

AGENDA FOR CITY COUNCIL MEETING
August 13, 2013 – 10:00 AM
Council Chamber - City Hall

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

OPENING ITEMS

1. Invocation - Pastor Douglas P. Lamb, Fannin Terrace Baptist 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 Tedrick Macklin Day.

PUBLIC COMMENT

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

CONSENT AGENDA

5. Consider a motion approving the following minutes:
 - a. Regular meeting of July 23, 2013.
 - b. Special meeting of August 6, 2013.
6. Consider a resolution ratifying emergency actions taken to replace wiring in thirty-three (33) vandalized light poles at the Scharbauer Sports Complex at a cost of \$58,335.38; and waiving the formal bidding requirement. (GENERAL SERVICES) (2013 - 220)

7. Consider a resolution awarding the City of Midland Paving: Alley, Street and Sidewalk ("Compass") Project to Onyx Contractors Operations, LP, of Midland, Texas, at an amount not to exceed \$1,000,000.00; and appropriating funds. (GENERAL SERVICES) (2013 - 221)
8. Consider a resolution authorizing the purchase of five hundred (500) 520RA single port radios for use with the City's automatic water meter reading system, from Western Industrial Supply, L.L.C., of Odessa, Texas, at a total cost of \$60,000.00; and said purchase was not bid but purchased as a sole source. (GENERAL SERVICES) (2013 - 222)
9. Consider a resolution authorizing the purchase of sixteen (16) mobile radios in assorted configurations, with accessories, from Holsum Bakers, Incorporated, dba Caprock Communications of Midland, Texas; said purchase was not bid but purchased as a sole source; and the costs for the radios shall be approximately \$71,276.25. (GENERAL SERVICES) (2013 - 223)
10. Consider a resolution approving the purchase of three (3) refuse bodies and one (1) cart body, for refuse trucks for the Garage Division, through the Houston-Galveston Area Council of Governments (HGAC) at a total cost of \$409,597.00; and this item was not bid but purchased through a Council of Governments. (GENERAL SERVICES) (2013 - 224)
11. Consider a resolution authorizing the execution of a contract with Jones Bros. of Odessa, Texas, for the project described as Terminal Vehicle Parking Expansion (9019) at the Midland International Airport; the Council previously authorized advertisement for bids for the project; the total estimated cost of said project is \$1,929,554.35; and appropriating funds. (AIRPORTS) (2013 - 225)
12. Consider a resolution authorizing the Mayor, City Manager, and the City Attorney to execute Federal Aviation Administration Grant Number 54 in the estimated amount of \$3,404,500.00 upon receipt from the Federal Aviation Administration; said grant will fund ninety percent (90%) of the FAA eligible portion of projects at the Midland International Airport; said grant funds are to be deposited in the Airport Fund upon receipt. (AIRPORTS) (2013 - 226)
13. Consider a resolution authorizing the Mayor to execute a Lease and Operating Agreement with the Midland County Fresh Water Supply District No. 1; the District has acquired right-of-way and designed, constructed, installed, and financed, certain infrastructure including wells and pipelines to deliver groundwater owned by the City from beneath those certain tracts of land located in Winkler and Loving Counties to a delivery point located approximately at the intersection of Highway 191 and FM 1788; and the District has constructed extended infrastructure related to the T-Bar Project at the request of the City; and the City will operate and maintain the extended infrastructure. (CITY ATTORNEY'S OFFICE) (2013 - 227)

14. Consider a resolution approving a 20-foot sewer line easement located in Section 8, Block 39, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas; providing that said easement shall be in a form acceptable to Western-T Corporation, Vineyard Reserve, LLC, and the City of Midland; authorizing the City of Midland's acceptance of said easement contingent upon inspection and approval of the sewer line located therein; determining the value of said easement to be \$49,400; and providing Western-T Corporation a credit in said amount at the time of platting. (CITY ATTORNEY'S OFFICE) (2013 - 228)
15. Consider a resolution authorizing the acceptance of Lots 7 and 8, Block 35, Original Town, City and County of Midland, Texas (Commonly known as the Building of the Southwest and located at 310 West Texas Avenue); directing the City Manager to obtain a deed from the owner; authorizing the City Manager to negotiate, execute and file all documents necessary for the acceptance of said property; authorizing payment for closing costs; and ordering recordation. (CITY MANAGER'S OFFICE) (2013 - 229)
16. Consider a resolution authorizing the allocation of funds from the Hotel/Motel Construction Fund and appropriating funds for the Bill Williams Softball Complex Renovations Project. (CITY SECRETARY'S OFFICE) (2013 - 230)
17. Consider a resolution granting a variance for Lots 11-13, Block 4, Stonebridge Addition, City and County of Midland, Texas (Commonly known as 1120, 1122 and 1200 Milltown Road), by permitting construction of residences where no portion of any structure is closer than 374.8 feet of an oil and gas well; and authorizing issuance of building permits. (DEVELOPMENT SERVICES) (2013 - 231)
18. Consider a resolution approving the issuance of a permit to Vector Oil & Gas LP ("Operator") to drill an oil and gas well within the City limits located 838 feet from the north line and 2,186 feet from the west line, Section 6, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas (Generally located on the west side of Oriole Drive, approximately 840 feet south of Mockingbird Lane); and providing that said permit does not require a new Road Repair Agreement but shall be consolidated under an existing Road Repair Agreement. (DEVELOPMENT SERVICES) (2013 - 232)
19. Consider a resolution approving the issuance of a permit to Midland Energy, Inc. ("Operator") to drill an oil and gas well within the City limits located 832 feet from the south line and 982 feet from the east line, Section 1, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas (Generally located on the north side of East Loop 250 North, north of North Fairgrounds Road); and waiving the requirement of a Road Repair Agreement. (DEVELOPMENT SERVICES) (2013 - 233)

