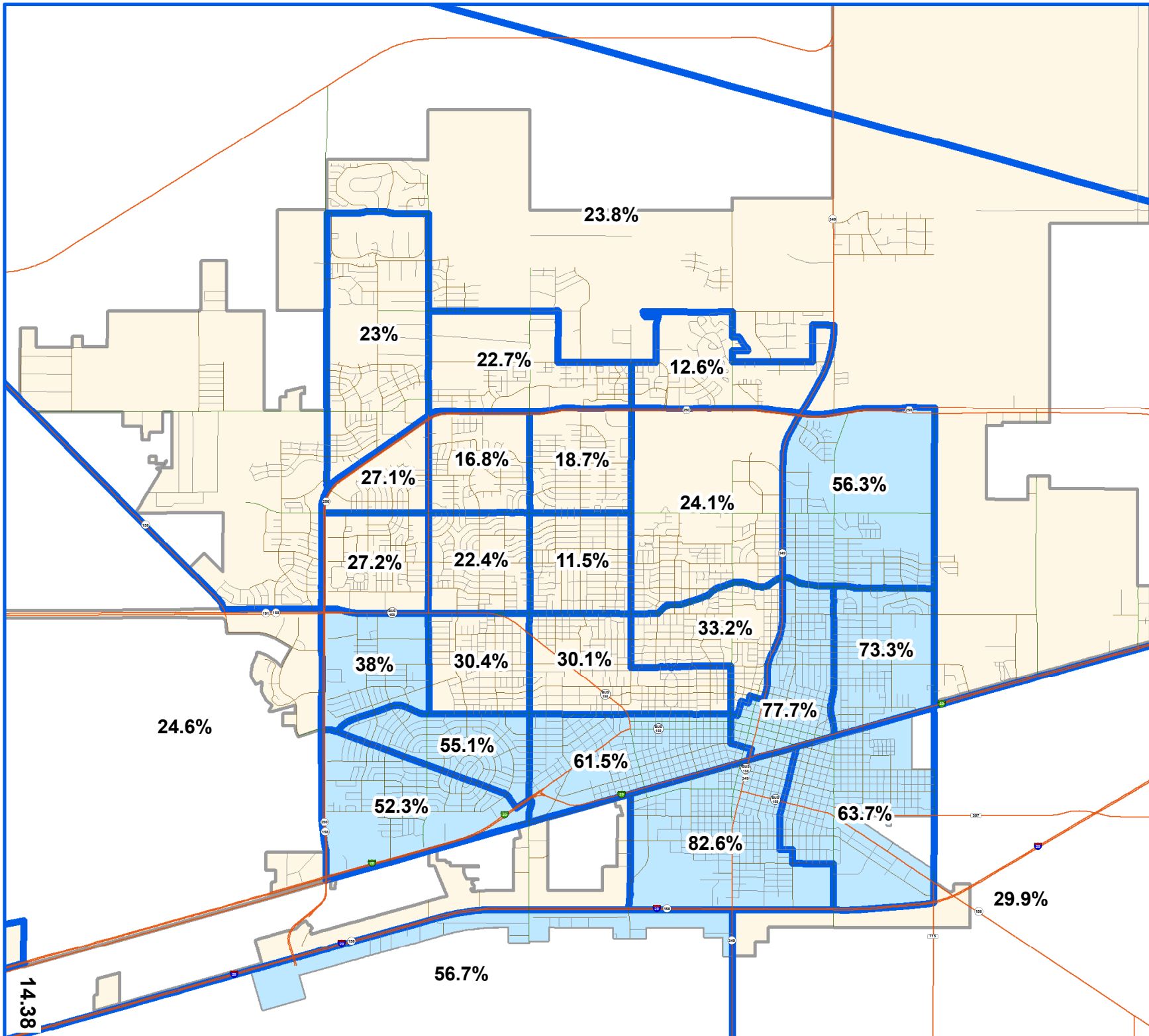
- Arterial
- Collector
- Interstate & State Highway
- Residential
- Census Tract 2010
- Above City Percent
- City Limit

CITYWIDE PERCENTAGE IS 37.6%



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PERCENT SUBSTANDARD HOUSING BY CENSUS TRACT



Legend

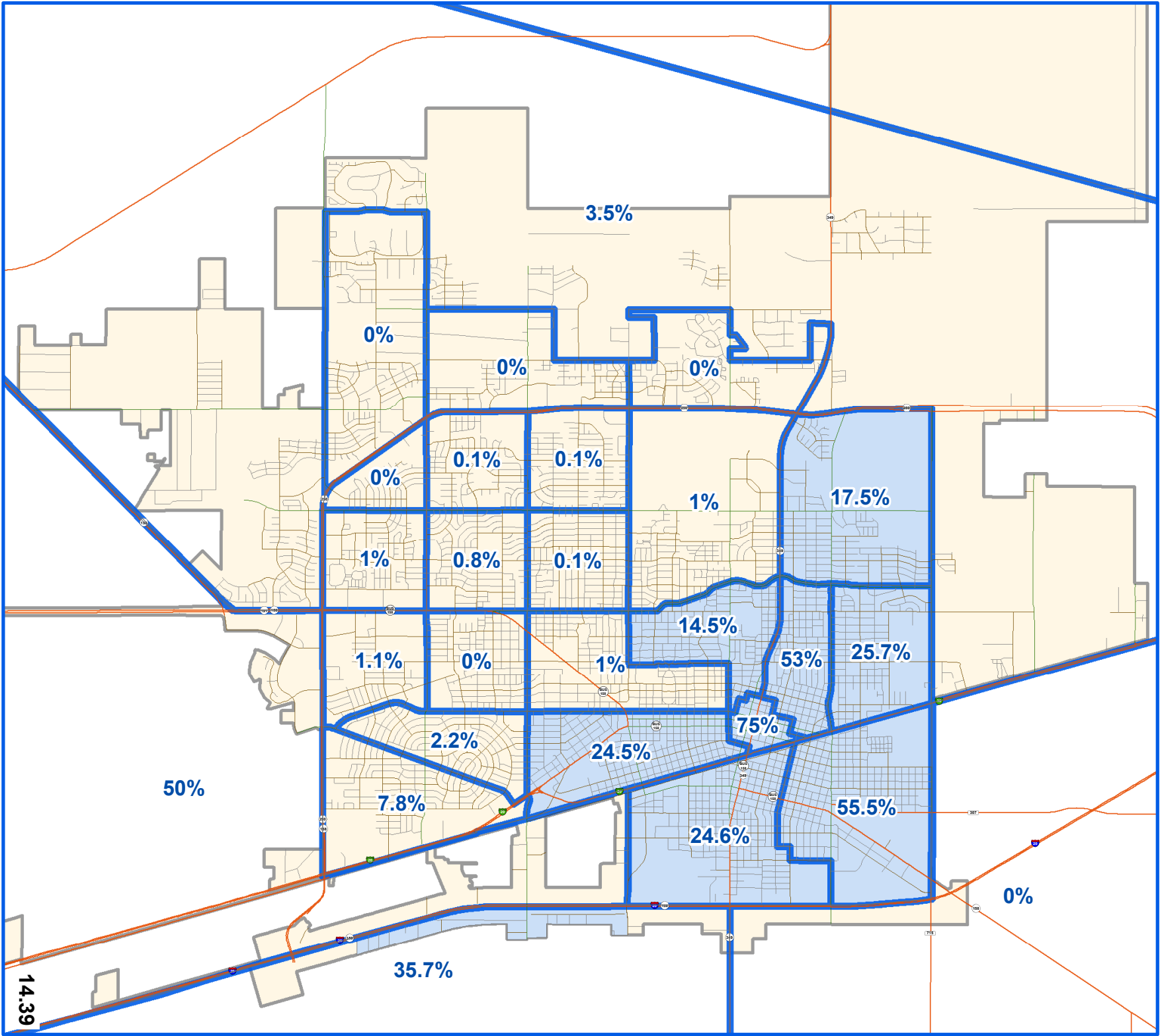
- Arterial
- Collector
- Interstate & State Highway
- Residential
- Census Tract 2000
- Slum/Blight Area
- City Limit

CITYWIDE PERCENTAGE
IS 9.7%



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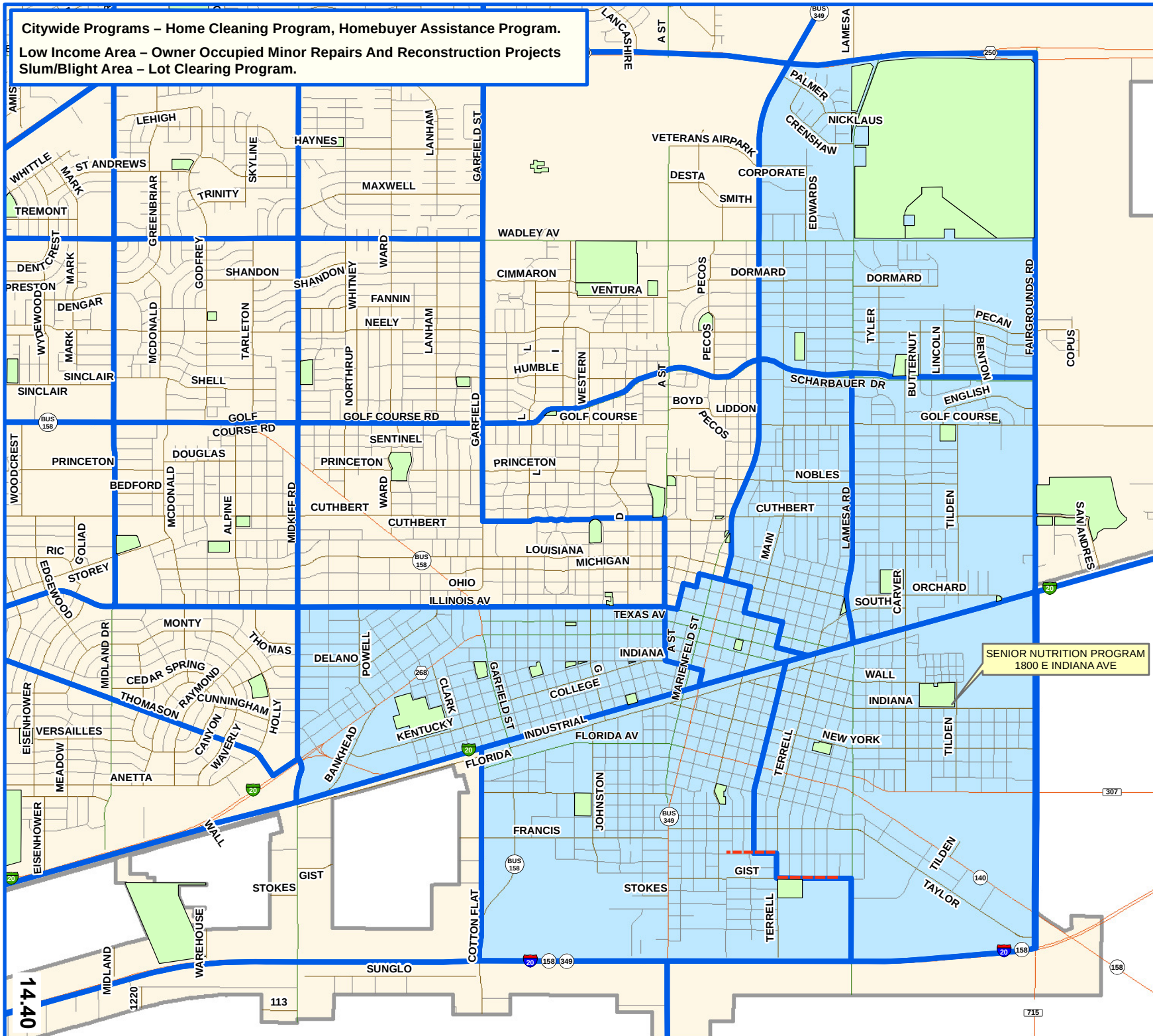
Citywide Programs – Home Cleaning Program, Homebuyer Assistance Program.
 Low Income Area – Owner Occupied Minor Repairs And Reconstruction Projects
 Slum/Blight Area – Lot Clearing Program.

LOCATIONS OF PROPOSED 2012 PROJECTS



Legend

- Prop. Sidewalk
- Arterial
- Collector
- Interstate & State Highway
- Residential
- Low to Moderate Income
- Census Tract 2000
- Parks
- City Limit



JUNE 11, 2012
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TABLE 3A - SUMMARY OF SPECIFIC ANNUAL OBJECTIVES
DH-1: Availability/Accessibility of Decent Housing

Specific Obj. #	Outcome/Objectives Specific Annual Objective	Sources of Funds	Performance Indicators	Year	Expected Number	Actual Number	Percent Completed
DH-1	Increase the availability of affordable decent housing	CDBG	Land Parcels Purchased	2010	0	1	n/a
				2011	0	0	n/a
				2012	0		n/a
				2013			
				2014			
		MULTI-YEAR GOAL			0	1	n/a
		CDBG	Homes Reconstructed or Rehabilitated	2010	3	1	33%
				2011	3	2	67%
	2012			4			
	2013						
	2014						
	Acquire land for affordable housing development in target areas. Provide financial assistance for rehabilitation or reconstruction of homes occupied by low-income homeowners. Provide financial assistance to low-income homeowners for housing minor repairs.	MULTI-YEAR GOAL				3	
		CDBG	Minor Repairs Completed	2010	55	30	55%
				2011	33	23	70%
				2012	28		
				2013			
				2014			
		MULTI-YEAR GOAL				53	

TABLE 3A - SUMMARY OF SPECIFIC ANNUAL OBJECTIVES
DH-2: Affordability of Decent Housing

Specific Obj. #	Outcome/Objectives Specific Annual Objective	Sources of Funds	Performance Indicators	Year	Expected Number	Actual Number	Percent Completed
DH-2	Increase the affordability of decent housing	CDBG	Homebuyers Assisted	2010	11	6	55%
				2011	23	11	48%
				2012	7		
				2013			
				2014			
		MULTI-YEAR GOAL				17	
				2010			
				2011			
				2012			
				2013			
				2014			
		MULTI-YEAR GOAL					
	Provide financial assistance to low-income first-time homebuyers to purchase homes.			2010			
				2011			
				2012			
				2013			
				2014			
		MULTI-YEAR GOAL					
				2010			
				2011			
				2012			
				2013			
				2014			
		MULTI-YEAR GOAL					

TABLE 3A - SUMMARY OF SPECIFIC ANNUAL OBJECTIVES
SL-1: Availability/Accessibility of Suitable Living Environment

Specific Obj. #	Outcome/Objectives Specific Annual Objective	Sources of Funds	Performance Indicators	Year	Expected Number	Actual Number	Percent Completed
SL-1	Improve and maintain availability of services and facilities.	CDBG	Blocks of Street Paving	2010	3	12	400%
				2011	0	0	n/a
				2012	0		
				2013			
				2014			
		MULTI-YEAR GOAL				12	
		CDBG	Neighborhood Parks Improved	2010	1	0	0%
				2011	0	1	
				2012	0		
				2013			
	2014						
	MULTI-YEAR GOAL				1		
	Improve sidewalks and streets with paving, curb and gutter in low-income areas; improve deteriorating parks located in low-income areas. Fund meals and home cleaning programs that benefit the elderly.	CDBG	Senior Citizens Served.	2010	420	435	104%
				2011	500	252	50%
				2012	450		
				2013			
				2014			
		MULTI-YEAR GOAL				687	

TABLE 3A - SUMMARY OF SPECIFIC ANNUAL OBJECTIVES
SL-1: Availability/Accessibility of Suitable Living Environment – CONTINUED

Specific Obj. #	Outcome/Objectives Specific Annual Objective	Sources of Funds	Performance Indicators	Year	Expected Number	Actual Number	Percent Completed	
SL-1 Continued		CDBG	Blocks of Sidewalks Constructed	2010	0	4	n/a	
				2011	7	0	0%	
				2012	0			
				2013				
				2014				
			MULTI-YEAR GOAL				4	
		CDBG		2010				
				2011				
				2012				
				2013				
				2014				
			MULTI-YEAR GOAL					
		CDBG		2010				
				2011				
				2012				
				2013				
				2014				
			MULTI-YEAR GOAL					

TABLE 3A - SUMMARY OF SPECIFIC ANNUAL OBJECTIVES
SL-2: Availability/Accessibility of Suitable Living Environment

Specific Obj. #	Outcome/Objectives Specific Annual Objective	Sources of Funds	Performance Indicators	Year	Expected Number	Actual Number	Percent Completed
SL-2	Increase the affordability of public services	CDBG	Children Served	2010	100	93	93%
				2011	50	91	182%
				2012	0		
				2013			
				2014			
		MULTI-YEAR GOAL				184	
				2010			
				2011			
				2012			
				2013			
				2014			
	MULTI-YEAR GOAL						
	Support childcare programming so that low-income head of households may attend training or maintain employment.			2010			
				2011			
				2012			
				2013			
				2014			
		MULTI-YEAR GOAL					
			2010				
			2011				
	2012						
		2013					
		2014					
		MULTI-YEAR GOAL					

TABLE 3A - SUMMARY OF SPECIFIC ANNUAL OBJECTIVES
SL-3: Sustainability of Suitable Living Environment

Specific Obj. #	Outcome/Objectives Specific Annual Objective	Sources of Funds	Performance Indicators	Year	Expected Number	Actual Number	Percent Completed
SL-3	Provide programs aimed at eliminating or preventing slum/blight	CDBG	Properties cleared	2010	360	443	123%
				2011	225	17	7%
				2012	333		
				2013			
				2014			
		MULTI-YEAR GOAL				460	
		CDBG	Dilapidated structures removed.	2010	12	0	0%
				2011	10	0	0%
				2012	0		
				2013			
	2014						
	MULTI-YEAR GOAL				0		
	Clearing and mowing of unsightly properties in slum/blighted areas. Demolishing and removing dilapidated structures in slum/blighted areas.			2010			
				2011			
				2012			
				2013			
				2014			
		MULTI-YEAR GOAL					

TABLE 3A - SUMMARY OF SPECIFIC ANNUAL OBJECTIVES
O-1: Other

Specific Obj. #	Outcome/Objectives Specific Annual Objective	Sources of Funds	Performance Indicators	Year	Expected Number	Actual Number	Percent Completed
0-1	CDBG Program Administration	CDBG		2010			
				2011			
				2012			
				2013			
				2014			
		MULTI-YEAR GOAL					
				2010			
				2011			
				2012			
				2013			
				2014			
	MULTI-YEAR GOAL						
				2010			
				2011			
				2012			
				2013			
				2014			
		MULTI-YEAR GOAL					
				2010			
				2011			
				2012			
				2013			
				2014			
		MULTI-YEAR GOAL					

TABLE 3B ANNUAL HOUSING COMPLETION GOALS					
ANNUAL AFFORDABLE RENTAL HOUSING GOALS (SEC. 215)	Annual Expected Number Completed	Resources used during the period			
		CDBG	HOME	ESG	HOPWA
Acquisition of existing units		☐	☐		☐
Production of new units		☐	☐		☐
Rehabilitation of existing units		☐	☐	☐	☐
Rental Assistance		☐	☐		☐
Total Sec. 215 Rental Goals		☐	☐	☐	☐
ANNUAL AFFORDABLE OWNER HOUSING GOALS (SEC. 215)					
Acquisition of existing units		☐	☐		
Production of new units		☐	☐		
Rehabilitation of existing units	4	☒	☐		
Homebuyer Assistance	7	☒	☐		☐
Total Sec. 215 Owner Goals	11	☒	☐	☐	☐
ANNUAL AFFORDABLE HOUSING GOALS (SEC. 215)					
Homeless		☐	☐	☐	☐
Non-Homeless	11	☐	☐	☐	☐
Special Needs		☐	☐	☐	☐
Total Sec. 215 Affordable Housing	11	☐	☐	☐	☐
ANNUAL HOUSING GOALS					
Annual Rental Housing Goal		☐	☐	☐	☐
Annual Owner Housing Goal	11	☒	☐	☐	☐
Total Annual Housing Goal	11	☒	☐	☐	☐
For the purpose of identification of annual goals, an assisted household is one that will receive benefits through the investment of Federal funds, either alone or in conjunction with the investment of other public or private funds.					

**FUNDING SOURCES
CITY OF MIDLAND, TEXAS
2012/2013 Program Year**

Entitlement Grant (includes reallocated funds)	
CDBG	\$721,361
ESG	\$0
HOME	\$0
HOPWA	\$0
Total	\$721,361
Prior Years' Program Income NOT previously programmed or reported	
CDBG	\$0
ESG	\$0
HOME	\$0
HOPWA	\$0
Total	\$0
Reprogrammed Prior Years' Funds	
CDBG	\$0
ESG	\$0
HOME	\$0
HOPWA	\$0
Total	\$0
Total Estimated Program Income	
Owner Housing Assistance Program	\$104,400
Total	\$104,400
Section 108 Loan Guarantee Fund	\$0
 TOTAL FUNDING SOURCES	 \$825,761
 Other Funds	 \$0
 Submitted Proposed Projects Totals	 \$805,000
 Un-Submitted Proposed Projects Totals	 \$20,771

**SUPPORT OF APPLICATIONS BY OTHER ENTITIES REPORT
CITY OF MIDLAND, TEXAS
2012/2013 Program Year**

Funding Source	Support Application by Other Entities?
B. Formula/Entitlement Programs	
ESG	N
Public Housing Comprehensive Grant	N
B. Competitive Programs	
HOPE 1	N
HOPE 2	N
HOPE 3	Y
ESG	Y
Supportive Housing	Y
HOPWA	Y
Safe Havens	Y
Rural Homeless Housing	N
Sec. 202 Elderly	Y
Sec. 811 Handicapped	Y
Moderate Rehab SRO	Y
Rental Vouchers	Y
Rental Certificates	Y
Public Housing Development	Y
Public Housing MROP	Y
Public Housing CIAP	Y
LIHTC	Y

2010-2014 Consolidated Plan Specific Community Development Objectives

#	Objective	Outcome
DH1.1	Purchase of land for affordable housing development by the City in target areas.	100 parcels
DH1.2	Construction of affordable rental units under Low Income Housing Tax Credit Program by private developers at appropriate citywide locations.	200 units
DH1.3	Construction of affordable rental housing for low-income elderly households through HUD 202 funding by non-profit sponsor at appropriate citywide location.	100 units
DH1.4	Rehabilitation or reconstruction of homes occupied by low-income homeowners. This is the City's major projects loan program available to ICT residents.	30 units
DH1.5	Minor repair services to low-income homeowners by City and other non-profits.	1,750 units
DH1.6	Increase the number of emergency shelter beds for individuals.	5 beds
DH1.7	Increase the transitional housing capacity for individuals.	8 beds
DH1.8	Increase the number of emergency shelter units for intact families.	5 units
DH1.9	Increase the transitional housing capacity for intact families.	10 units
DH1.10	Develop a 60 unit affordable housing assisted living facility for frail elderly.	60 units
DH1.11	Develop a 60 unit affordable housing assisted living facility for near frail elderly.	60 units
DH2.1	Financial assistance by non-profit entities and the City from CDBG, HOME and other sources to low-income homebuyers.	130 units
SL1.1	Infrastructure – City Streets – Paving construction with curb and gutter in low-income areas.	8 blocks per year
SL1.2	Public Facility – City Parks – Upgrade neighborhood parks that are deteriorating. Located in low-income areas.	5 parks
SL1.3	Public Facility - Community Facility/Youth Center - an indoor/outdoor multi-purpose facility. Developer and owner operator are needed.	1 facility
SL1.4	Public Services – Senior services – support senior citizen center meal program and home cleaning program.	1,500 persons
SL1.5	Infrastructure – City Sidewalks – Sidewalk construction in low-income areas.	8 blocks per year
SL2.1	Public Services – Childcare – support local match childcare program for working families.	50 children
SL3.1	Demolition of dilapidated structures by the City in slum/blighted areas.	100 structures
SL3.2	Clearing of unsightly properties by the City in slum/blighted areas.	2,000 properties

Amended July 2011

CERTIFICATIONS

In accordance with the applicable statutes and the regulations governing the consolidated plan regulations, the jurisdiction certifies that:

Affirmatively Further Fair Housing -- The jurisdiction will affirmatively further fair housing, which means it will conduct an analysis of impediments to fair housing choice within the jurisdiction, take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting that analysis and actions in this regard.

Anti-displacement and Relocation Plan -- It will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and implementing regulations at 49 CFR 24; and it has in effect and is following a residential antidisplacement and relocation assistance plan required under section 104(d) of the Housing and Community Development Act of 1974, as amended, in connection with any activity assisted with funding under the CDBG or HOME programs.

Drug Free Workplace -- It will or will continue to provide a drug-free workplace by:

1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
2. Establishing an ongoing drug-free awareness program to inform employees about –
 - (a) The dangers of drug abuse in the workplace;
 - (b) The grantee's policy of maintaining a drug-free workplace;
 - (c) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (d) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
3. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph 1;
4. Notifying the employee in the statement required by paragraph 1 that, as a condition of employment under the grant, the employee will -
 - (a) Abide by the terms of the statement; and
 - (b) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
5. Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph 4(b) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

6. Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph 4(b), with respect to any employee who is so convicted:

(a) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(b) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs 1, 2, 3, 4, 5 and 6.

Anti-Lobbying -- To the best of the jurisdiction's knowledge and belief:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and
3. It will require that the language of paragraph 1 and 2 of this anti-lobbying certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

Authority of Jurisdiction -- The consolidated plan is authorized under State and local law (as applicable) and the jurisdiction possesses the legal authority to carry out the programs for which it is seeking funding, in accordance with applicable HUD regulations.

Consistency with plan -- The housing activities to be undertaken with CDBG, HOME, ESG, and HOPWA funds are consistent with the strategic plan.

Section 3 -- It will comply with section 3 of the Housing and Urban Development Act of 1968, and implementing regulations at 24 CFR Part 135.

W. Wesley Perry

Date

Mayor
Title

Specific CDBG Certifications

The Entitlement Community certifies that:

Citizen Participation -- It is in full compliance and following a detailed citizen participation plan that satisfies the requirements of 24 CFR 91.105.

Community Development Plan -- Its consolidated housing and community development plan identifies community development and housing needs and specifies both short-term and long-term community development objectives that provide decent housing, expand economic opportunities primarily for persons of low and moderate income. (See CFR 24 570.2 and CFR 24 part 570)

Following a Plan -- It is following a current consolidated plan (or Comprehensive Housing Affordability Strategy) that has been approved by HUD.

Use of Funds -- It has complied with the following criteria:

1. **Maximum Feasible Priority.** With respect to activities expected to be assisted with CDBG funds, it certifies that it has developed its Action Plan so as to give maximum feasible priority to activities which benefit low and moderate income families or aid in the prevention or elimination of slums or blight. The Action Plan may also include activities which the grantee certifies are designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community, and other financial resources are not available);
2. **Overall Benefit.** The aggregate use of CDBG funds including section 108 guaranteed loans during program year(s) , 2012 , shall principally benefit persons of low and , shall principally benefit persons of low and moderate income in a manner that ensures that at least 70% of the amount is expended for activities that benefit such persons during the designated period;
3. **Special Assessments.** It will not attempt to recover any capital costs of public improvements assisted with CDBG funds including Section 108 loan guaranteed funds by assessing any amount against properties owned and occupied by persons of low and moderate income, including any fee charged or assessment made as a condition of obtaining access to such public improvements. However, if CDBG funds are used to pay the proportion of a fee or assessment that relates to the capital costs of public improvements (assisted in part with CDBG funds) financed from other revenue sources, an assessment or charge may be made against the property with respect to the public improvements financed by a source other than CDBG funds.

The jurisdiction will not attempt to recover any capital costs of public improvements assisted with CDBG funds, including Section 108, unless CDBG funds are used to pay the proportion of fee or assessment attributable to the capital costs of public improvements financed from other revenue sources. In this case, an assessment or charge may be made against the property with respect to the public improvements financed by a source other than CDBG funds. Also, in the case of properties owned and occupied by moderate-income (not low-income) families, an assessment or charge may be made against the property for public improvements financed by a source other than CDBG funds if the jurisdiction certifies that it lacks CDBG funds to cover the assessment.

Excessive Force -- It has adopted and is enforcing:

1. A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in non-violent civil rights demonstrations; and
2. A policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location which is the subject of such non-violent civil rights demonstrations within its jurisdiction;

Compliance With Anti-discrimination laws -- The grant will be conducted and administered in conformity with title VI of the Civil Rights Act of 1964 (42 USC 2000d), the Fair Housing Act (42 USC 3601-3619), and implementing regulations.

Lead-Based Paint -- Its activities concerning lead-based paint will comply with the requirements of 24 CFR Part 35, subparts A, B, J, K and R;

Compliance with Laws -- It will comply with applicable laws.

W. Wesley Perry

Date

Mayor
Title

OPTIONAL CERTIFICATION CDBG

Submit the following certification only when one or more of the activities in the action plan are designed to meet other community development needs having a particular urgency as specified in 24 CFR 570.208(c):

The grantee hereby certifies that the Annual Plan includes one or more specifically identified CDBG-assisted activities which are designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community and other financial resources are not available to meet such needs.

Signature/Authorized Official

Date

Mayor
Title

APPENDIX TO CERTIFICATIONS

INSTRUCTIONS CONCERNING LOBBYING AND DRUG-FREE WORKPLACE REQUIREMENTS:

A. Lobbying Certification

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

B. Drug-Free Workplace Certification

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification.
2. The certification is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HUD, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.
3. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.
4. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio stations).
5. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph three).
6. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

Midland, City Hall, 300 N Loraine, Midland, Midland, Texas 79701

Check if there are workplaces on file that are not identified here.

The certification with regard to the drug-free workplace is required by 24 CFR part 24, subpart F.

7. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

ACTION PLAN CITIZEN PARTICIPATION

The required thirty day public review period occurred from June 18 to July 17, 2012. Copies of the proposed Action Plan were available per the notice that was published on June 17, 2012. Copies of all notices published during the Action Plan development process are also included in this section.

Written comments on the Action Plan submitted during the review period are as follows:

(to be listed on final version of the Plan)



City Council Agenda

Approved for Agenda:
jnichols
City Manager's Office

MEETING DATE: 7/24/2012

TO: City Council / City Manager

FROM: Sylvester Cantu, Community Development Manager

SUBJECT: 2012/2013 Community Development Block Grant Application

Purpose:

Consider a resolution authorizing the adoption of the City of Midland's 2012/2013 Action Plan to the City of Midland Consolidated Plan for Community Development and Housing Funds for Fiscal Years 2011 through 2015; the Consolidated Plan was approved by Resolution Number 2010-197; and authorizing the execution of an application for Community Development Block Grant funds.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Indirect cost of non-CDBG staff involved in administering the grant and specific projects; savings due to using CDBG to pay for two employees, lot clearing; and increased property tax base due to new residential construction under two of the proposed housing programs.

Discussion:

To receive CDBG funds, we have undertaken a lengthy process allowing for citizen participation with the process culminating in a draft Action Plan that underwent a 30-day public review period. The review period was completed on July 17, 2012. Therefore, the City can finalize and submit the Action Plan to HUD who must receive the Plan by August 15, 2012. Funding will consist of the 2012 CDBG entitlement grant of \$699,035, \$22,326 reallocated from prior grants and \$104,400 in program income. Therefore, the total CDBG budget will be \$825,761. The Action Plan also serves as the City's application for 2012/2013 CDBG funds.

RESOLUTION NO.

**RESOLUTION AUTHORIZING THE ADOPTION OF
THE CITY OF MIDLAND'S 2012-2013 ACTION PLAN
TO THE CONSOLIDATED PLAN FOR COMMUNITY
DEVELOPMENT AND HOUSING FUNDS FOR FISCAL
YEARS 2011-2015, (OCTOBER 2010-SEPTEMBER 2015);
THE CONSOLIDATED PLAN WAS APPROVED BY
RESOLUTION NUMBER 2010-197; AND AUTHORIZING
THE EXECUTION OF AN APPLICATION FOR
COMMUNITY DEVELOPMENT BLOCK GRANT
FUNDS**

WHEREAS, the Department of Housing and Urban Development requires the recipients of Community Development Block Grant Funds to prepare a yearly action plan to the Consolidated Plan for Community Development and Housing Funds for fiscal years 2011-2015 (October 2010-September 2015); and

WHEREAS, the City Council of the City of Midland, Texas, finds it to be in the public interest to adopt the 2012-2013 Action Plan; and

WHEREAS, the City Council finds it to be in the public interest for the City to apply to the United States Department of Housing and Urban Development for Community Development Block Grant Funds for the fiscal year 2012-2013;

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

SECTION ONE. That the document which is on file with the City Secretary's office referenced by the number and date of this resolution is hereby approved and adopted as the City of Midland 2012-2013 Action Plan to the City of Midland Consolidated Plan for Community Development and Housing Funds for fiscal years 2011-2015 (October 2010-September 2015).

SECTION TWO. That the Mayor is hereby authorized and directed to execute on behalf of the City of Midland an application, No. B-12-MC-48-0023, to the United States Department of Housing and Urban Development for Community Development Block Grant Funds in the amount of \$699,035.00 for fiscal year 2012-2013, by GSA Standard Form 424 with budgetary attachments, copies of which are attached hereto and are incorporated within

the City of Midland 2012-2013 Action Plan and made a part hereof for all legal purposes.

SECTION THREE. That an estimated amount of \$104,400.00 in program income will be received for program year 2012-2013 which will be used by the program that generated the income.

SECTION FOUR. That the amount of \$22,326.00 will be reallocated from prior grants.

SECTION FIVE. That the City will receive \$699,035.00 in Community Development Block Grant Entitlement Grand Funds for the 2012-2013 program, an estimated amount of \$104,400.00 in program income will be received for program year 2012-2013 which will be used by the program that generates the income, and the amount of \$22,326.00 will be reallocated from prior grants, thus resulting in a total of \$825,761.00 in Community Development Block Grant funds that will be available in 2012-2013.

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

Sylvester Cantu, Community Development
Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

***Community Development Block Grant
Building Communities***

**October 2012 to September 2013
ACTION PLAN**

to the

**CITY OF MIDLAND
CONSOLIDATED PLAN
FOR COMMUNITY DEVELOPMENT
AND HOUSING FUNDS
October 2010 - September 2015**

Prepared for the U.S. Department of Housing and Urban Development





City of Midland
Action Plan for 2012/13 Community Development
and Housing Funds

The City of Midland has prepared the 2012/13 (October 1, 2012 to September 30, 2013) Action Plan to the Consolidated Plan. The Consolidated Plan establishes Midland's long range strategy for investment of its U.S. Department of Housing and Urban Development (HUD) Community Development Block Grant (CDBG) resources and other service needs linked to activities directed at community development, housing and homeless service needs. The Consolidated Plan covers a five-year period beginning October 1, 2010 and ending September 30, 2015.

The Action Plan may be examined at the following locations from June 18 to July 17, 2012 (a 30-day public review period) or on the City Website (www.midlandtexas.gov):

City Secretary's Office 300 N Loraine, Room 340, City Hall	Casa de Amigos 1101 E Garden Lane
Midland County Branch Library Centennial Branch, 3211 W Wadley	SE Community Senior Center 1803 E Indiana
Midland Senior Center 3303 W Illinois, Kingsway Mall	Midland County Housing Authority 1710 Edwards
City Housing Authority 700 W Scharbauer Drive	Midland County Public Library 301 W Missouri

The purpose of the 2012/13 Action Plan is to identify the HUD resources that will be used in the coming year to address the various housing, homeless and community development needs in the City. This Action Plan represents Year Three of the Consolidated Plan. The primary funding source is the City's 2012/13 CDBG entitlement allocation of \$699,035. The City also expects to receive \$104,400 in program income and \$22,336 reprogrammed from prior year's fund. Specific projects to be undertaken with the total \$825,771 CDBG

funds are:

	<u>Amount</u>
Housing Needs	
Owner Housing Major Projects Program	\$420,000*
Owner Housing Minor Repairs Program	\$ 80,000
Homebuyer Assistance Program	\$ 40,000
Community Development Needs	
SE Senior Nutrition Program	\$ 45,000
Home Cleaning Program	\$ 25,000
Lot Clearing Program	\$ 35,000
CDBG Administration	\$160,000
Contingency	<u>\$ 20,771</u>
Total	\$825,771

* includes \$104,400 in program income.

The Action Plan provides information on the locations of the proposed activities. The City anticipates that 96% of funds will benefit low and moderate income persons. The Plan includes a narrative addressing a variety of issues and required certifications. The agency responsible for development of the Plan is the Community Development Division of the City's Development Services Department.

Please direct any **written comments** to the City's Community Development Division, PO Box 1152, Midland, Texas, 79702, **by July 17, 2012**. The Midland City Council will consider approval of the plan during the regular Council meeting on July 24, 2012. The Plan will be forwarded to HUD by August 15, 2012.

For more information, call the City's Community Development Office at 685-7408 or 685-7472.

Fair Housing – it's the Law.



City of Midland

THIRD YEAR ACTION PLAN October 2012 to September 2013

Consolidated Plan for Community
Development and Housing Funds
October 2010 to September 2015

Mayor:

W. Wesley Perry

City Manager:

Courtney Sharp

City Council Members:

District 1: Jeff Sparks
District 2: Vicky Hailey
District 3: John James
District 4: Michael B. Trost
At-Large: Scott Dufford
At-Large: Jerry Morales

Deputy City Manager:

Tommy Hudson

Assistant City Manager:

Jim Nichols

Community Development Office Staff:

Sylvester Cantu, Community Development Administrator
Wanda Valles, Program Coordinator

Special thanks to Steve Baker, GIS Specialist for maps included in the Plan

LIST OF CONTENTS

	<u>Page</u>
Executive Summary	4
Standard Form 424 - Application for Federal Assistance	6
City Council Resolution	8
Action Plan Narrative	11
Project Tables	19
Maps	28
2000 Census Tracts	
2010 Census Tracts	
Low-Income Areas – 2000 Census Tracts	
Non-white Population – 2010 Census Tracts	
Hispanic Population – 2010 Census Tracts	
Substandard Housing – 2000 Census Tracts	
Locations of Proposed 2012 Projects	
Tables 3A – Summary of Specific Annual Objectives	35
Table 3B – Annual Housing Completion Goals	42
Funding Sources Table	43
Support Other Applications Report	44
Consolidated Plan Specific Community Development Objectives Table	45
CERTIFICATIONS	46
CITIZEN PARTICIPATION	52

**CITY OF MIDLAND CONSOLIDATED PLAN
FOR COMMUNITY DEVELOPMENT AND HOUSING FUNDS**

ACTION PLAN for the 2012/13 PROGRAM YEAR

EXECUTIVE SUMMARY

The Consolidated Plan establishes Midland's long-range strategy for investment of its U.S. Department of Housing and Urban Development (HUD) resources and other resources linked to activities directed at community development, housing and homeless services needs. The Plan covers a five-year period, beginning October 1, 2010 and ending September 30, 2015.

The purpose of the 2012/2013 Action Plan is to identify the HUD resources that will be used in the coming year to address the various housing, homeless and community development needs in the City. This Action Plan represents Year Three of the Consolidated Plan. The sole funding source is the City's 2012/2013 Community Development Block Grant (CDBG) program entitlement allocation of \$699,035. Additionally, the City expects to receive \$104,400 in program income and reprogrammed \$22,336 from prior grant year's fund for a total of \$825,771.

Priority housing needs to be addressed are those of owner households in the 0% to 80% of median income range, and renter households in the 31% to 80% of median income range who will be making home purchases. The City will also address public services (senior citizens and child care) and other community development needs. Specific objectives with intended outcomes to be addressed are:

- reconstruct 4 homes and perform 28 minor repairs on homes occupied by low-income homeowners
- assist 7 low-income first time homebuyers with home purchases
- support meals program and home cleaning program for seniors (450 persons)
- clearing and mowing on 333 unsightly properties
- CDBG program administration

The Action Plan provides information as to the locations of the proposed activities. The City anticipates that 95.8% of funds will benefit low and moderate income persons.

In summary, the Action Plan was developed through the following citizen participation and consultation process: public organizations and affected groups were informed of the 2012/2013 plan development process and schedule, one community meeting was held, formal project proposals were accepted, two public hearings were held, media outreach was conducted, and public notification including direct mail-outs. The draft plan was made available for a 30-day review period (June 18 to July 17, 2012).

Concerning progress on the 2010-2014 Consolidated Plan, the City is eight months into the Second Year Action Plan. Specifically, public service activities and the owner housing assistance programs are progressing well towards their respective goals.

Several projects including public improvement activity, demolition and the homebuyer assistance program are experiencing slower progress. Greater detail is provided on Table 3A. The City's Consolidated Annual Performance and Evaluation Report that is generally published in December should also be reviewed for past performance.

The Plan includes narrative responses on a variety of issues posed as part of the Consolidated Plan. CDBG program specific requirements including required certifications are contained in the Action Plan. The agency responsible for development of the Plan is the Community Development Division of the City's Development Services Department.

Specific projects proposed to be undertaken with the total \$825,771 CDBG funds are:

<u>Project</u>	<u>Funds</u>
1 CDBG Program Administration	\$160,000
2 Lot Clearing Program	\$35,000
3 SE Senior Nutrition Program	\$45,000
4 Citywide Community Services Home Cleaning Program	\$25,000
5 Owner Occupied Major Project Program	\$420,000*
6 Owner Occupied Minor Repair Program	\$80,000
7 Homebuyer Assistance Program	\$40,000
Contingency	<u>\$20,771</u>
TOTAL	\$825,771

* = includes \$104,400 in program income.



SF 424

The SF 424 is part of the CPMP Annual Action Plan. SF 424 form fields are included in this document. Grantee information is linked from the 1CPMP.xls document of the CPMP tool.

SF 424

Complete the fillable fields (blue cells) in the table below. The other items are pre-filled with values from the Grantee Information Worksheet.

Date Submitted	Applicant Identifier	Type of Submission	
Date Received by state	State Identifier	Application	Pre-application
Date Received by HUD	Federal Identifier	☐ Construction	☐ Construction
		☐ Non Construction	☐ Non Construction
Applicant Information			
City of Midland, Texas		TX483564 MIDLAND	
300 N Loraine		73186579	
PO BOX 1152			
Midland	Texas	Development Services	
79702	Country U.S.A.	Community Development	
Employer Identification Number (EIN):		Midland	
75-6000608		Program Year Start Date (10/01)	
Applicant Type:		Specify Other Type if necessary:	
Local Government: City			
Program Funding		U.S. Department of Housing and Urban Development	
Catalogue of Federal Domestic Assistance Numbers; Descriptive Title of Applicant Project(s); Areas Affected by Project(s) (cities, Counties, localities etc.); Estimated Funding			
Community Development Block Grant		14.218 Entitlement Grant	
CDBG Project Titles 2012/13 Community Development Program for Neighborhood Revitalization		Description of Areas Affected by CDBG Project(s)	
\$699,035	\$Additional HUD Grant(s) Leveraged	Describe	
\$Additional Federal Funds Leveraged		\$Additional State Funds Leveraged	
\$Locally Leveraged Funds		\$Grantee Funds Leveraged	
Anticipated Program Income \$104,400		Other (Describe)	
Total Funds Leveraged for CDBG-based Project(s)			
Home Investment Partnerships Program		14.239 HOME	
NOT APPLICABLE		Description of Areas Affected by HOME Project(s)	
\$HOME Grant Amount \$0	\$Additional HUD Grant(s) Leveraged	Describe	
\$Additional Federal Funds Leveraged		\$Additional State Funds Leveraged	
\$Locally Leveraged Funds		\$Grantee Funds Leveraged	

\$Anticipated Program Income		Other (Describe)	
Total Funds Leveraged for HOME-based Project(s)			
Housing Opportunities for People with AIDS		14.241 HOPWA	
NOT APPLICABLE		Description of Areas Affected by HOPWA Project(s)	
\$0	\$Additional HUD Grant(s) Leveraged	Describe	
\$Additional Federal Funds Leveraged		\$Additional State Funds Leveraged	
\$Locally Leveraged Funds		\$Grantee Funds Leveraged	
\$Anticipated Program Income		Other (Describe)	
Total Funds Leveraged for HOPWA-based Project(s)			
Emergency Shelter Grants Program		14.231 ESG	
NOT APPLICABLE		Description of Areas Affected by ESG Project(s)	
\$ 0	\$Additional HUD Grant(s) Leveraged	Describe	
\$Additional Federal Funds Leveraged		\$Additional State Funds Leveraged	
\$Locally Leveraged Funds		\$Grantee Funds Leveraged	
\$Anticipated Program Income		Other (Describe)	
Total Funds Leveraged for ESG-based Project(s)			
Congressional Districts of:		Is application subject to review by state Executive Order 12372 Process?	
11	11		
Is the applicant delinquent on any federal debt? If "Yes" please include an additional document explaining the situation.		☐ Yes	This application was made available to the state EO 12372 process for review on DATE
		☐ No	
		☐ Yes	☐ No

Person to be contacted regarding this application		
Sylvester	C	Cantu
Community Dev. Administrator	432-685-7408	432-686-1609
scantu@midlandtexas.gov	www.midlandtexas.gov	Other Contact
Signature of Authorized Representative		Date Signed

Resolution

Resolution page 2

Third Program Year Action Plan Narrative

GENERAL

Executive Summary

An **Executive Summary** is located at the beginning of the Action Plan.

General Questions

1. Describe the geographic areas of the jurisdiction (including areas of low income families and/or racial/minority concentration) in which assistance will be directed during the next year. Where appropriate, the jurisdiction should estimate the percentage of funds the jurisdiction plans to dedicate to target areas.
2. Describe the basis for allocating investments geographically within the jurisdiction (or within the EMSA for HOPWA) (91.215(a)(1)) during the next year and the rationale for assigning the priorities.
3. Describe actions that will take place during the next year to address obstacles to meeting underserved needs.
4. Identify the federal, state, and local resources expected to be made available to address the needs identified in the plan. Federal resources should include Section 8 funds made available to the jurisdiction, Low-Income Housing Tax Credits, and competitive McKinney-Vento Homeless Assistance Act funds expected to be available to address priority needs and specific objectives identified in the strategic plan.

The geographic areas in which CDBG funds will be directed are shown on the **Locations of Proposed 2012 Projects Map**. The Map also identifies the location criteria for beneficiaries of each proposed project. The reader should also refer to the census tract boundaries, minority population and low-income area maps. The minority population maps are based on 2010 Census Tracts boundaries and data. The low income areas map relies on the 2000 Census.

The City's rationale for its geographic distribution of CDBG funds is based on compliance with the CDBG Primary Objective - the development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income. Generally, CDBG supported public services are available on a citywide basis to income eligible households or persons. However, public capital improvements and other development projects are directed at sites within low- and moderate-income neighborhoods.

Housing assistance, elderly and childcare programs specifically target underserved populations. The targeting techniques include providing higher levels of assistance for lower income applicants and limiting assistance to low income areas.

As per the **Funding Sources Report**, the City will receive \$699,035 in CDBG Entitlement Grant funds for the 2012/2013 program. A total \$104,400 is estimated as CDBG program income for

2012/2013. Additionally \$22,336 will be reprogrammed from prior year's funds. Altogether, \$825,771 in CDBG funds will be available in 2012/2013. The City anticipates that 95.8% of CDBG funds will benefit low and moderate income persons.

As it relates to other HUD programs, the City shall support applications by other entities as reported in the **Support Other Applications Report**. It is hoped that the State of Texas will continue to offer HUD HOME funds on a competitive application basis. The City and the various housing providers should apply for these HOME funds as well as access the State's HOME Reservation System Participant program component. Low-Income Housing Tax Credit applications for Midland are currently under consideration. The City does encourage local providers to seek suitable federal resources such as the Emergency Shelter Grants (ESG) and federal weatherization funds.

Private funds to be used in conjunction with CDBG funding include United Way funds received by CDBG subrecipients. The City will also use non-federal funds for its lot clearing and demolition programs and for project management performed by city departments. Organizations like Christmas in Action and Habitat for Humanity rely on private donations for their programs.

Managing the Process

1. Identify the lead agency, entity, and agencies responsible for administering programs covered by the consolidated plan.
2. Identify the significant aspects of the process by which the plan was developed, and the agencies, groups, organizations, and others who participated in the process.
3. Describe actions that will take place during the next year to enhance coordination between public and private housing, health, and social service agencies.

The lead agency for administering the Action Plan is the City of Midland's Department of Development Services through its Community Development (CD) Division. Major public and private agencies responsible for administering programs covered by the Consolidated Plan are the City of Midland, local housing authorities and numerous housing (Midland Community Development Corporation, Midland Habitat for Humanity) and social service non-profits (Casa de Amigos, Community and Senior Services of Midland, the local Workforce Network).

The process for developing the Action Plan includes public notification, citizen input situations and target area selection. Public notification consisted of informing over 100 public organizations, non-profits and key target organizations about the upcoming Action Plan cycle was made on February 3, 2012. Proposals from outside organizations and city departments for the use of funds were accepted on April 12, 2012. A community meeting and two public hearings were conducted and the above groups were encouraged to attend. The City communicates and coordinates with other Midland governmental entities, local housing authorities, the City of Odessa and various State departments on an as needed basis. The City

provided copies of the Action Plan to the following governmental entities: Permian Basin Regional Planning Commission, local housing authorities and Midland County. Midland is not adjacent to another municipal government.

The City will continue to participate in local, regional and state efforts that serve to enhance coordination among public and private housing, health, and social service agencies. Such efforts include those of the Midland Affordable Housing Alliance, the Midland Homeless Coalition, the Midland Asset Building Coalition, the United Way, Board of Realtors, home builders association, and social service case managers among others.

Citizen Participation

1. Provide a summary of the citizen participation process.
2. Provide a summary of citizen comments or views on the plan.
3. Provide a summary of efforts made to broaden public participation in the development of the consolidated plan, including outreach to minorities and non-English speaking persons, as well as persons with disabilities.
4. Provide a written explanation of comments not accepted and the reasons why these comments were not accepted.

As per the Citizen Participation Plan for the City's Community Development program, the citizen participation process consists of providing notification and having formal opportunity for citizen input. The City informs the public through various means of upcoming input opportunities such as community meeting or public hearings. Specifically, the City conducted a neighborhood/ community meeting at Casa de Amigos on March 8, 2012 to solicit citizen input on priority community development and housing needs. Two public hearings (May 8, 2012 and June 12, 2012) at City Hall were also held to solicit citizen input. Spanish interpretation was available at the meetings. Minutes of the public hearings are maintained by the City Secretary Office. Copies of the draft plan were made available at several locations including the housing authorities as part of the 30-day review period (that occurred from June 18 to July 17, 2012). Comments received on the proposed Action Plan are included in the **Citizen Participation section**. This section also contains copies of published notices of the above meeting and public hearings.

Institutional Structure

1. Describe actions that will take place during the next year to develop institutional structure.

Major changes to the institutional structure described in the Consolidated Plan are not anticipated in the coming year. The City will continue to support activity by the various providers and encourage them to seek other funding sources to enhance the service delivery system in Midland. City staff and/or elected officials will continue to be involved in housing

and homeless concerns that seek to improve service delivery. Examples can be seen in the existence of the Midland Affordable Housing Alliance and the Midland Homeless Coalition among others.

Monitoring

1. Describe actions that will take place during the next year to monitor its housing and community development projects and ensure long-term compliance with program requirements and comprehensive planning requirements.

The City's Community Development Office has the responsibility of monitoring plan implementation. For its CDBG activity, monitoring will be done on a continuous basis regardless of whether a project is undertaken by a subrecipient or City staff. The **Summary of Specific Annual Objectives Tables** are used to track progress of individual activities toward addressing the broader Program objectives. All CDBG projects will be monitored monthly for progress in expenditure of funds. Public service programs also report performance monthly. Technical assistance to project managers by the CD Office is available throughout the year. Written agreements with subrecipients contain provisions on complying with HUD requirements that will be enforced. The City will perform on-site monitoring of such projects. Program objectives will be stated in measurable terms in the agreements. Any project involving development must conform to City development standards and other City Master Plan Objectives. Housing reconstruction homes and units under homebuyer assistance programming will meet HUD's housing quality standards. The City has a performance manual that is used on the reconstruction program. City staff will strive to attend HUD sponsored training to help maintain the capacity needed to monitor programs effectively.

Although the City is not responsible for monitoring HUD funds it does not directly receive, the City will issue certificates of consistency with the Consolidated Plan on the condition that receiving agencies provide periodic reports to the City. In this manner, the City can better track progress related to the implementation of the plan. The City will seek information on the number and categories of households served by such projects. To obtain a certificate, an agency must provide information on its ability to implement the proposed program, the proposal's measurable objectives and time frames for completion, and the responsible officials.

Lead-based Paint

1. Describe the actions that will take place during the next year to evaluate and reduce the number of housing units containing lead-based paint hazards in order to increase the inventory of lead-safe housing available to extremely low-income, low-income, and moderate-income families, and how the plan for the reduction of lead-based hazards is related to the extent of lead poisoning and hazards.

The City will implement its CDBG-aided activities consistent with the lead-based paint hazard reduction objective. Specifically, prospective households shall be made aware of the potential

hazard and appropriate evaluation and reduction steps will be pursued in rehabilitation programs. Referrals to services for testing of children by local health and child welfare agencies will be made as needed.

HOUSING

Specific Housing Objectives

*Please also refer to the Housing Needs Table in the Needs.xls workbook.

1. Describe the priorities and specific objectives the jurisdiction hopes to achieve during the next year.
2. Describe how Federal, State, and local public and private sector resources that are reasonably expected to be available will be used to address identified needs for the period covered by this Action Plan.

Available resources for the coming year will consist of the 2012/2013 CDBG funds budgeted for housing and the program income generated by the owner occupied housing program. The City anticipates housing programming to address priority housing needs of owner households, principally in the 0% to 50% of median income range and first time homebuyers in the 40% to 80% of median income range. As shown in the **Project Tables**, it is expected that homebuyer assistance, owner housing major projects, and owner housing minor repairs will be undertaken. The Project Tables contain information on outcome measurements. Privately funded Christmas in Action should annually achieve 300 minor repair projects. West Texas Opportunities is responsible for weatherization projects funded by DOE. **Table 3B Annual Housing Completion Goals** of the Action Plan also identifies the specific housing goals including resources to be used.

Needs of Public Housing

1. Describe the manner in which the plan of the jurisdiction will help address the needs of public housing and activities it will undertake during the next year to encourage public housing residents to become more involved in management and participate in homeownership.
2. If the public housing agency is designated as "troubled" by HUD or otherwise is performing poorly, the jurisdiction shall describe the manner in which it will provide financial or other assistance in improving its operations to remove such designation during the next year.

The only public housing project in Midland is for the elderly and is in good condition but was built in 1976. The City will remain receptive to assisting the PHAs, upon request, on their "resident initiative" activity and will continue to provide information on homeownership opportunities to households assisted by the PHAs. The CD Office provides its housing brochure to the PHAs for distribution at its offices, and the PHAs reciprocate. Currently, the PHAs are not designated as "troubled" or otherwise performing poorly.

Barriers to Affordable Housing

1. Describe the actions that will take place during the next year to remove barriers to affordable housing.

The City shall continue to be receptive to cases supporting the objective. Often, favorable outcomes can be achieved when re-zoning cases, mobile home occupancy permit and sidewalk waivers are considered. The City shall also strive to reduce or waive certain development and building fees for affordable housing projects and use local funds to pay for public improvements and the disposal of site clearance debris on affordable housing sites. Services such as platting and surveying aspects can also be considered for non-profit developers. The City uses its Street Fund that is generated from each building permit for street improvements primarily within the city's low income areas. The City shall strive to use City resources for street improvements, primarily in Midland's south and east sides. Continuation of CDBG funding for the housing reconstruction program contributes toward this objective. These actions also have the effect of fostering and maintaining affordable housing.

The City of Midland is not a HOME/ADDI participating jurisdiction.

HOMELESS

Specific Homeless Prevention Elements

*Please also refer to the Homeless Needs Table in the Needs.xls workbook.

1. Sources of Funds—Identify the private and public resources that the jurisdiction expects to receive during the next year to address homeless needs and to prevent homelessness. These include the McKinney-Vento Homeless Assistance Act programs, other special federal, state and local and private funds targeted to homeless individuals and families with children, especially the chronically homeless, the HUD formula programs, and any publicly-owned land or property. Please describe, briefly, the jurisdiction's plan for the investment and use of funds directed toward homelessness.
2. Homelessness—In a narrative, describe how the action plan will address the specific objectives of the Strategic Plan and, ultimately, the priority needs identified. Please also identify potential obstacles to completing these action steps.
3. Chronic homelessness—The jurisdiction must describe the specific planned action steps it will take over the next year aimed at eliminating chronic homelessness by 2012. Again, please identify barriers to achieving this.
4. Homelessness Prevention—The jurisdiction must describe its planned action steps over the next year to address the individual and families with children at imminent risk of becoming homeless.
5. Discharge Coordination Policy—Explain planned activities to implement a cohesive, community-wide Discharge Coordination Policy, and how, in the coming year, the community will move toward such a policy.

Not counting the CDBG program, the City does not receive any funds to carryout homeless

programs. Therefore, the City relies on other organizations to pursue funds to serve homeless needs. For 2012/2013, the City does not anticipate using CDBG funds that will directly assist in programs that serve the homeless or on projects involving homeless facilities.

By being an active partner in the Midland Homeless Coalition, the Midland Asset Building Coalition, and the Midland Affordable Housing Alliance, the City aims to work toward addressing gaps within the Midland continuum of care for the homeless and eliminating chronic homelessness. As required, partners in the Homeless Coalition are still considering an appropriate discharge coordination policy. Collaborations with the United Way and local foundations are vital in efforts to ensure current funding levels are sustained and that federal/state funding opportunities are not missed in order to apply for shelter and transitional housing needs.

Nonetheless, the current system of support services and facilities through the Salvation Army, Midland Fair Havens, Safe Place, local churches and social service agencies, and agencies dealing with offenders will continue. This system intends that extremely low income individuals and families can be prevented from becoming homeless and that homeless persons can be aided in their transition to permanent housing and independent living.

Emergency Shelter Grants (ESG)

The City of Midland does not receive an ESG allocation.

COMMUNITY DEVELOPMENT

Community Development

*Please also refer to the Community Development Table in the Needs.xls workbook.

1. Identify the jurisdiction's priority non-housing community development needs eligible for assistance by CDBG eligibility category specified in the Community Development Needs Table (formerly Table 2B), public facilities, public improvements, public services and economic development.
2. Identify specific long-term and short-term community development objectives (including economic development activities that create jobs), developed in accordance with the statutory goals described in section 24 CFR 91.1 and the primary objective of the CDBG program to provide decent housing and a suitable living environment and expand economic opportunities, principally for low- and moderate-income persons.
*Note: Each specific objective developed to address a priority need, must be identified by number and contain proposed accomplishments, the time period (i.e., one, two, three, or more years), and annual program year numeric goals the jurisdiction hopes to achieve in quantitative terms, or in other measurable terms as identified and defined by the jurisdiction.

With 2012/2013 CDBG funds, the City will address the following non-housing community development needs: public services (senior care) and other community development needs (lot

clearing). Specifically as shown in the **Project Tables**, the City will address the following Community Development Objectives:

- Fund meals and home cleaning programs that benefit the elderly.
- Clear and mow unsightly properties in slum and blighted areas.
- The City will also use CDBG funds for proper administration of the CDBG program including citizen participation and fair housing programming.

The individual Project Tables contain information on outcome measures.

No changes to the Consolidated Plan were made during the past year.

Antipoverty Strategy

1. Describe the actions that will take place during the next year to reduce the number of poverty level families.

The City will continue its overall anti-poverty strategy that revolves around economic development – using the economic development sales tax to create jobs for Midland. Fortunately, the current oil based economic boom has resulted in the generation of jobs in all sectors of the local economy. The Midland Asset Building Coalition has the mission of enabling low income households to better their economic status and is working on developing new initiatives to do so. Other aspects of the local strategy are to continue to direct assistance programs towards the neediest households, employment-training programs and the hiring of low income individuals on federally supported contracts. Small businesses that hire low income persons typically are vendors in housing assistance programs. Adherence to HUD's Section 3 requirements is another way to help eliminate poverty.

NON-HOMELESS SPECIAL NEEDS HOUSING

Non-homeless Special Needs (91.220 (c) and (e))

*Please also refer to the Non-homeless Special Needs Table in the Needs.xls workbook.

1. Describe the priorities and specific objectives the jurisdiction hopes to achieve for the period covered by the Action Plan.
2. Describe how Federal, State, and local public and private sector resources that are reasonably expected to be available will be used to address identified needs for the period covered by this Action Plan.

While the City does not anticipate having any resources that will be devoted to the non-homeless special needs objectives of the Consolidated Plan, the public services to be funded by CDBG do serve special needs populations – the elderly, frail elderly and persons with

Housing Opportunities for People with AIDS

The City of Midland is not a direct HOPWA grantee.

Specific HOPWA Objectives

The City of Midland is not a direct HOPWA grantee.

PROJECT TABLES

**CITY OF MIDLAND, TEXAS
PROJECT DESCRIPTION TABLE
Program Year 3 – Begins October 1, 2012**

Project #:	1		Project Name:	CDBG Administration	
Project Description:	General oversight and management of the CDBG Program to be conducted by the City's Community Development Office. Activities include fair housing program and affordable housing application costs. Independent audit of the Program would also be paid with CDBG funds.				
Location:	Not Applicable			Expected Completion Date:	09/30/2013
Eligibility Matrix Code:	21A General Program Administration 570.206		National Objective:	Not Applicable	
Consolidated Plan Priority Need Category:	Not Applicable		Explanation:	Not Applicable	
HUD Specific Objectives:	Not Applicable				
HUD Objective Category:		<i>Decent Housing</i>		<i>Suitable Living Environment</i>	
HUD Outcome Category:		<i>Availability/Accessibility</i>		<i>Affordability</i>	
Local Specific Objective:					
Local Proposed Outcome:					
Performance Measure:			Accomplishments Goal and Type:		
FUNDING SOURCE	CDBG			Amount:	\$160,000
FUNDING SOURCE	HOME			Amount:	\$0
FUNDING SOURCE	Other			Amount:	\$0
TOTAL					\$160,000

**CITY OF MIDLAND, TEXAS
PROJECT DESCRIPTION TABLE
Program Year 3 – Begins October 1, 2012**

Project #:	2		Project Name:	Lot Clearing Program	
Project Description:	Program includes the removal and disposal of debris and mowing of properties that are violating City Code. Activity will occur within slum/blight areas and will be conducted by the City's Code Administration Office. Some minor program revenue may be earned during the year and will be used for same activity.				
Location:	Slum/Blighted Areas: Generally Census Tracts 1,9,11,14,15,16,17 in Midland Texas			Expected Completion Date:	09/30/2013
Eligibility Matrix Code:	05 Public Services (General) 570.201(e)		National Objective:	570.208(b)(1) Prevent/Eliminate Slum/Blight on Area Basis	
Consolidated Plan Priority Need Category:	Public Services		Explanation:	Other Needs – High Priority	
HUD Specific Objectives:	Improve the quality of services to low moderate income persons				
HUD Objective Category:	<i>Decent Housing</i>	X	<i>Suitable Living Environment</i>		<i>Economic Opportunity</i>
HUD Outcome Category:	<i>Availability/Accessibility</i>		<i>Affordability</i>	X	<i>Sustainability</i>
Local Specific Objective:	SL3.2: Clearing of unsightly properties by the City in slum/blighted areas.				
Local Proposed Outcome:	Eliminate fire and health hazards				
Performance Measure:	Mowed and cleared un-kept properties	Accomplishments Goal and Type:		333 People	
FUNDING SOURCE	CDBG			Amount:	\$35,000
FUNDING SOURCE	HOME			Amount:	\$0
FUNDING SOURCE	Other			Amount:	\$0
TOTAL					\$35,000

CITY OF MIDLAND, TEXAS
PROJECT DESCRIPTION TABLE
Program Year 3 – Begins October 1, 2012

Project #:	3	Project Name:	SE Senior Nutrition Program		
Project Description:	This is the nutrition program at the Southeast Community Senior Citizen Center that provides a noon time meal Monday through Friday for the elderly. Kitchen for the year-long program is at 3301 Sinclair. This activity will be performed by Community and Senior Services of Midland, a non-profit.				
Location:	1803 E Indiana, Midland Texas 79701		Expected Completion Date:	09/30/2013	
Eligibility Matrix Code:	05A Senior Services 570.201(e)	National Objective:	570.208(a)(2)Limited Clientele – Presumed Low/Moderate Income		
Consolidated Plan Priority Need Category:	Public Services	Explanation:	Senior Services – High Priority		
HUD Specific Objectives:	Improve the quality of services to low moderate income persons				
HUD Objective Category:	<i>Decent Housing</i>	X	<i>Suitable Living Environment</i>		<i>Economic Opportunity</i>
HUD Outcome Category:	X	<i>Availability/Accessibility</i>		<i>Affordability</i>	<i>Sustainability</i>
Local Specific Objective:	SL1.4: Public Services – Senior services – support senior citizen center meal program and home cleaning program.				
Local Proposed Outcome:	Better mental and physical health of seniors				
Performance Measure:	Seniors Served		Accomplishments Goal and Type:	250 People	
FUNDING SOURCE	CDBG		Amount:	\$45,000	
FUNDING SOURCE	HOME		Amount:	\$0	
FUNDING SOURCE	Other		Amount:	\$0	
TOTAL				\$45,000	

**CITY OF MIDLAND, TEXAS
PROJECT DESCRIPTION TABLE
Program Year 3 – Begins October 1, 2012**

Project #:	4	Project Name:	Citywide Home Cleaning Program		
Project Description:	This is the home cleaning service for low income elderly and/or handicapped residents of Midland. Service enables recipients to continue independent safe and sanitary living in their own home. This activity will be performed by Casa de Amigos, a non-profit.				
Location:	Citywide, Midland Texas			Expected Completion Date:	09/30/2013
Eligibility Matrix Code:	05A Senior Services 570.201(e)		National Objective:	570.208(a)(2)Limited Clientele – Presumed Low/Moderate Income	
Consolidated Plan Priority Need Category:	Public Services		Explanation:	Senior Services – High Priority	
HUD Specific Objectives:	Improve the quality of services to low moderate income persons				
HUD Objective Category:		<i>Decent Housing</i>	X	<i>Suitable Living Environment</i>	<i>Economic Opportunity</i>
HUD Outcome Category:	X	<i>Availability/Accessibility</i>		<i>Affordability</i>	<i>Sustainability</i>
Local Specific Objective:	SL1.4: Public Services – Senior services – support senior citizen center meal program and home cleaning program.				
Local Proposed Outcome:	Safe and sanitary living conditions for seniors				
Performance Measure:	Persons Served		Accomplishments Goal and Type:	200 People	
FUNDING SOURCE		CDBG		Amount:	\$25,000
FUNDING SOURCE		HOME		Amount:	\$0
FUNDING SOURCE		Other		Amount:	\$0
TOTAL					\$25,000

CITY OF MIDLAND, TEXAS
PROJECT DESCRIPTION TABLE
Program Year 3 – Begins October 1, 2012

Project #:	5		Project Name:	Owner Occupied Major Project Program		
Project Description:	Financial assistance to low and moderate income homeowners for reconstruction of substandard homes. Program will be available for single family dwellings on a loan basis. An estimated \$104,400 in program income will also be used. Funds will also pay for program delivery costs incurred by the City's Community Development Office.					
Location:	Generally Census Tracts 1,9,11,14,15,16,17 in Midland Texas			Expected Completion Date:	12/31/2013	
Eligibility Matrix Code:	14A Rehabilitation – Single Unit Residential 570.202		National Objective:	570.208(a)(3) Housing–Low/Moderate Income		
Consolidated Plan Priority Need Category:	Owner Households		Explanation:	Low/Moderate Income Owner Households		
HUD Specific Objectives:	Improve the quality of owner housing					
HUD Objective Category:	X	<i>Decent Housing</i>		<i>Suitable Living Environment</i>		<i>Economic Opportunity</i>
HUD Outcome Category:		<i>Availability/Accessibility</i>	X	<i>Affordability</i>		<i>Sustainability</i>
Local Specific Objective:	DH1.4: Housing – Rehabilitation or reconstruction of homes occupied by low-income homeowners.					
Local Proposed Outcome:	Affordable safe, sanitary standard homes					
Performance Measure:	Homes reconstructed		Accomplishments Goal and Type:	4 Households		
FUNDING SOURCE		CDBG		Amount:	\$315,600	
FUNDING SOURCE		HOME		Amount:	\$0	
FUNDING SOURCE		Other – CDBG Income		Amount:	\$104,400	
				TOTAL	\$420,000	

CITY OF MIDLAND, TEXAS
PROJECT DESCRIPTION TABLE
Program Year 3 – Begins October 1, 2012

Project #:	6	Project Name:	Owner Occupied Minor Repairs Program			
Project Description:	Minor repair assistance will be available to low income owner households. Generally, eligible repairs will be plumbing, electrical, roofing and heating. Some minor program revenue will be earned and will be used for same activity. Funds will also pay for the program delivery administrative costs by the City’s Community Development Office.					
Location:	Generally Census Tracts 1,9,11,14,15,16,17 in Midland Texas		Expected Completion Date:	10/31/2013		
Eligibility Matrix Code:	14A Rehabilitation – Single Unit Residential 570.202		National Objective:	570.208(a)(3) Housing–Low/Moderate Income		
Consolidated Plan Priority Need Category:	Owner Households		Explanation:	Low/Moderate Income Owner Households		
HUD Specific Objectives:	Improve the quality of services to low moderate income persons					
HUD Objective Category:	X	Decent Housing		Suitable Living Environment		Economic Opportunity
HUD Outcome Category:	X	Availability/Accessibility		Affordability		Sustainability
Local Specific Objective:	DH1.5: Housing – Minor repair services to low-income homeowners by City and other non-profits.					
Local Proposed Outcome:	Affordable safe, sanitary standard homes					
Performance Measure:	Minor repairs completed		Accomplishments Goal and Type:	28 Households		
FUNDING SOURCE		CDBG		Amount:	\$80,000	
FUNDING SOURCE		HOME		Amount:	\$0	
FUNDING SOURCE		Other		Amount:	\$0	
TOTAL					\$80,000	

**CITY OF MIDLAND, TEXAS
PROJECT DESCRIPTION TABLE
Program Year 3 – Begins October 1, 2012**

Project #:	7	Project Name:	Homebuyer Assistance Program		
Project Description:	Closing costs and downpayment financial assistance to low and moderate income first time home buyers. Only single family homes will be eligible. Funds will also pay for the program delivery costs incurred by the City's Community Development Office.				
Location:	Citywide, Midland Texas			Expected Completion Date:	10/31/2013
Eligibility Matrix Code:	13 Direct Homeownership Assistance 570.201(n)		National Objective:	570.208(a)(3) Housing–Low/Moderate Income	
Consolidated Plan Priority Need Category:	Renter Households		Explanation:	Low/Moderate Income Renter Households	
HUD Specific Objectives:	Improve the quality of services to low moderate income persons				
HUD Objective Category:	X	<i>Decent Housing</i>		<i>Suitable Living Environment</i>	
HUD Outcome Category:		<i>Availability/Accessibility</i>	X	<i>Affordability</i>	
Local Specific Objective:	DH2.1: Housing – Financial assistance by non-profit entities and the City from CDBG, HOME and other sources to low-income homebuyers.				
Local Proposed Outcome:	Affordable safe, sanitary standard homes				
Performance Measure:	Households assisted in purchase of homes		Accomplishments Goal and Type:	7 Households	
FUNDING SOURCE	CDBG			Amount:	\$40,000
FUNDING SOURCE	HOME			Amount:	\$0
FUNDING SOURCE	Other			Amount:	\$0
TOTAL					\$40,000

**CITY OF MIDLAND, TEXAS
PROJECT DESCRIPTION TABLE
Program Year 3 – Begins October 1, 2012**

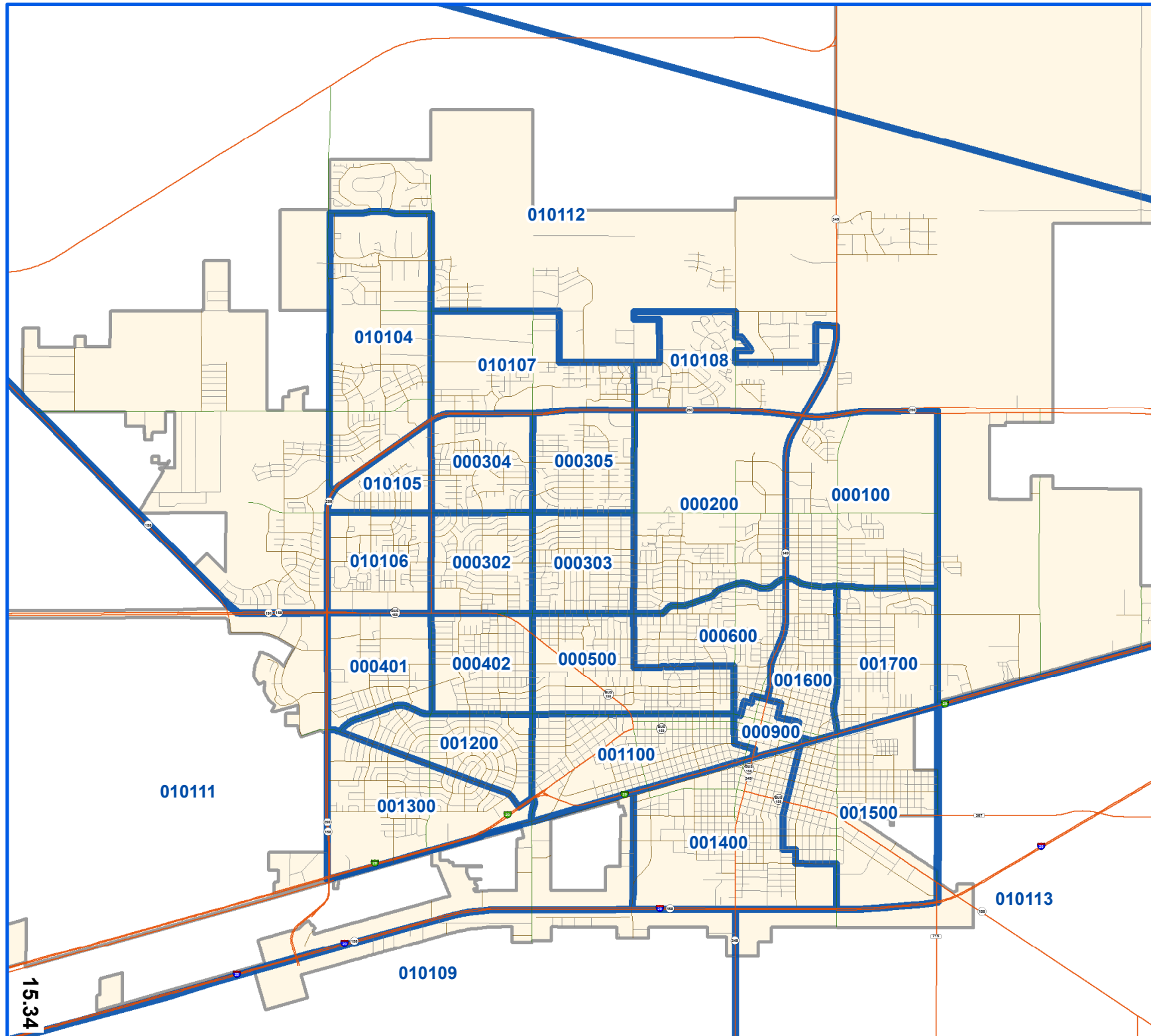
Project #:	8	Project Name:	Contingency		
Project Description:	This project consists of un-allocated funds that are reserved in the event an establishd CDBG project will need added funding due to cost overruns.				
Location:	N/A			Expected Completion Date:	N/A
Eligibility Matrix Code:	22 Unprogrammed Funds		National Objective:		
Consolidated Plan Priority Need Category:	N/A		Explanation:		
HUD Specific Objectives:					
HUD Objective Category:		<i>Decent Housing</i>		<i>Suitable Living Environment</i>	
HUD Outcome Category:		<i>Availability/Accessibility</i>		<i>Affordability</i>	
Local Specific Objective:					
Local Proposed Outcome:					
Performance Measure:			Accomplishments Goal and Type:		
FUNDING SOURCE	CDBG			Amount:	\$20,771
FUNDING SOURCE	HOME			Amount:	\$0
FUNDING SOURCE	Other			Amount:	\$0
TOTAL					\$20,771

2000 CENSUS TRACTS FOR CITY OF MIDLAND



Legend

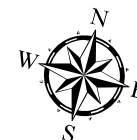
- Arterial
- Collector
- Interstate & State Highway
- Residential
- Census Tract 2000
- City Limit



JUNE 1, 2011
STEVE BAKER

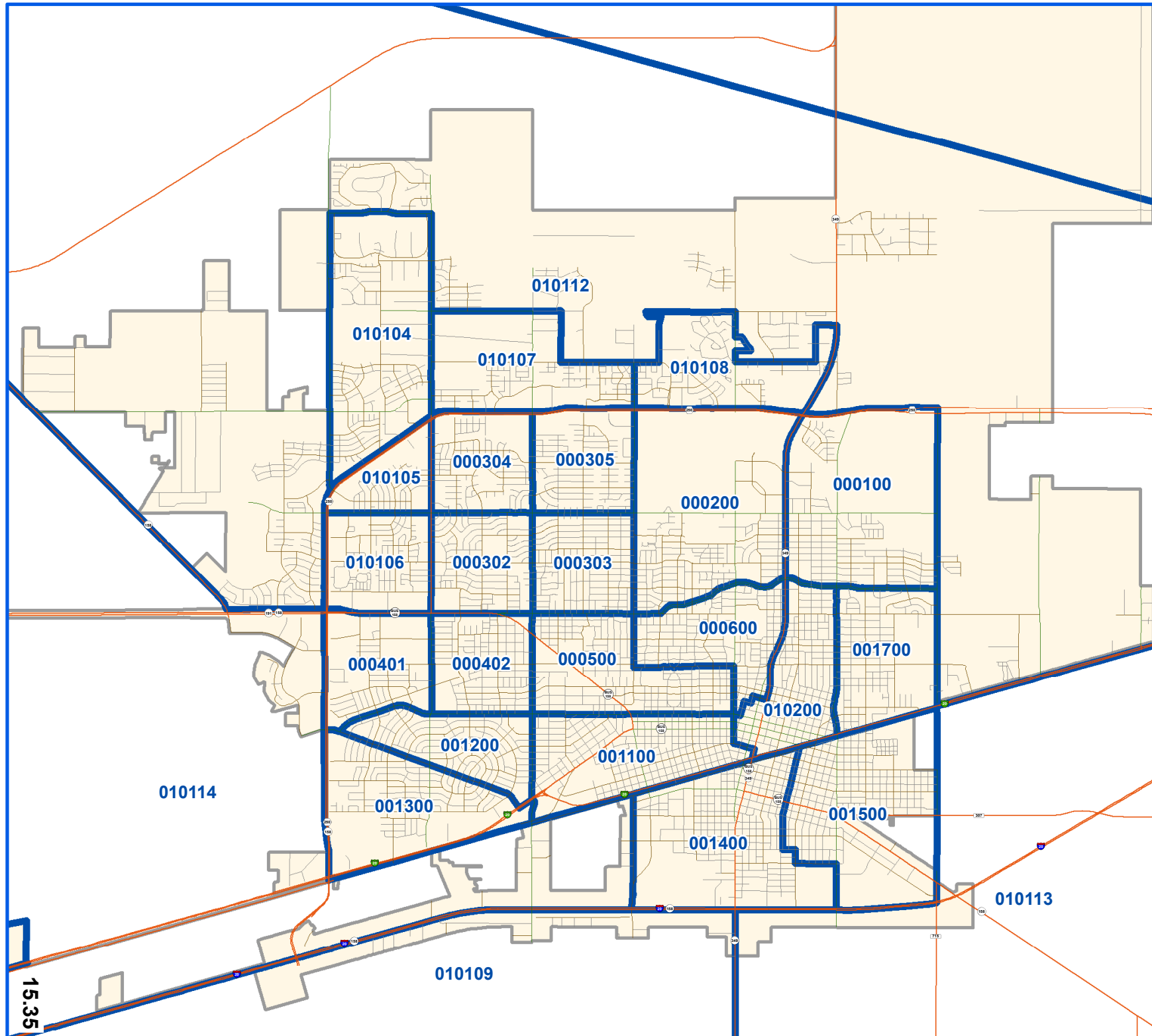
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2010 CENSUS TRACTS FOR CITY OF MIDLAND



Legend

- Arterial
- Collector
- Interstate & State Highway
- Residential
- Census Tract 2010
- City Limit



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PERCENTAGE OF LOW INCOME POPULATION BY CENSUS TRACT



Legend

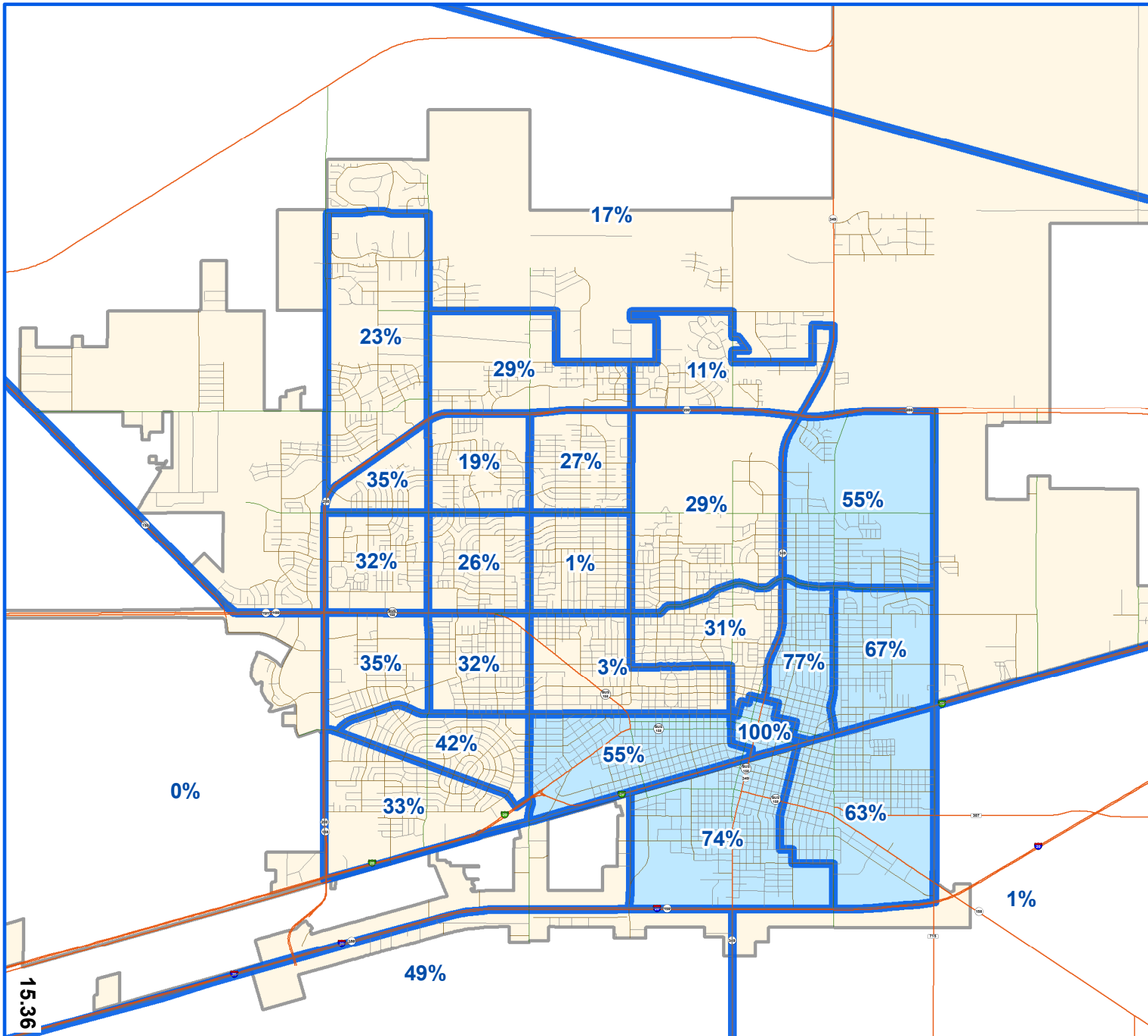
- Arterial
- Collector
- Interstate & State Highway
- Residential
- Census Tract 2000
- Low to Moderate Income
- City Limit

**CITYWIDE
PERCENTAGE
IS 36.1%**

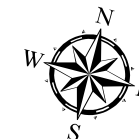


JUNE 10, 2011
STEVE BAKER

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PERCENTAGE OF NON-WHITE POPULATION BY 2010 CENSUS TRACT



Legend

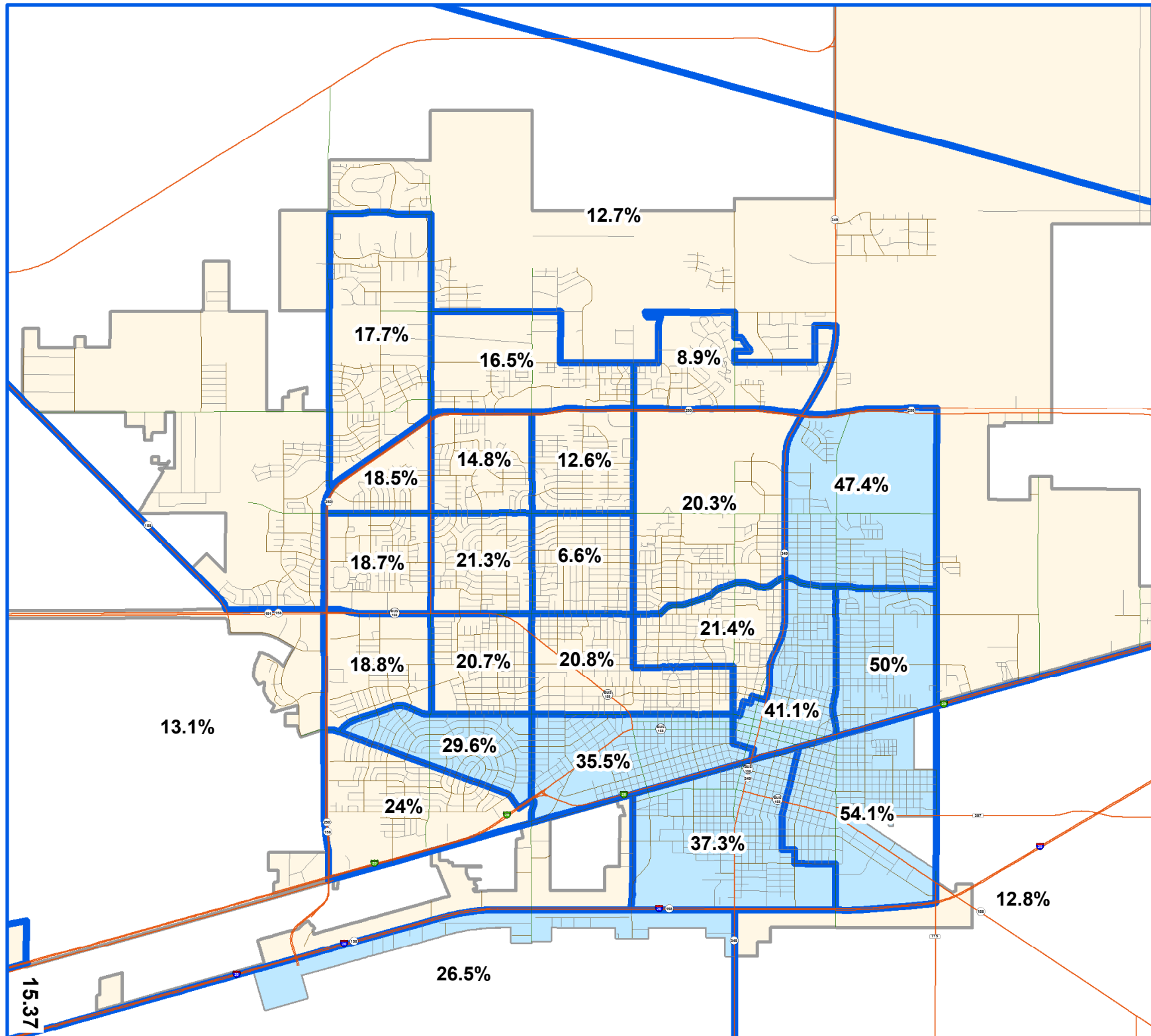
- Arterial
- Collector
- Interstate & State Highway
- Residential
- Census Tract 2010
- Above City Average
- City Limit