20. Consider a resolution approving the issuance of a permit to Crownquest Operating, LLC ("Operator") to drill an oil and gas well within the City limits located 1,550 feet from the south line and 1,980 feet from the east line, Section 36, Block 39, T-1-N, T&P RR Co. Survey, City of Midland and Martin County, Texas (Generally located on the east side of the State Highway 349, approximately 2 ½ miles north of Arapahoe Road); and waiving the requirement of a Road Repair Agreement. (DEVELOPMENT SERVICES) (2013 - 234)
21. Consider a resolution approving the issuance of a permit to Crownquest Operating, LLC ("Operator") to drill an oil and gas well within the City limits located 660 feet from the north line and 2,173 feet from the east line, Section 36, Block 39, T-1-N, T&P RR Co. Survey, City of Midland and Martin County, Texas (Generally located on the east side of the State Highway 349, approximately 3 miles north of Arapahoe Road); and waiving the requirement of a Road Repair Agreement. (DEVELOPMENT SERVICES) (2013 - 235)
22. Consider a resolution approving the issuance of a permit to Crownquest Operating, LLC ("Operator") to drill an oil and gas well within the City limits located 467 feet from the north line and 467 feet from the east line, Section 36, Block 39, T-1-N, T&P RR Co. Survey, City of Midland and Martin County, Texas (Generally located on the east side of the State Highway 349, approximately 3 miles north of Arapahoe Road); and waiving the requirement of a Road Repair Agreement. (DEVELOPMENT SERVICES) (2013 - 236)
23. Consider a resolution approving the issuance of a permit to Callon Petroleum Operating Company ("Operator") to drill an oil and gas well within the City limits located 660 feet from the north line and 660 feet from the west line, Section 23, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas (Generally located on the south side of the west extension of Mockingbird Lane, approximately ¾ of a mile west of Golden Gate Drive); and providing that said permit does not require a new Road Repair Agreement but shall be consolidated under an existing Road Repair Agreement. (DEVELOPMENT SERVICES) (2013 - 237)
24. Consider a resolution approving the issuance of a permit to Callon Petroleum Operating Company ("Operator") to drill an oil and gas well within the City limits located 660 feet from the north line and 587 feet from the east line, Section 22, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas (Generally located on the south side of the west extension of Mockingbird Lane, approximately 1 mile north of Briarwood Avenue); and providing that said permit does not require a new Road Repair Agreement but shall be consolidated under an existing Road Repair Agreement. (DEVELOPMENT SERVICES) (2013 - 238)
25. Consider a resolution approving the issuance of a permit to Petroplex Energy, Inc. ("Operator") to drill an oil and gas well within the City limits located 2,173 feet from the south line and 2,173 feet from the west line, Section 8, Block 39, T-

1-S, T&P RR Co. Survey, City and County of Midland, Texas (Generally located on the east side of the extension of north Midland Drive, approximately ½ mile north of Green Tree Boulevard); and waiving the requirement of a Road Repair Agreement. (DEVELOPMENT SERVICES) (2013 - 239)

26. Consider a resolution granting a variance for Lots 37-42, Block 7, Lots 4-13, 19-25 and 36, Block 18, Lots 1-10, Block 20, and Lots 1-7, 9-12 and 21-25, Block 21, Greathouse Addition, Section 7, City and County of Midland, Texas (Generally located on the east side of Holiday Hill Road, south of Mockingbird Lane), by permitting construction of residences where no portion of any structure is closer than 155.0 feet of an oil and gas well; and authorizing issuance of building permits. (DEVELOPMENT SERVICES) (2013 - 240)
27. Consider a resolution granting a variance for Lots 38-41, Block 18, Lot 2, Block 19, and Lots 1 and 2, Block 24, Greathouse Addition, Section 7, City and County of Midland, Texas (Generally located on the east side of Holiday Hill Road, south of Mockingbird Lane), by permitting construction of residences where no portion of any structure is closer than 330.1 feet of an oil and gas well; and authorizing issuance of building permits. (DEVELOPMENT SERVICES) (2013 - 241)
28. Consider a resolution granting a variance for Lots 7-12 and 15, Block 13, Lots 6, 7, 9 and 13-39, Block 14, Lots 12-21, Block 24, and Lots 3-16, Block 26, Greathouse Addition, Section 7, City and County of Midland, Texas (Generally located on the east side of Holiday Hill Road, south of Mockingbird Lane), by permitting construction of residences where no portion of any structure is closer than 155.0 feet of an oil and gas well; and authorizing issuance of building permits. (DEVELOPMENT SERVICES) (2013 - 242)
29. Consider a resolution granting a variance for Lots 38 and 39, Block 18, and Lots 1-5 and 36-42, Block 24, Greathouse Addition, Section 7, City and County of Midland, Texas (Generally located on the east side of Holiday Hill Road, south of Mockingbird Lane), by permitting construction of residences where no portion of any structure is closer than 155.0 feet of a tank battery; and authorizing issuance of building permits. (DEVELOPMENT SERVICES) (2013 - 243)
30. Consider a resolution authorizing a Right-of-Way License with the City of Midland, Texas and Crownquest Operating LLC; said Right-of-Way License is for the purpose of drilling and maintaining three (3) oil wells and associated road way, surface flow lines, tank batteries, transmission lines, and frac pits; the three oil wells are located within the City of Midland, Section 36, Block 39, T-1-N, T&P RR Co. Survey, Martin County, Texas; the license term is for ten (10) years, commencing with the date of this license and may renew at the end of the term for one Additional five (5) year term upon 90 days written request prior to expiration. (ENGINEERING SERVICES) (2013 - 244)

31. Consider a resolution authorizing the execution of a Supplemental Agreement with Union Pacific Railroad Company ("Union Pacific") regarding certain utilities that have been abandoned or removed from Union Pacific's right-of-way. (ENGINEERING SERVICES) (2013 - 245)
32. Consider a motion on a request by Schumann Engineering Company for the Ranchero Park – Section 7 to approve items requested for deferral and to waive the associated public improvement guarantee. The subject property is located south of I-20 along County Road 1120. (ENGINEERING SERVICES)
33. Consider a resolution accepting a cash donation of \$44,000.00 from the "Bad Boy Blast" Fund-Raising Project sponsored by Conoco-Phillips; the donated funds will be used to purchase law enforcement equipment, technology, and training; and appropriating said funds. (POLICE) (2013 - 246)
34. Consider a resolution authorizing the Midland Police Department to transfer the appropriation of funds from the Police Equipment and Technology Project to the Police Supervisory Training Project in the amount of \$48,000.00; the Midland Police Department will use said funds to host a law enforcement supervisory training series; there is no fiscal impact to the City. (POLICE) (2013 - 247)
35. Consider a resolution authorizing the execution of an agreement with Del Carmen Consulting, LLC, to provide services in connection with the evaluation of racial profiling data collected by the Midland Police Department. (POLICE) (2013 - 248)
36. Consider a resolution authorizing the execution of a Professional Services Agreement Task Order with CDM Smith Inc., for professional inspection services and construction management services for the Midland Water Purification Plant Raw Water Project and the MBR Satellite Reuse Project, at an estimated total cost of \$248,000.00; and appropriating funds. (UTILITIES) (2013 - 249)