CITYWIDE PERCENTAGE IS 24.5%



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PERCENT OF HISPANIC POPULATION BY 2010 CENSUS TRACT



Legend

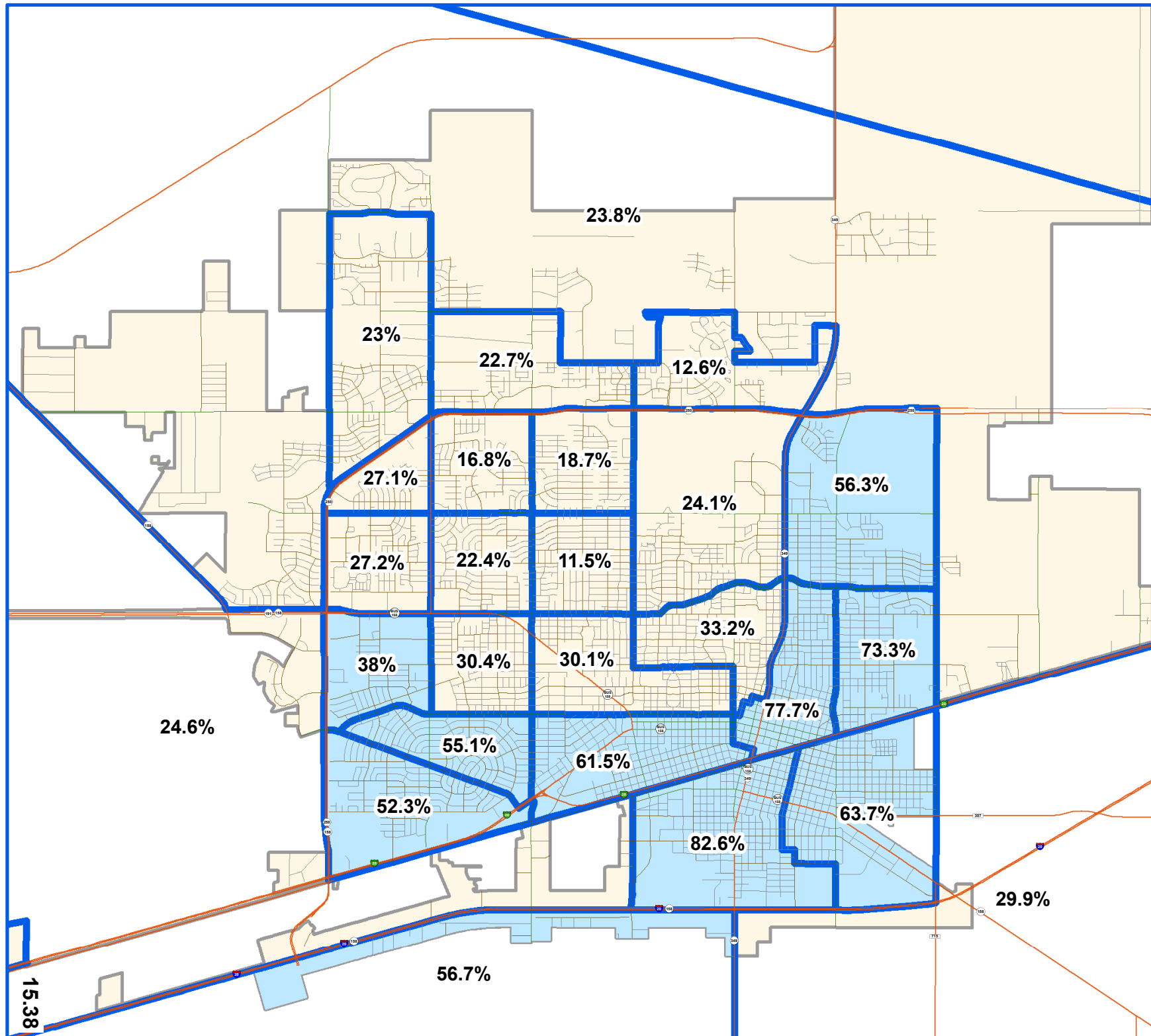
- Arterial
- Collector
- Interstate & State Highway
- Residential
- Census Tract 2010
- Above City Percent
- City Limit

**CITYWIDE
PERCENTAGE
IS 37.6%**



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PERCENT SUBSTANDARD HOUSING BY CENSUS TRACT



Legend

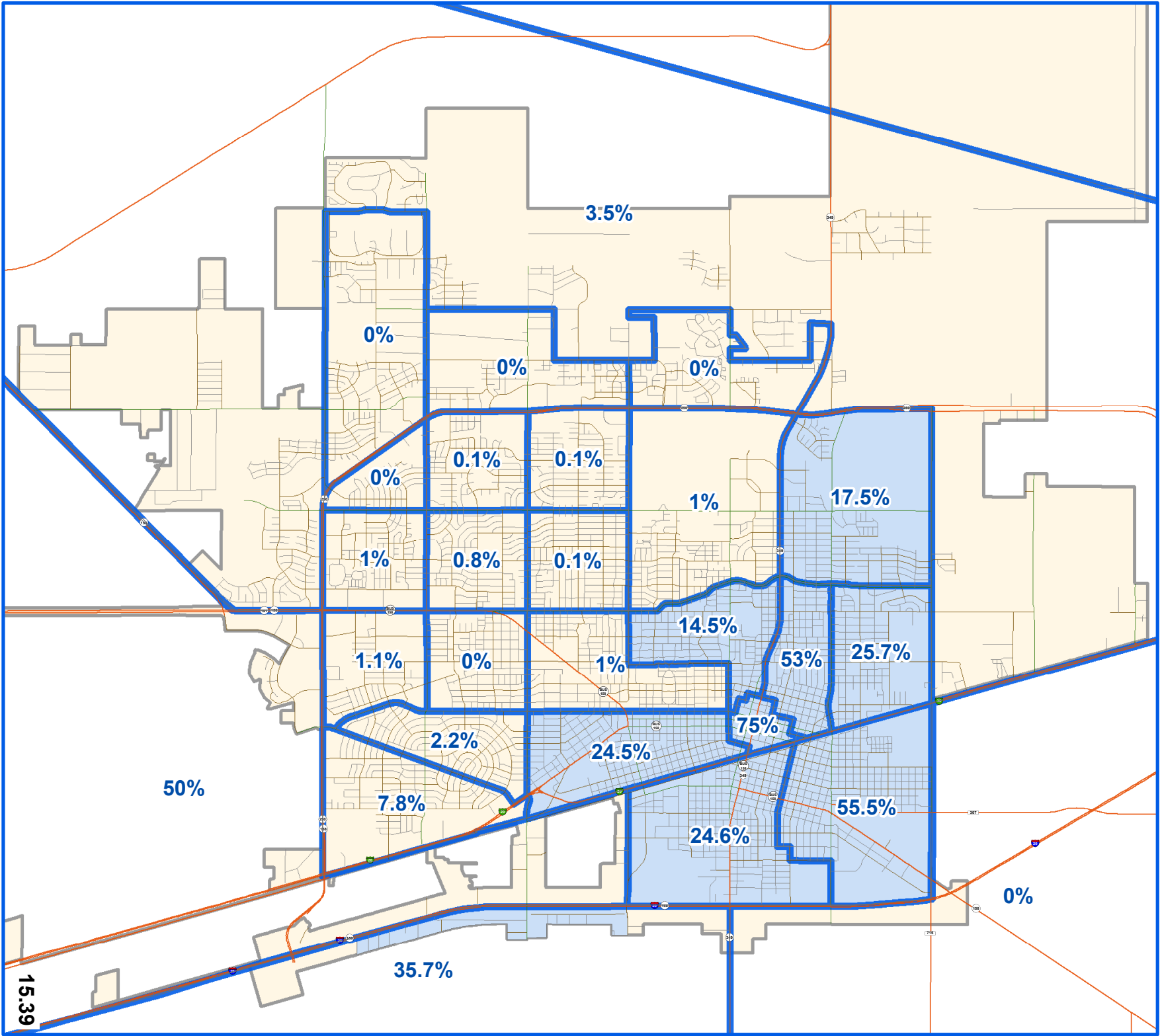
- Arterial
- Collector
- Interstate & State Highway
- Residential
- Census Tract 2000
- Slum/Blight Area
- City Limit

CITYWIDE PERCENTAGE
IS 9.7%



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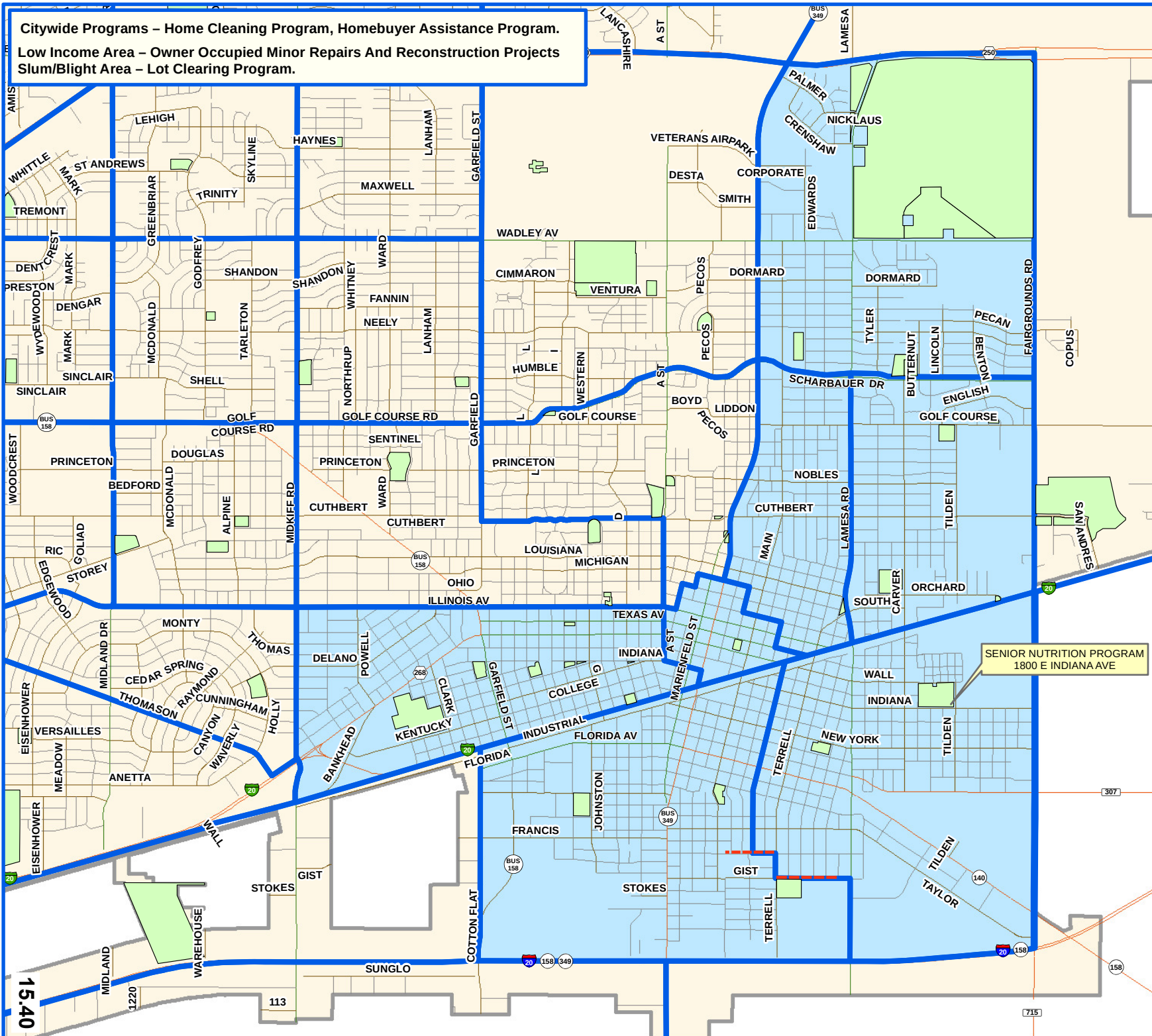
Citywide Programs – Home Cleaning Program, Homebuyer Assistance Program.
 Low Income Area – Owner Occupied Minor Repairs And Reconstruction Projects
 Slum/Blight Area – Lot Clearing Program.

LOCATIONS OF PROPOSED 2012 PROJECTS



Legend

- Prop. Sidewalk
- Arterial
- Collector
- Interstate & State Highway
- Residential
- Low to Moderate Income
- Census Tract 2000
- Parks
- City Limit



JUNE 11, 2012
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TABLE 3A - SUMMARY OF SPECIFIC ANNUAL OBJECTIVES
DH-1: Availability/Accessibility of Decent Housing

Specific Obj. #	Outcome/Objectives Specific Annual Objective	Sources of Funds	Performance Indicators	Year	Expected Number	Actual Number	Percent Completed
DH-1	Increase the availability of affordable decent housing	CDBG	Land Parcels Purchased	2010	0	1	n/a
				2011	0	0	n/a
				2012	0		n/a
				2013			
				2014			
		MULTI-YEAR GOAL			0	1	n/a
		CDBG	Homes Reconstructed or Rehabilitated	2010	3	1	33%
				2011	3	2	67%
				2012	4		
				2013			
	2014						
	MULTI-YEAR GOAL				3		
	Acquire land for affordable housing development in target areas. Provide financial assistance for rehabilitation or reconstruction of homes occupied by low-income homeowners. Provide financial assistance to low-income homeowners for housing minor repairs.	CDBG	Minor Repairs Completed	2010	55	30	55%
				2011	33	23	70%
				2012	28		
				2013			
				2014			
		MULTI-YEAR GOAL				53	

TABLE 3A - SUMMARY OF SPECIFIC ANNUAL OBJECTIVES
DH-2: Affordability of Decent Housing

Specific Obj. #	Outcome/Objectives Specific Annual Objective	Sources of Funds	Performance Indicators	Year	Expected Number	Actual Number	Percent Completed
DH-2	Increase the affordability of decent housing	CDBG	Homebuyers Assisted	2010	11	6	55%
				2011	23	11	48%
				2012	7		
				2013			
				2014			
		MULTI-YEAR GOAL				17	
				2010			
				2011			
				2012			
				2013			
				2014			
	MULTI-YEAR GOAL						
	Provide financial assistance to low-income first-time homebuyers to purchase homes.			2010			
				2011			
				2012			
				2013			
				2014			
		MULTI-YEAR GOAL					
				2010			
				2011			
				2012			
				2013			
				2014			
		MULTI-YEAR GOAL					

TABLE 3A - SUMMARY OF SPECIFIC ANNUAL OBJECTIVES
SL-1: Availability/Accessibility of Suitable Living Environment

Specific Obj. #	Outcome/Objectives Specific Annual Objective	Sources of Funds	Performance Indicators	Year	Expected Number	Actual Number	Percent Completed
SL-1	Improve and maintain availability of services and facilities.	CDBG	Blocks of Street Paving	2010	3	12	400%
				2011	0	0	n/a
				2012	0		
				2013			
				2014			
		MULTI-YEAR GOAL				12	
		CDBG	Neighborhood Parks Improved	2010	1	0	0%
				2011	0	1	
				2012	0		
				2013			
	2014						
	MULTI-YEAR GOAL				1		
	Improve sidewalks and streets with paving, curb and gutter in low-income areas; improve deteriorating parks located in low-income areas. Fund meals and home cleaning programs that benefit the elderly.	CDBG	Senior Citizens Served.	2010	420	435	104%
				2011	500	252	50%
				2012	450		
				2013			
				2014			
		MULTI-YEAR GOAL				687	

TABLE 3A - SUMMARY OF SPECIFIC ANNUAL OBJECTIVES
SL-1: Availability/Accessibility of Suitable Living Environment – CONTINUED

Specific Obj. #	Outcome/Objectives Specific Annual Objective	Sources of Funds	Performance Indicators	Year	Expected Number	Actual Number	Percent Completed	
SL-1 Continued		CDBG	Blocks of Sidewalks Constructed	2010	0	4	n/a	
				2011	7	0	0%	
				2012	0			
				2013				
				2014				
			MULTI-YEAR GOAL				4	
		CDBG		2010				
				2011				
				2012				
				2013				
				2014				
			MULTI-YEAR GOAL					
		CDBG		2010				
				2011				
				2012				
				2013				
				2014				
			MULTI-YEAR GOAL					

TABLE 3A - SUMMARY OF SPECIFIC ANNUAL OBJECTIVES
SL-2: Availability/Accessibility of Suitable Living Environment

Specific Obj. #	Outcome/Objectives Specific Annual Objective	Sources of Funds	Performance Indicators	Year	Expected Number	Actual Number	Percent Completed
SL-2	Increase the affordability of public services	CDBG	Children Served	2010	100	93	93%
				2011	50	91	182%
				2012	0		
				2013			
				2014			
		MULTI-YEAR GOAL				184	
				2010			
				2011			
				2012			
				2013			
				2014			
	MULTI-YEAR GOAL						
	Support childcare programming so that low-income head of households may attend training or maintain employment.			2010			
				2011			
				2012			
				2013			
				2014			
		MULTI-YEAR GOAL					
			2010				
			2011				
	2012						
		2013					
		2014					
		MULTI-YEAR GOAL					

TABLE 3A - SUMMARY OF SPECIFIC ANNUAL OBJECTIVES
SL-3: Sustainability of Suitable Living Environment

Specific Obj. #	Outcome/Objectives Specific Annual Objective	Sources of Funds	Performance Indicators	Year	Expected Number	Actual Number	Percent Completed
SL-3	Provide programs aimed at eliminating or preventing slum/blight	CDBG	Properties cleared	2010	360	443	123%
				2011	225	17	7%
				2012	333		
				2013			
				2014			
		MULTI-YEAR GOAL				460	
		CDBG	Dilapidated structures removed.	2010	12	0	0%
				2011	10	0	0%
				2012	0		
				2013			
	2014						
	MULTI-YEAR GOAL				0		
	Clearing and mowing of unsightly properties in slum/blighted areas. Demolishing and removing dilapidated structures in slum/blighted areas.			2010			
				2011			
				2012			
				2013			
				2014			
		MULTI-YEAR GOAL					

TABLE 3A - SUMMARY OF SPECIFIC ANNUAL OBJECTIVES
O-1: Other

Specific Obj. #	Outcome/Objectives Specific Annual Objective	Sources of Funds	Performance Indicators	Year	Expected Number	Actual Number	Percent Completed
0-1	CDBG Program Administration	CDBG		2010			
				2011			
				2012			
				2013			
				2014			
		MULTI-YEAR GOAL					
				2010			
				2011			
				2012			
				2013			
				2014			
	MULTI-YEAR GOAL						
				2010			
				2011			
				2012			
				2013			
				2014			
		MULTI-YEAR GOAL					
				2010			
				2011			
				2012			
				2013			
				2014			
		MULTI-YEAR GOAL					

TABLE 3B ANNUAL HOUSING COMPLETION GOALS					
ANNUAL AFFORDABLE RENTAL HOUSING GOALS (SEC. 215)	Annual Expected Number Completed	Resources used during the period			
		CDBG	HOME	ESG	HOPWA
Acquisition of existing units		☐	☐		☐
Production of new units		☐	☐		☐
Rehabilitation of existing units		☐	☐	☐	☐
Rental Assistance		☐	☐		☐
Total Sec. 215 Rental Goals		☐	☐	☐	☐
ANNUAL AFFORDABLE OWNER HOUSING GOALS (SEC. 215)					
Acquisition of existing units		☐	☐		
Production of new units		☐	☐		
Rehabilitation of existing units	4	☒	☐		
Homebuyer Assistance	7	☒	☐		☐
Total Sec. 215 Owner Goals	11	☒	☐	☐	☐
ANNUAL AFFORDABLE HOUSING GOALS (SEC. 215)					
Homeless		☐	☐	☐	☐
Non-Homeless	11	☐	☐	☐	☐
Special Needs		☐	☐	☐	☐
Total Sec. 215 Affordable Housing	11	☐	☐	☐	☐
ANNUAL HOUSING GOALS					
Annual Rental Housing Goal		☐	☐	☐	☐
Annual Owner Housing Goal	11	☒	☐	☐	☐
Total Annual Housing Goal	11	☒	☐	☐	☐
For the purpose of identification of annual goals, an assisted household is one that will receive benefits through the investment of Federal funds, either alone or in conjunction with the investment of other public or private funds.					

**FUNDING SOURCES
CITY OF MIDLAND, TEXAS
2012/2013 Program Year**

Entitlement Grant (includes reallocated funds)	
CDBG	\$721,371
ESG	\$0
HOME	\$0
HOPWA	\$0
Total	\$721,371
Prior Years' Program Income NOT previously programmed or reported	
CDBG	\$0
ESG	\$0
HOME	\$0
HOPWA	\$0
Total	\$0
Reprogrammed Prior Years' Funds	
CDBG	\$0
ESG	\$0
HOME	\$0
HOPWA	\$0
Total	\$0
Total Estimated Program Income	
Owner Housing Assistance Program	\$104,400
Total	\$104,400
Section 108 Loan Guarantee Fund	\$0
 TOTAL FUNDING SOURCES	 \$825,771
 Other Funds	 \$0
 Submitted Proposed Projects Totals	 \$805,000
 Un-Submitted Proposed Projects Totals	 \$20,771

**SUPPORT OF APPLICATIONS BY OTHER ENTITIES REPORT
CITY OF MIDLAND, TEXAS
2012/2013 Program Year**

Funding Source	Support Application by Other Entities?
B. Formula/Entitlement Programs	
ESG	N
Public Housing Comprehensive Grant	N
B. Competitive Programs	
HOPE 1	N
HOPE 2	N
HOPE 3	Y
ESG	Y
Supportive Housing	Y
HOPWA	Y
Safe Havens	Y
Rural Homeless Housing	N
Sec. 202 Elderly	Y
Sec. 811 Handicapped	Y
Moderate Rehab SRO	Y
Rental Vouchers	Y
Rental Certificates	Y
Public Housing Development	Y
Public Housing MROP	Y
Public Housing CIAP	Y
LIHTC	Y

2010-2014 Consolidated Plan Specific Community Development Objectives

#	Objective	Outcome
DH1.1	Purchase of land for affordable housing development by the City in target areas.	100 parcels
DH1.2	Construction of affordable rental units under Low Income Housing Tax Credit Program by private developers at appropriate citywide locations.	200 units
DH1.3	Construction of affordable rental housing for low-income elderly households through HUD 202 funding by non-profit sponsor at appropriate citywide location.	100 units
DH1.4	Rehabilitation or reconstruction of homes occupied by low-income homeowners. This is the City's major projects loan program available to ICT residents.	30 units
DH1.5	Minor repair services to low-income homeowners by City and other non-profits.	1,750 units
DH1.6	Increase the number of emergency shelter beds for individuals.	5 beds
DH1.7	Increase the transitional housing capacity for individuals.	8 beds
DH1.8	Increase the number of emergency shelter units for intact families.	5 units
DH1.9	Increase the transitional housing capacity for intact families.	10 units
DH1.10	Develop a 60 unit affordable housing assisted living facility for frail elderly.	60 units
DH1.11	Develop a 60 unit affordable housing assisted living facility for near frail elderly.	60 units
DH2.1	Financial assistance by non-profit entities and the City from CDBG, HOME and other sources to low-income homebuyers.	130 units
SL1.1	Infrastructure – City Streets – Paving construction with curb and gutter in low-income areas.	8 blocks per year
SL1.2	Public Facility – City Parks – Upgrade neighborhood parks that are deteriorating. Located in low-income areas.	5 parks
SL1.3	Public Facility - Community Facility/Youth Center - an indoor/outdoor multi-purpose facility. Developer and owner operator are needed.	1 facility
SL1.4	Public Services – Senior services – support senior citizen center meal program and home cleaning program.	1,500 persons
SL1.5	Infrastructure – City Sidewalks – Sidewalk construction in low-income areas.	8 blocks per year
SL2.1	Public Services – Childcare – support local match childcare program for working families.	50 children
SL3.1	Demolition of dilapidated structures by the City in slum/blighted areas.	100 structures
SL3.2	Clearing of unsightly properties by the City in slum/blighted areas.	2,000 properties

Amended July 2011

CERTIFICATIONS

In accordance with the applicable statutes and the regulations governing the consolidated plan regulations, the jurisdiction certifies that:

Affirmatively Further Fair Housing -- The jurisdiction will affirmatively further fair housing, which means it will conduct an analysis of impediments to fair housing choice within the jurisdiction, take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting that analysis and actions in this regard.

Anti-displacement and Relocation Plan -- It will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and implementing regulations at 49 CFR 24; and it has in effect and is following a residential antidisplacement and relocation assistance plan required under section 104(d) of the Housing and Community Development Act of 1974, as amended, in connection with any activity assisted with funding under the CDBG or HOME programs.

Drug Free Workplace -- It will or will continue to provide a drug-free workplace by:

1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
2. Establishing an ongoing drug-free awareness program to inform employees about –
 - (a) The dangers of drug abuse in the workplace;
 - (b) The grantee's policy of maintaining a drug-free workplace;
 - (c) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (d) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
3. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph 1;
4. Notifying the employee in the statement required by paragraph 1 that, as a condition of employment under the grant, the employee will -
 - (a) Abide by the terms of the statement; and
 - (b) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
5. Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph 4(b) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

6. Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph 4(b), with respect to any employee who is so convicted:

(a) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(b) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs 1, 2, 3, 4, 5 and 6.

Anti-Lobbying -- To the best of the jurisdiction's knowledge and belief:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and
3. It will require that the language of paragraph 1 and 2 of this anti-lobbying certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

Authority of Jurisdiction -- The consolidated plan is authorized under State and local law (as applicable) and the jurisdiction possesses the legal authority to carry out the programs for which it is seeking funding, in accordance with applicable HUD regulations.

Consistency with plan -- The housing activities to be undertaken with CDBG, HOME, ESG, and HOPWA funds are consistent with the strategic plan.

Section 3 -- It will comply with section 3 of the Housing and Urban Development Act of 1968, and implementing regulations at 24 CFR Part 135.

W. Wesley Perry

Date

Mayor
Title

Specific CDBG Certifications

The Entitlement Community certifies that:

Citizen Participation -- It is in full compliance and following a detailed citizen participation plan that satisfies the requirements of 24 CFR 91.105.

Community Development Plan -- Its consolidated housing and community development plan identifies community development and housing needs and specifies both short-term and long-term community development objectives that provide decent housing, expand economic opportunities primarily for persons of low and moderate income. (See CFR 24 570.2 and CFR 24 part 570)

Following a Plan -- It is following a current consolidated plan (or Comprehensive Housing Affordability Strategy) that has been approved by HUD.

Use of Funds -- It has complied with the following criteria:

1. **Maximum Feasible Priority.** With respect to activities expected to be assisted with CDBG funds, it certifies that it has developed its Action Plan so as to give maximum feasible priority to activities which benefit low and moderate income families or aid in the prevention or elimination of slums or blight. The Action Plan may also include activities which the grantee certifies are designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community, and other financial resources are not available);
2. **Overall Benefit.** The aggregate use of CDBG funds including section 108 guaranteed loans during program year(s) , 2012 , shall principally benefit persons of low and , shall principally benefit persons of low and moderate income in a manner that ensures that at least 70% of the amount is expended for activities that benefit such persons during the designated period;
3. **Special Assessments.** It will not attempt to recover any capital costs of public improvements assisted with CDBG funds including Section 108 loan guaranteed funds by assessing any amount against properties owned and occupied by persons of low and moderate income, including any fee charged or assessment made as a condition of obtaining access to such public improvements. However, if CDBG funds are used to pay the proportion of a fee or assessment that relates to the capital costs of public improvements (assisted in part with CDBG funds) financed from other revenue sources, an assessment or charge may be made against the property with respect to the public improvements financed by a source other than CDBG funds.

The jurisdiction will not attempt to recover any capital costs of public improvements assisted with CDBG funds, including Section 108, unless CDBG funds are used to pay the proportion of fee or assessment attributable to the capital costs of public improvements financed from other revenue sources. In this case, an assessment or charge may be made against the property with respect to the public improvements financed by a source other than CDBG funds. Also, in the case of properties owned and occupied by moderate-income (not low-income) families, an assessment or charge may be made against the property for public improvements financed by a source other than CDBG funds if the jurisdiction certifies that it lacks CDBG funds to cover the assessment.

Excessive Force -- It has adopted and is enforcing:

1. A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in non-violent civil rights demonstrations; and
2. A policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location which is the subject of such non-violent civil rights demonstrations within its jurisdiction;

Compliance With Anti-discrimination laws -- The grant will be conducted and administered in conformity with title VI of the Civil Rights Act of 1964 (42 USC 2000d), the Fair Housing Act (42 USC 3601-3619), and implementing regulations.

Lead-Based Paint -- Its activities concerning lead-based paint will comply with the requirements of 24 CFR Part 35, subparts A, B, J, K and R;

Compliance with Laws -- It will comply with applicable laws.

W. Wesley Perry

Date

Mayor
Title

OPTIONAL CERTIFICATION CDBG

Submit the following certification only when one or more of the activities in the action plan are designed to meet other community development needs having a particular urgency as specified in 24 CFR 570.208(c):

The grantee hereby certifies that the Annual Plan includes one or more specifically identified CDBG-assisted activities which are designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community and other financial resources are not available to meet such needs.

Signature/Authorized Official

Date

Mayor
Title

APPENDIX TO CERTIFICATIONS

INSTRUCTIONS CONCERNING LOBBYING AND DRUG-FREE WORKPLACE REQUIREMENTS:

A. Lobbying Certification

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

B. Drug-Free Workplace Certification

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification.
2. The certification is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HUD, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.
3. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.
4. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio stations).
5. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph three).
6. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

Midland, City Hall, 300 N Loraine, Midland, Midland, Texas 79701

Check if there are workplaces on file that are not identified here.

The certification with regard to the drug-free workplace is required by 24 CFR part 24, subpart F.

7. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

ACTION PLAN

CITIZEN PARTICIPATION

The required thirty day public review period occurred from June 18 to July 17, 2012. Copies of the proposed Action Plan were available per the notice that was published on June 17, 2012. Copies of all notices published during the Action Plan development process are also included in this section.

Written comments on the Action Plan submitted during the review period are as follows:

(to be listed on final version of the Plan)



City Council Agenda

Approved for Agenda:
csharp
City Manager's Office

MEETING DATE: 7/24/2012

TO: City Council / City Manager

FROM: Price Robinson, Chief of Police

SUBJECT: Appropriate Interest Earned on 2009 JAG Grant

Purpose:

Consider a resolution appropriating Interest Earned on 2009 JAG Grant.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

That the sum of \$58 is hereby appropriated from the Department of Justice Grant Fund (074) Unappropriated Fund Balance (5650) to the 2009 JAG City Project (7032)

Discussion:

Justice Assistant Grant funds cannot be fully expended until the interest earned is appropriated to the fund.

RESOLUTION NO.

**RESOLUTION APPROPRIATING INTEREST EARNED
IN THE AMOUNT OF \$58.00 ON THE 2009 JUSTICE
ASSISTANCE GRANT FUNDS; THIS GRANT WAS
ACQUIRED FOR THE PURCHASE OF NEEDED
EQUIPMENT FOR THE MIDLAND POLICE
DEPARTMENT**

WHEREAS, the previously accepted 2009 Justice Assistance Grant has earned \$58.00 in interest; and

WHEREAS, the City Council finds it to be in the public interest to appropriate said earned interest to provide funding for the purchase of needed equipment for the Midland Police Department;

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

THAT the sum of \$58 is hereby appropriated from the Department of Justice Grant Fund (074) Unappropriated Fund Balance (5650) to the 2009 JAG City Project (7032).

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:
JNichols
City Manager's Office

MEETING DATE: 07/24/2012

TO: City Council / City Manager

FROM: David D. Beard, P.E.

SUBJECT: Consider a resolution authorizing the disposal of a City asset (Troxler 4640 – Nuclear Density Testing Gauge).

Purpose:

Authorize staff to dispose of a City asset (Troxler 4640 – Nuclear Density Gauge).

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

To be determined. Once asset has been disposed, City will advertise and sell by sealed bids.

Discussion:

The City currently owns a Troxler 4640 Nuclear Density Gauge. Owning the gauge requires the City to maintain a Radioactive Materials License. This license is expensive to renew each year and requires a staff to invest a significant amount of time in keeping current with the documentation.

Staff recommends disposing of the asset and selling by sealed bids win a minimum bid of \$1,000.

RESOLUTION NO.

**RESOLUTION AUTHORIZING THE ADVERTISEMENT
FOR BIDS FOR THE SALE OF PROPERTY OWNED BY
THE CITY OF MIDLAND DESCRIBED AS A TROXLER
4640 NUCLEAR DENSITY GAUGE; AND SETTING A
MINIMUM BID AT \$1,000.00**

WHEREAS, the City of Midland is the owner of property described as a Troxler 4640 Nuclear Density Gauge; and

WHEREAS, the City of Midland no longer has a need for said property; and

WHEREAS, the City Council finds it to be in the public interest that the minimum bid for said property be set at \$1,000.00; and

WHEREAS, the City Council finds it to be in the public interest to sell said property;

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

SECTION ONE. That the City Manager is hereby authorized to advertise for competitive sealed bids for the sale of the City-owned Troxler 4640 Nuclear Density Gauge.

SECTION TWO. That the minimum bid for said property is set at \$1,000.00 by the Midland 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:

David Beard, City Engineer

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

City of Midland
CITY ATTORNEY'S OFFICE
Office Memorandum

DATE: July 24, 2012

TO: The Honorable Mayor and City Council Members

FROM: Don Fletcher, Assistant City Attorney

SUBJECT: Shayla Haynes, Individually and as Next Friend of Jataisha Woodard, a minor child v. City of Midland, Texas; County Court at Law, Midland County, Texas; Cause No. CC16654

Plaintiff Shayla Haynes, individually and on behalf of her daughter, Jataisha Woodard, has sued the City of Midland, Texas, in the County Court at Law in Midland County, Texas. The suit arises from Jataisha Woodard, a minor child, allegedly falling at Grande Communications Stadium. This suit is currently progressing as a friendly suit and will settle in all likelihood.

The proposed resolution authorizes the City Attorney's office to file all necessary documents, employ experts and make all appearances necessary for the defense and likely settlement of this lawsuit.

If you have any questions about this matter, please do not hesitate to contact me or City Attorney Keith Stretcher at 685-7254.

DF/df

RESOLUTION NO.

RESOLUTION AUTHORIZING THE OFFICE OF THE CITY ATTORNEY TO FILE ALL DOCUMENTS AND MAKE ALL NECESSARY APPEARANCES TO REPRESENT THE CITY OF MIDLAND IN A LAWSUIT STYLED, SHAYLA HAYNES, INDIVIDUALLY AND AS NEXT FRIEND OF JATAISHA WOODARD, A MINOR CHILD V. CITY OF MIDLAND, TEXAS, IN THE COUNTY COURT AT LAW, MIDLAND COUNTY, TEXAS; CAUSE NO. CC16654; AND RATIFYING ALL ACTIONS TAKEN TO DATE BY THE OFFICE OF THE CITY ATTORNEY AS PART OF SETTLEMENT NEGOTIATIONS

WHEREAS, Shayla Haynes has filed a cause of action against the City of Midland styled Shayla Haynes, Individually and as Next Friend of Jataisha Woodard, a minor child v. City of Midland, Texas, in the County Court at Law, Midland County, Texas, Cause No. CC16654; and

WHEREAS, the City Council of the City of Midland finds it to be in the public interest to ratify any previous actions taken by the office of the City Attorney in an attempt to settle said cause of action; and

WHEREAS, the City Council of the City of Midland finds it to be in the public interest to authorize the City Attorney to execute all documents and make all appearances in representing the City of Midland in said proceeding or in further settlement negotiations;

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

SECTION ONE. That the City Attorney is hereby authorized to file all motions and other documents, and to make all appearances necessary to provide a defense in the litigation styled, Shayla Haynes, Individually and as Next Friend of Jataisha Woodard, a minor child v. City of Midland, Texas, in the County Court at Law, Midland County, Texas, Cause No. CC16654.

SECTION TWO. The City Attorney is hereby authorized to employ all experts which may be necessary in the defense of the lawsuit styled Shayla Haynes, Individually and

as Next Friend of Jataisha Woodard, a minor child v. the City of Midland, Texas, in the County Court at Law, Midland County, Texas, Cause No. CC16654.

SECTION THREE. That all actions taken by the office of the City Attorney in an attempt to settle said cause of action are hereby ratified and approved.

SECTION FOUR. That the City Attorney is hereby authorized to respond to all settlement offers from the Plaintiff.

SECTION FIVE. That the City Treasurer is hereby authorized, upon receipt of proper invoice or statement, approved by the City Manager or the City Attorney, to pay court costs, settlement amounts, medical expenses and other expenses found reasonable by the City Attorney out of funds available in the General Liability Self-Insurance Fund.

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:
csharp
City Manager's Office

MEETING DATE: 7/24/2012

TO: City Council / City Manager

FROM: Courtney Sharp, City Manager

SUBJECT: Atmos Energy Corporation

Purpose:

Consider a Resolution to deny the effective date of an Atmos West Texas proposed rate increase.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Atmos is asking for an approximately \$11.6 million or 14.8% increase to system wide base rate.

Discussion:

The City, along with approximately 66 other cities served by Atmos Energy Corp., West Texas Division ("Atmos West Texas" or "Company"), is a member of the Steering Committee of Cities Served by Atmos West Texas ("Cities"). On or about February 7, 2012, Atmos West Texas filed with the City a Statement of Intent to increase rates within the City.

In 2003, the Texas Legislature passed legislation referred to as the Gas Reliability Infrastructure Program ("GRIP") which authorized annual piecemeal rate reviews that Texas courts have concluded significantly restrict city jurisdiction, participation, and input. Atmos West Texas took advantage of this piecemeal process for several years, but as part of the settlement of the 2006 GRIP filing, Cities and Atmos West Texas agreed to a substitute for GRIP.

That substitute process was called a Rate Review Mechanism ("RRM") and was intended as an expedited but comprehensive rate review that included a number of fixed values and constraints. The RRM was intended as a three-year experiment, but was extended for a fourth year. Last year, Cities focused on the rate disparity between Amarillo, Lubbock and other West Texas cities, and the Company has responded with a system-wide rate case that should ultimately put all West Texas cities on the same rates.

Background on Atmos West Texas Rate Case

On February 7, 2012, Atmos Energy Corporation, West Texas Division (“Atmos West Texas” or “Company”) filed with the members of Steering Committee of Cities Served by Atmos West Texas (“Steering Committee” or “Cities”) that exercise original jurisdiction over the Company’s rates, a request for a system-wide (i.e., including Amarillo and Lubbock) rate increase by approximately \$11.6 million. Cities passed resolutions suspending the effective date of the proposed increase to allow Cities’ attorneys and consultants to study the request. A summary of the consultants’ findings is attached as Exhibit A. Scheduling difficulties have precluded representatives of the Company, Amarillo, Lubbock, and the Steering Committee from meeting to discuss settlement.

Timing of City Action

Cities with original jurisdiction suspended the proposed effective date of March 13, 2012, extending city jurisdiction until June 11, 2012. Cities and the Company have a mutual hope of achieving settlement that resolves the pending rate case and extends the Rate Review Mechanism (“RRM”) process. However, it does not appear that settlement can be achieved within a time frame that would allow the Cities to take final action prior to June 11, 2012. Thus, the Cities’ Executive Committee recommends passage of a denial resolution. Such action will result in the Company appealing to the Railroad Commission but does not preclude a subsequent settlement. If settlement is achieved, the Steering Committee will return to member cities with a request for approval of the settlement.

Recommendation and Explanation of Denial Resolution

The Cities’ Executive Committee recommends the Cities pass resolutions denying Atmos West Texas’ proposed rate increase. The denial resolution will prevent the Company’s proposed rate increase from automatically taking effect on June 11, 2012, and allow more time to engage in settlement discussions.

RESOLUTION NO.

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

WHEREAS, the City of Midland, Texas ("City") is a gas utility customer of Atmos Energy Corporation - West Texas Division ("Atmos West Texas" or "Company"), and is a regulatory authority under the Gas Utility Regulatory Act ("GURA") and under Chapter 104, §104.001 et seq. of GURA, has exclusive original jurisdiction over Atmos West Texas' rates, operations, and services within the City; and

WHEREAS, the City is a member of the Steering Committee of Cities Served by Atmos West Texas ("Cities"), a coalition of similarly situated cities served by the Company that have joined together to facilitate the review and response to natural gas issues affecting rates charged in Atmos Energy Corporation's West Texas Division; and

WHEREAS, on or about July 16, 2012, the Company filed a Statement of Intent with the City to increase rates in the City of Midland by approximately \$227,000; and

WHEREAS, Atmos West Texas proposed August 21, 2012, as the effective date for its requested increase in rates; and

WHEREAS, the City has previously denied essentially the same filing when it was framed as a system-wide case, which the Company failed to appeal; and

WHEREAS, the Cities' Executive Committee hired and directed legal counsel and consultants to prepare a common response to the Company's requested system-wide rate increase which resulted in a conclusion that Midland's rates should be reduced and a recommendation that the rate request be denied; and

WHEREAS, the City finds no justification in a conclusion that differs from the Council's prior action in denying the Company's system-wide application; and

WHEREAS, the City wishes to be joined expeditiously with appeals of other city resolutions that denied the requested system-wide increase; and

WHEREAS, the GURA § 103.022 provides that costs incurred by Cities in ratemaking activities are to be reimbursed by the regulated utility.

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

SECTION ONE. That the rates proposed by Atmos West Texas to be recovered through its gas rates charged to customers located within the City limits, are hereby found to be unreasonable and shall be denied.

SECTION TWO. That the Company shall continue to charge its existing rates to customers within the City and that said existing rates are reasonable.

SECTION THREE. That the City's reasonable rate case expenses shall be reimbursed by the Company.

SECTION FOUR. That it is hereby officially found and determined that the meeting at which this Resolution is passed is open to the public as required by law and the public notice of the time, place, and purpose of said meeting was given as required.

SECTION FIVE. That the City Secretary shall send a copy of this Resolution to Atmos West Texas, care of Jeffrey Foley, Vice-President, Rates and Regulatory Affairs, at Atmos Energy Corporation, West Texas Division, 5110 80th Street, Lubbock, Texas 79424, and to Geoffrey Gay, General Counsel to Cities, at Lloyd Gosselink Rochelle & Townsend, P.C., P.O. Box 1725, Austin, Texas 78767-1725.

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



Jeffrey Foley,
VP of Rates and Regulatory Affairs
Atmos Energy Corporation

Atmos Energy Corporation
5110 80th Street
Lubbock, Texas, 79424
Tel: 806-798-4464
Fax: 806-798-4494
jeffrey.foley@atmosenergy.com

July 16, 2012

Courtney Sharp, City Manager
City Hall
300 North Loraine
Midland, Texas 79701

RE: *Statement Of Intent Filed By Atmos Energy Corp., West Texas Division with The City of Midland*

Dear Courtney,

As you know, Atmos Energy Corporation ("Atmos Energy" or the "Company") filed a statement of intent to increase rates with all municipalities in its West Texas Division on February 7, 2012. All cities in the West Texas Division have acted to deny the Company's request. The Texas Utility Code requires that a utility must file its appeal with the Texas Railroad Commission within thirty days of a city's action to deny the utility's request. Atmos Energy timely filed its appeal for all cities in the West Texas Division except for City of Midland. Due to a clerical error, the Company overlooked the denial ordinance passed by the City of Midland on May 22, 2012.

As a result of the above, Atmos Energy is re-filing its statement of intent with the City of Midland. Rather than litigate a separate rate case with just the City of Midland, **the Company proposes that the City act to deny the enclosed statement of intent immediately.** As soon as a denial is received, Atmos Energy will include the City of Midland with its existing appeal that is already pending before the Railroad Commission. Atmos Energy believes that this approach will minimize litigation costs and facilitate the Company's request for uniform, system wide rates across the West Texas Division. Should you have any questions concerning the attached, please do not hesitate to call me at 806-798-4464.