SECOND READINGS

37. Consider an ordinance on second reading changing the zoning classification by amending Chapter One, Title XI, of the City Code of Midland, Texas, by permitting a 6.08-acre tract of land ("Tract 1") which is presently zoned FD, Future Development District, to be used as an LR-2, Local Retail District; by permitting a 40.90-acre tract of land ("Tract 2") which is presently zoned FD, Future Development District, to be used as an LI, Light Industrial District; by permitting a 13.70-acre tract of land ("Tract 3") which is presently zoned PD, Planned District for a Shopping Center, to be used as an LR-2, Local Retail District; by permitting a 16.61-acre tract of land ("Tract 4") which is presently zoned PD, Planned District for a Shopping Center, to be used as a PD, Planned District for a Housing Development; by permitting a 34.39-acre tract of land ("Tract 5") which is presently zoned BP, Business Park District, to be used as a

PD, Planned District for a Housing Development; by permitting a 37.72-acre tract of land ("Tract 6") which is presently zoned FD, Future Development District, to be used as a PD, Planned District for a Housing Development; by permitting a 21.82-acre tract of land ("Tract 7") which is presently zoned PD, Planned District for a Shopping Center, to be used as a BP, Business Park District; by permitting a 0.74-acre tract of land ("Tract 8") which is presently zoned LR-2, Local Retail District, to be used as a BP, Business Park District; by permitting a 2.77-acre tract of land ("Tract 9") which is presently zoned BP, Business Park District, to be used as a 1F-3, One-Family Dwelling District; by permitting a 55.83-acre tract of land ("Tract 10") which is presently zoned FD, Future Development District, to be used as a 1F-3, One-Family Dwelling District; all of said tracts being out of Section 12, Block 40, T-2-S, T&P RR Co. Survey, City and County of Midland, Texas; all of said tracts being more specifically described by metes and bounds made a part hereof; said tracts are generally located on the south side of West Interstate Highway 20, South of Loop 250; 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) (9171)

38. Consider an ordinance on second reading changing the zoning use classification of the property described as a 5,000 square foot portion of Lot 1, Block 1, Mesa Verde Addition, City and County of Midland, Texas (Generally located on the southwest corner of the intersection of North Midland Drive and Neely 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 the sale of all alcoholic beverages in a lounge 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) (9172)

PUBLIC HEARINGS

39. At approximately 10:30 a.m. hold a public hearing and consider a resolution authorizing the temporary use of land for an outdoor amusement function on Lots 10-12, Block 93, Lots 1-5, Block 105, and Blocks 94 and 104, West End Addition, City and County of Midland, Texas (Generally located on the south side of Missouri Avenue, between "J" Street and "I" Street); and making said permit subject to certain special conditions and restrictions contained herein. (DEVELOPMENT SERVICES) (2013 - 250)
40. At approximately 10:33 a.m. hold a public hearing and consider a resolution authorizing the temporary use of land for a philanthropic event on the west 51.5 feet of Lot 5, all of Lots 6-10, and the east 22 feet of Lot 11, Block 8, Loma Linda Replat, City and County of Midland, Texas (Generally located on the north side

of Scharbauer Drive, approximately 250 feet west of Lamesa Road); making said permit subject to certain special conditions and restrictions contained herein. (DEVELOPMENT SERVICES) (2013 - 251)

41. At approximately 10:36 a.m. hold a public hearing and consider an ordinance changing the zoning use classification of a 1.50-acre portion of Lot 53, Block 2, Skyview Development, City and County of Midland, Texas (Generally located on the west side of Irvin Drive, approximately 240 feet south of East Loop 250 North), which is presently zoned AE, Agriculture Estate District, by permitting said property to be used under a Specific Use Permit Without Term for a Vineyard; 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) (9173)
42. At approximately 10:39 a.m. hold a public hearing and consider an ordinance changing the zoning classification by amending Chapter One, Title XI, of the City Code of Midland, Texas, by permitting Lot 20, Block 5, North Park, Section 16, City and County of Midland, Texas, which is presently zoned PD, Planned District for a Shopping Center, to be used as an Amended Planned District (Generally located on the north side of Loop 250, east of Billingsley Boulevard); providing for such use to be subject to certain special conditions and restrictions as set out herein; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2,000.00); and ordering publication. (DEVELOPMENT SERVICES) (9174)
43. At approximately 10:42 a.m. hold a public hearing regarding a proposed oil and gas permit to Rust Oil Corporation (Operator), for a Permit to Drill an Oil & Gas Well within the City Limits, (Moss Partnership "9" No. 1) located 2,183 feet from the south line and 1,616 feet from the east line located in Section 9, Block X, H.P. Hilliard Survey, City and County of Midland, Texas. (Generally located on the west side of the extension of North Garfield Street, approximately 1/2 mile north of Mockingbird Lane.) This is a public hearing only. No further action will be taken. (DEVELOPMENT SERVICES)
44. At approximately 6:00 p.m. hold a public hearing regarding a proposal establishing the ad valorem tax rate of .431927 per \$100 taxable assessed valuation for the Fiscal Year 2013 - 2014. (FINANCE)

MISCELLANEOUS

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

EXECUTIVE SESSION

46. 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, compensation and duties of the City Manager, the City Attorney, the City Secretary, the Municipal Court Presiding Judge and the Municipal Court Associate Judge.

b. Section 551.087 Deliberate Economic Development Negotiations

b.1. Discuss business prospects that the City seeks to have, locate, stay, or expand in or near the City of Midland, Texas, and discuss possible incentives.

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 23, 2013**

BRIEFING SESSION

The City Council convened in a Briefing Session in the basement conference room, City Hall, Midland, Texas, at 9:30 a.m. on July 23, 2013.