Sincerely,

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

Jeffrey R. Foley
Vice President, Rates & Regulatory Affairs
Atmos Energy Corporation, West Texas

Enclosures

**ATMOS ENERGY CORPORATION'S STATEMENT OF INTENT TO INCREASE GAS
UTILITY RATES WITHIN THE CITY OF MIDLAND**

To the Honorable Mayor and City Council of the City of Midland:

Atmos Energy Corporation ("Atmos Energy" or the "Company"), a "gas utility" under TEX. UTIL. CODE § 101.003(7), respectfully files this Statement of Intent to increase gas utility rates within the City of Midland (hereafter "City"). This Statement of Intent is filed pursuant to the provisions of Subchapter C of Section 104 of the Texas Utilities Code. The City of Midland is served by Atmos Energy's West Texas Division. The municipalities served by the Company's West Texas Division are identified on **Exhibit A** of the Rate Filing Package, which is attached hereto and incorporated herein by reference. The Company requests that the revised rate schedules, **Exhibit B** of the Rate Filing Package, become effective for bills rendered on and after August 21, 2012, which is 35 days from the date of this filing. No action on the part of the City is required to permit these proposed rates to become effective.

I. JURISDICTION

Atmos is a gas utility under § 101.003(7) of the Texas Utilities Code, and the City has exclusive original jurisdiction to set the rates requested for the residential, commercial, industrial, public authority and state institution customers within the City under § 103.001 of the Texas Utilities Code. Consistent with such jurisdiction, the proposed rates are applicable to the Company's natural gas sales within the incorporated areas of the City.

**II. SUMMARY OF PROPOSED CHANGES AND
EXPECTED REVENUE CHANGE**

Atmos has calculated the revenue requirement for this filing using the division-wide cost of providing service to all customers within the Company's West Texas Division, which includes the Amarillo, Lubbock, and West Texas Cities rate jurisdictions. For the twelve (12) month period ending September 30, 2011, Atmos' adjusted revenues from the City of Midland totaled

approximately \$23.3 million. If approved, the proposed rates will produce a \$172,000 increase in the Company's annual revenues for gas service and a \$ 55,000 increase in annual revenues from service charges, and will result in an overall annual revenue increase in the incorporated areas of Midland of approximately \$227,000 or 0.97%, including gas costs, or 2.31% excluding gas cost. The effect that the proposed increase in rates will have on Atmos' aggregate revenues in the City of Midland is shown on **Exhibit D** of the Rate Filing Package. Because the proposed changes will increase the total aggregate revenues of the Company within the incorporated areas by less than two and one half percent, the proposed rate increase does not constitute a major change as that term is defined by § 104.101 of the Texas Utility Code.

The rate schedules, attached hereto as **Exhibit B** of the Rate Filing Package and made a part hereof, evidence the rate changes proposed by the Company. In addition to the change in rates, the Company proposes to consolidate its various GCA and WNA tariffs into a single GCA tariff and a single WNA tariff that will apply to all incorporated areas within the Company's West Texas Division. It should be noted that the GCA tariff proposed in the Company's filing removes language regarding the recovery of transaction related costs to mitigate price volatility. The Company's proposed WNA tariff expands its applicability to include the State Institution customer class and removes monthly reporting requirements where applicable. As reflected in **Exhibit B**, the Company is also proposing Rate Schedules to implement a new Transportation Gas Services tariff, a Rate Review Mechanism ("RRM") tariff and a new conservation and energy efficiency tariff ("Rider CEE"). Additional tariffs proposed by the Company include a Rider FF and Rider TAX, which authorize the collection of franchise fees and state gross receipts taxes through a separate line item on customer bills. The Company has also requested approval of a Depreciation Surcharge tariff that will be applicable to customers within the City. New service charges are also proposed as part of the Company's filing in order to achieve uniformity

in the service charges applicable within the Amarillo, Lubbock and West Texas Cities rate jurisdictions.

This filing also demonstrates the reasonableness and necessity of the investment that has been made in the West Texas Division since December 31, 2010. As provided by law, the Company seeks reimbursement of all Company and City rate case expenses. The exact amount will not be known until the case is complete.

III. DETAILS OF PROPOSED CHANGES

A. Test Year

The Company's proposed cost of service has been calculated on a division-wide basis as set forth in this Statement of Intent and Rate Filing Package and is based on the twelve-month period ending September 30, 2011, updated for known changes and conditions that are measurable with reasonable accuracy.

B. Class and Number of Customers Affected

The West Texas Division provides gas utility service to customers inside the limits of approximately 72 incorporated cities, as listed on **Exhibit A** of the Rate Filing Package that is attached hereto. The following table shows the number of customers by class within the City of Midland that will be affected by the proposed changes:

<u>Municipal Customer Classes</u>	<u>Number of Customers</u>
Residential	29,771
Commercial	2,260
Industrial Sales	3
Public Authority	154
State Institution	6

Exhibit D, attached, shows the amount of the proposed increase to be collected from each class of customers.

C. Proposed Rate Change

The Company's West Texas Division includes the Amarillo, Lubbock and West Texas Cities rate jurisdictions. In developing the proposed rates, the Company has used the division-wide cost of providing service to the entire West Texas Division and has updated its Class Cost of Service Study with current test period information. The use of a division-wide cost of service to develop rates differs from the Company's past practice of developing rates based on the costs of service for each of the three distinct rate jurisdictions within the West Texas Division.

Exhibit E, attached, shows the effect of the proposed change to an average bill for each class of customers within the City of Midland. Excluding gas cost, Midland residential customers will see a 4.68% increase in the average monthly bill, Midland commercial customers will see a 6.63% decrease in the average monthly bill, Midland industrial customers will see a 33.06% decrease in the average monthly bill, Midland Public Authority customers will see a 13.22% decrease in the average monthly bill, and Midland State Institution customers will see a 0.82% increase in the average monthly bill.

D. Other Proposed Tariff Changes

In addition to the proposed change in rates, the Company proposes to revise its service charges to establish uniform service charges throughout all incorporated areas of the West Texas Division. Other proposed tariff changes are identified below:

1) Rider WNA

The Company proposes to consolidate its various WNA tariffs into a single WNA tariff that will be applicable to the City and all other incorporated areas within the Company's West Texas Division. The Company's proposed WNA tariff also expands its applicability to include the State Institution customer class and removes monthly reporting requirements where applicable. The Company further proposes to update the heat load and base load factors utilized in its Rider WNA. The Company requests these changes in order to synchronize these factors

with proposed rates and the updated billing determinant calculations used to develop the proposed rates.

(2) Rider GCA

The Company proposes to consolidate its various GCA tariffs into a single GCA tariff that will apply to all incorporated areas within the Company's West Texas Division. In terms of language differences between the current and proposed GCA tariff, the proposed GCA tariff removes language regarding the recovery of transaction related costs to mitigate price volatility.

(3) Rider RRM

Atmos Energy includes for the City's consideration a new Rider RRM, which provides for an annual review by the City of the Company's expenses, revenues and rate base investment, and a corresponding adjustment to the Company's rates to reflect annual changes (increases or decreases) in these categories. The purpose of the RRM mechanism is to ensure transparency of the Company's annual financial performance and to better ensure that rates paid by customers reflect annual changes that occur in the Company's cost of service and rate base.

(4) Rider CEE

Atmos Energy is proposing a new Rider CEE. Unlike the existing tariff, which is limited to low income customers, the proposed Rider CEE will offer assistance to residential and commercial customers to encourage reductions in energy consumption and lower energy utility bills. Cost recovery under the new Rider CEE will occur through the Residential and Commercial customer charge using the cost recovery factor set forth in the proposed Rider CEE.

(5) Rider FF and Rider TAX

The Company proposes to adopt a new Rider FF and Rider TAX, which authorize the collection of franchise fees and state gross receipts taxes through a separate line item on customer bills. The Rider FF and Rider TAX proposed in the Company's filing contains the

same language that the Commission has previously reviewed and approved for use by the Company's Mid-Tex Division. Consistent with the Company's request to adopt new Rider FF and Rider TAX, the Company's requested revenue requirement does not include expense amounts attributable to franchise fees and state gross receipts taxes. In the event that the Company's proposal to adopt new Rider FF and Rider TAX is not approved, the adjustment made to remove the expense amounts attributable to franchise fees and state gross receipts taxes must be reversed and included in the authorized revenue requirement.

(6) Transportation Gas Service Tariff

The Company proposes a new Transportation Gas Service tariff to offer large volume customers an additional service that will allow these customers to purchase and transport their own natural gas supplies. The rates proposed for the new transportation gas service customer class are shown below:

TRANSPORTATION GAS SERVICE	
Charge	Proposed
Meter Charge	\$275.00
Consumption Charge per Ccf	\$.04824

(8) Rate Schedule - Depreciation Surcharge

The Company has also requested approval of a Depreciation Surcharge tariff that will be applicable to customers within the City and all other incorporated areas of the West Texas Cities rate jurisdiction. The purpose of this new tariff is to provide for the recovery of the regulatory asset created to track differences between the West Texas Division's actual depreciation expense resulting from depreciation rate changes approved by the Railroad Commission of Texas in GUD

No. 10041 and depreciation expense currently recovered under existing rates. The regulatory asset was established pursuant to municipal ordinances passed by cities within the West Texas Cities rate jurisdiction.

E. Rate Case Expenses

The Company requests authority, pursuant to § 104.051 of the Texas Utilities Code, to recover any applicable rate case expenses through a surcharge on its rates.

IV. PUBLIC NOTICE

Atmos will promptly undertake to notify the public of the proposed changes in its gas rates by publication in a newspaper of general circulation once each week for four consecutive weeks. The public notice that Atmos will provide is attached as **Exhibit F** to the Rate Filing Package. Additional copies of the Company's proposal are available from the undersigned Company representatives. Atmos will submit proof of publication promptly upon completion thereof, along with a copy of the published notice.

V. COMPANY REPRESENTATIVES FOR NOTIFICATION

Mr. Jeffrey Foley
Vice-President, Rates and Regulatory Affairs
5110 80th Street
P.O. Box 1121
Lubbock, Texas 79408-1121
806-798-4457 (phone) 806-798-4494 (fax))

Ann M. Coffin
Parsley Coffin Renner LLP
98 San Jacinto Blvd., Suite 1450
Austin, Texas 78701
512.879-0900 (phone)
512.879-0912 (fax)

VI. CONCLUSION

Atmos requests that the proposed new rates it seeks to implement for the City become effective for bills rendered on and after August 21, 2012 by operation of law or by ordinance granting it the authority to charge such rates.

Atmos appreciates your consideration of these requested rate changes. Please contact me at 806.798.4457 if you have questions concerning this filing.

Respectfully submitted,

ATMOS ENERGY CORPORATION

By: 
Jeffrey Foley
Vice President, Rates and Regulatory Affairs

Atmos Energy Corporation
West-Texas Division
Incorporated Cities Served by the West Texas Division

EXHIBIT A

City

Abernathy
Amarillo
Amherst
Anton
Big Spring
Bovina
Brownfield
Buffalo Springs Lake
Canyon
Channing
Coahoma
Crosbyton
Dalhart
Dimmitt
Earth
Edmonson
Floydada
Forsan
Friona
Fritch
Hale Center
Happy
Hart
Hereford
Idalou
Kress
Lake Tanglewood
Lamesa
Levelland
Littlefield
Lockney
Lorenzo
Los Ybanez
Lubbock
Meadow
Midland
Muleshoe
Nazareth

Atmos Energy Corporation
West-Texas Division
Incorporated Cities Served by the West Texas Division

EXHIBIT A

City

New Deal
New Home
Odessa
O'Donnell
Olton
Opdyke
Palisades
Pampa
Panhandle
Petersburg
Plainview
Post
Quitaque
Ralls
Ransom Canyon
Ropesville
Sanford
Seagraves
Seminole
Shallowater
Silverton
Slaton
Smyer
Springlake
Stanton
Sudan
Tahoka
Timbercreek Canyon
Tulia
Turkey
Vega
Wellman
Wilson
Wolfforth

EXHIBIT B

RATE SCHEDULES AND RIDERS

**WEST TEXAS DIVISION
ATMOS ENERGY CORPORATION**

RATE SCHEDULE:	RESIDENTIAL GAS SERVICE	
APPLICABLE TO:	ALL INCORPORATED AREAS IN THE WEST TEXAS CITIES RATE JURISDICTION	
EFFECTIVE DATE:	Bills Rendered on and after 08/21/2012	

Availability

This schedule is applicable to general use by Residential customers for heating, cooking, refrigeration, water heating and other similar type uses. This schedule is not available for service to premises with an alternative supply of natural gas.

Monthly Rate

Charge	Amount
Customer Charge	\$ 18.00
Consumption Charge	\$ 0.05666 per Ccf

The West Texas Division Gas Cost Adjustment Rider applies to this schedule.

The West Texas Division Weather Normalization Adjustment Rider applies to this schedule.

The West Texas Division Rate Review Mechanism (RRM) Adjustment Rider applies to this schedule.

The West Texas Division Conservation and Energy Efficiency Rider applies to this schedule.

The West Texas Division Rider TAX applies to this schedule.

The West Texas Division Rider FF applies to this schedule.

The West Texas Cities Rate Jurisdiction Depreciation Surcharge Rider applies to this schedule.

**WEST TEXAS DIVISION
ATMOS ENERGY CORPORATION**

RATE SCHEDULE:	COMMERCIAL GAS SERVICE	
APPLICABLE TO:	ALL INCORPORATED AREAS IN THE WEST TEXAS CITIES RATE JURISDICTION	
EFFECTIVE DATE:	Bills Rendered on and after 08/21/2012	

Availability

This schedule is applicable to Commercial customers, including hospitals and churches, for heating, cooking, refrigeration, water heating and other similar type uses. This schedule is not available for service to premises with an alternative supply of natural gas.

Monthly Rate

Charge	Amount
Customer Charge	\$ 40.00
Consumption Charge	\$ 0.05581 per Ccf

The West Texas Division Gas Cost Adjustment Rider applies to this schedule.

The West Texas Division Weather Normalization Adjustment Rider applies to this schedule.

The West Texas Division Rate Review Mechanism (RRM) Adjustment Rider applies to this schedule.

The West Texas Division Conservation and Energy Efficiency Rider applies to this schedule.

The West Texas Division Rider TAX applies to this schedule.

The West Texas Division Rider FF applies to this schedule.

The West Texas Cities Rate Jurisdiction Depreciation Surcharge Rider applies to this schedule.

**WEST TEXAS DIVISION
ATMOS ENERGY CORPORATION**

RATE SCHEDULE:	INDUSTRIAL GAS SERVICE	
APPLICABLE TO:	ALL INCORPORATED AREAS IN THE WEST TEXAS CITIES RATE JURISDICTION	
EFFECTIVE DATE:	Bills Rendered on and after 08/21/2012	

Availability

This schedule is applicable to the sales to any industrial or commercial customer whose predominant use of natural gas is other than space heating, cooking, water heating or other similar type uses. Service under this schedule is available to eligible customers following execution of a contract specifying the maximum hourly load. This schedule is not available for service to premises with an alternative supply of natural gas.

Monthly Rate

Charge	Amount
Customer Charge	\$ 275.00
Consumption Charge	\$ 0.04824

The West Texas Division Gas Cost Adjustment Rider applies to this schedule.

The West Texas Division Rate Review Mechanism (RRM) Adjustment Rider applies to this schedule.

The West Texas Division Rider TAX applies to this schedule.

The West Texas Division Rider FF applies to this schedule.

The West Texas Cities Rate Jurisdiction Depreciation Surcharge Rider applies to this schedule.

**WEST TEXAS DIVISION
ATMOS ENERGY CORPORATION**

RATE SCHEDULE:	PUBLIC AUTHORITY GAS SERVICE	
APPLICABLE TO:	ALL INCORPORATED AREAS IN THE WEST TEXAS CITIES RATE JURISDICTION	
EFFECTIVE DATE:	Bills Rendered on and after 08/21/2012	

Availability

This schedule is applicable to general use by Public Authority type customers, including public schools, for heating, cooking, refrigeration, water heating and other similar type uses. This schedule is not available for service to premises with an alternative supply of natural gas.

Monthly Rate

Charge	Amount
Customer Charge	\$ 75.00
Consumption Charge	\$ 0.08160 per Ccf

The West Texas Division Gas Cost Adjustment Rider applies to this schedule.

The West Texas Division Weather Normalization Adjustment Rider applies to this schedule.

The West Texas Division Rate Review Mechanism (RRM) Adjustment Rider applies to this schedule.

The West Texas Division Rider TAX applies to this schedule.

The West Texas Division Rider FF applies to this schedule.

The West Texas Cities Rate Jurisdiction Depreciation Surcharge Rider applies to this schedule.

**WEST TEXAS DIVISION
ATMOS ENERGY CORPORATION**

RATE SCHEDULE:	STATE INSTITUTION GAS SERVICE	
APPLICABLE TO:	ALL INCORPORATED AREAS IN THE WEST TEXAS CITIES RATE JURISDICTION	
EFFECTIVE DATE:	Bills Rendered on and after 08/21/2012	

Availability

This schedule is applicable to gas service to state agencies (as provided in Texas Utilities Code, Section 104.202) including, but not limited to, state college and universities, MHMR schools, agriculture, highway and public safety departments, prisons, and other facilities owned or operated by the State of Texas for the purpose of heating, cooking, refrigeration, water heating and other similar type uses.

Monthly Rate

Charge	Amount
Customer Charge	\$ 75.00
Consumption Charge	\$ 0.08160 per Ccf

The West Texas Division Gas Cost Adjustment Rider applies to this schedule.

The West Texas Division Weather Normalization Adjustment Rider applies to this schedule.

The West Texas Division Rate Review Mechanism (RRM) Adjustment Rider applies to this schedule.

The West Texas Division Rider TAX applies to this schedule.

The West Texas Division Rider FF applies to this schedule.

The West Texas Cities Rate Jurisdiction Depreciation Surcharge Rider applies to this schedule.

**ATMOS ENERGY CORPORATION
WEST TEXAS DIVISION**

RATE SCHEDULE:	OTHER SERVICE CHARGES	
APPLICABLE TO:	ALL INCORPORATED AREAS IN THE WEST TEXAS DIVISION	
EFFECTIVE DATE:	Bills Rendered on and after 08/21/2012	

DURING BUSINESS HOURS:

Charge	Amount
Turn On New Service With Meter Set	\$ 45.00
Turn On Service (shut-In test required)	\$ 37.00
Turn On Service (meter read only required)	\$ 21.00
Miscellaneous Service Charge Calls	\$ 10.00
Reconnect Delinquent Service or Service Temporarily Off at Customer's Request	\$ 47.00
Return Check Fee	\$ 25.00
Tampering Fee	\$ 150.00

AFTER BUSINESS HOURS:

Charge	Amount
Turn On New Service With Meter Set	\$ 67.50
Turn On Service (shut-In test required)	\$ 55.50
Turn On Service (meter read only required)	\$ 31.50
Miscellaneous Service Charge Calls	\$ 15.00
Reconnect Delinquent Service or Service Temporarily Off at Customer's Request	\$ 70.50
Tampering Fee	\$ 150.00

**ATMOS ENERGY CORPORATION
WEST TEXAS DIVISION**

RATE SCHEDULE:	DEPRECIATION SURCHARGE	
APPLICABLE TO:	ALL CUSTOMER CLASSES WITHIN THE INCORPORATED AREAS OF THE WEST TEXAS CITIES RATE JURISDICTION	
EFFECTIVE DATE:	Bills Rendered on and after 08/21/2012	

Purpose

To provide for the recovery of the regulatory asset established pursuant to certain municipal ordinances. The regulatory asset was created to track differences between the West Texas Division's actual depreciation expense resulting from depreciation rate changes approved by the Railroad Commission of Texas in GUD No. 10041 and depreciation expense currently recovered under existing rates.

Application

Applicable to all customer classes within the Cities of:

Abernathy	Hale Center	New Deal	Seagraves
Amherst	Happy	New Home	Seminole
Anton	Hart	Odessa	Shallowater
Big Spring	Hereford	O'Donnell	Silverton
Bovina	Idalou	Olton	Slaton
Brownfield	Kress	Opdyke West	Smyer
Buffalo Springs Lake	Lake Tanglewood	Palisades	Springlake
Canyon	Lamesa	Pampa	Stanton
Coahoma	Levelland	Panhandle	Sudan
Crosbyton	Littlefield	Petersburg	Tahoka
Dimmitt	Lockney	Plainview	Timbercreek Canyon
Earth	Lorenzo	Post	Tulia
Edmonson	Los Ybanez	Quitaque	Turkey
Floydada	Meadow	Ralls	Vega
Forsan	Midland	Ransom Canyon	Wellman
Friona	Muleshoe	Ropesville	Wilson
Fritch	Nazareth	Sanford	Wolfforth

The balance of the regulatory asset for depreciation expense will be collected through a monthly surcharge on customer bills beginning on August 20, 2012 and ending on August 19, 2013. The monthly surcharge to appear on each bill shall be calculated as follows:

$$SUR = (DRA \times CCA) / EBC$$

**ATMOS ENERGY CORPORATION
WEST TEXAS DIVISION**

RATE SCHEDULE:	DEPRECIATION SURCHARGE	
APPLICABLE TO:	ALL CUSTOMER CLASSES WITHIN THE INCORPORATED AREAS OF THE WEST TEXAS CITIES RATE JURISDICTION	
EFFECTIVE DATE:	Bills Rendered on and after 08/21/2012	

Where:

Variable	Description
SUR	= Surcharge per bill for each applicable customer class
DRA	= Balance of the regulatory asset for depreciation
CCA	= Class allocation per the most recent class cost of service study for the Atmos Energy Corporation, West Texas Division.
EBC	= Estimated number of annual bills for the applicable customer class with said estimates updated monthly in the final quarter to ensure as near a zero balance as practicable.

Notwithstanding the above formula, any remaining regulatory asset balance will be included in the last monthly surcharge to allow full regulatory asset recovery.

ATMOS ENERGY CORPORATION
WEST TEXAS DIVISION

RATE SCHEDULE:	CEE - CONSERVATION AND ENERGY EFFICIENCY	
APPLICABLE TO:	ALL INCORPORATED AREAS IN THE WEST TEXAS DIVISION	
EFFECTIVE DATE:	Bills Rendered on and after July 15, 2013	

I. Purpose

Atmos Energy Corporation's West Texas Division provides a Conservation and Energy Efficiency program which offers assistance to residential and commercial customers to encourage reductions in energy consumption and lower energy utility bills. The programs offered under Rate Schedule CEE will be consistent with similar conservation and energy efficiency programs offered by other gas utilities and may include, but not limited to residential and commercial customer rebates for high efficiency appliances and equipment, as well as a low income customer weatherization assistance program.

II. Application

Applicable to Residential Gas Sales Service and Commercial Gas Sales Service customers only.

The Customer Charges under Rate Schedule -Residential Gas Sales and Rate Schedule -Commercial Gas Sales, shall be increased or decreased annually beginning July 15, 2013 by the CEE Cost Recovery Component (CEE) at a rate per bill in accordance with the following formula:

$$\text{CEE} = \text{CRC} + \text{BA}$$

Where:

CRC = Cost Recovery-Current. The CRC shall include all expected costs attributable to the Company's CEE program for the twelve month period ending July 14th of each year, including, but not limited to rebates paid, material costs, the costs associated with installation and removal of replaced materials and/or equipment, the cost of educational and customer awareness materials related to conservation/efficiency and the planning, development, implementation and administration of the CEE program.

BA = Balance Adjustment. The BA shall compute differences between Rider CRC collections and expenditures for the twelve month period ending the prior December 31 and collect the over/under recovery during the 12 month period beginning July 15th of the following year.

The CEE will be collected from each customer class eligible to participate in the applicable CEE program.

ATMOS ENERGY CORPORATION
WEST TEXAS DIVISION

RATE SCHEDULE:	CEE - CONSERVATION AND ENERGY EFFICIENCY	
APPLICABLE TO:	ALL INCORPORATED AREAS IN THE WEST TEXAS DIVISION	
EFFECTIVE DATE:	Bills Rendered on and after July 15, 2013	

III. Administration

A third-party administrator (Program Administrator) may coordinate general program administration. Program administration expenses will be funded from the annual budget.

IV. Program Selection

Program selection will be determined on annual basis and a summary of programs selected for the upcoming twelve-month period will be provided to interested parties on or before March 15th of each calendar year. The portfolio of program offerings will be designed to be impactful and cost effective based on Atmos' knowledge of its customer base and experience administering various conservation and energy efficiency program initiatives.

V. Report

The Company will file an annual report with the Director of the Gas Services Division of the Railroad Commission on or before March 15th of each calendar year. The annual report shall also be made available on the Company's website. The annual report will identify the portfolio of program offerings the Company will provide during the twelve-month period commencing July 15th of each year. This annual filing shall include detailed calculations of the CRC and the Balancing Adjustments, as well as data on the total cost of the CEE Program.

**WEST TEXAS DIVISION
ATMOS ENERGY CORPORATION**

RATE SCHEDULE:	WEST TEXAS DIVISION GAS COST ADJUSTMENT (GCA) RIDER	
APPLICABLE TO:	ALL SERVICE AREAS IN THE WEST TEXAS DIVISION	
EFFECTIVE DATE:	Bills Rendered on and after 08/21/2012	PAGE:

Application

Gas bills issued under rate schedules to which this Rider applies will include adjustments to reflect decreases or increases in purchased gas costs or taxes. Accumulated Deferred Gas Costs shall also be adjusted for gas cost amounts which are uncollectible. Any such adjustments shall be filed with the appropriate regulatory authority before the beginning of the month in which the adjustment will be applied to bills. The amount of each adjustment shall be computed as follows:

Gas Cost Adjustment (GCA)

The GCA to be applied to each Ccf billed shall be computed as follows and rounded to the nearest \$0.01:

$$\text{GCA} = (\text{G}/\text{S} + \text{CF})$$

Where:

1. "G", in dollars, is the expected cost of gas for the expected sales billings units.
2. "S", in Ccf as measured at local atmospheric pressure, is the expected sales billing units to be billed to customers in the respective section of the Company's West Texas Division.
3. "CF", in \$/Ccf as measured at local atmospheric pressure, is the correction factor charge per Ccf to adjust for the cumulative monthly difference between the cost of gas purchased by the Company and the amount of gas cost billed to the customer plus any gas cost which is uncollectible.

More specifically, CF shall be calculated as follows:

$$\text{CF} = (\text{a}/\text{b}) + (\text{c}/\text{b})$$

- a = over (under) collection dollar amount for the 12 month period ending September.
b = expected estimated sales volumes for the future 12 month period ending November.
c = net uncollectible gas cost, that is:

(uncollectible gas cost for the previous 12 months ended September) – (subsequently collected gas cost for the previous 12 months ended September)

Once a year, on a 12 months ended September basis, the Company shall review the percentage of lost and unaccounted for gas. If this percentage exceeds 5% of the amount metered in, the correcting account balance will be reduced so that the customer will effectively be charged a maximum of 5% for lost and unaccounted for gas and the Company will absorb the excess.

**ATMOS ENERGY CORPORATION
WEST TEXAS DIVISION**

RIDER:	RRM -RATE REVIEW MECHANISM	
APPLICABLE TO:	ALL INCORPORATED AREAS IN THE WEST TEXAS DIVISION	
EFFECTIVE DATE:	Bills Rendered on and after 08/21/2012	

I. Purpose

This rate mechanism is designed to provide annual earnings transparency. All rate calculations under this tariff shall be made on a system wide basis. If, through the implementation of the provisions of this rate mechanism, it is determined that rates should be decreased or increased, then rates will be adjusted accordingly in the manner set forth herein. The rates implemented under this tariff will reflect annual changes in the Company's cost of service and rate base. This Rider RRM will be effective for the period commencing with the Company's first RRM filing on or before March 15, 2013.

II. Definitions

a) The **Annual Evaluation Date** shall be the date the Company will make its annual filing under this tariff. The Annual Evaluation Date shall occur on or about March 15 of each year. This filing shall be made in electronic form where practicable.

b) **Audited Financial Data** shall mean the Company's books and records related to the Company's West Texas Division operating area and shared services operations. Audited Financial Data shall not require the schedules and information provided under this tariff to undergo a separate financial audit by an outside auditing firm similar to the Company's annual financial audit.

c) The **Company** is defined as Amos Energy Corporation's West Texas Division.

d) The **Test Period** is defined as the twelve month period ending December 31, of each preceding calendar year (i.e. the Company's March 15, 2013 filing will be based on the twelve month period ending December 31, 2012).

e) The **Rate Effective Period** is defined as the twelve-month period commencing July 15 of each year in which the RRM filing is made.

f) **Final Order** is defined as the final order issued by the Railroad Commission of Texas in GUD No. 9869 or the final order arising from any appeal of the Company's February 7, 2012 rate case filing with the applicable regulatory authorities.

g) **Review Period** is defined as the period between the Annual Evaluation Date (March 15) and June 30.

h) **NGV Sales Revenue** is defined as natural gas sales revenues attributable to the act or acts identified in Sections 101.003(7)(C)(i)-(iii) and 121.006 of the Texas Utilities Code (Vernon 2007).

III. Rate Review Mechanism

The Company shall file with each regulatory authority having original jurisdiction over the Company's rates the schedules specified below for the Test Period, with the filing to be made by the Annual Evaluation Date following the end of the Test Period. The schedules will be based upon the Company's Audited Financial Data, as adjusted, and will include the following:

- a) Test Period ending balances for actual gross plant in service, accumulated depreciation, accumulated deferred income taxes, inventory, working capital, and other rate base components will be used for the calculation of rates for the Rate Effective Period. The ratemaking treatments, principles, findings and adjustments included in the Final Order will apply except when a departure from those treatments, principles, findings or adjustments is justified by changed circumstances. Regulatory adjustments due to prior regulatory rate base adjustment

**ATMOS ENERGY CORPORATION
WEST TEXAS DIVISION**

RIDER:	RRM -RATE REVIEW MECHANISM	
APPLICABLE TO:	ALL INCORPORATED AREAS IN THE WEST TEXAS DIVISION	
EFFECTIVE DATE:	Bills Rendered on and after 08/21/2012	

disallowances will be maintained. Cash working capital will be calculated using the lead/lag days approved in the Final Order.

- b) Depreciation rates booked in the period will be those approved in the Final Order, or the depreciation rates most recently approved for the West Texas Division and the Shared Services Division by the Railroad Commission of Texas. All calculation methodologies will be those approved in the Final Order except where noted or included in this tariff. The Company may record a regulatory asset or liability for depreciation changes approved by the Railroad Commission of Texas until such changes can be reflected in rates in an RRM filing.
- c) The Company shall exclude from operating and maintenance expense the discretionary costs listed in the RRM Schedules and Information section of this tariff.
- d) Return on Equity (ROE) shall be maintained at rate approved in the Final Order.
- e) Cost of Debt will reflect actual cost for the Evaluation Period. Evaluation Period ending balances for cost of debt and capital structure will be used for the calculation of rates for the Rate Effective Period. Capital structure will be the actual Evaluation Period ratio of long-term debt to equity.
- f) All applicable accounting adjustments along with all supporting work papers. Where applicable, the methodology used will be that approved in the Final Order. Such adjustments may include:
 - 1) Pro-forma adjustments to update and annualize costs and revenue billing determinants for the Rate Effective Period.
 - 2) Pro-forma or other adjustments required to properly account for atypical, unusual, or nonrecurring events recorded during the Test Period.
- g) Shared Services allocation factors shall be recalculated each year based on the latest component factors used during the Test Period, but the methodology used will be that approved in the Final Order.

IV. Calculation of Rates

- a) The Company shall provide additional schedules indicating the following revenue deficiency/sufficiency calculations using the methodology accepted in the Final Order. The result shall be reflected in the proposed new rates to be established for the Rate Effective Period. Any proposed change in rates will be apportioned between the customer charge and usage charge with the Residential and the Commercial customer charges being rounded to the nearest \$0.25.
- b) The Company's rate calculation for the Rate Effective Period may include recovery of any known and measurable changes to reasonable and necessary operating and maintenance costs and capital investment in a manner consistent with the ratemaking treatments, principles, findings and adjustments reflected in the Final Order. With respect to pension and other postemployment benefits, the Company may record a regulatory asset or liability for these costs until the amounts are reflected in RRM rates.
- c) The regulatory authority may disallow any net plant investment that is not shown to be prudently incurred. Approval by the regulatory authority of net plant investment pursuant to the provisions of this tariff shall constitute a finding that such net plant investment was prudently incurred. Such

**ATMOS ENERGY CORPORATION
WEST TEXAS DIVISION**

RIDER:	RRM -RATE REVIEW MECHANISM	
APPLICABLE TO:	ALL INCORPORATED AREAS IN THE WEST TEXAS DIVISION	
EFFECTIVE DATE:	Bills Rendered on and after 08/21/2012	

finding of prudence shall not be subject to further review in a subsequent Evaluation Period or Statement of Intent filing.

- d) The Company shall provide a schedule demonstrating the “proof of revenues” relied upon to calculate the proposed rate for the Rate Effective Period. The proposed rates shall conform as closely as is practicable to the revenue allocation principles approved in the Final Order.
- e) The RRM revenue requirement calculation will be adjusted based on the change in 1) NGV Sales Revenue for the Test Period from 2) the level of NGV Sales Revenue for the twelve-month period ended September 30, 2011.

Fifty percent of the difference between the change in 1) NGV Sales Revenue for the Test Period from 2) the level of NGV Sales Revenue for the twelve-month period ended September 30, 2011 less revenue related taxes shall be allocated to the Rate Schedule R, C, I and T customer classes in the same proportion as the NGV Sales Revenue was allocated to each class in GUD No. 9869 or the final order arising from any appeal of the Company's February 7, 2012 rate case filing with the applicable regulatory authorities.

V. Attestation

A sworn statement shall be filed by an Officer of the West Texas Division affirming that the filed schedules are in compliance with the provisions of this mechanism and are true and correct to the best of his/her knowledge, information and belief. No testimony shall be filed, but a brief narrative explanation shall be provided of any changes to corporate structure, accounting methodologies or allocation of common costs.

VI. Evaluation Procedures

The regulatory authority having original jurisdiction over the Company's rates shall review and render a decision on the Company's filed schedules and work papers prior to the beginning of the Rate Effective Period. The Company will be prepared to provide all supplemental information as may be requested to ensure adequate review by the relevant regulatory authority. The Company shall not unilaterally impose any limits upon the provision of supplemental information and such information shall be provided within ten (10) working days of the original request. The regulatory authority may propose any adjustments it determines to be required to bring the schedules into compliance with the above provisions.

During the Review Period, the Company and the regulatory authority will work collaboratively and seek agreement on the Company's schedules and proposed rates. If, at the end of the Review Period, the Company and the regulatory authority have not reached agreement, the regulatory authority may take action to modify or deny the proposed RRM rates and the Company shall have the right to appeal the regulatory authority's action to the Railroad Commission of Texas. Upon the filing of an appeal of the regulatory authority's order relating to an annual RRM filing with the Railroad Commission of Texas, the regulatory authority having original jurisdiction over the Company's rates shall not oppose the implementation of the Company's proposed rates, subject to refund nor will the regulatory authority advocate the imposition of a 3rd party surety bond by the Company.

In the event that the regulatory authority and Company agree to an RRM rate that is different than that requested in the RRM filing, the Company shall file compliance tariffs consistent with the agreement and no action on the part of the regulatory authority shall be required to allow the RRM rate to become effective on July 15. To the extent that the regulatory authority does not take action on the Company's RRM filing by June 30, the RRM rates proposed in the Company's filing shall be deemed approved effective July 15.

**ATMOS ENERGY CORPORATION
WEST TEXAS DIVISION**

RIDER:	RRM -RATE REVIEW MECHANISM	
APPLICABLE TO:	ALL INCORPORATED AREAS IN THE WEST TEXAS DIVISION	
EFFECTIVE DATE:	Bills Rendered on and after 08/21/2012	

To defray the cost, if any, of regulatory authorities conducting a review of the Company's annual RRM filing, the Company shall reimburse the regulatory authorities for their reasonable expenses for such review. Any reimbursement contemplated hereunder shall be deemed a reasonable and necessary operating expense of the Company in the year in which the reimbursement is made. A regulatory authority seeking reimbursement under this provision shall submit its request for reimbursement to the Company no later than September 1 of the year in which the RRM filing is made and the Company shall reimburse regulatory authorities in accordance with this provision on or before September 30 of the year the RRM filing is made.

This Rider RRM does not limit the legal rights and duties of a regulatory authority. Nothing herein shall abrogate the jurisdiction of the regulatory authority to initiate a rate proceeding at any time to review whether rates charged are just and reasonable. Similarly, the Company retains its right to utilize the provisions of Texas Utilities Code, Chapter 104, Subchapter C to request a change in rates. The provisions of this Rider RRM are implemented in harmony with the Gas Utility Regulatory Act (Texas Utilities Code, Chapters 101-105).

VII. Reconsideration and Appeal

Orders issued pursuant to this mechanism are ratemaking orders and shall be subject to appeal under Sections 102.001(b) and 103.021, et seq., of the Texas Utilities Code (Vernon 2007).

VIII. Notice

Notice of this annual RRM filing shall be provided by including the notice, in conspicuous form, in the bill of each directly affected customer no later than forty-five (45) days after the Company makes its annual filing pursuant to this tariff. The notice to customers shall include the following information:

- a) a description of the proposed revision of rates and schedules;
- b) the effect the proposed revision of rates is expected to have on the rates applicable to each customer class and on an average bill for each affected customer;
- c) the service area or areas in which the proposed rates would apply;
- d) the date the annual RRM filing was made with the regulatory authority; and
- e) the Company's address, telephone number and website where information concerning the proposed rate adjustment may be obtained.

IX. RRM Schedules and Information

Discretionary Costs to Be Disallowed from Rider RRM filings

The following types of employee reimbursed expenses and directly incurred costs are to be removed from all expense and rate base amounts included within Rider RRM filings for the Test Period and for the Rate Effective Period:

**ATMOS ENERGY CORPORATION
WEST TEXAS DIVISION**

RIDER:	RRM -RATE REVIEW MECHANISM	
APPLICABLE TO:	ALL INCORPORATED AREAS IN THE WEST TEXAS DIVISION	
EFFECTIVE DATE:	Bills Rendered on and after 08/21/2012	

- Amounts incurred for travel, meals or entertainment of employee spouses, domestic partners, significant others, children and pets.
- Amounts for air travel that exceed published commercial coach air fares.
- Amounts for alcoholic beverages.
- Amounts paid for admission to entertainment, sports, art or cultural events, and all event sponsorship costs.
- Amounts for social club dues or fees.

Expenses incurred for meals and lodging of Company employees that do not exceed the following amounts may be included as a reasonable and necessary operating expense of the Company in the year in which the expense is incurred:

- Amounts of \$25 per meal per person, exclusive of taxes.
- Amounts for lodging expense of \$150 per night, exclusive of taxes and fees.

**WEST TEXAS DIVISION
ATMOS ENERGY CORPORATION**

RIDER:	TAX – TAX ADJUSTMENT	
APPLICABLE TO:	ALL INCORPORATED AREAS IN THE WEST TEXAS DIVISION	
EFFECTIVE DATE:	Bills Rendered on and after 08/21/2012	

Application

Applicable to Customers taking service under Residential, Commercial, Industrial, Public Authority, and State Institution to the extent of state gross receipts taxes only.

Each monthly bill shall be adjusted for state gross receipts taxes imposed by Sections 182-021 - 182-025 of the Texas Tax Code.

Each monthly bill shall also be adjusted by an amount equivalent to the amount of all applicable taxes and any other governmental impositions, rentals, fees, or charges (except state, county, city, and special district ad valorem taxes and taxes on net income) levied, assessed, or imposed upon or allocated to Company with respect to the Gas Service provided to Customer by Company, and any associated facilities involved in the performance of such Gas Service. Each monthly bill shall also be adjusted by an amount equivalent to the proportionate part of any increase or decrease of any tax and any other governmental imposition, rental, fee, or charge (except state, county, city, and special district ad valorem taxes and taxes on net income) levied, assessed, or imposed subsequent to the effective date of this tariff, upon or allocated to Company's operations, by any new or amended law, ordinance, or contract.

**WEST TEXAS DIVISION
ATMOS ENERGY CORPORATION**

RIDER:	FF – FRANCHISE FEE ADJUSTMENT	
APPLICABLE TO:	ALL INCORPORATED AREAS IN THE WEST TEXAS DIVISION	
EFFECTIVE DATE:	Bills Rendered on and after 08/21/2012	

Application

Applicable to Customers inside the corporate limits of an incorporated municipality that imposes a municipal franchise fee upon Company for the Gas Service provided to Customer. Franchise Fees to be assessed solely to customers within the municipal limits. This does not apply to Environs customers.

Monthly Adjustment

Company will adjust Customer's bill each month in an amount equal to the municipal franchise fees payable for the Gas Service provided to Customer by Company. Municipal franchise fees are determined by each municipality's franchise ordinance. Each municipality's franchise ordinance will specify the percentage and applicability of franchise fees.

From time to time, Company will make further adjustments to Customer's bill to account for any over- or under-recovery of municipal franchise fees by Company.

**WEST TEXAS DIVISION
ATMOS ENERGY CORPORATION**

RATE SCHEDULE:	WEST TEXAS DIVISION WEATHER NORMALIZATION ADJUSTMENT (WNA) RIDER	
APPLICABLE TO:	ALL SERVICE AREAS IN THE WEST TEXAS DIVISION	
EFFECTIVE DATE:	Bills Rendered on and after 08/21/2012	PAGE:

Provision for Adjustment

The base rate per Ccf (100,000 Btu) for gas service set forth in any Rate Schedules utilized in all cities in the West Texas Division or their environs for determining normalized winter period revenues shall be adjusted by an amount hereinafter described, which amount is referred to as the "Weather Normalization Adjustment". The Weather Normalization Adjustment shall apply to all temperature sensitive residential, commercial, public authority, and state institution bills based on meters read during the revenue months of October through May.

Computation of Weather Normalization Adjustment

The Weather Normalization Adjustment Factor shall be computed to the nearest one-hundredth cent per Ccf by the following formula:

WNAF _i	$= \frac{R_i \left(\frac{HSF_i}{BL_i} \times (NDD-ADD) \right)}{(BL_i + (HSF_i \times ADD))}$
Where	
i	= any particular Rate Schedule or billing classification within any such particular Rate Schedule that contains more than one billing classification
WNAF _i	= Weather Normalization Adjustment Factor for the i th rate schedule or classification expressed in cents per Ccf
R _i	= base rate of temperature sensitive sales for the i th schedule or classification utilized
HSF _i	= heat sensitive factor for the i th schedule or classification divided by the average bill count in that class
NDD _i	= billing cycle normal heating degree days
ADD _i	= billing cycle actual heating degree days
BL _i	= base load sales for the i th schedule or Classification divided by the average bill count in that class

The Weather Normalization Adjustment for the jth customer in ith rate schedule is computed as:

WNA _i	$= WNAF_i \times q_{ji}$ Where q _{ji} is the relevant sales quantity for the j th Customer in i th rate schedule
------------------	--

EXHIBIT C

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Atmos Energy
MIDLAND DISTRIBUTION SYSTEM
REVENUE COMPARISON
ICL CUSTOMER ONLY

EXHIBIT D

IMPACT ON COMPANY MARGINS						
	REVENUE AT PROPOSED RATES(2)	CCF	REVENUE AT PRESENT RATES(1)	Customers	TOTAL CHANGE	%
RESIDENTIAL	\$7,412,106	17,325,136	\$7,447,774	29,771	(\$35,668)	-0.48%
COMMERCIAL	\$1,463,845	6,794,562	\$1,649,089	2,260	(\$185,244)	-11.23%
INDUSTRIAL	\$30,061	406,531	\$47,238	3	(\$17,177)	-36.36%
STATE INSTITUTION	\$7,360	23,103	\$7,679	6	(\$319)	-4.15%
PUBLIC AUTHORITY	\$324,925	2,287,072	\$393,845	154	(\$68,920)	-17.50%
OTHER REVENUE	\$0		\$0		\$0	
SERVICE CHARGES	\$289,100.73		\$234,648		\$54,453	23.21%
RIDER FF AND TAX	\$479,246				\$479,246	
SUBTOTAL	\$10,006,644	\$26,836,404	\$9,780,273	32,193	\$226,371	2.31%

IMPACT ON TOTAL REVENUES						
RESIDENTIAL	\$16,534,974		\$16,186,131		\$348,843	2.16%
COMMERCIAL	\$4,966,787		\$5,076,093		(\$109,306)	-2.15%
INDUSTRIAL	\$236,664		\$252,282		(\$15,617)	-6.19%
STATE INSTITUTION	\$19,395		\$19,332		\$63	0.33%
PUBLIC AUTHORITY	\$1,495,322		\$1,547,386		(\$52,064)	-3.36%
OTHER REVENUE	\$0		\$0		\$0	
SERVICE CHARGES	\$289,101		\$234,648		\$54,453	23.21%
TOTAL REVENUES	\$23,542,242		\$23,315,871		\$226,371	0.97%

Notes:

(1) Revenue at present rates includes revenue related taxes imbedded in base rates.

(2) Revenue at proposed rates will collect revenue related tax through RIDER FF and RIDER Tax.

CITY OF MIDLAND

CLASS	CURRENT										Avg Bill(3)			
	CUST CHARGE	COMM Tier 1	COMM Tier 2	No. of Bills	Volume Tier 1	Volume Tier 2	Current Margin	Revenue Tax On Margin (1)	Gas Cost	Revenue Tax on Gas Cost	Current Margin / Bill	Average Bill	Avg Bill % Chng	% Chng wo Gas Cost
RESIDENTIAL	7.50	0.27514		357,248.00	17,325,136.00		7,447,773.92	386,360.66	8,307,402.71	430,954.75	20.85	45.31		
COMMERICAL	14.50	0.18484		27,116.00	6,794,562.00		1,649,088.84	85,548.12	3,257,992.48	169,011.59	60.82	187.20		
INDUSTRIAL	110.00	0.12859	0.10277	38.00	49,515.48	357,015.52	47,237.68	2,450.50	194,931.61	10,112.27	1,243.10	6,638.99		
PUBLIC AUTHORITY	55.00	0.12786		1,844.00	2,287,072.00		393,845.03	120,399.83	1,096,651.02	56,889.86	213.58	839.15		
STATE INSTITUTION	61.50	0.13806		73.00	23,103.00		7,679.10	398.36	11,077.89	574.68	105.19	264.82		
CLASS	PROPOSED										Avg Bill(3)			
	CUST CHARGE	COMM Tier 1	COMM Tier 2	No. of Bills	Volume Tier 1	Volume Tier 2	Proposed Margin	Revenue Tax on Margin (2)	Gas Cost	Revenue Tax on Gas Cost	Proposed Margin / Bill	Average Bill	Avg Bill % Chng	% Chng wo Gas Cost
RESIDENTIAL	18.00	0.05666		357,248.00	17,325,136.00		7,412,106.21	384,510.36	8,307,402.71	430,954.75	21.82	46.28	2.16%	4.68%
COMMERICAL	40.00	0.05581		27,116.00	6,794,562.00		1,463,844.51	75,938.39	3,257,992.48	169,011.59	56.79	183.17	-2.15%	-6.63%
INDUSTRIAL	275.00	0.04824	-	38.00	406,531.00	-	30,061.06	1,559.45	194,931.61	10,112.27	832.12	6,228.01	-6.19%	-33.06%
PUBLIC AUTHORITY	75.00	0.08160		1,844.00	2,287,072.00		324,925.08	16,855.81	1,096,651.02	56,889.86	185.35	810.91	-3.36%	-13.22%
STATE INSTITUTION	75.00	0.08160		73.00	23,103.00		7,360.20	381.82	11,077.89	574.68	106.06	265.68	0.33%	0.82%

NOTES:

- (1) Revenue taxes on current margins is already imbedded in base rates.
- (2) Revenue related tax rate on proposed margins is collected as a separate line item on customer bills through Rider FF and Tax.
- (3) Average Bill increase without Gas Gost inclusive of revenue related taxes on margins.

CUSTOMER NOTICE INCORPORATED AREA OF THE CITY OF MIDLAND

On July 17, 2012, Atmos Energy Corporation, West Texas Division (“Atmos” or “the Company”), filed a Statement of Intent with the City of Midland served by the West Texas Division (hereafter “City”). The Company’s Statement of Intent proposes to increase its gas rates and implement a new schedule of rates and riders applicable to all customers within the City. The proposed effective date of the requested rate changes is August 21, 2012. If approved, the proposed changes will affect approximately 29,771 residential, 2,260 commercial, 3 industrial, 154 public authority, and 6 state institution customers within the City.

Atmos is proposing to adopt rates for the City and the remainder of its West Texas Division based on the division-wide cost of providing service to all customers within the Company’s West Texas Division, which includes the Amarillo, Lubbock and West Texas Cities rate jurisdictions. Atmos further proposes to revise its service charges to establish uniform service charges throughout all incorporated areas of the West Texas Division, including the City. If approved, the proposed rates will produce a \$172,000 increase in the Company’s annual revenues from customers within the City for gas service and a \$55,000 increase in annual revenues from service charges, and will result in an overall annual revenue increase of approximately \$227,000 or 0.97%, including gas costs, or 2.31% excluding gas cost. The proposed change in rates does not constitute a “major change” as that term is defined by Section 104.101 of the Texas Utilities Code.

The Company further proposes to consolidate its various WNA and GCA tariffs into single WNA and GCA tariffs that will apply to the City and all incorporated areas within the Company’s West Texas Division. The Company’s proposed WNA tariff expands its applicability to include the State Institution customer class, removes monthly reporting requirements where applicable, and reflects updates to heat load and base load factors. The proposed GCA tariff removes language regarding the recovery of transaction related costs to mitigate price volatility. The Company seeks to implement a new Transportation Gas Services tariff, a new Rate Review Mechanism (“RRM”) tariff, and a new conservation and energy efficiency tariff (“Rider CEE”). Atmos also proposes to adopt new Rider FF and Rider TAX tariffs, which authorize the collection of franchise fees and state gross receipts taxes through a separate line item on customer bills.

For the West Texas Cities rate jurisdiction, which includes the City, the Company has also requested approval of a Depreciation Surcharge tariff that will allow recovery of the regulatory asset created to track differences between the West Texas Division’s actual depreciation expense resulting from depreciation rate changes approved by the Railroad Commission of Texas in GUD No. 10041 and depreciation expense recovered under existing rates. Finally, the Company seeks to recover all of its rate case expenses and all city rate case expenses as allowed by law. The exact amount will not be known until the case is completed.

The Company proposes to change its rates as follows: Residential customer charge of \$18.00 per bill per month and a consumption charge of \$0.05666 per Ccf; Commercial customer charge of \$40.00 per bill per month and a consumption charge of \$0.05581 per Ccf; Industrial and Transportation customer charge of \$275.00 per month and a consumption charge of \$0.04824; Public Authority Gas Service and State Institution customer charge of \$75.00 per bill per month and a consumption charge of \$0.08160 per Ccf.

Based on the proposed rate design, the average monthly bill for each customer class within the City will increase by the amount and percent shown in the table below.

Customer Class	Current Bill **	Proposed Bill**	Difference	Percentage Increase with Gas Cost*	Percentage Increase without Gas Cost
Residential	\$45.31	\$46.28	\$0.97	2.16%	4.68%
Commercial	\$187.20	\$183.17	\$(4.03)	-2.15%	-6.63%
Industrial	\$6,638.99	\$6,228.01	\$(410.98)	-6.19%	-33.06%
Public Authority	\$839.15	\$810.91	\$(28.24)	-3.36%	-13.22%
State Institution	\$264.82	\$265.68	\$0.86	0.33%	0.82%

*Includes Rider GCA cost of \$0.48 per Ccf.

**For the City of Midland, the calculation of bill impacts assumes average monthly consumption of 48.5 Ccf for residential customers, 250.57 Ccf for commercial, 10,698.20 Ccf for industrial, 1,240.28 Ccf for Public Authority, and 316.47 Ccf for State Institution customers within the City of Midland.

The rates proposed for the new transportation gas service customer class are shown below:

TRANSPORTATION GAS SERVICE	
Charge	Proposed
Meter Charge	\$275.00
Consumption Charge per Ccf	\$.04824

Persons with specific questions or desiring additional information about this filing may contact Atmos Energy Corporation at 1-888-286-6700. In addition, customers can contact their City for additional information regarding this rate request. Complete copies of the filed Statement of Intent, including all proposed rates and schedule changes are available for inspection at Atmos' offices located at 5110 80th Street, Lubbock, Texas 79424. To view the proposed tariffs, visit our Web site at: www.atmosenergy.com/WTX-Filings.

Este es un aviso a los clientes de Atmos Energy Corporation de West Texas Division, (la "Compañía"), que la Compañía está solicitando un aumento en la tarifa del gas. Este aumento afecta a todos los clientes en las áreas no-incorporadas y servidas por West Texas Division. Si usted tiene preguntas con respecto a este aumento, por favor llame a Atmos Energy Corporation al 1-800-460-3030.



City Council Agenda

Approved for Agenda:
jnichols
City Manager's Office

MEETING DATE: 7/24/2012

TO: City Council / City Manager

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Consider an ordinance on second reading 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:

Consider an ordinance on second reading 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. No changes have been made to this item since its first reading on July 10, 2012.

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:

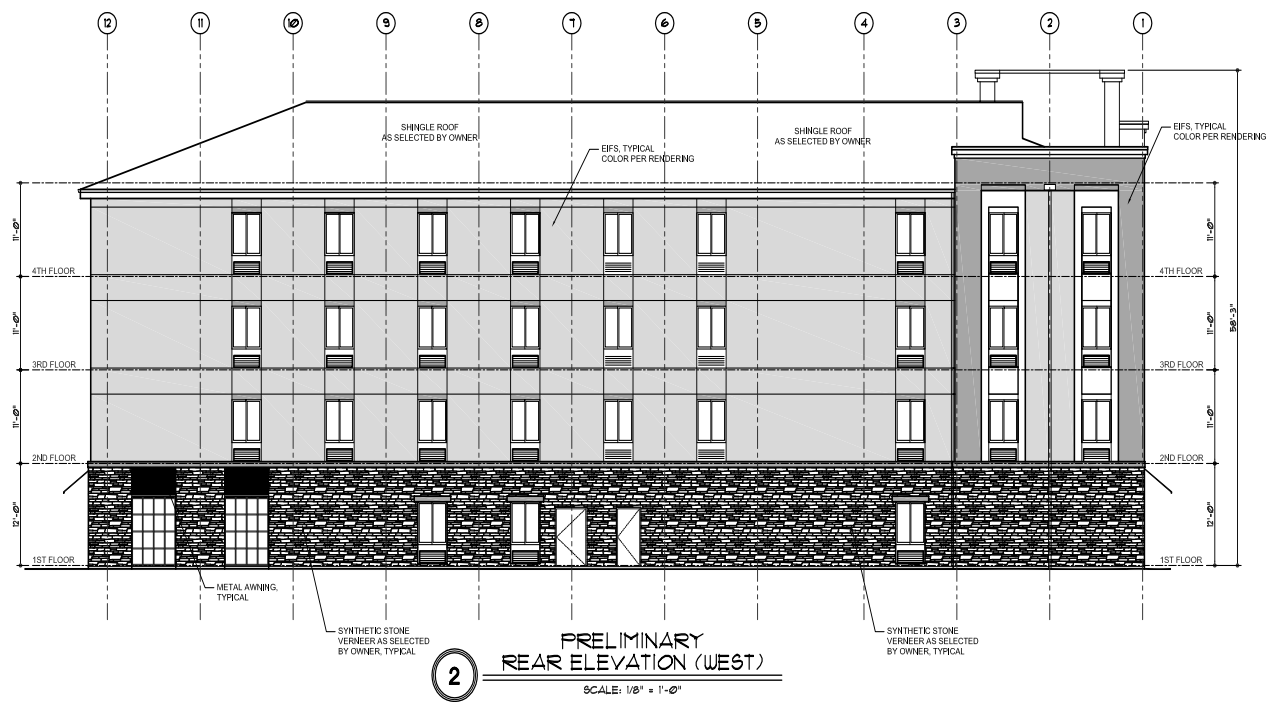
Jim Nichols, Assistant City Manager

APPROVED AS TO FORM:

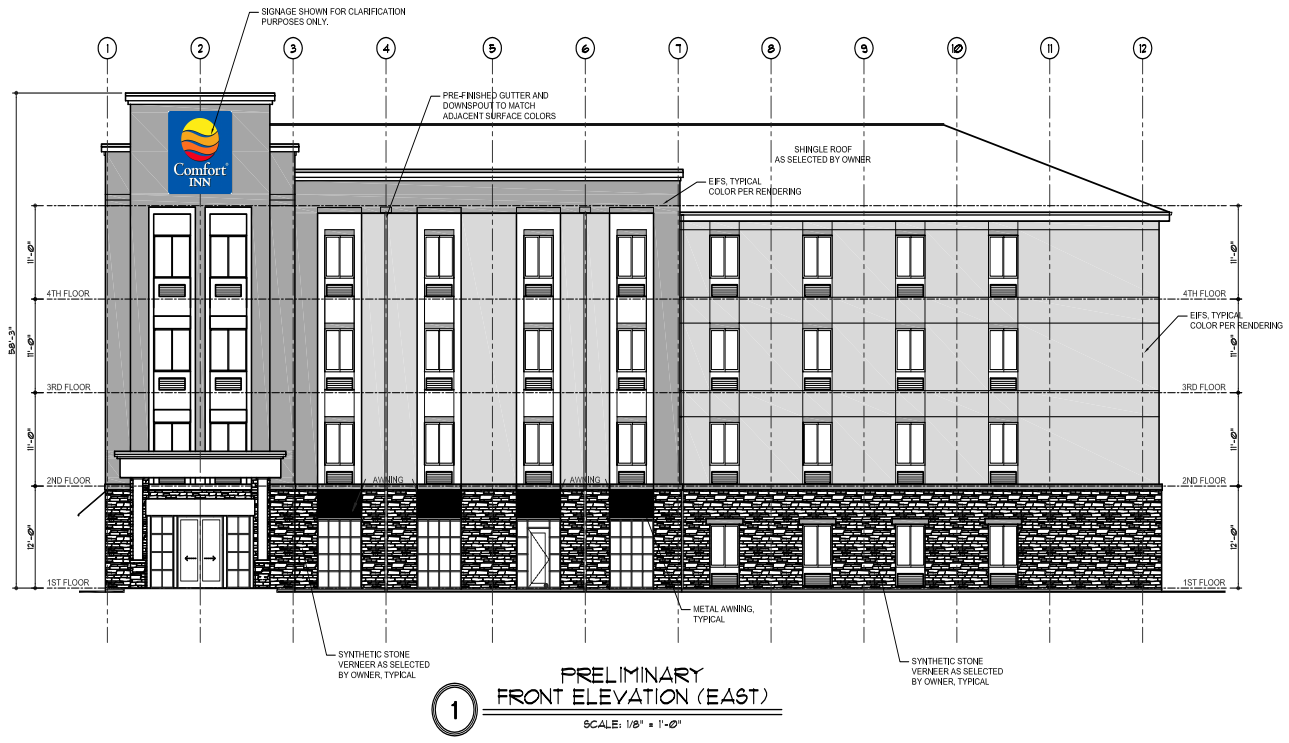
Keith Stretcher, City Attorney



PRELIMINARY - FOR REVIEW ONLY



PRELIMINARY
REAR ELEVATION (WEST)
SCALE: 1/8" = 1'-0"



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.

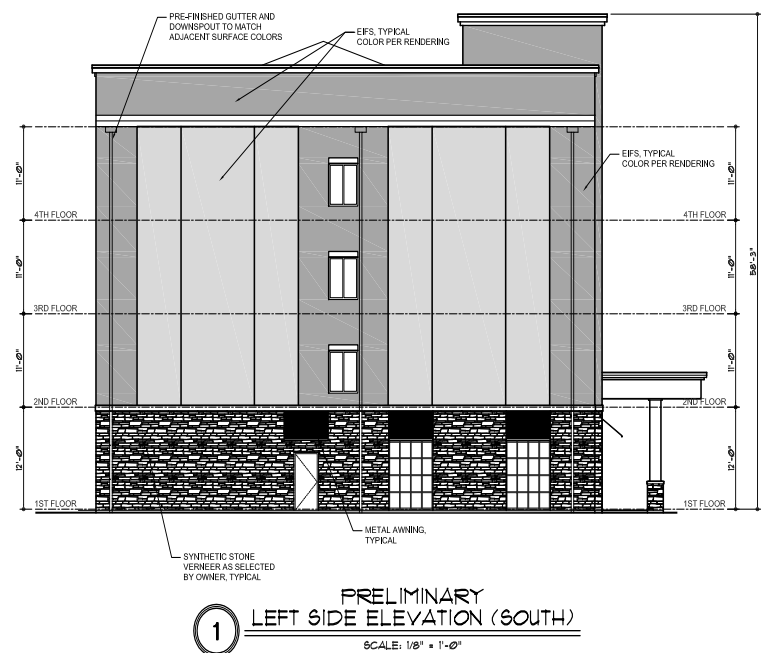
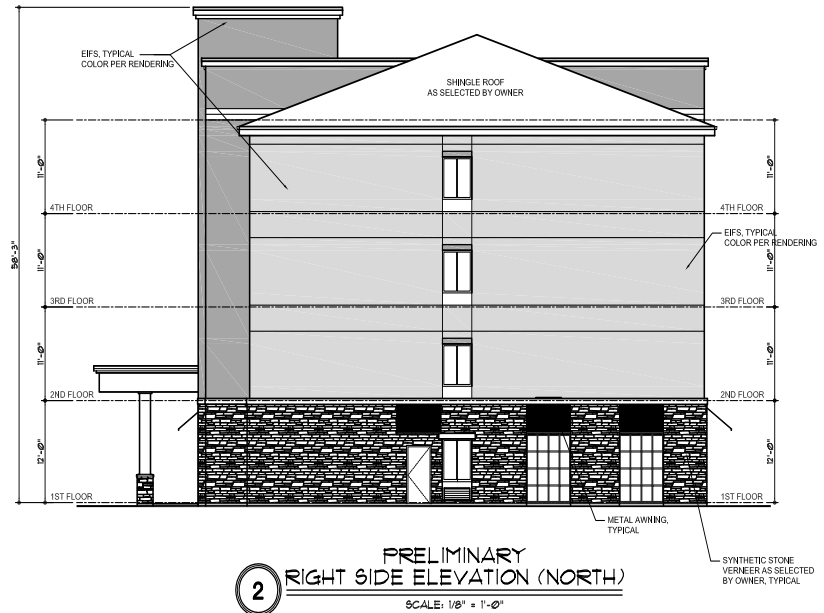
COMFORT INN
INTERSTATE HIGHWAY 20 AT CAMP DRIVE
MIDLAND, TEXAS



R. S. ARCHITECTS, LLC
2201 CALLE PANAMA, SUITE 145
DALLAS, TEXAS 75201
TEL: 877-64-0003 FAX: 877-64-0040

Date	5-11-12
Job	1201
Sheet	
Of	Sheets

PRELIMINARY - FOR REVIEW ONLY



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

PRELIMINARY
FOR REVIEW ONLY

R S S ARCHITECTS, LLC
2201 CANTERBURY LANE, SUITE 145
DALLAS, TEXAS 75201
TEL: 972/640-2033 FAX: 972/640-5440

Date: 5-11-12

Job: 1201

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.

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:

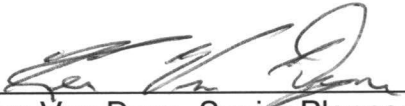
Staff recommends approval of this request for a zone change from LR-2, Local Retail District, to PD, Planned District for a Shopping Center, subject to the following conditions:

- 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: 2-12-019

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.

[Signature]

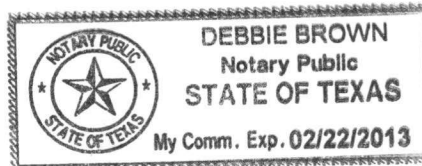
Authorized Agent (signature)

Subscribed and sworn to before me, this 15th day of May, 20 12, to certify which witness my hand and seal of office.

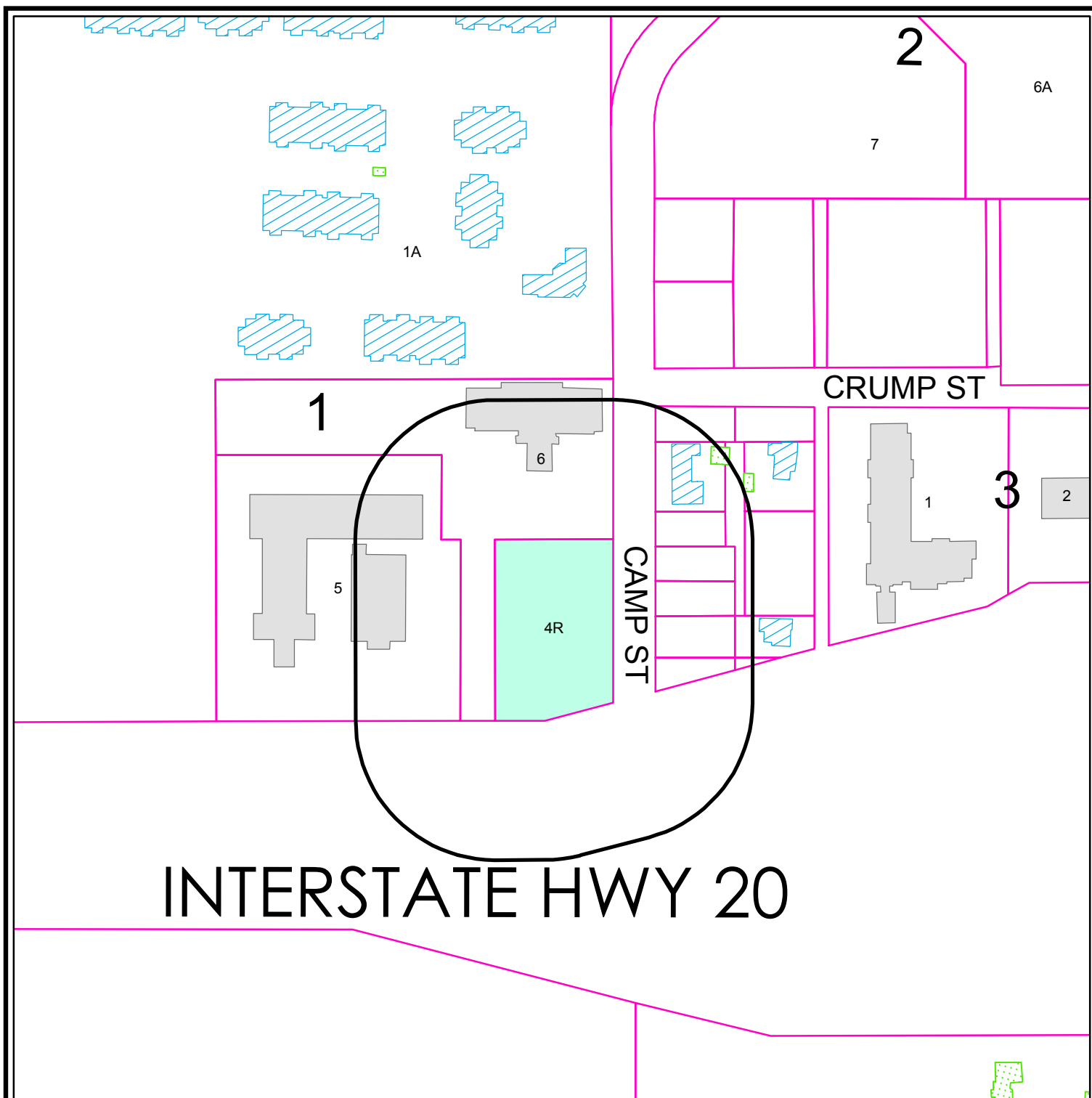
[Signature]

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: <u>SO</u>	Date: <u>5-15-12</u>
Assigned: _____	
For: _____	On: _____



****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.

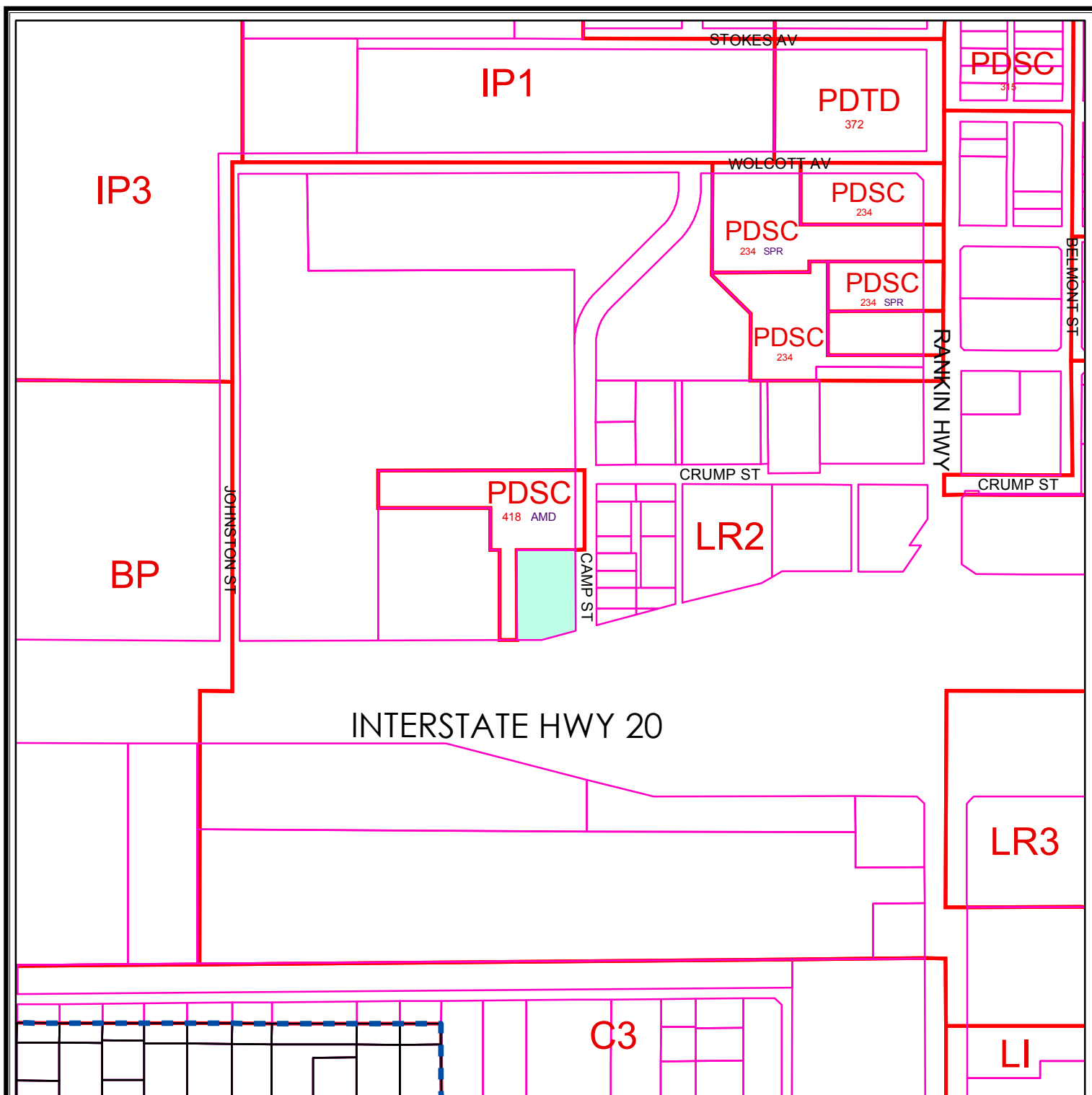
LEGEND

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



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20.17



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

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City Council Agenda

Approved for Agenda:
jnichols
City Manager's Office

MEETING DATE: 7/24/2012

TO: City Council / City Manager

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Consider an ordinance on second reading 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:

Consider an ordinance on second reading on a request by Brownstones Midland, L.P. for a zone change from C-3, Commercial District to PD, Planned District for Housing Development. No changes have been made to this item since its first reading on July 10, 2012.

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 DISTRICT)
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 SPOTS

PARKING

UNCOVERED PARKING	10 PARKING SPOTS
CLUBHOUSE PARKING	7 PARKING SPOTS
TOTAL	17 PARKING SPOTS

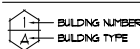
UNIT TABULATION

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	1,800 S.F.	7,200 S.F.
TOTAL	70		67,640 S.F.

BUILDING TABULATION

TYPE	# OF BLDGS.	# OF UNITS /BLDG.	UNIT TYPES
A	1	70	A1-B, A2-B, B1-M, C1-M
TOTAL	1		

BUILDING KEY



PARKING SPACES

TOTAL PARKING SPACE	9'-0" X 18'X10"	18'
HANDICAP SPACE	9'-0" X 18'X10"	18'
ABLE	9'-0" X 18'X10"	9' 9"
VAN HANDICAP SPACE	9'-0" X 18'X10"	18'
ABLE	9'-0" X 18'X10"	9' 9"
PARALLEL PARKING SPACE	9'-0" X 22'X10"	22'

SITE AMENITIES:

- SWIMMING POOL
- FULL PERIMETER FENCING
- CONTROLLED GATE ACCESS
- BUSINESS CENTER
- COMMON AREA WIFI

(*) 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
- BUILDING SETBACK
- ABANDONED ALLEY
- 4" WROUGHT IRON PERIMETER FENCE
- BUILDING ACCENT LIGHTING
- BUILDING 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
- PERMEABLE WEED BARRIER INSTALLED = 2 POINTS
- IRRIGATION SYSTEM IN ALL AREAS 15 FEET OR LESS IN WIDTH = 10 POINTS
- QUANTITY EXCEEDS REQUIRED QUANTITY (PER TREE) = 2 POINTS
- OPTIONAL TREES ACCORD
- DROUGHT TOLERANT 60D IS PRIMARY VARIETY OF TURF GRASS = 5 POINTS

21.7

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 ON VALU: 94
EXISTING ON VALU: 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.

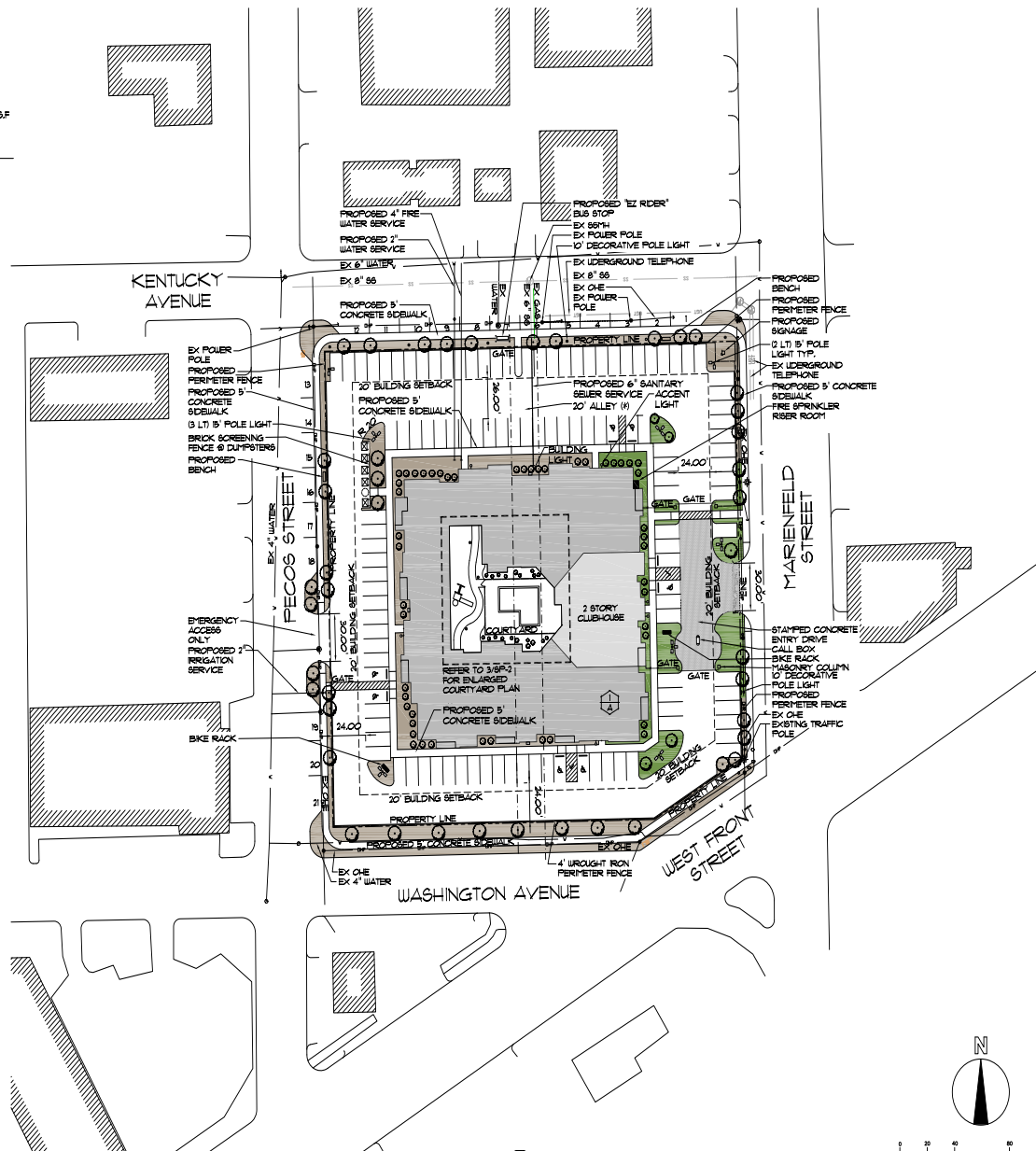
FLOODPLAIN STATEMENT

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 48302C0202 E.

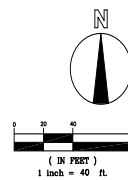


VICINITY MAP
(NOT TO SCALE)

PROJECT LOCATION



1 SITE PLAN
SCALE: 1" = 20'



ARCHITECT:
CROSS ARCHITECTS, PLLC.
1255 W. 15TH ST., SUITE 125
PLANO, TEXAS 75075
PH: 972.398.6644
FAX: 972.312.8666
brunsey@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

[illegible]

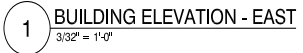
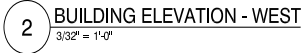
DRAWINGS ISSUED FOR:

DATE:
5.18.12

PROJ. NO.:
12018

SHEET NUMBER

E-1
ELEVATION





2 BUILDING ELEVATION - SOUTH
3/32" = 1'-0"



1 BUILDING ELEVATION - NORTH
3/32" = 1'-0"



ARCHITECT:
CROSS ARCHITECTS, PLLC.
1255 W. 15TH. ST., SUITE 125
PLANO, TEXAS 75075
PH: 972.398.6644
FAX: 972.312.8666
brunsey@crossarchitects.com



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



KOLT DEVELOPMENT

BROWNSTONES MIDLAND



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 ensued 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

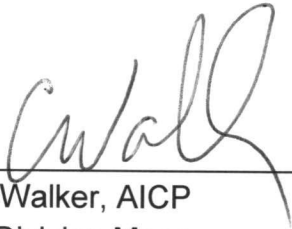
20' are acceptable as provided in the plans. The site plan indicates three dumpsters for solid waste collection. According to City Code the requirement is one refuse container for each 15 apartment units, therefore the complex will require five waste containers. The building design is ring-shaped with 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: 212-000

CITY OF MIDLAND
Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

TCDP Brownstones Midland, LP 214.543.7146 carfields@koltdevelopment.com
Applicant Name (Phone/e-mail)

5646 Milton St, Suite 810, Dallas, Texas 75206
Address Zip Code

Kent C. Venderheiden 432.528.6953 kentvander@yahoo.com
Property Owner Name (Phone/e-mail)

302 South 1 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
Describe how conditions affecting the property have changed since present zoning designation: growth
Not aware

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

APPLICATION FEES:

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

SITE PLAN SUBMITTALS (if applicable):

16 copies (FOLDED) of the PD site plan:

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. Vanderheiden 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. Vanderheiden, 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.

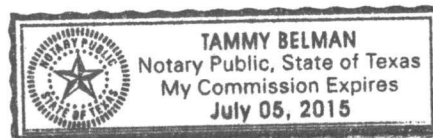
C.W. Fields

Authorized Agent (signature)

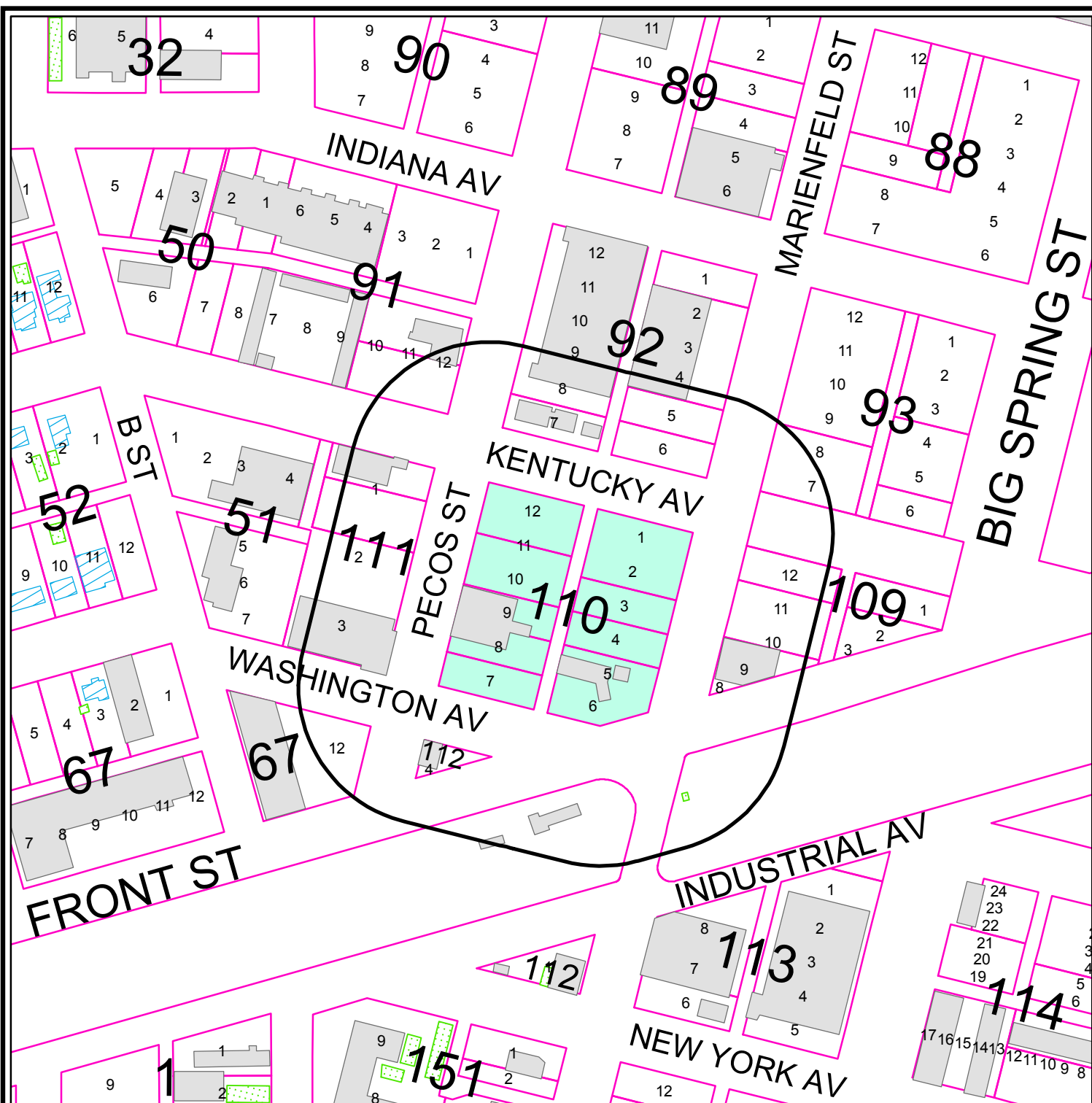
Subscribed and sworn to before me, this 10 day of February, 20 12 to certify which witness my hand and seal of office.

Tammy Belman
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: <u>CV</u>	Date: <u>3/5/12</u>
Assigned: <u>KV</u>	
For: <u>P+2</u>	On: <u>3/5/12</u>



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



PROPERTY OWNER NOTIFICATION MAP

Z - 12 - 006

Scale: 1" = 200'

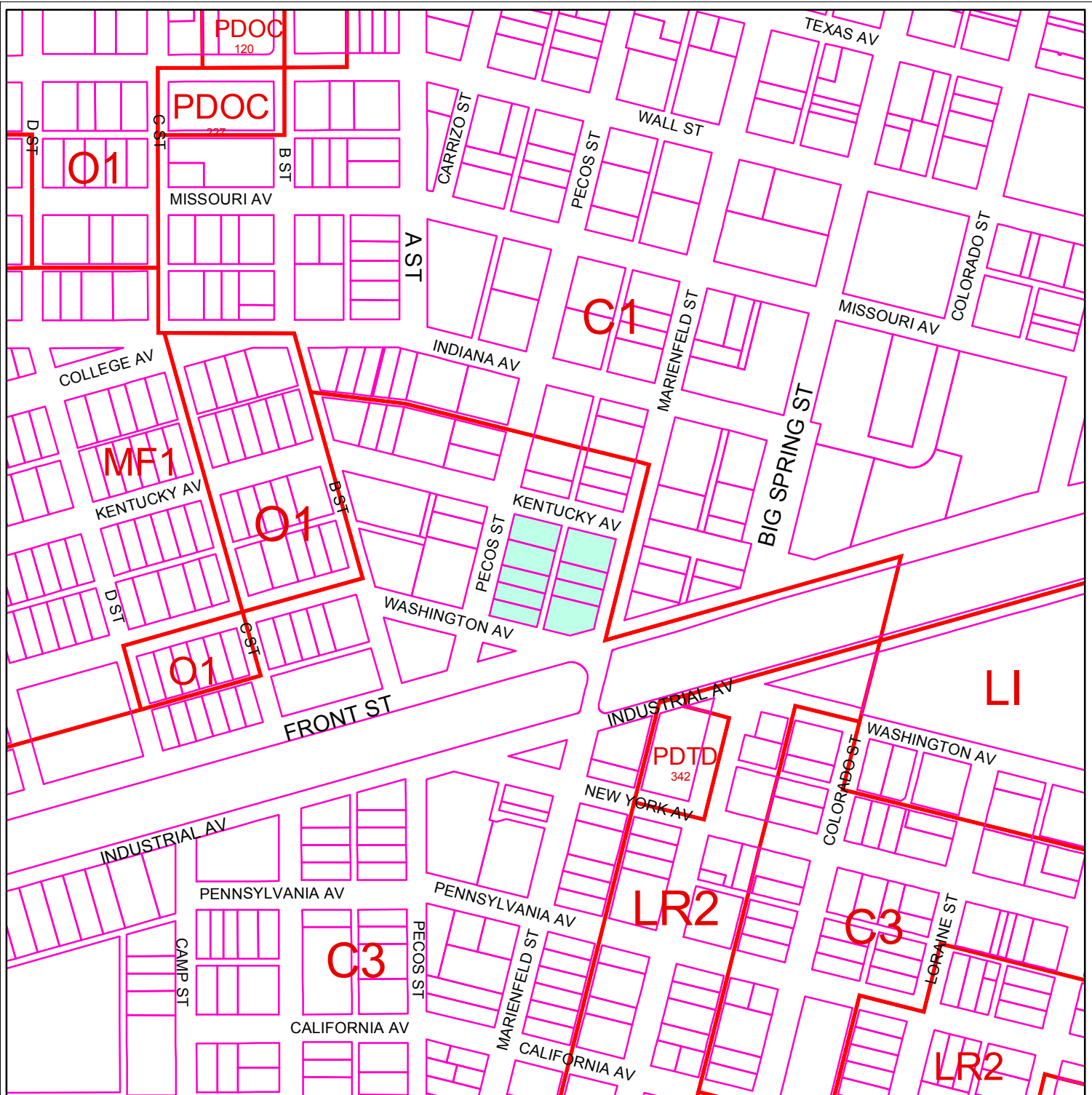
Consider a request for a zone change from C3, Commercial District to PD, Planned District for Housing Development on Lots 1 – 5, the remainder of Lot 6 and Lots 7 - 12, Block 110, Original Town, City and County of Midland, Texas.