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

Council Members absent: Mayor Pro Tem Jeff Sparks (District 1).

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, Engineering Director Jose Ortiz, Chief Information Officer Sharlett Chowning, Solid Waste Director Morris Williams, Downtown Development Director Genora Young, Interim Planning Division Manager Ken VanDyne, Assistant City Attorney Don Fletcher, and Public Information Officer Sara Higgins.

1. Receive an update from the Communication and Information Services Department regarding the Mass Notification System.

Chief Information Officer Sharlett Chowning reported that in December of 2012 the Council approved a Mass Notification System also known as a reverse 911 system. She has been working with various departments including Midland County Emergency Management and the weather service. If there is a potential safety issue, a mass notification can go out to those who may be affected via text, email or phone call. The previous system would only contact land lines and the new system will contact land lines in addition to any other ways each citizen chooses to have information communicated to them. Additionally, citizens can sign up for the types of information they would like to be notified about such as water leaks, weather information, and etcetera.

When asked if the information provided could be made public via a public records request, City Attorney Stretcher stated that type of request would be forwarded to the Attorney General for an opinion. Ms. Chowning noted that the City would not share or sell the information to any other party.

Discussion ensued about the importance of getting as many people to sign up as possible. Ms. Chowning noted that it was not a requirement to be a Midland resident. For example, if someone's elderly parents lived in Midland, but they lived in another town, they may be interested in signing up for alerts. Her group will be working with other citizen groups to get as many people signed up as possible. The public will be able to sign up beginning in August via the City of Midland website.

Discussion ensued about how this service might be duplicative of the website and the City of Midland app. Council agreed that this is an important service to provide to the citizens.

The foregoing agenda items were discussed by the City Council with no formal action taken. The Briefing Session was adjourned at 9:53 a.m.

REGULAR SESSION

The City Council convened in regular session in the Council Chamber, City Hall, Midland, Texas, at 10:04 a.m., July 23, 2013.

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

Council Members absent: Mayor Pro Tem Jeff Sparks (District 1).

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, 9, 10, 11, 13, 14, 15, 16, 19, 20, 6, 7, 8, 12, 17, 18, 21, 22, 26, 27, 28, 29, 30, 31, 32, 33, 34, 23, 24, 25, 35, 36.

OPENING ITEMS

1. Invocation - Reverend Pat Bryant, Travis Baptist Church
2. Pledge of Allegiance

PRESENTATIONS

3. Presentation of special events, organizations, individuals, or periods of time including, but not limited to:
 - a. Mayor Perry presented a Proclamation for Quanah Macklin Day in recognition of her winning the 2013 Class A Women's Black Belt World Championship.

PUBLIC COMMENT

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

There were no citizens requesting to speak.

CONSENT AGENDA

Council Member Dufford moved to approve Consent Agenda items 5 - 20 excluding 6, 7, 8, 12, 17, and 18; seconded by Council Member Morales. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James. NAY: None. ABSTAIN: None. ABSENT: Sparks.

5. Approved a motion approving the following minutes:
 - a. Special meeting of July 8, 2013.
 - b. Regular meeting of July 9, 2013.
9. Approved a resolution calling an election on November 5, 2013 for three City Officials. (CITY SECRETARY'S OFFICE)

RESOLUTION NO. 2013 - 206

RESOLUTION CALLING AN ELECTION FOR THREE CITY OFFICIALS; AMENDING THE BOUNDARY OF THE CITY AND CITY COUNCIL DISTRICTS; PROVIDING FOR USE OF ACCESSIBLE VOTING SYSTEMS; ESTABLISHING ELECTION PRECINCTS FOR SAID ELECTION; AND ESTABLISHING POLLING PLACES FOR SAID ELECTION

10. Approved a resolution authorizing the execution of an agreement with Rock the Desert Ministries, Incorporated to promote tourism and the convention/hotel industry in Midland. (CITY SECRETARY'S OFFICE)

RESOLUTION NO. 2013 - 207

RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH ROCK THE DESERT MINISTRIES, INCORPORATED AS AUTHORIZED BY CHAPTER 351 OF THE TEXAS TAX CODE; THE FUNDS ALLOCATED BY THIS RESOLUTION SHALL BE USED TO PROMOTE TOURISM AND THE MOTEL AND HOTEL INDUSTRY; THE ALLOCATED FUNDS ARE EXPENDED IN A MANNER DIRECTLY ENHANCING AND PROMOTING TOURISM AND THE MOTEL AND HOTEL INDUSTRY; THE USE AND ALLOCATION OF THESE FUNDS ARE AUTHORIZED BY CHAPTER 351 OF THE TEXAS TAX CODE; AND THE APPROVAL OF THIS RESOLUTION SHOULD NOT BE CONSTRUED OR INTERPRETED AS ENDORSING THE MESSAGE OR ACTIVITIES PROMOTED BY ROCK THE DESERT MINISTRIES, INCORPORATED; AND ROCK THE DESERT MINISTRIES, INCORPORATED IS REQUIRED TO PROVIDE INSURANCE PRIOR TO THE EVENT AND THE CITY SECRETARY SHALL ENSURE THAT THE INSURANCE IS RECEIVED AND APPROVED PRIOR TO THE ROCK THE DESERT EVENT; AND ALLOCATING FUNDS

11. Approved a resolution authorizing the adoption of the City of Midland's 2013-2014 Action Plan to the Consolidated Plan for Community Development and Housing Funds for Fiscal Years 2011-2015; 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)

RESOLUTION NO. 2013 - 208

RESOLUTION AUTHORIZING THE ADOPTION OF THE CITY OF MIDLAND'S 2013-2014 ACTION PLAN TO THE CONSOLIDATED PLAN FOR COMMUNITY DEVELOPMENT AND HOUSING FUNDS FOR FISCAL YEARS 2011-2015; THE CONSOLIDATED PLAN WAS APPROVED BY RESOLUTION NUMBER 2010-197; AND AUTHORIZING THE EXECUTION OF AN APPLICATION FOR COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS

13. Approved a resolution approving a Temporary Water Service Agreement with Stagg Investment Group, Inc. This property is positioned in the City of Midland ETJ, generally located at 2701 W. Francis Avenue. (ENGINEERING SERVICES)