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, Commercial 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, 02	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 7/24/2012

TO: City Council / City Manager

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Consider an ordinance on second reading 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:

Consider an ordinance on second reading a request by Lamar Outdoor Advertising for a Specific Use Permit with Term for an Electronic Billboard/Billboard Sign. No changes have been made to this item since its first reading on July 10, 2012.

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

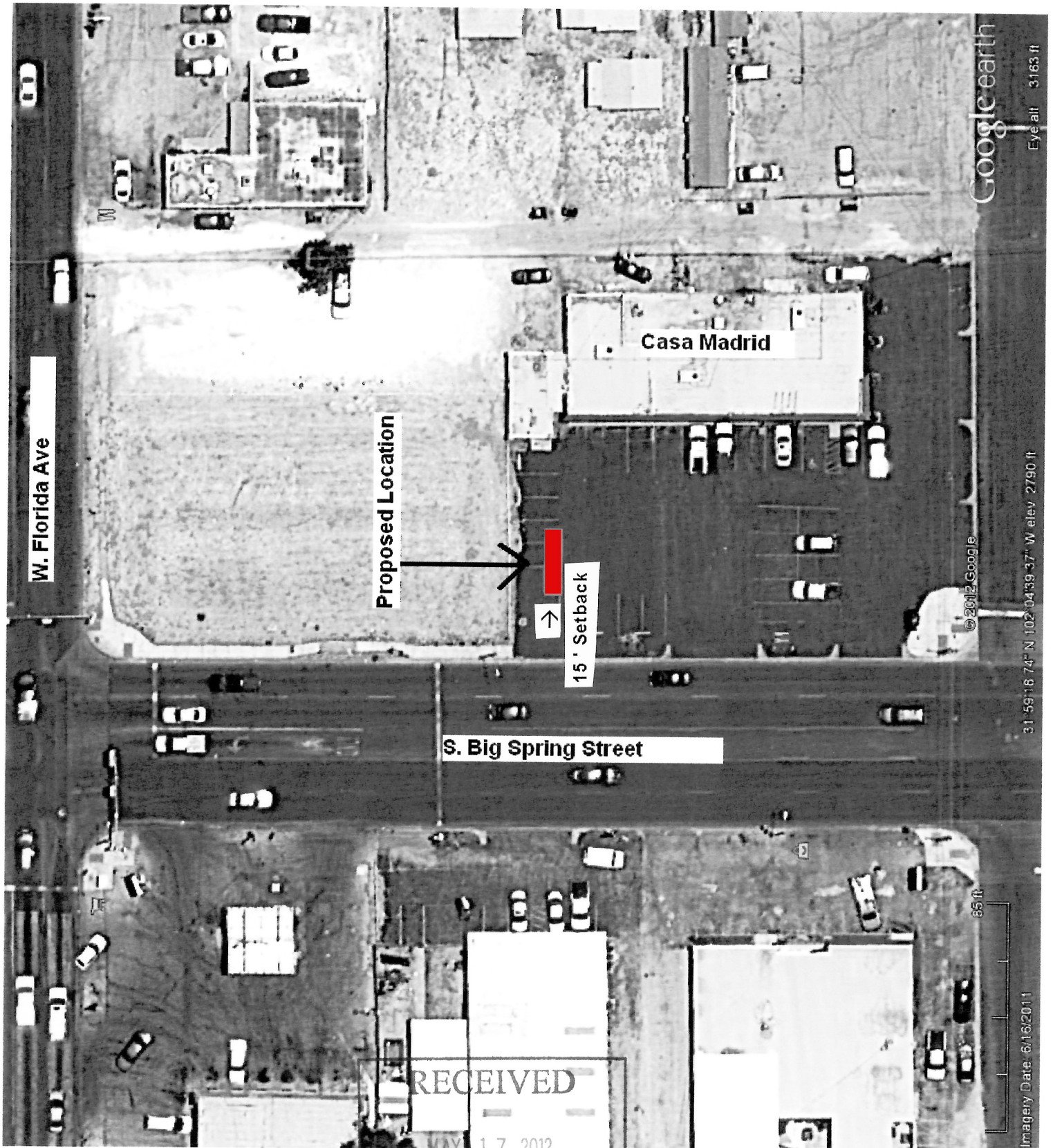
APPROVED AS TO CONTENT
AND COMPLETENESS:

Jim Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

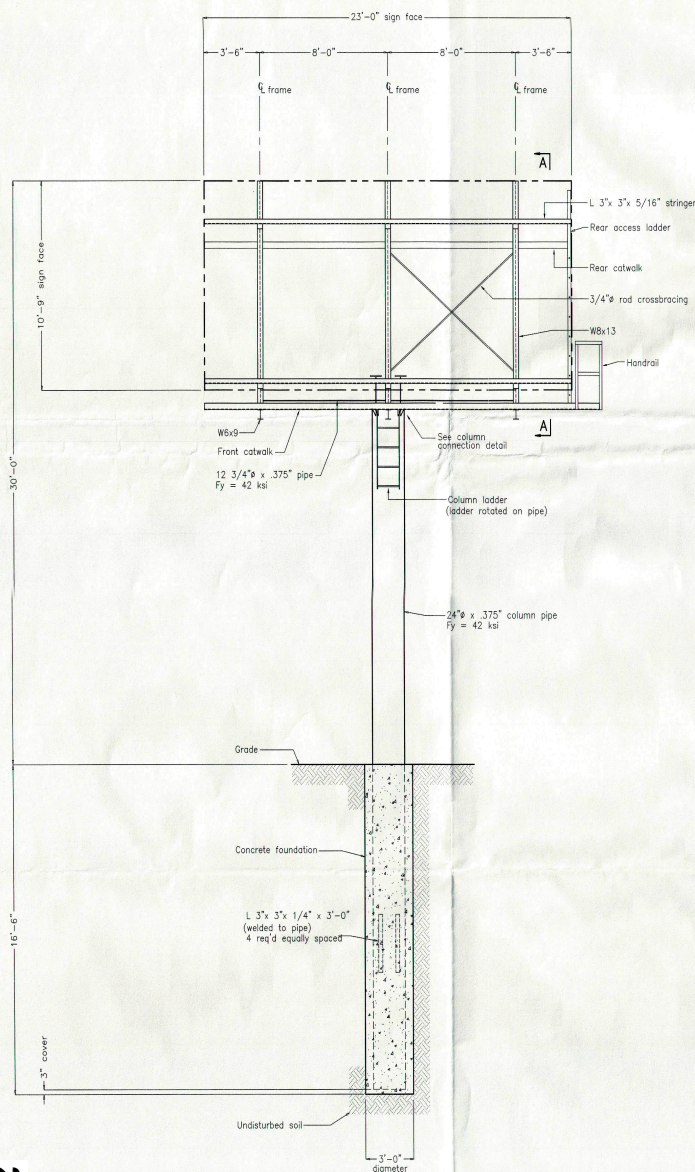
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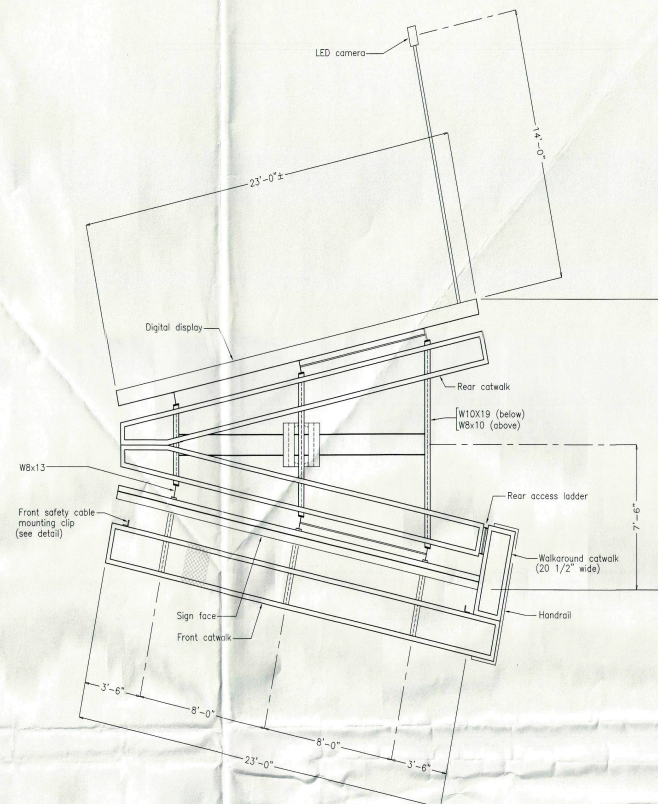
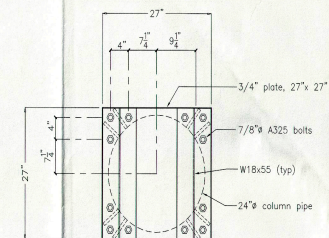
CASE NO. 5-12-008
EXHIBIT A

RECEIVED
MAY 17 2012
CITY OF MIDLAND
PLANNING DIVISION OFFICE

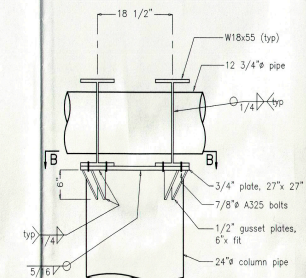
SITE PLAN



SIGN FACE ELEVATION

PLAN VIEW
SIGN STRUCTURE

SECTION B-B



COLUMN CONNECTION DETAIL

RECEIVED

MAY 25 2012

CITY OF MIDLAND
PLANNING DIVISION OFFICE

CASE NO. 51208

Seismic Design Criteria

- Seismic importance factor $I_e = 1.0$
- Seismic occupancy category I
- Mapped spectral response accelerations
 $S_s = 0.080\text{ g}$
 $S_1 = 0.040\text{ g}$
- 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

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 - $I_w = 0.87$
- Pipe shall conform to ASTM A252 or API 5L of appropriate grade to obtain specified minimum yield stress, F_y .
- 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 $f'_c = 2500\text{ psi}$.
- 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 UNFINISHED, UNPERMANENT DRAWING. IT IS NOT TO BE REPRODUCED, COPIED OR EXHIBITED IN ANY MANNER WITHOUT WRITTEN PERMISSION OF ALUMI OUTDOOR SIGNS.

GRC
ENGINEERING, INC.

5544 W. 147TH STREET
OAK FOREST, ILLINOIS 60452
(708) 489-0400

Exhibit - B

10'-9" x 23'-9"
MONOPOLE SIGNCENTERMOUNT 15' V
30'-0" TO TOP

TEXAS

ENG. fm CAD mcDATE May 23, 2012DRAWING NUMBER 16363-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.

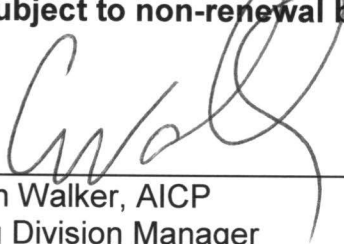
ANALYSIS:

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: 5-12-008

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 electronic 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

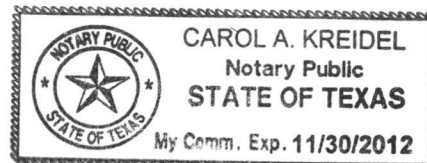
GUY V. SPECK who, being by me duly sworn, upon oath says: That (s)he is authorized by MARTHA RAMIREZ, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney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

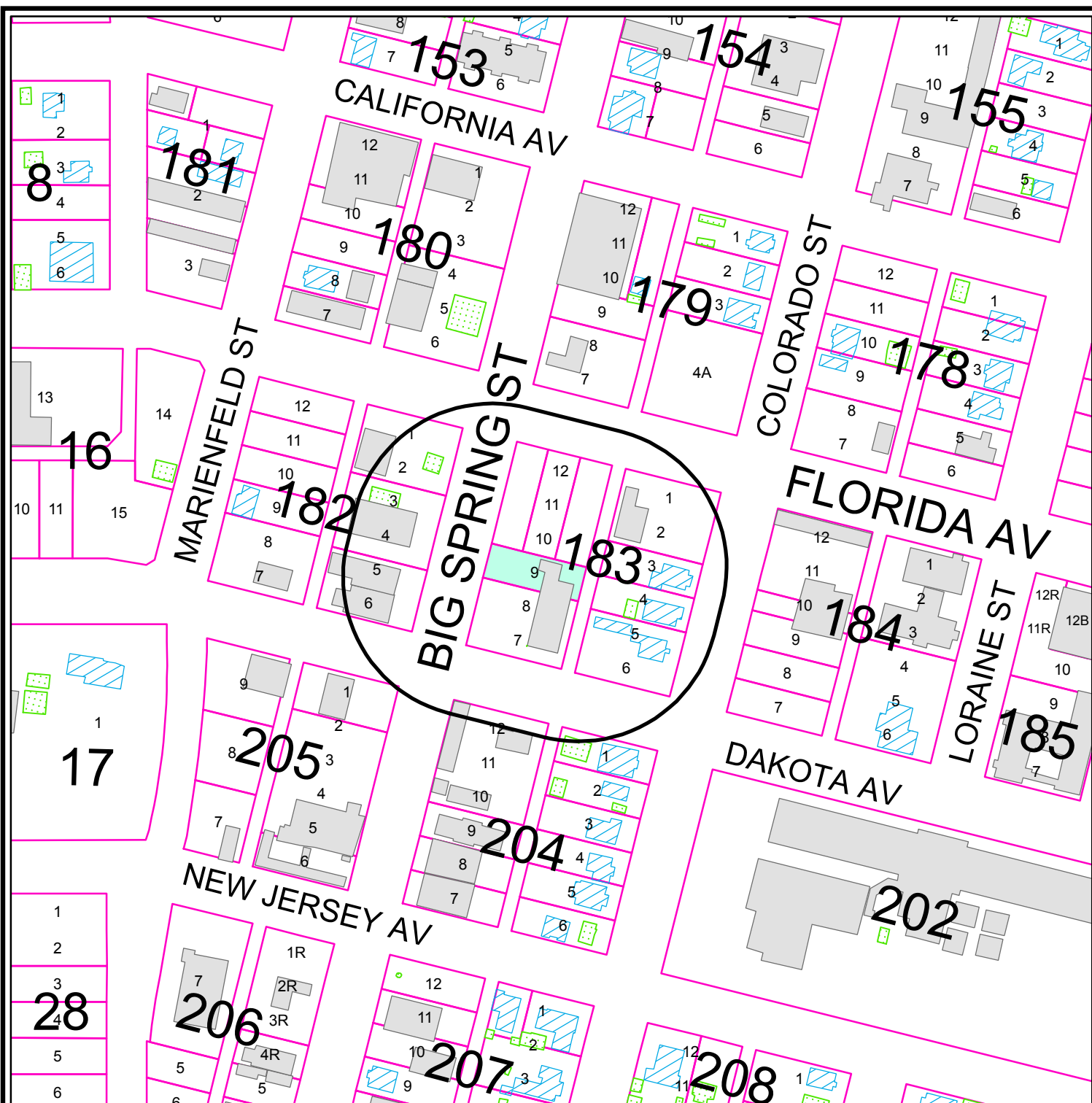
Carol A. Kreidel
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY

Rec'd By: SD Date: 5-17-12
Assigned: _____
For: _____ On: _____



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



PROPERTY OWNER NOTIFICATION MAP

S - 12 - 008

Scale: 1" = 200'

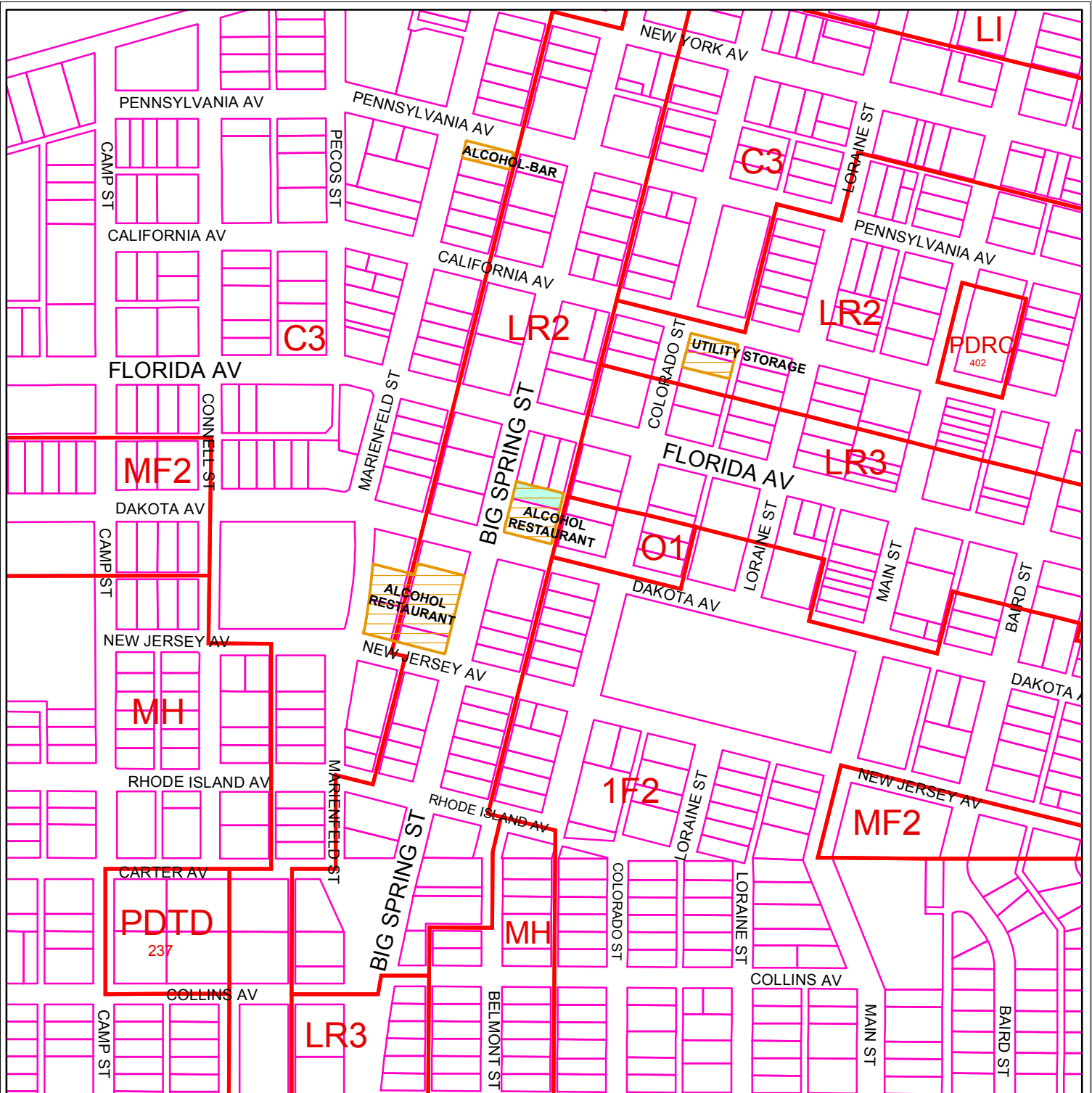
Consider a request for a Specific Use Permit with Term for an Electronic Billboard/ Billboard Sign, on Lot 9, Block 183, Southern Addition, City and County of Midland, Texas.

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

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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: July 24, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Consider an ordinance on second reading on a request by Midland Community Development Corporation for a zone change from O-1, Office District to TH, Townhouse District and PD, Planned District for a Housing Development. (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 second reading on a request by Midland Community Development Corporation for a zone change from O-1, Office District to TH, Townhouse District and PD, Planned District for a Housing Development.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

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

Discussion:

Midland Community Development Corporation (MCDC) has presented a proposal to convert vacant land zoned for office use into workforce housing. The property is located on the north and south sides of Elm Avenue, between Taylor and Carver Streets. In addition to this zone change request, there is also a subdivision plat pending, and a request to vacate 10 feet of Elm Avenue. The result would be the establishment of 32 residential lots, with attached homes on the north side of Elm Avenue, and detached homes on the south side. The City Council held a public hearing on July 10, 2012, at which time it passed this ordinance on first reading. It is now appropriate to consider this ordinance on second and final reading. (While the City Council also approved the associated Elm Street vacation on July 10th, the second reading of the vacation ordinance will be postponed until a complete final plat application is submitted, which will dedicate additional right-of-way for Elm Avenue.)

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 LYNDSIDE 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



EXHIBIT A

CASE NO. 2-12-004

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 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 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



EXHIBIT B

CASE NO. 7-12-004

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:

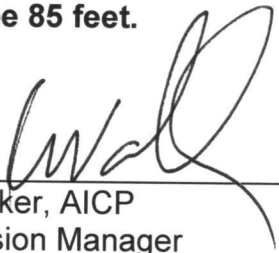
3. The rezoning of this property from 1F-2 and 2F Districts to an O-1 District in 1987 was an unsuccessful effort to stimulate development on this property. We have now been presented with a zone change request and a preliminary plat for affordable housing, which is in short supply today. Consequently, 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.

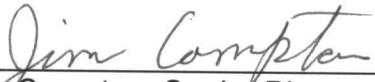
STAFF RECOMMENDATION:

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

Lots 1-18 block 8=Planned District

PRESENT ZONE: Office District 01 REQUESTED ZONE: 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 ☒ 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:

see preliminary plat
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.

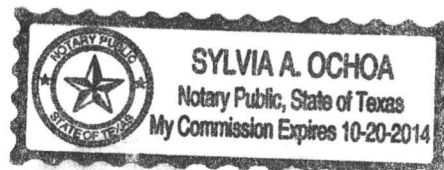
David Diaz

Authorized Agent (signature)

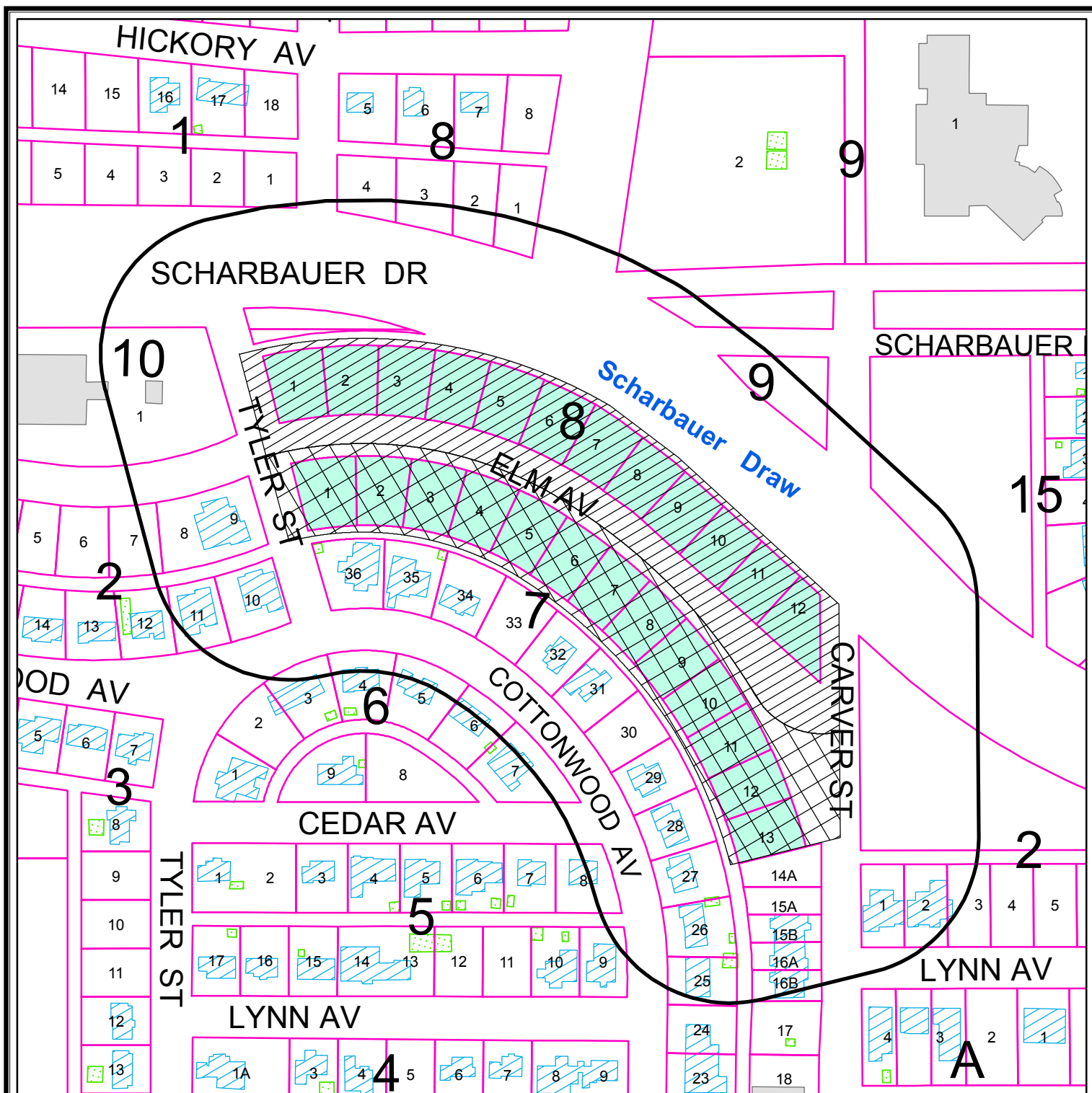
Subscribed and sworn to before me, this 8th day of February, 20 12, to certify which
witness my hand and seal of office.

Sylvia A. Ochoa
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: _____	Date: _____
Assigned: <u>SC</u>	
For: _____	On: _____



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



PROPERTY OWNER NOTIFICATION MAP

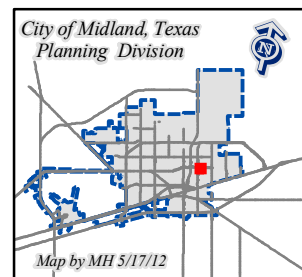
Z - 12 - 004

Scale: 1" = 200'

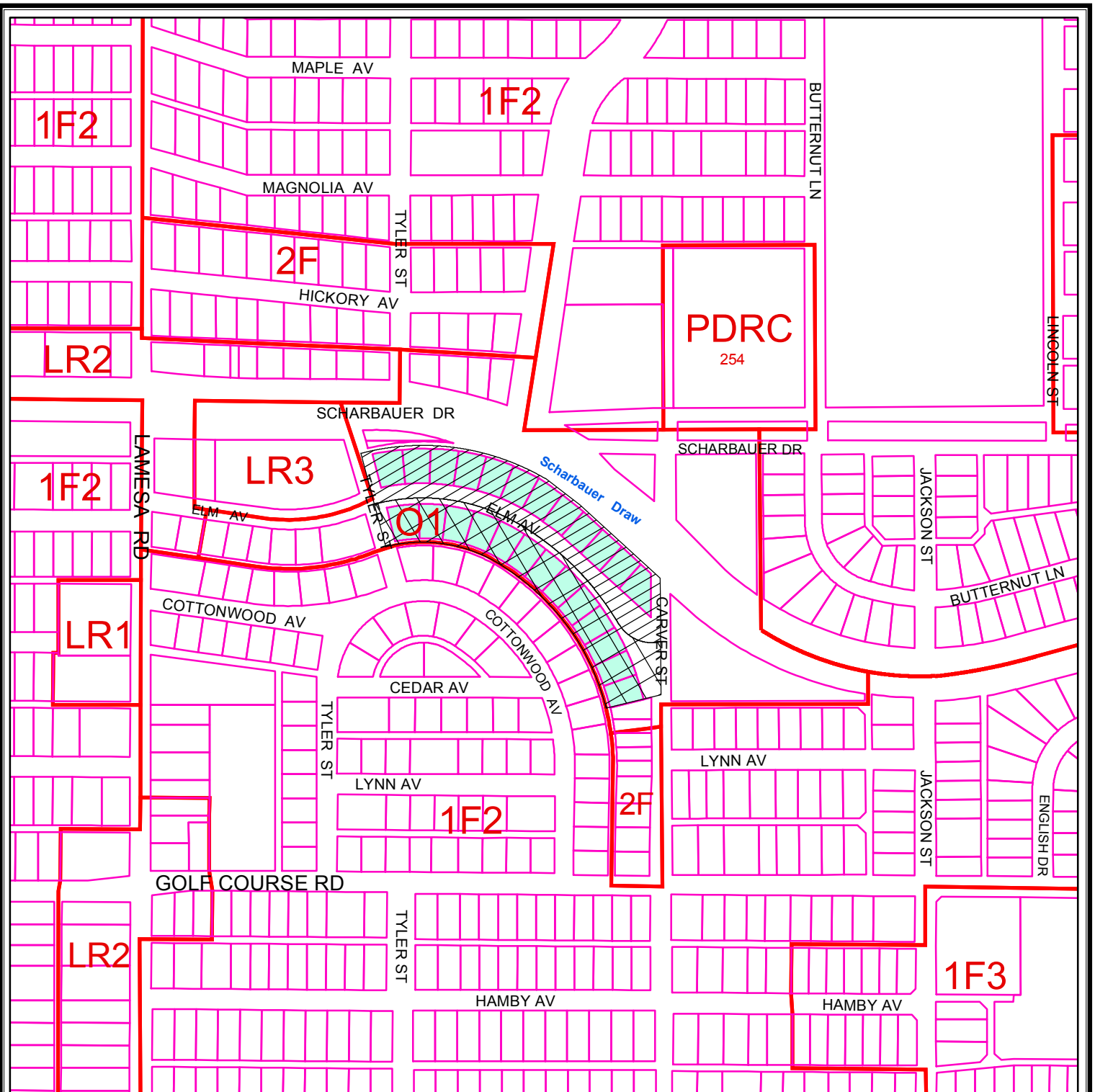
Consider a request for a zone change from O-1, Office District, to PD, Planned District for a Housing Development on Lots 1 thru 12, Block 8, and the to be vacated 0.3863-acre portion of the right-of-way of Elm Avenue, and to TH, Townhouse Dwelling District on Lots 1 thru 13, Block 7, and the to be vacated 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 1 thru 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 thru 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	O1, O2	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, IP1, IP2, IP3	INDUSTRIAL PARK
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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: 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 for second reading 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.



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 for second reading 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 to a point 230 feet south 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.
 - (c) "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.
 - (c) 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

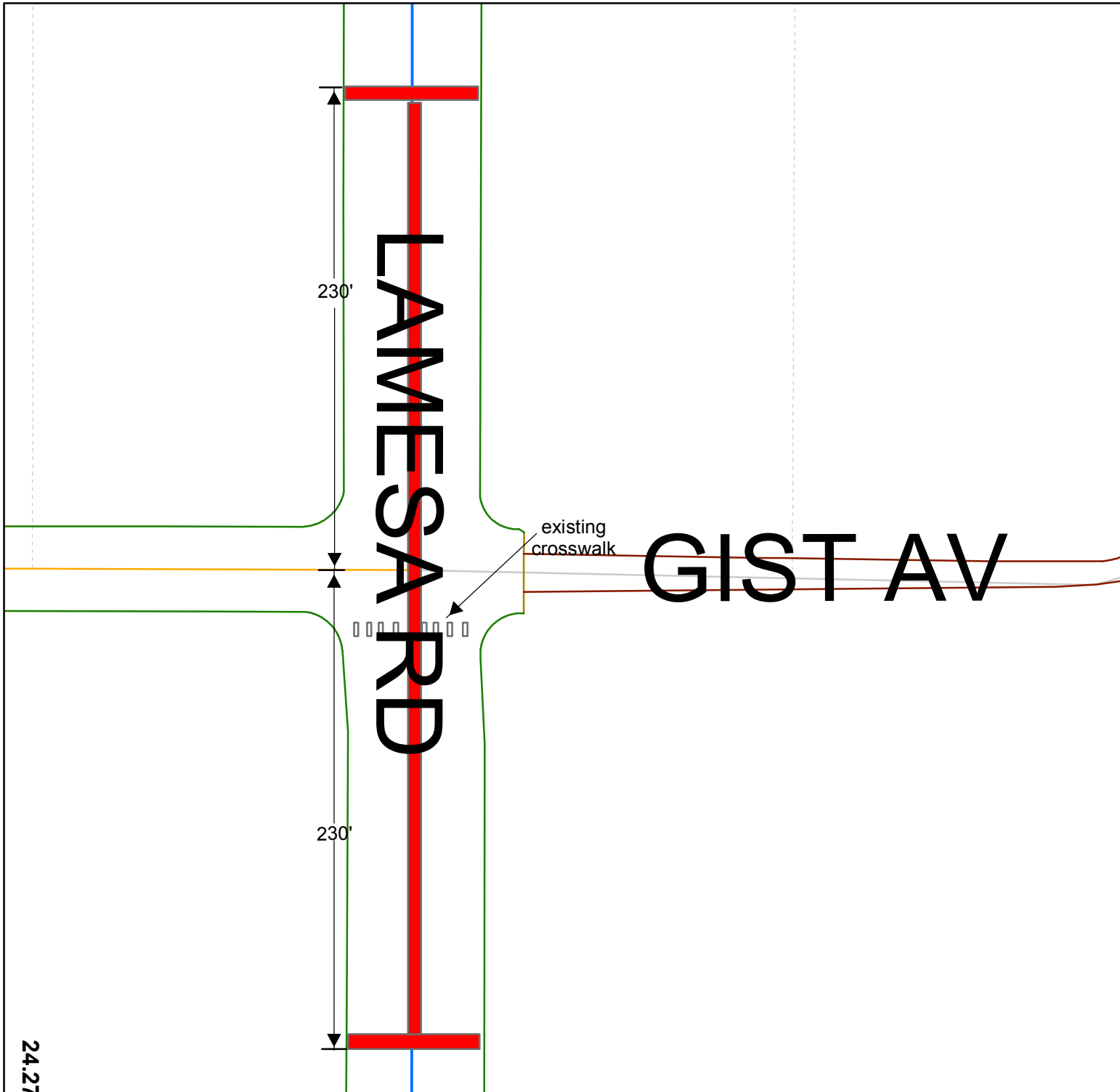
**TRANSPORTATION
DIVISION**

**Travis Elementary
School**

**Proposed 30 M.P.H.
School Zone
7:00 to 9:00 am
and
2:30 to 4:30 pm**



Map by TC 6/27/12





City Council Agenda

Approved for Agenda:
jnichols
City Manager's Office

MEETING DATE: 7/24/2012

TO: City Council / City Manager

FROM: Cameron Walker/Department Manager

SUBJECT: At approximately 10:30 A.M. hold a public hearing and consider an ordinance on a request by Basin Burger House, LLC. for a Specific Use Permit with Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant. (Generally located on the southwest corner of the intersection of W. Louisiana Avenue and N. Colorado Street. – District 2)

Purpose:

To hold a public hearing and consider an ordinance on a request by Basin Burger House, LLC. for a Specific Use Permit with Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant.

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 build a restaurant offering a full dining menu in addition to selling alcoholic beverages for on-premise consumption. The proposed area serving alcoholic beverages will be 3,200 square feet inside the restaurant with an additional 800 square feet in an outdoor dining area. Proposed hours of operation are Sundays through Thursdays 11:00 a.m. to 11:00 p.m. with Fridays & Saturdays 11:00 a.m. to midnight. Maximum occupancy is estimated by the applicant to be 175 persons. Staff concurs with the Planning

& Zoning Commission that the proposal fits in with on-going efforts to revitalize the underutilized properties downtown.

Attachments:

Application

Maps

Exhibit A - Floor Plan

Exhibit B - Site Plan

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF THE PROPERTY DESCRIBED AS THE NORTH 125 FEET OF THE EAST HALF OF BLOCK 29 AND THE ADJACENT VACATED 0.032-ACRE PORTION OF WEST LOUISIANA AVENUE RIGHT-OF-WAY, HOMESTEAD ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTHWEST CORNER OF THE INTERSECTION OF WEST LOUISIANA AVENUE AND NORTH COLORADO STREET), WHICH IS PRESENTLY ZONED C-1, CENTRAL AREA DISTRICT, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT WITH TERM FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID PERMIT SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

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 C-1, Central Area District, to-wit:

The north 125 feet of the east half of Block 29 and the adjacent vacated 0.032-acre portion of West Louisiana Avenue right-of-way, Homestead 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 the sale of all alcoholic beverages for on-premises consumption in a restaurant, together with the uses permitted in the present C-1, Central Area District.

SECTION TWO. That said property shall be subject to the following conditions and restrictions:

- A. That the alcohol serving area shall be a maximum of 4,000 square feet, and the maximum occupancy shall be 175 persons.
- B. That no outside entrance to a separate bar area shall be permitted.
- C. That all applicable provisions of the Building Code and Fire Code shall be met prior to business operations.
- D. That the days and hours of alcoholic beverage sales and consumption shall be limited to Sunday through Thursday, from 11:00 a.m. until 11:00 p.m., and Friday and Saturday, from 11:00 a.m. until 12:00 a.m. (Midnight), unless otherwise prohibited by law.
- E. That the sale and on-premise consumption of alcoholic beverages shall conform to all applicable laws established by the City of Midland and the State of Texas.

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:

James R. Nichols, Assistant City Attorney

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

PLANNING AND ZONING COMMISSION

July 2, 2012

CASE: S-12-006.

REQUEST: Hold a public hearing and consider a request for a Specific Use Permit with Term for on-premise consumption of all alcoholic beverages in a restaurant.

APPLICANT: Basin Burger House, LLC.

OWNER: Duke Edwards.

LEGAL DESCRIPTION: The north 125 feet of the east half of Block 29 and the adjacent vacated 0.032-acre portion of the right-of-way of W. Louisiana Avenue, Homestead Addition, City and County of Midland, Texas..

LOCATION: Generally located on the southwest corner of the intersection of W. Louisiana Avenue and N. Colorado Street.

CURRENT ZONING: C-1, Central Area District.

DETAILS OF REQUEST:

1. The applicant plans to develop this site with a restaurant offering a full dining menu in addition to selling alcoholic beverages for on-premise consumption. The proposed area serving alcoholic beverages will be 3,200 square feet inside the restaurant with an additional 800 square feet providing the same food and alcohol service in an outdoor dining area (Exhibit – A). Proposed hours of operation are Sundays through Thursdays 11:00 a.m. to 11:00 p.m. with Fridays & Saturdays 11:00 a.m. to midnight. Maximum occupancy is estimated by the applicant to be 175 persons.

SURROUNDING ZONING AND LAND USE:

2. The proposed building and most of the surrounding area is zoned C-1, Central Area District. Located on N. Colorado Street just south of W. Louisiana Avenue, this property has an old house on it that will be incorporated as a portion of the new restaurant. Just west of this is the Subway restaurant located on Big Spring Street. To the south is large parking lot, to the east is the police station, and to the north is an office building. To the immediate northeast is a vacant lot (proposed for development by this applicant as a separate project) in an O-2, Office District.

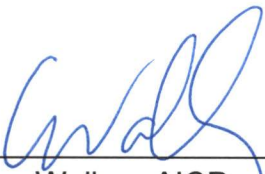
ANALYSIS:

3. The request is to sell alcoholic beverages at this downtown location, which would require developing this property for this proposed use. The proposed plan offers 14 on-site parking spaces (Exhibit – B); however, there are no minimum parking spaces required in the C-1, Central Area District. This property is currently in the process of being platted. City Council has also approved the vacation of a small portion of right-of-way associated with this proposed development. Staff concurs that the proposal fits in with on-going efforts to revitalize the downtown.

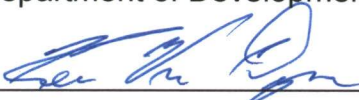
STAFF RECOMMENDATION:

Staff recommends approval of this request for a Specific Use Permit with Term for the sale and on-premise consumption of alcoholic beverages in a restaurant, subject to the following conditions:

- A. That the maximum area of the alcohol serving area shall be 4,000 square feet and the occupancy shall be 175 persons;
- B. All applicable Building and Fire Codes must be met prior to business operations;
- C. That the days and hours of alcoholic beverage sales and consumption shall not exceed the following: Sundays through Thursdays 11:00 a.m. to 11:00 p.m. with Fridays & Saturdays 11:00 a.m. to midnight;
- D. That the operation of the Lounge shall conform to all laws established by the City of Midland and the State of Texas.



Cameron Walker, AICP
Planning Division Manager
Department of Development Services



Ken Van Dyne, Senior Planner
Department of Development Services

Attachments:

Application
Exhibits A – Floor Plan
Exhibit B – Site Plan
Maps

Case Number: S-12-006

CITY OF MIDLAND
Planning Division

SPECIFIC USE PERMIT APPLICATION

BASIN Burger House, LLC 432-688-2650
Applicant Name Contact Phone #s

Box 51108 Midland, TX 79710
Address Zip Code

E-Mail address: Dukeofoil-tex@msn.com

ADD Alliance Energy Management, LLC 688-2650
Property Owner Name Contact Phone #s

Box 51108 Midland, TX 79710
Address Zip Code

E-Mail address: Aronmarquez@AOL.com

(Duke Edwards, Aron Marquez, JUAN ARRIOLA)
Operator (if different from Applicant or Property Owner) Contact Phone #s

Address Zip Code
Type of Permit: Restaurant w/ Alcoholic Beverages

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.)

607-609 N Colorado Midland TX 79701
S. 50' OF N 125' OF E/2 and N 75' OF
E/2, Block 29, Midland County

Current Zoning: Commercial C-1

Maximum Floor Area: 5,400 Max. Occupancy: Est. 175

Proposed hours and days of use or operation: 11 to 11 Daily
11 to 12 midnighly Fri & Sat

Reason for request: New Restaurant wishing to Sell
Alcoholic Beverages

Applicant's opinion as to why the request will not adversely affect the public safety, health, morals, general welfare, and convenience: Location is in Commercial Area
no homes are located within general area.

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: 4/5/12

Property Owner: _____

Date: 4/5/12

Duke Edwards

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

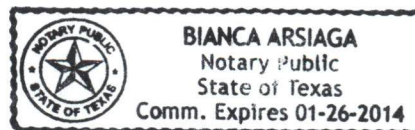
Duke Edwards who, being by me duly sworn, upon oath says: That (s)he is authorized by Basin Burger House, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney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

Subscribed and sworn to before me, this 5 day of April, 20 12, to certify which witness my hand and seal of office.

[Signature]
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY

Rec'd By: CW Date: 4/5/12
Assigned: _____
For: _____ On: _____



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

Planning and Zoning Commission
Minutes
July 02, 2012

S-12-006 - Hold a public hearing and consider a request by **Basin Burger House, LLC.** for a *Specific Use Permit with Term* for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant, on the north 125 feet of the east half of Block 29 and the adjacent vacated 0.032-acre portion of the right-of-way of W. Louisiana Avenue, Homestead Addition, City and County of Midland, Texas. (Generally located on the southwest corner of the intersection of W. Louisiana Avenue and N. Colorado Street.)

Aron Marquez, P.O. Box 51108, Midland, TX 79710, is partnering with Duke Edwards to open the Basin Burger House. The restaurant will be open for brunch on the weekends as well as open for lunch and dinner during the week. He stated the restaurant would serve different types of American fare and hopefully bring more people to the downtown area

Senior Planner Ken VanDyne gave an overview of the request for a Specific Use Permit with Term. He stated this was a full service restaurant that was zoned C-1 and has no minimum parking space requirements. Although the site plan indicates 14 on-site parking spaces in addition to on street parking within the area. The City Council has approved a vacation that will help accommodate on-site parking. Staff concurred the proposal's fit, which is within walking distance from offices in the area and would add to the downtown nightlife. Staff received one letter of concern. Staff recommended approval of the request for a Specific Use Permit with Term subject to conditions A through D.