RESOLUTION NO. 2013 - 210

RESOLUTION AUTHORIZING THE EXECUTION OF A TEMPORARY WATER AND SEWER SERVICE AGREEMENT BETWEEN THE CITY OF MIDLAND AND STAGG INVESTMENT GROUP, INC. FOR SERVICES TO 2701 WEST FRANCIS AVENUE, MIDLAND COUNTY, TEXAS; SAID PROPERTY IS OUTSIDE THE CITY LIMITS; STAGG INVESTMENT GROUP, INC. HAS EXECUTED A LETTER AGREEING TO ANNEXATION IF AND WHEN THE PROPERTY IS ANNEXED; STAGG INVESTMENT GROUP, INC. SHALL BE CHARGED A RATE FOR SERVICE WHICH IS ONE AND ONE-HALF TIMES THE RATE CHARGED CUSTOMERS IN THE CITY LIMITS; AND ORDERING RECORDATION BY THE CITY SECRETARY

14. Approved a resolution to approve a Professional Service Agreement with Freese & Nichols, Inc. in the amount of \$287,000 for engineering services in connection with the Midland Draw and Jal Draw Channel Studies. (ENGINEERING SERVICES)

RESOLUTION NO. 2013 - 211

RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH FREESE & NICHOLS, INC. FOR ENGINEERING SERVICES IN CONNECTION WITH THE MIDLAND DRAW STUDY AND THE JAL DRAW STUDY; AND AUTHORIZING PAYMENT THEREFOR IN THE AMOUNT OF \$285,614.00

15. Approved a resolution to approve a Professional Service Agreement with Maverick Engineering in the amount of \$44,000 for the engineering services in connection with the Beal Parkway Extension between Thomason Drive and Anetta Drive. (ENGINEERING SERVICES)

RESOLUTION NO. 2013 - 212

RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH MAVERICK CIVIL & SURVEY, LLC FOR ENGINEERING SERVICES IN CONNECTION WITH THE EXTENSION OF BEAL PARKWAY BETWEEN THOMASON DRIVE AND ANETTA DRIVE; AND AUTHORIZING PAYMENT THEREFOR IN THE AMOUNT OF \$44,000.00; A REQUEST FOR QUALIFICATIONS WAS NOT ADVERTISED BY THE CITY OF MIDLAND FOR SAID SERVICES

16. Approved a resolution to appropriate interest earned on the FY2010 Justice Assistance Grant funds. (POLICE)

RESOLUTION NO. 2013 - 213

RESOLUTION APPROPRIATING INTEREST EARNED IN THE AMOUNT OF \$82.00 ON THE FY2010 JUSTICE ASSISTANCE GRANT FUNDS; THE GRANT AWARD PLUS INTEREST MUST BE EXPENDED OR RETURNED TO THE FEDERAL GOVERNMENT AS A REQUIREMENT OF THE GRANT

19. Approved a resolution to reject any extension of the Contract Lease Agreement with Mr. W Fireworks, Inc. and authorizing the City Manager to give notice to the tenant that he surrenders the property to the City immediately. (UTILITIES)

RESOLUTION NO. 2013 - 216

RESOLUTION TERMINATING A LEASE ON A 100' BY 100' AREA OUT OF A LARGER 10-ACRE TRACT OF LAND OUT OF SECTION 8, BLOCK 38, T-2-S, T&P RR COMPANY SURVEY, MIDLAND COUNTY, TEXAS; AND AUTHORIZING THE UTILITIES DEPARTMENT TO GIVE 30 DAYS WRITTEN NOTICE THEREOF TO THE LESSEE, MR. W FIREWORKS, INCORPORATED

20. Approved a resolution authorizing the City Manager to enter into a Professional Services Agreement with Enprotec / Hibbs & Todd to evaluate and recommend water and sewer rate adjustments. (UTILITIES)

RESOLUTION NO. 2013 - 217

RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH ENPROTEC/HIBBS & TODD, INCORPORATED, FOR PROFESSIONAL CONSULTATION SERVICES FOR A FEE NOT TO EXCEED \$10,000.00; THIS ITEM WAS NOT BID

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

6. Consider a resolution recording a vote on a proposal to consider an Ad Valorem Tax Rate for the Fiscal Year 2013 – 2014 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. (FINANCE)

RESOLUTION NO. 2013 - 203

RESOLUTION RECORDING A VOTE ON A PROPOSAL TO CONSIDER AN AD VALOREM TAX RATE FOR THE FISCAL YEAR 2013 - 2014 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 Director Bob McNaughton reported that when the Council had their budget workshop they talked about a rate of \$.443151 per \$100 valuation, which would have made it the lowest rate adopted since 1988. Following the certification of the tax role, that rate dropped down to \$.431927 per \$100 valuation which is 2.9 cents less than the rate established last year and 2.78% over the effective rate. He emphasized that this is not the rate Council has to adopt, but it is the maximum rate that can be adopted. The rate will be published in the newspaper and public hearings will be held on August 6 at 9:00 a.m. and August 13 at 6:00 p.m.

Council Member Love moved to adopt Resolution No. 2013 - 203; seconded by Council Member Morales. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James. NAY: None. ABSTAIN: None. ABSENT: Sparks.

7. Consider a resolution authorizing the Mayor to negotiate and execute an interlocal agreement with the Midland County Fresh Water Supply District Number 1 regarding the development of the Clearwater Ranch; the Clearwater Ranch consists of approximately 6,750 acres in Winkler County, Texas; and the proposed interlocal agreement will allow the development of the Clearwater Ranch as a water supply for the City in conjunction with the T-Bar Ranch. (CITY ATTORNEY'S OFFICE)

RESOLUTION NO. 2013 - 204

RESOLUTION AUTHORIZING THE MAYOR TO NEGOTIATE AND EXECUTE AN INTERLOCAL AGREEMENT WITH THE MIDLAND COUNTY FRESH WATER SUPPLY DISTRICT NUMBER 1 REGARDING THE DEVELOPMENT OF THE CLEARWATER RANCH; THE CLEARWATER RANCH CONSISTS OF APPROXIMATELY 6,750 ACRES IN WINKLER COUNTY, TEXAS; AND THE PROPOSED INTERLOCAL AGREEMENT WILL ALLOW THE DEVELOPMENT OF THE CLEARWATER RANCH AS A WATER SUPPLY FOR THE CITY IN CONJUNCTION WITH THE T-BAR RANCH

Council Member Trost asked if this item was a continuation or addition to T-Bar. City Attorney Stretcher reported that it could be. He noted that it would be developed as a water supply line that would run to T-Bar and would be blended with the T-Bar water. He reported that bonds were sold for the T-Bar development and they may have to do a new issuance. They are working through the bonds and covenants. This item has been presented to get the project moving until the bond issue is resolved. The route of the water line is not known at this time.

Council Member Love moved to adopt Resolution No. 2013 - 204; seconded by Council Member Trost. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James. NAY: None. ABSTAIN: None. ABSENT: Sparks.

8. Consider a resolution authorizing the City Manager to employ Parkhill, Smith & Cooper, Incorporated, to work with various state agencies including the Railroad Commission of Texas and the Texas Commission on Environmental Quality in regards to the development of the City's water supply in Winkler County and Loving County, Texas; the City Manager is authorized to employ other experts as needed for the development of the City's water supply in Winkler County and Loving County, Texas; and appropriating funds. (CITY ATTORNEY'S OFFICE)

RESOLUTION NO. 2013 - 205

RESOLUTION AUTHORIZING THE CITY MANAGER TO EMPLOY PARKHILL, SMITH & COOPER, INCORPORATED, TO WORK WITH VARIOUS STATE AGENCIES INCLUDING THE RAILROAD COMMISSION OF TEXAS AND THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY IN REGARDS TO THE DEVELOPMENT OF THE CITY'S WATER SUPPLY IN WINKLER COUNTY AND LOVING COUNTY, TEXAS; THE CITY MANAGER IS AUTHORIZED TO EMPLOY OTHER EXPERTS AS NEEDED FOR THE DEVELOPMENT OF THE CITY'S WATER SUPPLY IN WINKLER COUNTY AND LOVING COUNTY, TEXAS; AND APPROPRIATING FUNDS

City Attorney Stretcher answered questions about this item noting that the City Manager was authorized to spend up to \$75,000 for various agreements relating to the water supply line.

Council Member Trost moved to adopt Resolution No. 2013 - 205; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James. NAY: None. ABSTAIN: None. ABSENT: Sparks.

12. Consider a resolution authorizing the City Manager to negotiate a contract for employment of Enprotec / Hibbs & Todd, Inc. (eHT) to provide professional services for the City of Midland relating to the development review processes within the Department of Development Services on a recurring or as-needed basis as requested by City staff with respects to planning, engineering, and building site development as defined in the scope of services. (DEVELOPMENT SERVICES)

RESOLUTION NO. 2013 - 209

RESOLUTION AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH ENPROTEC / HIBBS & TODD, INC. FOR PLAN REVIEW SERVICES TO ASSIST THE ENGINEERING SERVICES DEPARTMENT AND THE DEVELOPMENT SERVICES DEPARTMENT; AND AUTHORIZING PAYMENT IN AN AMOUNT NOT TO EXCEED \$50,000

When asked if the contract would be negotiated on a per job basis, Assistant City Manager Jim Nichols reported it would be on an as needed basis, paying for time and materials as expended, and that it would be handled by the City Manager's Office up to a maximum of \$50,000. If additional funds were needed, staff would come back to Council and ask for an additional lump sum.

When asked when the last time the job was posted, City Manager Sharp reported that the job has been continuously posted on the City's website as well as sent to several other groups that target Planners.

Council Member Morales moved to adopt Resolution No. 2013 - 209; seconded by Council Member Trost. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James. NAY: None. ABSTAIN: None. ABSENT: Sparks.

17. Consider a resolution authorizing the renewal of an Operating Certificate for GK's Shuttle Service, LLC. (POLICE)

RESOLUTION NO. 2013 - 214

RESOLUTION AUTHORIZING THE RENEWAL OF AN OPERATING CERTIFICATE FOR GK'S SHUTTLE SERVICE, LLC

Council Member Trost moved to adopt Resolution No. 2013 - 214; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford. NAY: None. ABSTAIN: James. ABSENT: Sparks.

18. Consider a resolution authorizing an Operating Certificate for B & B Platinum Limo, LLC to operate a limousine business (POLICE)

RESOLUTION NO. 2013 - 215

RESOLUTION AUTHORIZING AN OPERATING CERTIFICATE FOR B&B PLATINUM LIMO, LLC TO OPERATE A LIMOUSINE BUSINESS; SETTING FORTH CONDITIONS ACCOMPANYING THE CERTIFICATE; AND ESTABLISHING THE TERMS OF THE CERTIFICATE

Council Member Dufford moved to adopt Resolution No. 2013 - 215; seconded by Council Member Morales. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford. NAY: None. ABSTAIN: James. ABSENT: Sparks.

SECOND READINGS

21. Consider an ordinance on second reading prohibiting parking between 7:30 A.M. and 4:30 P.M. on school days only upon portions of certain streets in the vicinity of Henderson Elementary School; except to residents whose property abuts such streets and have obtained a valid parking permit. (ENGINEERING SERVICES) (First reading held April 9, 2013.)