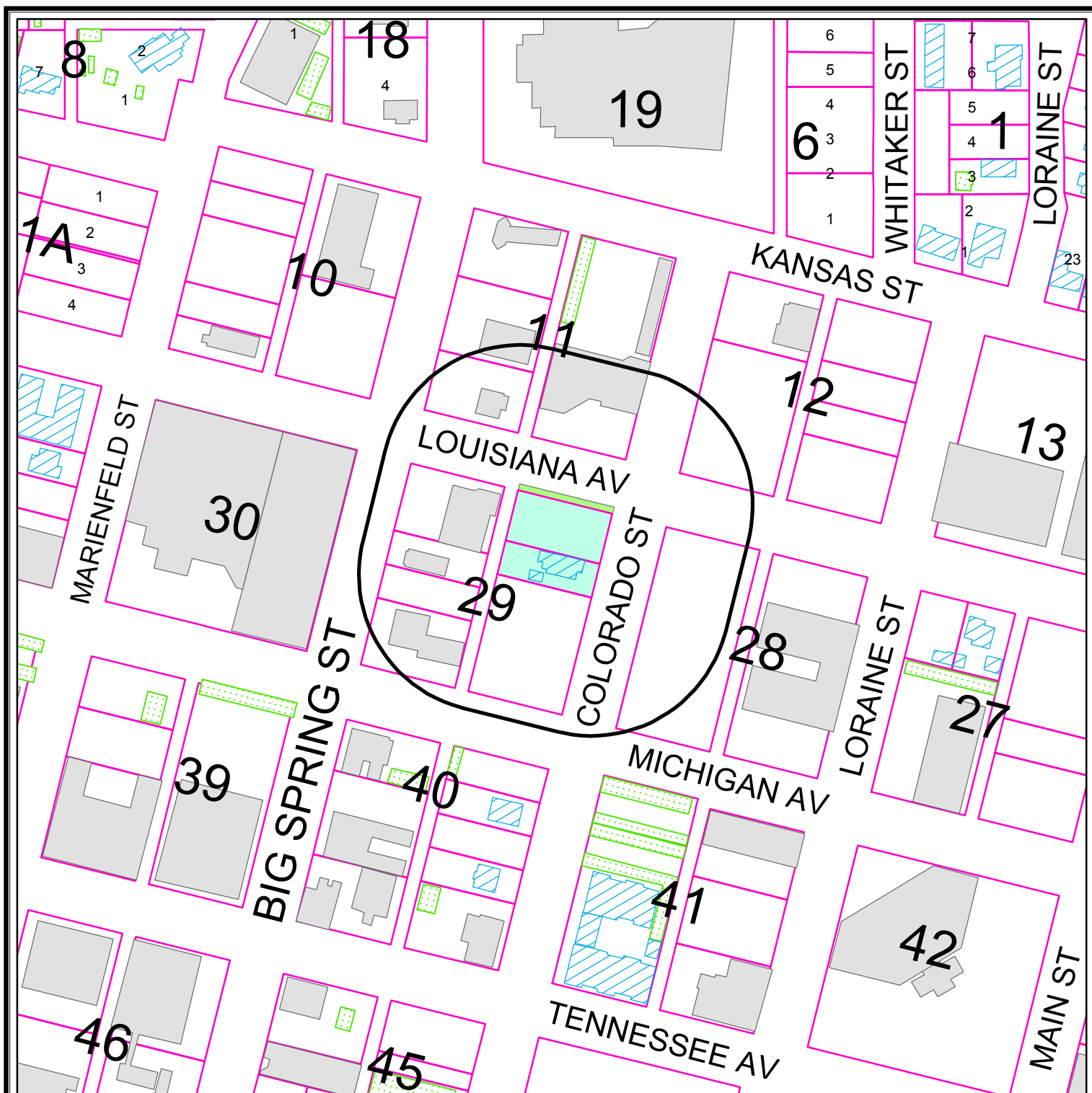
Commissioner Norris asked about the letter of concern. Mr. VanDyne stated the concern was from a business at 604 N. Big Spring. Domino's Pizza expressed concern with the late night alcohol sales.

Chairman Ferguson opened the public hearing.

Mr. Marquez stated that in regards to the Dominos concern his restaurant would not have a bar atmosphere and that he wanted to keep the liquor license hours until midnight due to football games. There was no intention of having a bar atmosphere and with the restaurant being located next door to the police station he was not expecting any problems.

With no one else wishing to speak in favor or in opposition of the request, Chairman Ferguson closed the public hearing.

A motion for approval was made by Commissioner Gatten subject to conditions A through D; seconded by Commissioner Lanning. The motion carried by the following vote: AYE: Ferguson, Gatten, Norris, Wolf, Lanning, Watkins and Wilton. NAY: None. ABSTAIN: None. ABSENT: York, Woodruff and Carrillo.



PROPERTY OWNER NOTIFICATION MAP

S - 12 - 006

Scale: 1" = 200'

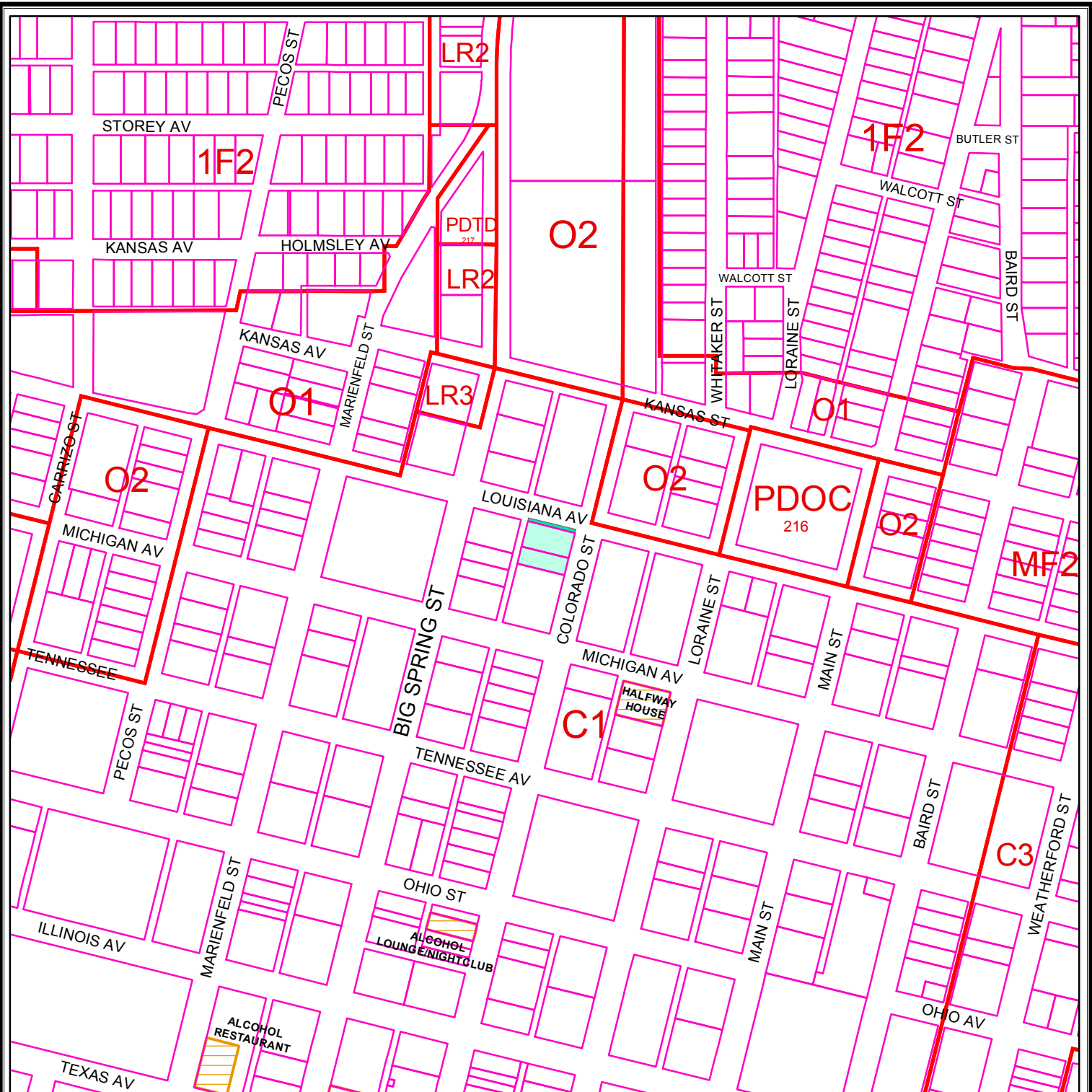
Consider a request for a Specific Use Permit With Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant, on the north 125 feet of the east half of Block 29 and the adjacent vacated 0.032-acre portion of the right-of-way of W. Louisiana Avenue, Homestead Addition, City and County of Midland, Texas.

LEGEND

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



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ZONING MAP

S - 12 - 006

Scale: 1" = 400'

Consider a request for a Specific Use Permit With Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant, on the north 125 feet of the east half of Block 29 and the adjacent vacated 0.032-acre portion of the right-of-way of W. Louisiana Avenue, Homestead Addition, City and County of Midland, Texas.

LEGEND

ZONING PARCELS SPECIFIC USE PERMITS

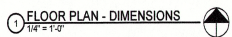
ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 02	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, JP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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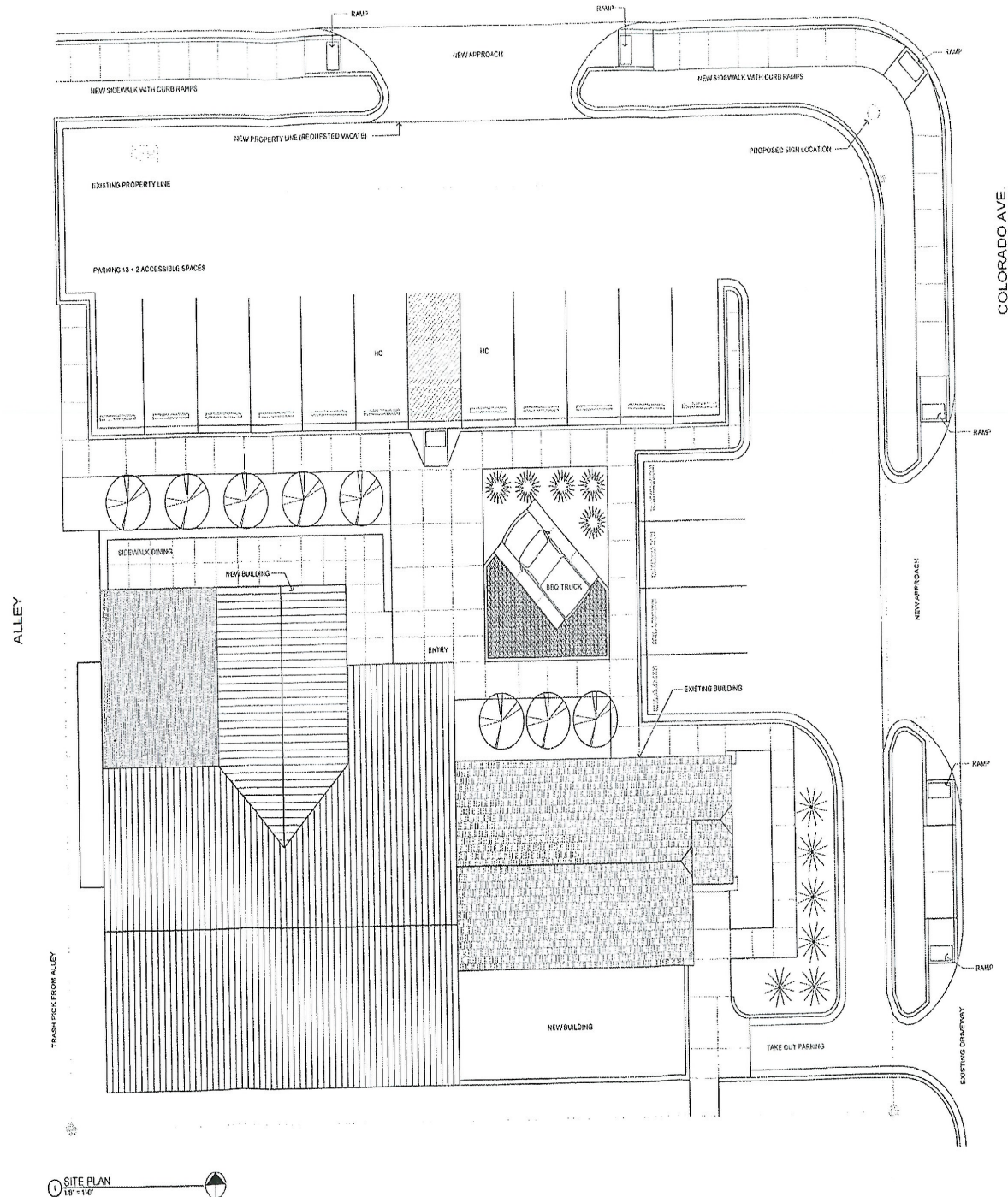
PROJECT: 1201
DATE: 6-1-12
DRAWN BY: ****
REVISION: ****



**607 COLORADO AVE.
MIDLAND, TEXAS 79701**

**TRAVIS
DURHAM ARCHITECT**
1306 G West Wall Street
Midland, Texas 79701
p 432.685.3997
f 432.685.0525

RECEIVED
JUN 21 2012
CITY OF MIDLAND
PLANNING DIVISION OFFICE



NOT FOR REGULATORY APPROVAL,
PERMITTING, OR CONSTRUCTION.

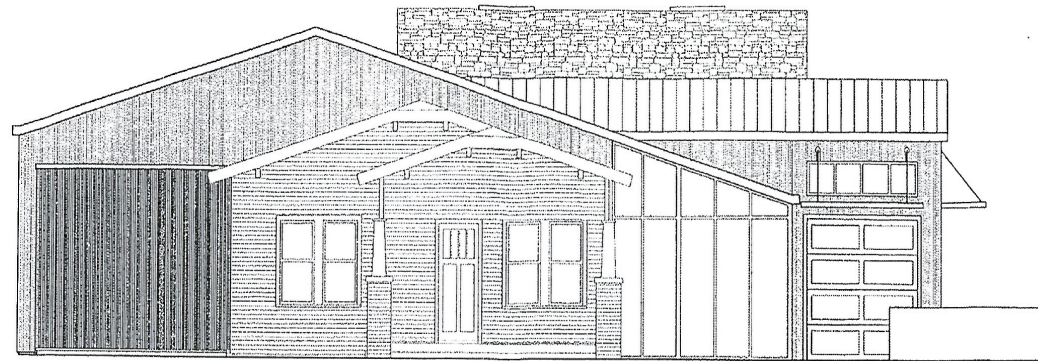
PROJECT : 1201
DATE: 4-3-12
DRAWN BY: ***
REVISION: ****

CITY OF MIDLAND
PLANNING DIVISION OFFICE

BASIN BURGER HOUSE
600 BLOCK OF COLORADO AVE.
MIDLAND, TEXAS 79701

**TRAVIS
DURHAM ARCHITECT**
1305 G West Wall Street
Midland, Texas 79701
p 432.685.3997
f 432.685.0525

CASE NO. S-12-006

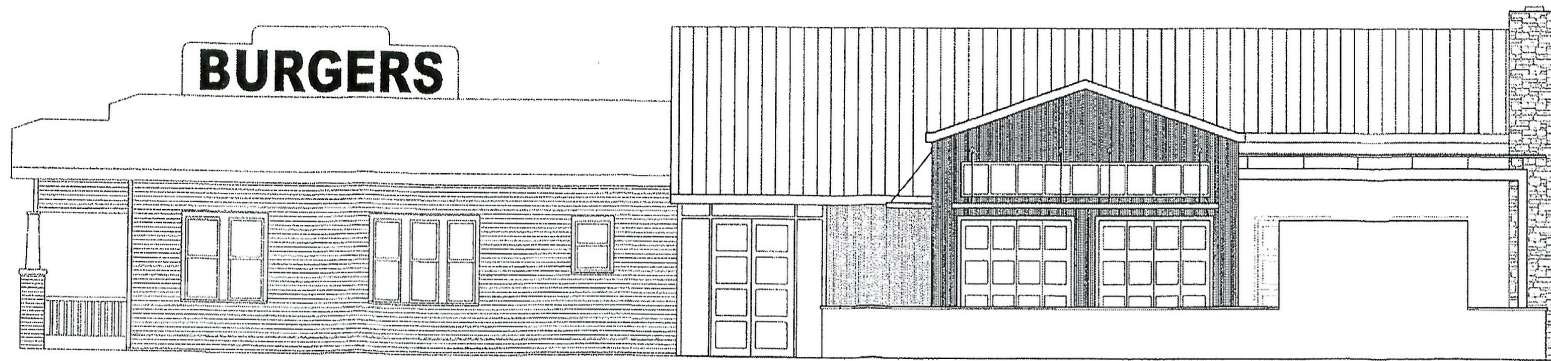


① ELEVATION LOOKING WEST
1/4" = 1'-0"



NOT FOR REGULATORY APPROVAL,
PERMITTING, OR CONSTRUCTION

PROJECT: 1201
DATE: 4-3-12
DRAWN BY: ****
REVISION: ****



① ELEVATION LOOKING SOUTH
1/4" = 1'-0"

BASIN BURGER HOUSE
600 BLOCK OF COLORADO AVE.
MIDLAND, TEXAS 79701

AVIS
RHAM ARCHITECT
1206 G West Wall Street
Midland, Texas 79701
P 432.685.3997
F 432.685.0525

CASE NO. S-12-006



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: July 24, 2012
TO: CITY COUNCIL/CITY MANAGER
FROM: Cameron Walker, Planning Division Manager
SUBJECT: S-12-007, David Alldredge SUP

Purpose:

Hold a public hearing at approximately 10:33 a.m. and consider an ordinance on a request by David Alldredge for a Specific Use Permit, With Term, for the sale and on-premise consumption of alcoholic beverages in a Restaurant.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

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

Discussion:

The City Council approved a specific use permit for alcohol sales in a restaurant on this same property in 2005. However, these permits are "with term" and the permit was allowed to expire. Mr. Alldredge is now requesting the same permit as was approved previously, except that the seating capacity is proposed to increase from 50 to 150 persons, and the maximum floor area would increase from 2,600 square feet to 3,000 square feet. The underlying zoning on this property is LR-3 District, and there are no residential neighborhoods in the area. There is sufficient parking for the additional seating capacity. The proposed days and hours of alcohol sales is identical to the 2005 permit. The Planning and Zoning Commission recommended approval of this request on July 2, 2012, and no public opposition has been received.

Attachments:

July 2, 2012 P&Z Staff Report
Proposed Ordinance and Site Plan

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF THE PROPERTY DESCRIBED AS LOT 1A, BLOCK 1, ALLDREDGE GARDENS ADDITION, SECTION 2, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF FAIRGROUNDS ROAD AT ITS INTERSECTION WITH WADLEY AVENUE), WHICH IS PRESENTLY ZONED LR-3, LOCAL RETAIL DISTRICT, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT WITH TERM FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID PERMIT SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

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-3, Local Retail District, to-wit:

Lot 1A, Block 1, Alldredge Gardens Addition, Section 2, City and County of Midland, Texas;

is hereby changed to permit said property to be used under a Specific Use Permit With Term for the sale of all alcoholic beverages for on-premises consumption in a restaurant, together

with the uses permitted in the present LR-3, Local Retail District.

SECTION TWO. That said property shall be subject to the following conditions and restrictions:

- A. That the location of the restaurant with alcoholic beverage sales on this lot shall conform to the conditions shown on the site plan, which is attached hereto and incorporated herein as Exhibit "A".
- B. That the maximum floor area where alcohol may be consumed shall not exceed 3,000 contiguous square feet, and the seating capacity of the restaurant shall not exceed 150 persons.
- C. That the days and hours of alcoholic beverage sales and consumption shall be limited to Monday through Saturday, from 9:00 a.m. until 12:00 a.m. (Midnight), and on Sunday, from 10:00 a.m. until 12:00 a.m. (Midnight), unless otherwise prohibited by law.
- D. That alcoholic beverage sales shall be prohibited unless the restaurant is open for business.
- E. That no sign or other advertising shall be allowed on the outside of the restaurant indicating alcoholic beverages are available.
- F. That the sale and on-premise consumption of alcoholic beverages shall conform to all applicable laws established by the City of Midland and the State of Texas.
- G. That the owner shall obtain a Certificate of Occupancy prior to the commencing alcohol sales to ensure that the conditions of this permit are satisfied.

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:

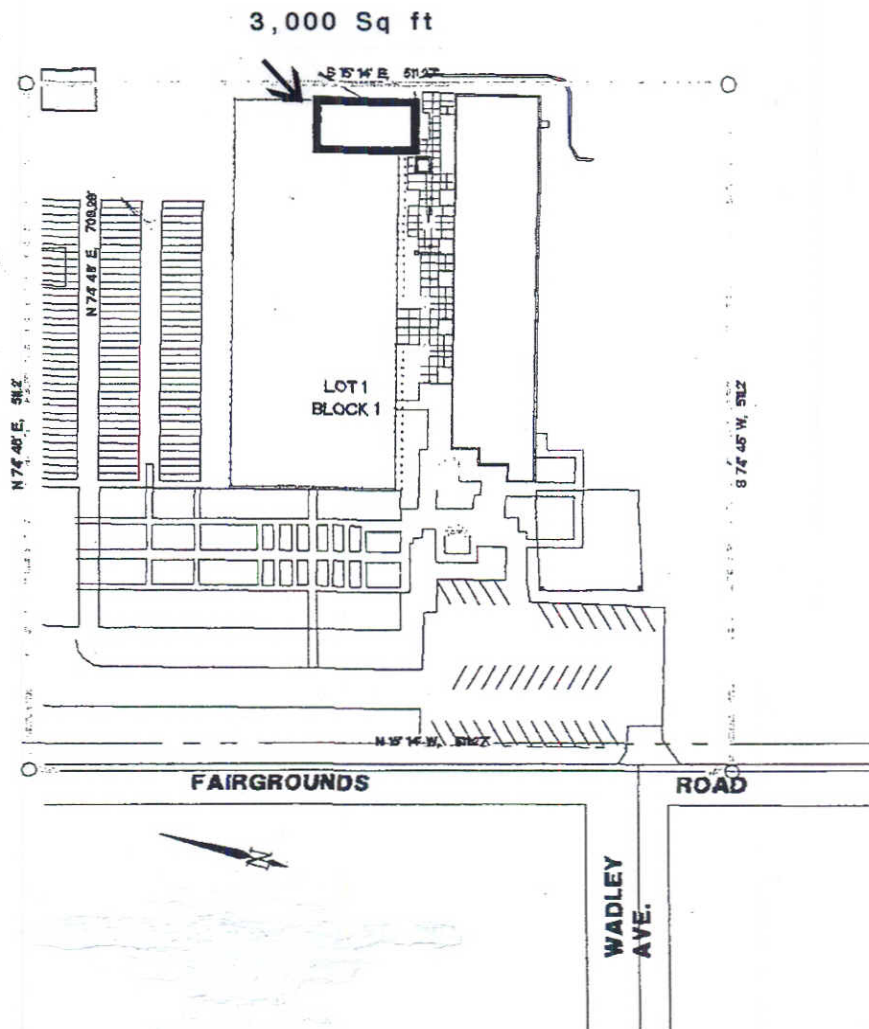
James R. Nichols, Assistant City Attorney

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

SITE PLAN OF PROPOSED RESTAURANT

LOT 1A, BLOCK 1, ALLDREDGE GARDENS ADDITION, SECTION 2
MIDLAND, TEXAS



SITE PLAN

Exhibit "A"

CASE NO. S-12-007

Case Number:

S-12-005

~~S-05-001~~

CITY OF MIDLAND
Planning Division

**APPLICATION FOR A SPECIFIC USE PERMIT WITH TERM
FOR THE SALE OF ALCOHOLIC BEVERAGES
FOR ON-PREMISE CONSUMPTION**

David Alldredge 432-682-4500
Applicant Name Phone/e-mail

3300 N. Fairgrounds Road 79705
Address Zip Code

David Alldredge 432-682-4500
Property Owner Name Phone/e-mail

3300 N. Fairgrounds Road 79705
Address Zip Code

Operator (if different from Applicant or Property Owner) Phone/e-mail

Address Zip Code

Type of Business: Restaurant
(Restaurant, Bar, Lounge, Nightclub, etc.)

Street address and Legal Description of property on which SUP is desired (complete Lot, Block, and Subdivision, name, or if unplatted, attach a Metes and Bounds description with surveyor's seal.)

See Attachment

Current Zoning: AE 3,000 LR-3

Max. Floor Area: ~~3500~~ 3,000 sq ft Seating Capacity: 150

building + 5.5 acres
Proposed hours and days of alcoholic beverage sales: _____

Reason for request: sale alcoholic beverages
at restaurant - Re-new application

REQUIRED SUBMITTALS

1. Application fee: \$300 ☒.

2. Site plan – 16 copies (FOLDED) ✓.
3. On a CD in .pdf and .jpg digital format ____.

SIGNATURES:

Applicant: _____ Date: _____

Property Owner: _____ 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.

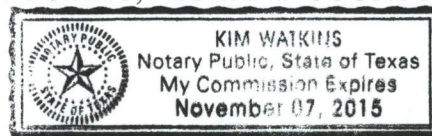
STATE of TEXAS
COUNTY OF MIDLAND

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

Justin Smith who, being by me duly sworn, upon oath says: That (s)he is authorized by David Aldredge, 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 20 day of April, 20 12, to certify which witness my hand and seal of office.

K Watkins
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS



FOR OFFICE USE ONLY	
Rec'd By: _____	Date: <u>4/23/12</u>
Assigned: <u>JC</u>	
For: <u>A+Z</u>	On: <u>7/2/12</u>

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

PLANNING AND ZONING COMMISSION

July 2, 2012

CASE: S-12-007.

REQUEST: Hold a public hearing and consider a request for a Specific Use Permit, With Term, for the sale and on-premise consumption of alcoholic beverages in a restaurant.

APPLICANT/OWNER: David Alldredge.

LEGAL DESCRIPTION: Lot 1A, Block 1, Alldredge Gardens Addition, Section 2, City and County of Midland, Texas.

LOCATION: East side of Fairgrounds Road at the intersection with Wadley Avenue.

CURRENT ZONING: LR-3, Local Retail District.

DETAILS OF REQUEST:

1. Mr. Alldredge owns and operates Alldredge Gardens, a landscaping nursery located at the intersection of Wadley Avenue and Fairgrounds Road. Part of his business includes a restaurant. In 2005, he was granted a Specific Use Permit, with term, for the sale and on-premise consumption of alcoholic in a restaurant. Since then, the permit was allowed to lapse. However, he is now requesting the same type of application. The maximum floor area is listed as 3,000 square feet, with a maximum seating capacity of 150 persons. Proposed days and hours of operation are Monday through Saturday, from 9:00 a.m. until 12:00 a.m., and on Sunday from 10:00 a.m. until 12:00 a.m.

SURROUNDING ZONING AND LAND USE:

2. Along the east side of Fairgrounds Road, there is relatively little development that is not related to Mr. Alldredge's nursery business. He has purchased much of the surrounding land that is undeveloped. Along the east side of Fairgrounds Road, Hogan Park Golf Course is located on the north side of Wadley Avenue, and Ranchland Hills is located on the south side.

ANALYSIS:

3. The LR-3 District permits a restaurant on this property, which is but a small element of this overall nursery development. There are no churches or schools within 300 feet of this property, and there is no adjoining residential development that might be impacted by this proposal. The proposed days and hours of operation fall within the general range that has been previously approved for alcohol sales in a restaurant. The maximum floor area of the restaurant would not exceed 3,000 square feet (please see the attached Exhibit A) and the seating capacity would not exceed 150 persons. There is ample for the existing nursery and the restaurant. The City Council has previously found this site to be suitable for a restaurant with alcohol sales. We believe that this request is reasonable.

STAFF RECOMMENDATION:

We recommend approval of this request for a Specific Use Permit for the sale and on-premises consumption of alcoholic beverages within a restaurant, subject to the following conditions:

- A. The restaurant and area of alcoholic beverage sales shall be contained within the area identified on Exhibit A.
- B. The maximum floor area where alcohol is consumed shall not exceed 3,000 square feet, and the seating capacity shall not exceed 150 persons.
- C. The days and hours of alcoholic beverage sales shall not exceed Monday through Saturday, from 9:00 a.m. until 12:00 a.m., and on Sundays from 10:00 a.m. until 12:00 a.m.
- D. Alcoholic beverage sales shall be prohibited unless the restaurant is open for business.
- E. No Sign or other advertising indicating the sale of alcoholic beverages shall be allowed outside of the restaurant proper.
- F. The sale and on-premises consumption of alcoholic beverages shall conform to all application regulations of the Federal, State and local government.
- G. The applicant shall obtain a Certificate of Occupancy to ensure that the conditions of this permit are satisfied.



Cameron Walker, Planning Division Manager
Department of Development Services



Jim Compton, Senior Planner
Department of Development Services

Attachments:

Application
Maps
Exhibits A

**Planning and Zoning Commission
Minutes
July 02, 2012**

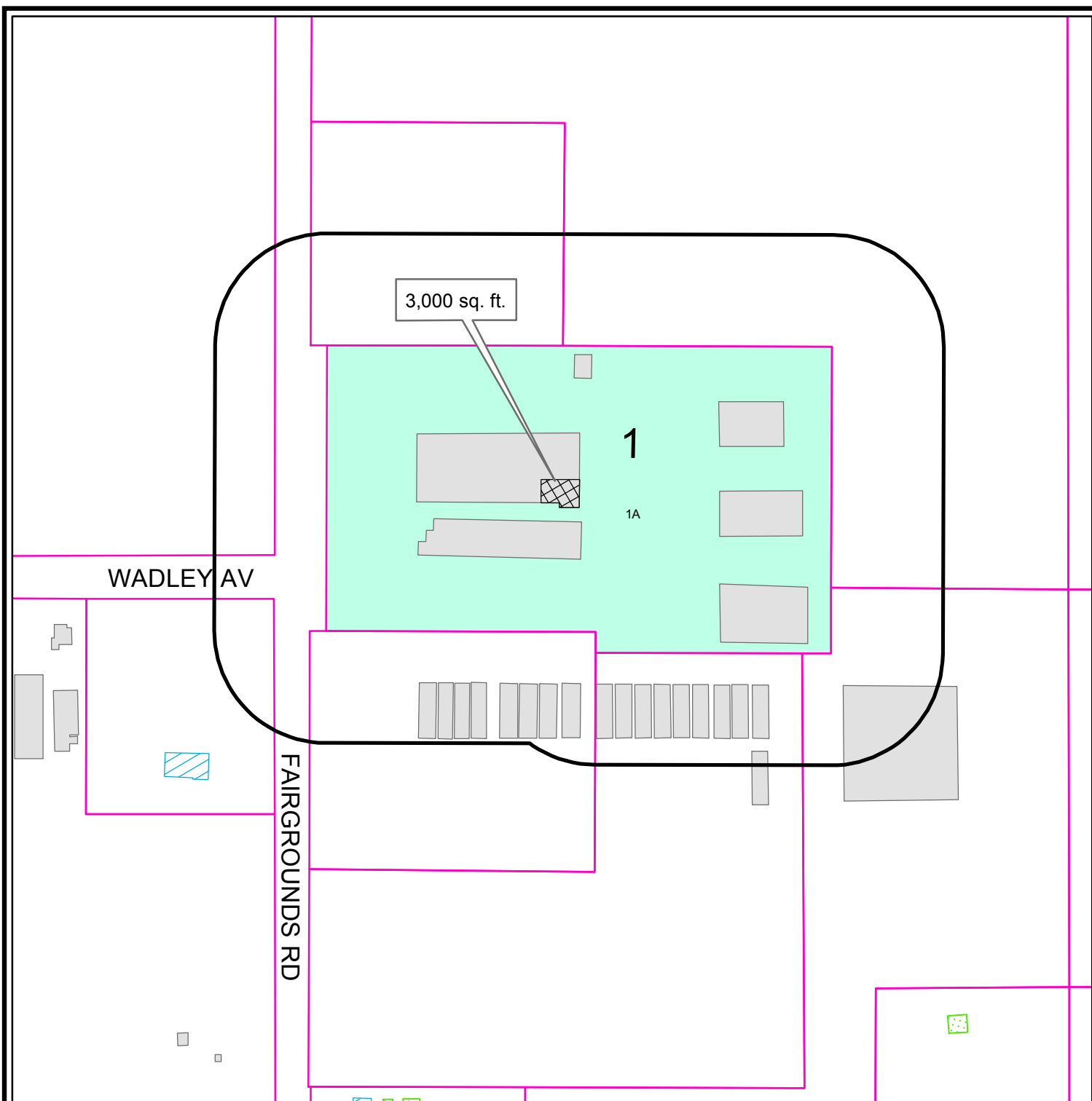
S-12-007 - Hold a public hearing and consider a request by **David Alldredge** for a *Specific Use Permit with Term* for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant, on 3,000 square feet portion of Lot 1A, Block 1, Alldredge Gardens Addition, Section 2, City and County of Midland, Texas. (Generally located on the east side of N. Fairgrounds Road at the east end of E. Wadley Avenue.)

With no applicant present, Planning Division Manager Cameron Walker gave an overview of the request for a Specific Use Permit with Term. Mr. Walker acknowledged that Mr. Alldredge did inform him he would not be able to attend the hearing. A Specific Use Permit with Term for on-premise consumption of alcohol was granted in 2005 but has since lapsed. Mr. Alldredge is requesting the same type of application. There were no letters of opposition and the site has previously been found suitable for a restaurant with alcohol sales, therefore, staff recommended approval for a renewal the Specific Use Permit with Term which previously existed in 2005 subject to conditions A through G.

Chairman Ferguson opened the public hearing.

With no one wishing to speak in favor or in opposition of the request, Chairman Ferguson closed the public hearing.

A motion for approval was made by Commissioner Gatten subject to conditions A through G; seconded by Commissioner Norris. The motion carried by the following vote: AYE: Ferguson, Gatten, Norris, Wolf, Lanning, Watkins and Wilton. NAY: None. ABSTAIN: None. ABSENT: York, Woodruff and Carrillo.



PROPERTY OWNER NOTIFICATION MAP

S - 12 - 007

Scale: 1" = 250'

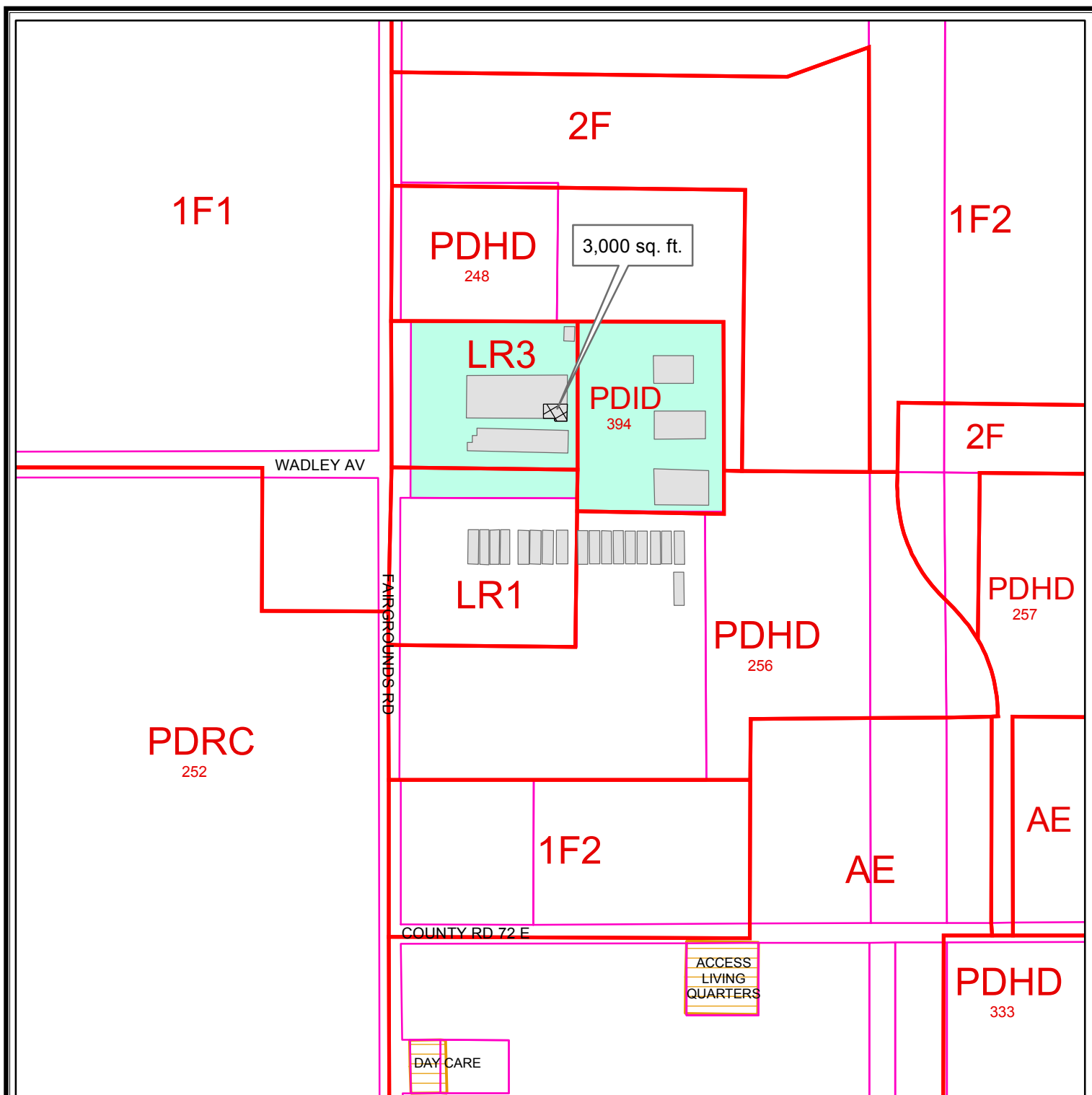
Consider a request for a Specific Use Permit With Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant, on 3,000 square foot portion of Lot 1A, Block 1 Alldredge Gardens Addition, Section 2, City and County of Midland, Texas.

LEGEND

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



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ZONING MAP

S - 12 - 007

Scale: 1" = 400'

Consider a request for a Specific Use Permit With Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant, on 3,000 square feet portion of Lot 1A, Block 1 Alldredge Gardens Addition, Section 2, 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: July 24, 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 city-initiated request to amend the City's thoroughfare plan from The City's Comprehensive Plan 2025, Chapter 4, The Thoroughfare Plan, "Plate 4-1".

Purpose:

Hold a public hearing at approximately 10:36 a.m. and consider an ordinance on a city-initiated request to amend the City's thoroughfare plan from The City's Comprehensive Plan 2025, Chapter 4, The Thoroughfare Plan, "Plate 4-1".

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

There is no cost to the City associated with approving this request.

Discussion:

This is a city-initiated effort to update the City's thoroughfare plan. In 2005 the City Council adopted the Master Plan 2025, which also included the Midland Thoroughfare Plan with Ordinance 8310. The adopted thoroughfare plan is shown in the attached map (Exhibit – B). While minor, periodic road network amendments have occurred, this city-initiated request is to update and create a more encompassing long-range Midland Thoroughfare Plan. The city's rapid growth through annexation, development and population increases necessarily requires the need to evaluate the current road network in light of projected development trends.

These proposed amendments are the result of both observed traffic and development trends within the City of Midland and, at a broader scale, the incorporation of the results of the draft State Highway 191 Corridor Management Plan. That study, initiated by Midland Odessa Transportation Organization (MOTOR) MPO, identified existing and proposed transportation corridors over a large study area (Exhibit – C). Staff recommends approval of this request to amend the City's Thoroughfare Plan as it is intended that the amended thoroughfare plan (Exhibit – A) be implemented immediately for current right-of-way development and identifying right-of-way for future development.

Attachments:

Proposed Amended Thoroughfare Plan, New "Plate 4-1" – Exhibit A
Plate 4-1 (to be replaced) from the Current 2025 Comprehensive Plan – Exhibit B
State Highway 191 Corridor Subject Area Thoroughfare Plan Map – Exhibit C
Proposed Ordinance

ORDINANCE NO.

**AN ORDINANCE OF THE CITY OF MIDLAND,
TEXAS, AMENDING THE MIDLAND
COMPREHENSIVE PLAN 2025 AS AUTHORIZED BY
CHAPTER 213 OF THE TEXAS LOCAL
GOVERNMENT CODE; SAID COMPREHENSIVE
PLAN ILLUSTRATING THE FUTURE
DEVELOPMENT OF THE CITY OF MIDLAND;
PROVIDING A SAVINGS AND SEVERABILITY
CLAUSE; AND PROVIDING AN EFFECTIVE DATE**

WHEREAS, the City of Midland recognizes the need for a comprehensive plan for the long-range development of the City; and

WHEREAS, the City Council previously adopted the Midland Comprehensive Plan 2025 to promote the sound development of the City of Midland and to promote the public health, safety and welfare; and

WHEREAS, Chapter 213 of the Texas Local Government Code provides for the adoption and amendment of municipal comprehensive plans; and

WHEREAS, on July 24, 2012, as advertised, a public hearing was held in the Council Chambers at which the public was given the opportunity to give testimony and present written evidence, all pursuant to law, regarding a City-initiated proposal to amend the Midland Comprehensive Plan 2025; and

WHEREAS, notice of said public hearing was published in a newspaper having general circulation in the City of Midland, Texas, on July 7, 2012; and

WHEREAS, the City Council finds it to be in the public interest to amend the Midland Comprehensive Plan 2025;

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

SECTION ONE. That the Midland Comprehensive Plan 2025 is hereby amended by deleting the current “Plate 4-1” referenced in Chapter 4, “The Thoroughfare Plan”, of the Midland Comprehensive Plan 2025 and replacing it with “Plate 4-1” which is attached hereto and incorporated herein for all purposes as Exhibit “A”.

SECTION TWO. That the Midland Comprehensive Plan 2025, as amended herein, is hereby adopted as the official policy of the City of Midland.

SECTION THREE. As required by Section 213.005 of the Texas Local Government Code, the City Manager shall make certain that the Midland Comprehensive Plan 2025 shall contain the following clearly visible statement: "A Comprehensive Plan shall not constitute zoning regulations or establish zoning district boundaries."

SECTION FOUR. Should any paragraph, sentence, subdivision, clause, phrase, or section of this ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this ordinance as a whole or any part or provision thereof, other than the part so declared to be invalid, illegal or unconstitutional.

SECTION FIVE. This ordinance shall take effect immediately from and after its passage and the publication of the caption, as the law in such cases provides.

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:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

PLANNING AND ZONING COMMISSION

June 4, 2012

CASE: M-12-006, Amending Thoroughfare Plan.

REQUEST: Hold a public hearing and consider a city-initiated request to amend the City's thoroughfare plan from The City's Comprehensive Plan 2025, Chapter 4, The Thoroughfare Plan, "Plate 4-1".

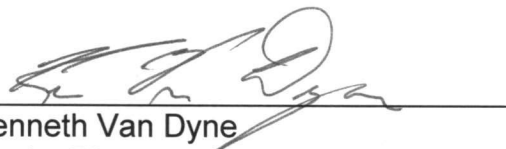
DETAILS OF REQUEST:

1. In 2005 the City Council adopted the *Master Plan 2025*, which also included the Midland Thoroughfare Plan with Ordinance 8310. The adopted thoroughfare plan is shown in the attached map (Exhibit – A). While minor, periodic road network amendments have occurred, this city-initiated request is to update and create a more encompassing long-range Midland Thoroughfare Plan. The city's rapid growth through annexation, development and population increases necessarily require the need to evaluate the current road network in light of projected development trends.
2. The proposed amendments are the result observed traffic and development patterns within the City of Midland and, at a broader scale, the incorporation of the results of the draft State Highway 191 Corridor Management Plan. This study, initiated by Midland Odessa Transportation Organization (MOTOR) MPO, identified, existing and proposed transportation corridors over a large study area (Exhibit – B).
3. Staff had prepared an amended, draft version of the Midland Thoroughfare Plan map to the Planning and Zoning Commission on April 30, 2012 for their review. At this time staff would like to provide a final version for consideration and vote to amend the City's Thoroughfare Plan (Exhibit – C).
4. Once approved by the Planning & Zoning Commission, an ordinance will need to be considered by the City Council and the amended thoroughfare plan adopted. It is intended that the amended thoroughfare plan be implemented immediately for current right-of-way development and identifying right-of-way for future development.