ORDINANCE NO. 9136

AN ORDINANCE PROHIBITING PARKING BETWEEN 7:30 A.M. AND 4:30 P.M. ON SCHOOL DAYS ONLY UPON PORTIONS OF CERTAIN STREETS IN THE VICINITY OF HENDERSON ELEMENTARY SCHOOL DESCRIBED AS ON THE NORTH SIDE OF GRACELAND DRIVE FROM THE NORTH SOUTH ALLEY WEST OF BENTWOOD DRIVE CONTINUING EAST A DISTANCE OF 921 FEET TO THE NORTH SOUTH ALLEY OF ERIE DRIVE, AND FROM THE WEST SIDE OF BENTWOOD DRIVE FROM THE CENTERLINE OF GRACELAND DRIVE CONTINUING NORTH A DISTANCE OF 368 FEET, AND ON THE EAST SIDE OF BENTWOOD DRIVE FROM THE CENTERLINE OF GRACELAND DRIVE CONTINUING NORTH A DISTANCE OF 398 FEET, AND ON THE WEST SIDE OF WILSHIRE DRIVE FROM THE CENTERLINE OF GRACELAND DRIVE CONTINUING NORTH A DISTANCE OF 372 FEET, AND ON THE EAST SIDE OF WILSHIRE DRIVE FROM THE CENTERLINE OF GRACELAND DRIVE CONTINUING NORTH A DISTANCE OF 271 FEET, AND ON THE WEST SIDE OF ERIE DRIVE FROM THE CENTERLINE OF GRACELAND DRIVE CONTINUING NORTH A DISTANCE OF 238 FEET, AND ON THE EAST SIDE OF ERIE DRIVE FROM THE CENTERLINE OF GRACELAND DRIVE CONTINUING NORTH A DISTANCE OF 397 FEET EXCEPT TO RESIDENTS WHOSE PROPERTY ABUTS SUCH STREET AND HAVE OBTAINED A VALID PARKING PERMIT; AUTHORIZING AND DIRECTING THE TRAFFIC ENGINEER TO ERECT APPROPRIATE SIGNS; DECLARING ANY VEHICLE IN VIOLATION OF THE PROVISIONS OF THIS ORDINANCE A NUISANCE AND PROVIDING FOR THE REMOVAL OF SAME; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO HUNDRED DOLLARS (\$200.00); AND ORDERING PUBLICATION

Deputy City Secretary Adriana Moreno read the caption of Ordinance No. 9136.

Transportation Manager Gary Saunders gave a brief overview of the item noting the rationale of including the sides of home on Graceland is to cover all front and side yards of any residential properties. When asked if another group of neighbors did not want parking in front of their home could the area be extended; Mr. Saunders responded it could.

Rick Davis, 2509 Shell Avenue, speaking on behalf of MISD Board of Trustees, reported that the majority of parents who park and walk their children into the school are for kids in Pre-K through third grade. The last time this item came before Council, Superintendant Warren was encouraged to meet with the neighborhood, which he did on June 13. Of those in attendance, one thought it was a constant problem, a few thought it was occasionally a problem and one thought it wasn't a problem at all. MISD opposes the parking restriction and feels it will not solve the problem and is concerned that if adopted other people near elementary schools will ask for the same thing. He reported they are planning to build a 32-space parking lot off of Graceland and it should be complete in December or January. They expect this should help alleviate the problem. Additionally, they are working on a specific drop off zone for kids in Pre-K through third grade hoping that too will reduce the number of people who park and walk their students into the school.

James Rikken, 801 S. Moran, also representing the school district, spoke briefly about the proposed school drop off.

Council Member Dufford moved to defer this item to the last meeting in March 2014; seconded by Council Member James.

Kay Richmond, 4719 Erie Drive reported she was advised to do this petition by Chief Colburn at MISD. She reported the congestion is bad during these times, that parents double park, ignore the laws and speed. She shared a story from a crossing guard who relayed that people drive through the crosswalk while she is still in it. She shared that one parent planned to make the front of her home her permanent parking space.

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

22. Consider an ordinance on second reading on a request by Grassland 2 Dev. Co., LLP for a zone change from PD, Planned District for a Housing Development to an Amended Planned District for a Housing Development on a 5.32-acre tract of land (Tract 1) and from 1F-1, One-Family Dwelling District to 1F-2, One-Family Dwelling District on 5.35-acre tract of land (Tract 2), all out of Section 35, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. (Generally located at the east side of State Highway 158 and at the west extension of Mosswood Drive.) (DEVELOPMENT SERVICES) (First reading held July 9, 2013.)

ORDINANCE NO. 9162

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 5.32-ACRE TRACT OF LAND WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT, TO BE USED AS AN AMENDED PLANNED DISTRICT FOR A HOUSING DEVELOPMENT; BY PERMITTING A 5.35-ACRE TRACT OF LAND WHICH IS PRESENTLY ZONED 1F-1, ONE-FAMILY DWELLING DISTRICT, TO BE USED AS A 1F-2, ONE-FAMILY DWELLING DISTRICT; SAID TRACTS BEING OUT OF SECTION 35, BLOCK 40, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF STATE HIGHWAY 158 AND AT THE WEST EXTENSION OF MOSSWOOD DRIVE); CONTAINING A CUMULATIVE CLAUSE;

CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

Deputy City Secretary Moreno read the caption of Ordinance No. 9162.

Council Member Love moved to approve the second and final reading of Ordinance No. 9162 in accordance with the Charter of the City of Midland; seconded by Council Member James. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James. NAY: None. ABSTAIN: None. ABSENT: Sparks.

23. Consider an ordinance on second reading on a request by Innovative Land Development for a zone change from 1F-3, One-Family Dwelling District to TH, Townhouse Dwelling District on a 10.32-acre tract of land out of Section 1, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas. (Generally located at the east side of Lamesa Road, approximately ½ mile north of E. Loop 250 North.) (DEVELOPMENT SERVICES) (First reading held July 9, 2013.)

ORDINANCE NO. 9163

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 10.32-ACRE TRACT OF LAND OUT OF SECTION 1, BLOCK "X", H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED 1F-3, ONE-FAMILY DWELLING DISTRICT, TO BE USED AS A TH, TOWNHOUSE DWELLING DISTRICT (GENERALLY LOCATED AT THE EAST SIDE OF NORTH LAMESA ROAD, APPROXIMATELY ½ MILE NORTH OF EAST LOOP 250 NORTH); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

Deputy City Secretary Moreno read the caption of Ordinance No. 9163.

Council Member Dufford moved to approve the second and final reading of Ordinance No. 9163 in accordance with the Charter of the City of Midland; seconded by Council Member Morales. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James. NAY: None. ABSTAIN: None. ABSENT: Sparks.

24. Consider an ordinance on second reading on a City-initiated request for a zone change from PD, Planned District for a Mixed Use District to PD, Planned District for Housing Development, on a 2.50-acre portion of Lot 1, Block 3, Wallace Heights Addition, Section 4, City and County of Midland, Texas. (Generally located on the south side of Sinclair Avenue, approximately 380 feet west of N. Midland Drive.) (DEVELOPMENT SERVICES) (First reading held July 9, 2013.)