STAFF RECOMMENDATION:

Staff recommends approval of this request to to amend the City's Thoroughfare Plan.



Cameron Walker, AICP
Planning Division Manager
Department of Development Services

Kenneth Van Dyne
Senior Planner
Department of Development Services

Attachments:

Plate 4-1 for the Current 2025 Comprehensive Plan – Exhibit A
State Highway 191 Corridor Subject Area Thoroughfare Plan Map – Exhibit B
Proposed Amended Thoroughfare Plan – Exhibit C



City Council Agenda

Approved for Agenda:
jnichols
City Manager's Office

MEETING DATE: 7/24/2012

TO: City Council / City Manager

FROM: Steve Thorpe, Acting Assistant Development Services
Director/Building Official

SUBJECT: Amend City of Midland Code of Ordinances 8-6-18 (A) 5.

Purpose:

To add language to this code section that clearly determines what "other bulky heavy materials" are.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

None

Discussion:

This ordinance section is typically used by Code Enforcement regarding prohibited accumulations of materials on a property. The term "debris" in this section includes brick, broken concrete, lumber, construction materials, cinders, plaster, automobile frames, dead trees, demolished or partly demolished structures or building structures or building destroyed by fire and other bulky heavy material. The Code Administration Division would like to add the following list of materials and items in place of "other bulky heavy materials". The list includes: discarded wood, automobile parts, sofas, coffee/end tables, trunks, televisions, mattress', box-springs, head boards, bed frames, cabinets, lamps, washers/dryers, dish washers, refrigerators, dining tables, sinks, toilets, bath-tubs, doors, heating and air-conditioning units, fans, heaters, desks, barrels, metal, pipe, carpet, drywall, ducts, fixtures, shingles, roofing products/material, insulation, plumbing fixtures, doors, vacuum cleaners, sewing machines, entertainment centers, book shelves, dresser, microwaves, love seats, rugs, exercise equipment, weights, treadmills, pool tables, non-operating lawn mowers, lawn equipment, water heaters, office equipment, tires, tanks, trash bags, swimming pools, swimming pool liners, discarded swimming pool accessories, wood/chain fence panels, wood/metal fence posts, cardboard boxes, water coolers, non-operating bicycles/bicycle parts, discarded/broken toys, stoves, ovens, non-operating motorcycles/motorcycle parts, dismantled swing sets, discarded/dismantled yard/patio furniture, clothing, limbs, Christmas trees, plastic waste/containers/products, paint cans/paint products, discarded pallets, discarded brick/stone/concrete block, tin and aluminum cans, batteries, oil, electronic equipment/waste (televisions, computers, monitors, keyboards, cell phones, VCR players, DVD players, stereos, etc.), discarded glass, mirrors, windows curtains/valances , shoes, kitchen/bath hardware, books/magazines, electrical cords, discarded planting pots, discarded/non-working bar-b-q pits/equipment, daybeds, cabinets, bookcases, media centers, benches, dinnerware, bedding material, cribs, dressers, nightstands, armoires, water softener tanks and accessories, discarded landscaping implements, dismantled/partially dismantled trailers

ORDINANCE NO.

AN ORDINANCE AMENDING TITLE VIII, "FOOD ESTABLISHMENTS, HEALTH AND GENERAL SANITATION", CHAPTER 6, "GARBAGE, TRASH AND RUBBISH," SECTION 18, "ACCUMULATION OF STAGNANT WATER, FILTH, WEEDS, BRUSH, AND DEBRIS ON LOTS" SUBSECTION A "PROHIBITED ACCUMULATIONS" PARAGRAPH 5 OF THE MIDLAND CITY CODE SO AS TO MODIFY THE TERM "DEBRIS" AND ADDING A NEW PARAGRAPH 6 SO AS TO CREATE PRESUMPTIONS AS TO OWNERSHIP, POSSESSION AND OCCUPYING; AND AMENDING TITLE VIII, "FOOD ESTABLISHMENTS, HEALTH AND GENERAL SANITATION", CHAPTER 6, "GARBAGE, TRASH AND RUBBISH," SECTION 18, "ACCUMULATION OF STAGNANT WATER, FILTH, WEEDS, BRUSH, AND DEBRIS ON LOTS" SUBSECTION "B" "AFFIRMATIVE DEFENSES" SO AS TO ESTABLISH AFFIRMATIVE DEFENSES TO PROSECUTION AND SUBSECTION "C" "PENALTY" OF THE CITY CODE OF MIDLAND, TEXAS, CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF FIVE HUNDRED DOLLARS (\$500.00); AND ORDERING PUBLICATION

WHEREAS, the City Council of the City of Midland, Texas, finds it to be in the public interest to amend Section 18, "Accumulation of Stagnant Water, Filth, Weeds, Brush, and Debris on Lots" Chapter 6, "Garbage, Trash and Rubbish" of Title VIII, "Food Establishment, Health and General Sanitation" of the Midland City Code;

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

SECTION ONE. That Title VIII, "Food Establishments, Health and General Sanitation", Chapter 6, "Garbage, Trash and Rubbish", Section 18, "Accumulation of Stagnant Water, Filth, Weeds, Brush, and Debris on Lots", Subsection A, "Prohibited Accumulations", Paragraph 5, and Paragraph 6, of the City Code of Midland, Texas, shall hereafter read as follows:

5. It shall be unlawful for any person or entity who shall own, occupy, or possess any lot, lots, or premises in the City to permit or allow debris to accumulate or

remain thereon. For purposes of this Subsection the term "debris" shall include such material as brick, broken concrete, cinder blocks, lumber, construction materials, cinders, plaster, automobile frames, dead trees, demolished or partly demolished structures or buildings, structures or buildings destroyed by fire, and other bulky heavy material, automobile parts, furniture, trunks, televisions, mattresses, box-springs, appliances, sinks, toilets, bath-tubs, doors, heating and air-conditioning units, fans, heaters, barrels, metal, pipe, carpet, drywall, ducts, roofing products/material, insulation, plumbing fixtures, vacuum cleaners, sewing machines, rugs, exercise equipment, weights, lawn mowers, lawn equipment, water heaters, office equipment, tires, tanks, trash bags, portable swimming pools and accessories, wood/chain fence panels, wood/metal fence posts, cardboard boxes, water coolers, bicycles/bicycle parts, toys, motorcycles/motorcycle parts, swing sets, clothing, tree limbs, Christmas trees, plastic waste/containers/products, paint cans/paint products, discarded pallets, discarded brick/stone/concrete block, tin and aluminum cans, batteries, oil, electronic equipment, glass, mirrors, windows curtains/valances, books/magazines, electrical cords, planting containers, bar-b-q pits/equipment, dinnerware, bedding material, water softener tanks and accessories, landscaping implements, and trailers.

6. For purposes of this Section, it shall be presumed that the following individual or entity owns, occupies or possesses the property, lot, lots or premises:
 1. The individual or entity whose name is on the City's water bill for the lot, lots, property or premises in question;
 2. The individual or entity who is paying the taxes or owns the property according to records of the Midland Central Appraisal District;
 3. The individual or entity who is paying the taxes or owns the property according to records of Midland County, Texas;

4. An individual who is physically present on the lot, lots, property or premises in question; or
5. An individual who is physically present in any structure on the lot, lots, premises or the property in question.

SECTION TWO. That Title VIII, "Food Establishments, Health and General Sanitation", Chapter 6, "Garbage, Trash and Rubbish", Section 18, "Accumulation of Stagnant Water, Filth, Weeds, Brush, and Debris on Lots", Subsection B, "Affirmative Defenses" of the City Code of Midland, Texas, shall hereafter read as follows:

(B) AFFIRMATIVE DEFENSES:

It is an affirmative defense to prosecution if any of the following apply:

1. The weeds or tall grass are less than eighteen inches (18") tall, and the brush is less than two feet (2') tall.
2. The weeds, tall grass, or brush are located on a City Council approved wildlife sanctuary or on land that is zoned Agriculture-Estate as defined by Section 11-1-6 of this Code and is devoted to livestock grazing.
3. The tall grass is located on land in an Agriculture-Estate zoned district as defined by Section 11-1-6 of this Code and the grass is being cultivated for agricultural purposes.
4. The brush has a central trunk with a girth of ten inches (10") or more at its base.
5. The weeds, tall grass, and brush are located more than one hundred seventy-five feet (175') from any property line of a public park or of any tract of land under unitary ownership which is developed with growing crops or with one or more buildings or structures, and from any building, structure or any improvement to the realty, and more than thirty-five feet (35') from the curb of any street or, if there is no curb, the edge of the pavement or traveled portion of the street.

6. The weeds, tall grass, and brush are located on an undeveloped area and are more than thirty-five (35') from the curb of any street or, if there is no curb, the edge of the pavement or traveled portion of the street. "Undeveloped area" means any unplatted land, which may or may not be under unitary ownership, which is in an undisturbed native biome for this part of the State of Texas, which is not less than seven and five-tenths (7.5) acres in area and has continuous width of at least three hundred feet (300'), and which has no streets, roads, commercial or residential improvements, or crops located thereon.
7. The weeds, tall grass, and brush are located on public property owned by the State of Texas, or any of its subdivisions, and such governmental entity has determined that it is in the public interest that such property should remain in its natural, undisturbed condition, and the vegetation on such property is in its native biome, and the condition of such property does not present a danger or hazard to abutting properties.
8. The debris is shielded from view by a screening fence or structure from any alley, street, public property or other private property with a different owner or occupant, and does not constitute a fire or health hazard or a violation of the zoning ordinance. Automotive service garages, wrecking and salvage yards shall be subject to the requirements of sections relating to those businesses as set forth in the City Code.
9. The construction materials are stored on residential property during a period of active construction or repair as evidenced by a current building-permit where applicable.
10. The person is actively engaged in a legally permissible garage or estate sale.

SECTION THREE. That Title VIII, "Food Establishments, Health and General Sanitation", Chapter 6, "Garbage, Trash and Rubbish", Section 18, "Accumulation of

Stagnant Water, Filth, Weeds, Brush, and Debris on Lots”, Subsection C, “Penalty” of the City Code of Midland, Texas, shall hereafter read as follows:

(C) PENALTY:

Any person, corporation, or association who shall violate any of the provisions of this Section shall be guilty of a misdemeanor, and upon conviction shall be fined in a sum not to exceed five hundred dollars (\$500.00). Each day on which the violation shall exist shall constitute a separate and distinct offense. A culpable mental state is not required. A culpable mental state is not required to prove a criminal offense under this Chapter. It is hereby declared, that for all offenses under this Chapter, that the culpable mental state required by Section 6.02 of the Texas Penal Code is specifically negated and clearly dispensed with.

SECTION FOUR. The provisions of any ordinance which are 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 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.

SECTION SEVEN. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding five hundred dollars (\$500.00) pursuant to State law. The definition of all offenses under this ordinance does not require a

culpable mental state. The definition of all offenses under this ordinance plainly dispenses with any mental element as authorized by Section 6.02 of the Texas Penal Code. It is hereby declared, that for all offenses under this ordinance, that the culpable mental state required by Section 6.02 of the Texas Penal Code is specifically negated and clearly dispensed with.

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, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: July 24, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Consider an ordinance approving the expenditure of \$50,000 of TIRZ funds for the purpose of promoting Downtown events.

Purpose:

Consider an ordinance approving the expenditure of \$50,000 of TIRZ funds for the purpose of promoting Downtown events.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

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

Discussion:

On June 6, 2012, the Board of the Midland Tax Increment Reinvestment Zone No. 1 (TIRZ) voted to contribute \$50,000 of TIRZ funds to participate in a partnership with the City of Midland (Hotel/Motel Tax Fund), the Midland Development Corporation and the Downtown Midland Management District. The partnership would provide grant funding under the direction of the *Live Downtown Midland Event Grant Program*, which will be administered by the Downtown Midland Management District. The funding will be used to enhance community pride and image, to generate positive media exposure and visibility, to generate positive economic impact, to promote tourism and to demonstrate support for local businesses and cultural organizations.

ORDINANCE NO.

AN ORDINANCE APPROVING A PROMOTIONAL AGREEMENT BETWEEN THE MIDLAND TAX INCREMENT REINVESTMENT ZONE NO. 1 AND THE DOWNTOWN MIDLAND MANAGEMENT DISTRICT; AND APPROVING A GRANT OF \$50,000.00 FROM THE MIDLAND TAX INCREMENT REINVESTMENT ZONE NO. 1 TO THE DOWNTOWN MIDLAND MANAGEMENT DISTRICT PURSUANT TO THE PROMOTIONAL AGREEMENT

WHEREAS, the Midland Tax Increment Reinvestment Zone No. 1 (the “TIRZ”) authorized the negotiation and execution of a promotional agreement with the Downtown Midland Management District (the “DMMD”) whereby the DMMD will promote, foster and advertise the City’s Tax Increment Reinvestment Zone (the “Zone”) as a destination for tourism and conventions in exchange for a \$50,000.00 grant from the TIRZ; and

WHEREAS, Chapter 311 of the Texas Tax Code authorizes the TIRZ to enter into such agreements; and

WHEREAS, the City Council finds it to be in the public interest to approve a promotional agreement between the TIRZ and the DMMD;

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

SECTION ONE. That the recitals stated above are hereby adopted and approved.

SECTION TWO. That the promotional agreement between the TIRZ and the DMMD, being attached hereto as Exhibit “A” and incorporated herein for all legal purposes, is hereby approved.

SECTION THREE. That the City Treasurer is hereby authorized and directed to pay the Downtown Midland Management District, on behalf of the Midland Tax Increment Reinvestment Zone No. 1, in accordance with the terms of said promotional agreement, from funds available in the Midland Development Corporation Promotions Project (8705).

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.

ATTEST:

W. Wesley Perry, Mayor

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

AGREEMENT

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

THIS AGREEMENT, made and effective this ____ day of ___, 2012, between the MIDLAND TAX INCREMENT REINVESTMENT ZONE NO. 1, hereinafter called “TIRZ”, and the DOWNTOWN MIDLAND MANAGEMENT DISTRICT, hereinafter called “District”.

W I T N E S S E T H:

WHEREAS, within downtown Midland is a tax increment reinvestment zone, created pursuant to Chapter 311 of the Texas Tax Code, and designated as Midland Tax Increment Reinvestment Zone No. 1 (the “Zone”); and

WHEREAS, it is the plan of the TIRZ to strengthen key geographical assets within the Zone, to transition underutilized or vacant properties, and to enhance the Zone as a multi-dimensional destination; and

WHEREAS, the District has for numerous years promoted, fostered and otherwise advertised the City of Midland as a destination for tourism and conventions, and as a result thereof has obtained certain knowledge and expertise in this particular area of endeavor; and

WHEREAS, the TIRZ finds that the Districts promotional activities will help to implement the TIRZ’ plan for the Zone; and

WHEREAS, it is the desire of the parties hereto to combine their efforts to bolster the tax base in the Zone and facilitate progress and development in downtown Midland;

NOW, THEREFORE, in consideration of the covenants and conditions stated herein, and in consideration of the mutual benefits which will accrue to each of the parties hereof, as well as the general citizenry of the City of Midland, Texas, the parties have agreed and do hereby agree as follows:

I. PROMOTIONAL ACTIVITIES

Pursuant to this Agreement, the District shall promote the Zone as a destination for tourism and conventions, and shall promote additional activities, all in an effort to help the TIRZ to implement its plan as referenced herein.

II.

ECONOMIC INCENTIVES

A. Designation of a Tax Increment Reinvestment Zone. The District and the TIRZ understand and agree that within downtown Midland is a tax increment reinvestment zone, created pursuant to Chapter 311 of the Texas Tax Code, and designated as Midland Tax Increment Reinvestment Zone No. 1.

B. The TIRZ agrees to pay to the District, as compensation for their promotional activities as enumerated in the attached “Project Plan/Finance Plan” within the Zone, the sum of \$50,000.00. Such sum shall be paid in a lump sum by the Treasurer of the City of Midland upon statement or invoice approved by the TIRZ Chairman. The District shall fund events only in the Zone.

C. Funding. Funds from the TIRZ to the District shall be granted contingent on the following conditions:

1. The District agrees that there shall be at least one (1) TIRZ Board Member on the Advisory Committee charged with the selection of the activities funded herein; and
2. The District agrees to only use funds granted herein to fund activities or events within the Zone.

D. Repayment. The District shall repay the funds to the TIRZ if the District violates any provision of this Agreement. The amount repayable shall be repaid, without interest, to the TIRZ on or before thirty (30) days after the TIRZ gives written notice to the District. Notwithstanding anything to the contrary contained anywhere in this Agreement, under no circumstances shall the District be obligated to repay the TIRZ an amount in excess to the total dollar amount of the funds actually received by the District from the TIRZ under this Agreement.

III.

MISCELLANEOUS PROVISIONS

A. Notice of Alleged Breach; Statutory Prerequisites. As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, the District or its legal representative, shall give TIRZ and the City of Midland notice in writing (consisting of one original and seven copies of notice attached to a copy of this Agreement) of such damages, duly verified, within one hundred twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of

this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which the District will settle, the physical and mailing addresses of the District at the time and date the claim was presented and the physical and mailing addresses of the District for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the District relies to establish its claim; and a failure to so notify the TIRZ and the City of Midland within the time and manner provided herein shall exonerate, excuse and except the TIRZ and the City of Midland from any liability whatsoever. Neither the TIRZ nor the City of Midland is under any obligation to provide notice to the District that the District's notice is insufficient. Both the TIRZ and the City of Midland reserve the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

B. Independent Contractor. It is expressly understood and agreed that the District shall perform all work described herein as an independent contractor and not as an officer, agent, servant or employee of either the TIRZ or the City of Midland; that the District shall have exclusive control of and the exclusive right to control the details of the 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 the District and the TIRZ or the City of Midland, their officers, members, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between the District and the TIRZ or the City of Midland. No person performing any of the work described hereunder by the District shall be considered an officer, agent, servant or employee of either the TIRZ or the City of Midland. Further, it is specifically understood and agreed that nothing in this Agreement is intended or shall be construed as creating a "Community of Pecuniary Interest" or "An Equal Right of Control" which would give rise to vicarious liability. The District shall be an independent contractor under this Agreement and shall assume all of the rights, obligations and liabilities applicable to it as such independent contractor hereunder. Neither the TIRZ nor the City of Midland have the power to direct the order in which the work is done. Neither the TIRZ nor the City of Midland shall have the right to control the means, methods or details of the the District's work. The District shall assume exclusive responsibility for the work. The District is entirely free to do the

work in its own way.

C. **INDEMNITY. THE DISTRICT WILL INDEMNIFY AND HOLD HARMLESS AND DEFEND BOTH THE TIRZ AND THE CITY OF MIDLAND, AND ALL OF THEIR OFFICERS, MEMBERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF THE DISTRICT,** its agents or employees, or any subcontractor, arising out of, or resulting from, the District's use of, or activities on, the Agreement premises, and the District will be required to pay any judgment with costs which may be obtained against TIRZ or the City of Midland, or any of their officers, agents or employees, including reasonable attorney's fees.

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

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

of the parties to this Agreement shall be deemed to have occurred in Midland County, Texas. The District specifically consents to, and waives any objections to, in personam jurisdiction in Midland County, Texas.

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

F. Complete Agreement. This Agreement represents the complete agreement of the parties with respect to the subject matter hereof and supercedes all prior written and oral matters related to this Agreement. Any amendment to this Agreement must be in writing and signed by all parties hereto or permitted or approved assignees.

G. Exhibits. All exhibits attached to this Agreement are incorporated herein by reference and expressly made part of this Agreement as if copied verbatim.

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

To the Midland Tax Increment
Reinvestment Zone No. 1:

Chairman
Midland Tax Increment
Reinvestment Zone No. 1
PO Box 1152
Midland, Texas 79702

with a copy to:

Courtney Sharp,
City Manager
PO Box 1152
Midland, Texas 79702

To the Downtown Midland
Management District:

Natalie Shelton,
Executive Director
Downtown Midland
Management District
109 North Main
Midland, Texas 79701

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

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

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

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

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

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

L. Financial Commitment. Notwithstanding any provision of this Agreement which

might be interpreted otherwise, the TIRZ' total financial commitment during the term of this Agreement shall not exceed \$50,000.00 in the aggregate.

M. **RELEASE.** NOTWITHSTANDING ANY OTHER PROVISIONS, THE DISTRICT HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES TIRZ AND THE CITY OF MIDLAND, THEIR EMPLOYEES, MEMBERS AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES, OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH THE DISTRICT 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, TIRZ'S NEGLIGENCE OR THE CITY'S NEGLIGENCE.

N. Sovereign Immunity. By acknowledging this Agreement, the City of Midland is not waiving its right of sovereign immunity from suit. The City of Midland is not granting consent to be sued by legislative resolution or action. There is no waiver of sovereign immunity.

O. Term of Agreement. This Agreement shall be for a term of five (5) months, commencing on May 1, 2012, and ending September 30, 2012.

EXECUTED by the duly authorized officials of the TIRZ and the District as of the day and year first above written.

**MIDLAND TAX INCREMENT
REINVESTMENT ZONE NO. 1**

By _____
Mark T. Wellen, Chairman

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared **Mark T. Wellen**, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he properly executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of **Midland Tax Increment Reinvestment Zone No. 1**.

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

Notary Public, State of Texas

**DOWNTOWN MIDLAND
MANAGEMENT DISTRICT**

By _____
W. L. "Scooter" Brown, Chairman

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared **W. L. "Scooter" Brown**, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of the **Downtown Midland Management District**.

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

Notary Public, State of Texas

Live Downtown Midland Event Grant Program
Project Plan & Facts

1. The Live Downtown Midland Event Grant Program will be a partnership between the following entities & proposed contributions by each:
 - a. City of Midland Hotel/Motel Tax Fund - \$50,000
 - b. Tax Increment Reinvestment Zone Number 1, City of Midland, Texas - \$50,000
 - c. Midland Development Corporation - \$50,000
 - d. Downtown Midland Management District - \$25,000
2. DMMD will execute Interlocal agreements with each of the partners that will outline the terms and conditions of each of the partners' participation in the program.
 - a. Each partner will contribute a certain amount of funds annually into the program
 - b. There may be some limitations on the use of some funds, i.e., Hotel-Motel Occupancy Tax can only be used to support hotel and tourist industry.
 - c. Funds will need to be maintained in a separate account from the DMMD's operating account.
3. DMMD will administer the grant program and will incur some additional costs associated with administering the program such as staff time and additional costs associated with annual audit.
4. Goals of the program are as follows:
 - a. Enhance community pride and positive image
 - b. Generate positive media exposure and visibility
 - c. Generate positive economic impact by stimulating business and commercial activity
 - d. Promote tourism and the convention/hotel industry
 - e. Demonstrate support for local businesses and charitable/non-profit/cultural organizations.
5. DMMD will establish the Live Downtown Midland Event Grant Review Committee to evaluate grant applications. This will require Board action to create Committee.
 - a. Committee will consist of no more than 5 members composed of representatives from funding partners and other downtown entities or event personnel.
 - b. Committee's role is to evaluate applications and make recommendations to DMMD Board.
 - c. DMMD Board will make all final decisions on whether to approve an application for funding by slate vote.
6. DMMD will execute a funding agreement with each grant recipient.
7. Application Period
 - a. Preferably once a year, but committee will make an exception if an applicant misses the set deadline.
8. Special consideration and enhanced incentives may be given to applications for reoccurring annual events.

9. Grant recipients must possess adequate amount of General Liability coverage and agree to release and indemnify DMMD from all liability.
10. Applicants must disclose other sources of funds and cannot receive funding from any of the partner entities or other grant programs, i.e., Hotel-Motel Tax or SEAM for the same event.
11. There will be no limits on amounts of grants.

**Downtown Midland Management District
Live Downtown Midland Event Grant Review Committee Structure**

- I. The Live Downtown Midland Event Grant Review Committee (Committee) is established as a standing Committee of the Downtown Midland Management District (DMMD).
- II. The purpose of the Committee is to review and evaluate grant funding applications for events for the Live Downtown Midland Event Grant Program and to make funding recommendations to the DMMD. The DMMD will consider the Committee's recommendation(s) and make all final funding decisions.
- III. The role of the Committee is to screen application for completeness, evaluate the merits of applications, complete score sheets as to how well each application meets the Program goals and criteria, and request additional information from the applicant, if needed.
- IV. The Committee will be composed of up to 5 members as follows:
 1. Representative from DMMD
 2. Representative from Midland Chamber of Commerce
 3. Representative from the City of Midland
 4. Representative from the Tax Increment Reinvestment Zone Number 1, City of Midland, Texas
 5. Vacant
- V. Natalie Shelton, in her position as Executive Director of DMMD, is appointed as the representative from the DMMD and will serve as Chair. The Chair shall preside over all Committee meetings.
- VI. The Chair will call meetings on an as needed basis to review and evaluate grant applications. Meetings will generally occur after the June 20th application deadline but could occur at other times as well.
- VII. Committee members must receive notice of a meeting at least 72 hours in advance of a scheduled meeting. There must be a quorum of the Committee in attendance to hold a meeting. A quorum is defined as a majority of the members appointed to the Committee.
- VIII. At the conclusion of its review process, the Committee will vote to decide which applications will be submitted to the DMMD to be considered for funding. The Committee has discretion to decide whether an interview with an applicant is needed. Applications must receive a majority vote of the Committee to be eligible for consideration by the DMMD for funding. Applications that result in a tie vote of the Committee will be forwarded to the DMMD for funding consideration.

- IX. All Committee members, including the Chair, are entitled one (1) vote on all applications for event grant funding except when there is a conflict of interest between a member of the Committee and an application for funding. The interested member must disclose the nature of the conflict and refrain from participating in any of the deliberations and voting on the application.



City Council Agenda

Approved for Agenda:
csharp
City Manager's Office

MEETING DATE: 07/24/2012

TO: CITY COUNCIL/CITY MANAGER

FROM: COURTNEY SHARP, CITY MANAGER

SUBJECT: Authorize the Mayor to negotiate and execute a Chapter 380 Agreement with the TIRZ District.

Purpose: Consider a resolution authorizing the Mayor to negotiate and execute a Chapter 380 Agreement with the TIRZ District.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Discussion:

An executive session item is scheduled to discuss this item in more detail.



City Council Agenda

Approved for Agenda:
csharp
City Manager's Office

MEETING DATE: 07/24/2012

TO: CITY COUNCIL/CITY MANAGER

FROM: COURTNEY SHARP, CITY MANAGER

SUBJECT: Authorize the Mayor to negotiate and execute an agreement with the Midland Development Corporation for the construction of a parking structure in downtown Midland.

Purpose: Consider a resolution authorizing the Mayor to negotiate and execute an agreement with the Midland Development Corporation for the construction of a parking structure in downtown Midland.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Discussion:

An executive session item is scheduled to discuss this item in more detail.

City of Midland
City Secretary's Office
Interoffice Memorandum

Date: July 19, 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 24, 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 two 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 24, 2012

AIRPORT PLANNING AND DEVELOPMENT BOARD

(Advisory)

(Membership-10; Terms - 3 Years expiring 3-3-4.)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Ronald Schwisow	09/06	Sept 30 2012	Sept 30 2012
Herbert Blankinship	09/06	Sept 30 2012	Sept 30 2012
Jerry Walton	11/09	Sept 30 2012	Sept 30 2015
Mike Owen	10/07	Sept 30 2013	Sept 30 2013
Gregory F. Baiano	09/10	Sept 30 2013	Sept 30 2016
John T. Echols	09/10	Sept 30 2013	Sept 30 2016
Dallas L. Smith	09/10	Sept 30 2013	Sept 30 2016
Earl Erdmann, Chairman	09/08	Sept 30 2014	Sept 30 2014
Brooks Smith	11/11	Sept 30 2014	Sept 30 2017
Don "Woody" Woodward	11/11	Sept 30 2014	Sept 30 2017

Ex-Officio members are Harry Spannaus, the City Manager and the City Attorney. The Secretary is the Director of Aviation.

ANIMAL SERVICES ADVISORY COMMISSION

(Advisory)

(Membership - 6; Terms - 4 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Dr. Tom Green (Veterinarian)	10/07*	Sept 30 2013	Sept 30 2017
Kelly Spencer	09/09	Sept 30 2013	Sept 30 2017
Laura Hollifield	09/08*	Sept 30 2013	Sept 30 2017
Justin Petty	04/07*	Sept 30 2013	Sept 30 2017
Tony Carrillo	09/09	Sept 30 2013	Sept 30 2017
Paul O'Neill	09/09	Sept 30 2013	Sept 30 2017

BUILDING CODES REVIEW COMMITTEE

(Membership – 9; Terms – 2 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
James Rigger	12/09	Dec 31 2013	Dec 31 2013
Chris Repman	12/09	Dec 31 2013	Dec 31 2013
John Cooper	12/09	Dec 31 2013	Dec 31 2013
Bill Routh	12/09	Dec 31 2013	Dec 31 2013
Tom Woodruff	12/09	Dec 31 2013	Dec 31 2013
Ron Ainsworth	12/09	Dec 31 2013	Dec 31 2013
Walter Pate	12/09	Dec 31 2013	Dec 31 2013
Robert Harrington	12/09	Dec 31 2013	Dec 31 2013
Jerry Morales	12/09	Dec 31 2013	Dec 31 2013

* Indicates appointment to an unexpired term.

CITY DEVELOPMENT ADVISORY COMMITTEE

(Advisory)

(Membership - 5; Terms - 2 Years expiring 2 even & 3 odd)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Vicky Hailey	09/10	Sept 30 2012	Sept 30 2014
Reggie Lawrence	09/10	Sept 30 2012	Sept 30 2014
Lena Margita	10/09	Sept 30 2013	Sept 30 2013
Alonda Massey	11/11	Sept 30 2013	Sept 30 2015
Tim Bryson	11/11	Sept 30 2013	Sept 30 2015

CONSTRUCTION BOARD OF ADJUSTMENTS AND APPEALS

(Decision Making)

(Membership - 7; Terms - 4 Years expiring 2-2-2-1)

To sunset December 31, 2011

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Joe Molina, Jr.	09/03	Sept 30 2011	Sept 30 2011
James W. Rigger (Architect)	09/99	Sept 30 2011	Sept 30 2011
Don Woodward (At Large)	11/11*	Sept 30 2012	Sept 30 2020
Richard D. Dunham	10/05	Sept 30 2013	Sept 30 2013
Greg Turner	03/11*	Sept 30 2013	Sept 30 2021
Chris Repman	10/07*	Sept 30 2014	Sept 30 2018
Jay K. Bradford	09/10	Sept 30 2014	Sept 30 2018

ALTERNATES:

Vacancy	Sept 30 2007
Vacancy	Sept 30 2007

HOTEL/MOTEL TAX ADVISORY BOARD

(Advisory)

(Membership - 7; Terms - 2 Years Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Tyler Wolfe	04/11*	Sept 30 2012	Sept 30 2012
Jon S. Blair	02/09*	Sept 30 2012	Sept 30 2014
Karmen Hendrix Bryant	02/12*	Sept 30 2013	Sept 30 2017
David Baur	09/10	Sept 30 2013	Sept 30 2014
Lisa Grissom	9/09	Sept 30 2013	Sept 30 2013
Steve Jones	02/09*	Sept 30 2013	Sept 30 2013
Alex Singh-Hotel/Motel Assn. Rep.	09/09	Dec 31 2013	Assn. Appt.
Vicky Hailey (Liaison Officer)			

* Indicates appointment to an unexpired term.

HOUSING AUTHORITY COMMISSION

(Membership - 5; Terms - 2 Years expiring 2 even & 3 odd.)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Rosie Gransberry	06/08*	Oct 2012	Oct 2012
Norma Duran	11/08*	Oct 2012	Oct 2014
Gregory Maes	11/11	Oct 2013	Oct 2015
Carla Repman, Vice Chairman	09/09	Oct 2013	Oct 2013
James A. Blischke	01/10	Oct 2013	Oct 2013

ALTERNATES:

Dennis Bade	11/11	Oct 2013	Oct 2015
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JOINT ECONOMIC DEVELOPMENT TASK FORCE

(Ad Hoc)

	<u>Appt. Date</u>
(Midland)	
Wes Perry	01/08
LuAnn Morgan	12/00
Keith Stretcher	12/00
Tommy Hudson	08/07
John Breier	01/04
(Odessa)	
Larry Melton	08/01
Jim Morris	11/00
Richard Morton	01/02
Joel Roberts	11/00
Neil McDonald	11/00

MANAGED COMPETITION COMMITTEE

(Ad Hoc)

	<u>Appt. Date</u>
Jon Morgan	01/02
Wes Perry	01/02
Roy Nelson	01/02
Hugh "Andy" Shaffer	12/03
Scott Dufford	01/02
Ted Tipton	04/04
Kevin Sparks	11/07
Scott Lovett	04/10
P. Lourcey Sams	04/10

Ex-Officio members are the Mayor and the City Manager.

• Indicates appointment to an unexpired term.

MIDLAND CENTER ADVISORY BOARD

(Advisory & Decision Making)

(Membership - 9; Terms - 3 Years expiring 3-2-2.)

		<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Brent Blackburn	(City)	09/09*	Sept 30 2013	Sept 30 2016
Charles Spence	(CC)	11/07	Sept 30 2013	N/A
Lorri Lyon West	(City)	09/10	Sept 30 2013	Sept 30 2016
Patricia S. Blackwell	(City)	10/07*	Sept 30 2014	Sept 30 2014
Paula Mitchell	(City)	09/08	Sept 30 2014	Sept 30 2014
Greg Turner	(CC)	12/11	Sept 30 2014	N/A
Tracy Bacon	(CC)	12/11	Sept 30 2014	N/A
Jerry Morales (Liaison Officer)				

Ex-Officio members are the City Manager and Executive Director of the Chamber of Commerce.

MIDLAND CENTRAL APPRAISAL DISTRICT BOARD OF DIRECTORS

Five Directors, Elected by Local Taxing Entities.

City Nominates/Cast Vote for one Director

(Terms - 2 Years)

	<u>Appt Date</u>	<u>Term Expires</u>
Chad Clark	3/12*	Dec 31 2013

MIDLAND DEVELOPMENT CORPORATION

(Membership - 5; Terms -3 Years - Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Michael Trost	02/11*	Jan 14 2013	Jan 14 2019
Cary J. Love	12/09	Jan 14 2013	Jan 14 2016
Gary Douglas	11/11*	Jan 14 2013	Jan 14 2019
Laura Roman	01/08	Jan 14 2014	Jan 14 2014
Robert Rendall, Chairman	01/09*	Jan 14 2014	Jan 14 2017

- Indicates appointment to an unexpired term.

MIDLAND FRESH WATER SUPPLY DISTRICT #1

(Ad Hoc)

(3 Non Voting Members)

	<u>Appt Date</u>
Wes Perry	05/12
Gary Harris	05/12
Wayne Merritt	05/12

**MIDLAND FOOTBALL-SOCCER AND BASEBALL COMPLEX
DEVELOPMENT CORPORATION**

(Decision Making)

Membership - 7; Terms - 2 Years)

	<u>Appt Date</u>	<u>Eligibility Term Expires</u>	<u>Expires</u>
Ken Marks, Vice President	10/07	Nov 2011	Nov 2011
James G. Smith	12/07	Nov 2011	Nov 2011
Mike Thompson	11/11	Nov 2013	Nov 2015
Tim Bryson	11/11	Nov 2013	Nov 2015
Wesley D. Bownds	02/09*	Nov 2013	Nov 2013
John James	08/08*	Nov 2013	Nov 2013
Rick Davis (MISD Resp.)	10/10*	Nov 2013	Nov 2015

MIDLAND HIGHER EDUCATION FACILITIES CORPORATION

(Membership - 7; Terms - 2 Years Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Vacancy		Jan 1 2007	
Vacancy		Jan 1 2007	
Vacancy		Jan 1 2007	
Vacancy		Jan 1 2009	
Cathy Oestmann	11/05*	Jan 1 2010	Jan 1 2010
Steve Jones	09/08*	Jan 1 2010	Jan 1 2012
Curt Kamradt	11/05*	Jan 1 2012	Jan 1 2012

- Indicates appointment to an unexpired term.

MIDLAND HOUSING FINANCE CORPORATION

(Decision Making)

(Membership - 5; Terms - 2 Years - Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Vacancy - (Damon L. Blakeley)	07/07*	Sept 30 2010	
Adrienne Valencia	10/07	Sept 30 2011	Sept 30 2011
Melissa Wicker	10/07	Sept 30 2011	Sept 30 2011
Jerry Morales (Liaison Officer)	10/08	Sept 30 2012	Sept 30 2012
Nathan Miller	11/11*	Sept 30 2012	Sept 30 2016

MIDLAND MUNICIPAL MANAGEMENT DISTRICT BOARD

(Ad Hoc)

Appt. Date

Vacancy	
Richard Hatchett	11/08
W. L. "Scooter" Brown	09/04
Ken Burgess	09/04
Jim Hightower	11/08
Ted H. Jones	09/04
Mitch Malouf	11/08
Christi Newton	09/04
Dan Rush	09/04

MIDLAND-ODESSA URBAN TRANSIT DISTRICT BOARD

(Decision Making)

(Membership - 6; Terms - 2 Years Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Willie Barber	09/08	Sept 30 2012	Sept 30 2012
Raymond McCarthy	09/08	Sept 30 2012	Sept 30 2012
Michael Trost	09/08	Sept 30 2012	Sept 30 2012
John H. James	09/09	Sept 30 2013	Sept 30 2013
Karen York	06/09*	Sept 30 2013	Sept 30 2013
Guy McKenize	03/11*	Sept 30 2013	Sept 30 2015

- Indicates appointment to an unexpired term.

OIL AND GAS ADVISORY COMMITTEE

(Advisory)

(Membership – 5; Terms – 3 Years expiring 2-2-1)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Richard D. Dunham (Realtor/Petro Eng.)	01/10	Sept 30 2013	Sept 30 2016
D. Patrick Darden (Petroleum Eng.)	02/10	Sept 30 2012	Sept 30 2015
Don Eubank (Drilling Eng.)	04/10	Sept 30 2012	Sept 30 2015
Paul Brown	11/11	Sept 30 2014	Sept 30 2017
David Rosen	11/11	Sept 30 2014	Sept 30 2017

PARKS AND RECREATION COMMISSION

(Advisory)

(Membership - 9; Terms - 3 Years expiring 3-3-3.)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Berry Simpson	09/10*	Sept 30 2011	Sept 30 2017
Amanda McCann	11/11*	Sept 30 2012	Sept 30 2018
David Ham	09/06	Sept 30 2012	Sept 30 2012
Charles A. Spence	01/10*	Sept 30 2013	Sept 30 2016
Susan Nichols	02/06*	Sept 30 2013	Sept 30 2013
Eric L. West	10/07	Sept 30 2013	Sept 30 2013
Kenny Harper	03/12*	Sept 30 2013	Sept 30 2019
P. Lourcey Sams	09/08	Sept 30 2014	Sept 30 2014
Tina Corbett	09/08	Sept 30 2014	Sept 30 2014

PERMIAN BASIN AIRPORT BOARD

(Advisory)

(Membership - 30; Terms - 1 year.)

	<u>Appt. Date</u>	<u>Term Expires</u>
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
Elvin Brownlee III (Andrews)	12/10*	Sept 30 2012
Jim Little (Big Spring)	09/03	Sept 30 2012
David Hardwick (Ft. Stockton)	10/07	Sept 30 2012
Don Bethel (Lamesa)	02/91	Sept 30 2012
Henry Cutbirth (Monahans)	09/05	Sept 30 2012

- Indicates appointment to an unexpired term.

PERMIAN BASIN AIRPORT BOARD CON'T

	<u>Appt. Date</u>	<u>Term Expires</u>
Willie Taylor (Odessa)	02/00	Sept 30 2012
Gloria Pena (Odessa)	03/03*	Sept 30 2012
Barbara Graff (Odessa)	06/10*	Sept 30 2012
Luis E. Elguezabal (San Angelo)	10/07	Sept 30 2012
Lex Hinds (Seminole)	10/08	Sept 30 2012
Glenn Wortham (Sweetwater)	10/07	Sept 30 2012
John Rogotzke (Snyder)	01/12	Sept 30 2012
Lance Goodrich (Artesia, NM)	09/09	Sept 30 2012
Larry Fry (Roswell, NM)	09/00	Sept 30 2012

Ex-Officio members are the City Manager and the City Attorney. The Secretary is the Director of Aviation.

**PERMIAN BASIN COMMUNITY CENTER FOR MENTAL HEALTH
AND MENTAL RETARDATION**

(Decision Making)
(Membership - 2 (City); Terms - 2 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Janet R. Pritchett (City)	05/09*	June 2012	June 2014
Larry Edgerton	07/10*	June 2013	June 2015

PERSONNEL BOARD OF APPEALS

(Decision Making)
(Membership - 3; No designated terms.)

	<u>Appt. Date</u>
John James	03/08
Hugh A. "Andy" Shaffer	09/05
Michael Trost	01/10

- Indicates appointment to an unexpired term.

PLANNING AND ZONING COMMISSION

(Advisory & Decision Making)

(Membership - 9; Terms - 3 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Becky Ferguson, Chairman	03/04*	Sept 30 2011	Sept 30 2011
Kevin Wilton	09/08*	Sept 30 2012	Sept 30 2015
Bill Woodruff	02/05*	Sept 30 2012	Sept 30 2012
Royce Watkins	02/08*	Sept 30 2012	Sept 30 2015
Karen York	01/10*	Sept 30 2012	Sept 30 2018
Jane Wolf	03/09*	Sept 30 2013	Sept 30 2016
Cindy Lanning	09/10	Sept 30 2013	Sept 30 2016
Jay Norris	11/11	Sept 30 2014	Sept 30 2017
Galen Gatten, Vice Chairman	09/08	Sept 30 2014	Sept 30 2014

ALTERNATES:

Tony Carrillo	11/11	Sept 30 2014	Sept 30 2017
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TAX INCREMENT REINVESTMENT ZONE BOARD

(Decision Making)

(Membership - 12; Terms - 2 Years, or 3 Years if appointed after 3/1/07)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Neil Florer (College)	07/01	Mar 20 2009	Mar 20 2009
Dan Rush (City)	07/01	Mar 20 2010	Mar 20 2010
Mark T. Wellen (City), Vice Chairman	07/01	Mar 20 2010	Mar 20 2010
Jay Reynolds (Hospital)	03/02	Mar 20 2010	Mar 20 2010
Ralph Way (College)	07/01	Mar 20 2010	Mar 20 2010
Randy Prude (County)	03/07	Mar 20 2010	Mar 20 2013
Judge Mike Bradford (County)	01/07*	Mar 20 2010	Mar 20 2014
C. Mark Wheeler (City), Treasurer	04/08	Mar 20 2011	Mar 20 2014
Bob Lanier (City), Secretary	04/03	Mar 20 2011	Mar 20 2011
Brent Kennedy (City)	06/09	Mar 20 2012	Mar 20 2015
John L. Kennedy (City)	10/09*	Mar 20 2012	Mar 20 2018
Pete Hulder (Hospital)	03/10	Mar 20 2013	Mar 20 2016

Ex-Officio member is President, Board of Trustees, Midland Independent School District

- Indicates appointment to an unexpired term.

ZONING BOARD OF ADJUSTMENT
AND
AIRPORT ZONING BOARD OF ADJUSTMENT

(Decision Making)

(Membership - 5; Terms - 2 Years expiring 3 odd & 2 even.)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Trudi Edwards	10/07	Sept 30 2011	Sept 30 2011
Manny Ribera	10/07	Sept 30 2011	Sept 30 2011
Todd Byars	02/08*	Sept 30 2012	Sept 30 2014
Ken Morgan	01/10*	Sept 30 2012	Sept 30 2014
Carla Repman	01/10*	Sept 30 2013	Sept 30 2015

ALTERNATES: (not applicable to Airport Zoning)

Vacancy		Sept 30 2006	
Vacancy		Sept 30 2009	
Annabel Holguin	11/11	Sept 30 2013	Sept 30 2015
Greg Turner	11/11	Sept 30 2013	Sept 30 2015

- * Indicates appointment to an unexpired term.