ORDINANCE NO. 9164

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 2.50-ACRE PORTION OF LOT 1, BLOCK 3, WALLACE HEIGHTS ADDITION, SECTION 4, CITY AND COUNTY OF MIDLAND, TEXAS, AND MORE SPECIFICALLY DESCRIBED IN SECTION ONE HEREOF, WHICH IS PRESENTLY

ZONED PD, PLANNED DISTRICT FOR A MIXED USE DISTRICT, TO BE USED AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT (GENERALLY LOCATED ON THE SOUTH SIDE OF SINCLAIR AVENUE, APPROXIMATELY 380 FEET WEST OF NORTH MIDLAND DRIVE); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

Deputy City Secretary Moreno read the caption of Ordinance No. 9164.

Council Member Love moved to approve the second and final reading of Ordinance No. 9164 in accordance with the Charter of the City of Midland; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James. NAY: None. ABSTAIN: None. ABSENT: Sparks.

25. Consider an ordinance on second reading amending the Fiscal Year 2012-2013 Budget to provide additional funds to the Sports and Entertainment Association of Midland (SEAM) in the amount of \$50,000. (CITY SECRETARY'S OFFICE) (First reading held July 9, 2013.)

ORDINANCE NO. 9166

AN ORDINANCE AMENDING THE OFFICIAL MUNICIPAL BUDGET FOR FISCAL YEAR 2012-2013 IN ORDER TO PROVIDE ADDITIONAL FUNDS TO THE SPORTS AND ENTERTAINMENT ASSOCIATION OF MIDLAND; THE ADDITIONAL FUNDING PROVIDED TO THE SPORTS AND ENTERTAINMENT ASSOCIATION OF MIDLAND WILL BE USED FOR UPCOMING EVENTS; THE ADDITIONAL FUNDS WILL ALLOW FOR THE PROMOTION OF TOURISM IN THE CITY OF MIDLAND; AND ORDERING RECORDATION; AND APPROPRIATING FUNDS

Deputy City Secretary Moreno read the caption of Ordinance No. 9166.

Council Member Love moved to approve the second and final reading of Ordinance No. 9166 in accordance with the Charter of the City of Midland; seconded by Council Member Trost. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James. NAY: None. ABSTAIN: None. ABSENT: Sparks.

26. Consider an ordinance on second reading on a request for the vacation of a 0.138-acre portion of the right-of-way of E. Spruce Avenue adjacent to Lots 23 and 24, Block 6 and to Lots 1 and 2, Block 5, Sun Garden Village, Second Section, City and County of Midland, Texas. (Generally located on the west side of North Carver Street, approximately 270 feet south of Dormard Avenue.) (DEVELOPMENT SERVICES) (First reading held July 9, 2013.)

ORDINANCE NO. 9167

AN ORDINANCE VACATING AND ABANDONING A 0.138-ACRE PORTION OF EAST SPRUCE AVENUE RIGHT-OF-WAY ADJACENT TO LOTS 23 AND 24, BLOCK 6, AND TO LOTS 1 AND 2, BLOCK 5, SUN GARDEN VILLAGE, SECOND SECTION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF NORTH CARVER STREET, APPROXIMATELY 270 FEET SOUTH OF DORMARD AVENUE); ADOPTING THE APPRAISAL BY THE CITY MANAGER OF \$599.20; AND

ORDERING RECORDATION BY THE CITY SECRETARY

Deputy City Secretary Moreno read the caption of Ordinance No. 9167.

Council Member Morales moved to approve the second and final reading of Ordinance No. 9167 in accordance with the Charter of the City of Midland; seconded by Council Member James. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James. NAY: None. ABSTAIN: None. ABSENT: Sparks.

27. Consider an ordinance on second reading on a request for the vacation of a 0.098-acre portion of the right-of-way of North Carver Street adjacent to Lot 1, Block 5, Sun Garden Village, Second Section, City and County of Midland, Texas. (Generally located on the south of East Spruce Avenue, approximately 150 feet north of East Pine Avenue.) (DEVELOPMENT SERVICES) (First reading held July 9, 2013.)

ORDINANCE NO. 9168

AN ORDINANCE VACATING AND ABANDONING A 0.098-ACRE PORTION OF NORTH CARVER STREET RIGHT-OF-WAY ADJACENT TO LOT 1, BLOCK 5, SUN GARDEN VILLAGE, SECOND SECTION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON SOUTH SIDE OF EAST SPRUCE AVENUE, APPROXIMATELY 150 FEET NORTH OF EAST PINE AVENUE); ADOPTING THE APPRAISAL BY THE CITY MANAGER OF \$424.90; AND ORDERING RECORDATION BY THE CITY SECRETARY

Deputy City Secretary Moreno read the caption of Ordinance No. 9168.

Council Member Dufford moved to approve the second and final reading of Ordinance No. 9168 in accordance with the Charter of the City of Midland; seconded by Council Member Morales. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James. NAY: None. ABSTAIN: None. ABSENT: Sparks.

28. Consider an ordinance on second reading on a request for the vacation of a 0.185-acre portion of the right-of-way of Spruce Avenue adjacent to Lot 4, Block 12 and to Lot 1, Block 11, Sun Garden Village, Second Section, City and County of Midland, Texas. (Generally located on the east side of Jackson Street, approximately 270 feet south of Dormard Avenue.) (DEVELOPMENT SERVICES) (First reading held July 9, 2013.)

ORDINANCE NO. 9169

AN ORDINANCE VACATING AND ABANDONING A 0.185-ACRE PORTION OF EAST SPRUCE AVENUE RIGHT-OF-WAY ADJACENT TO LOT 4, BLOCK 12, AND TO LOT 1, BLOCK 11, SUN GARDEN VILLAGE, SECOND SECTION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF NORTH JACKSON STREET, APPROXIMATELY 270 FEET SOUTH OF DORMARD AVENUE); ADOPTING THE APPRAISAL BY THE CITY MANAGER OF \$804.00; AND ORDERING RECORDATION BY THE CITY SECRETARY

Deputy City Secretary Moreno read the caption of Ordinance No. 9169.

Council Member Dufford moved to approve the second and final reading of Ordinance No. 9169 in accordance with the Charter of the City of Midland; seconded by Council Member James. The motion carried by the following vote: AYE: Love, Morales, Trost,

Perry, Dufford, James. NAY: None. ABSTAIN: None. ABSENT: Sparks.

29. Consider an ordinance on second reading establishing intersection stops at various locations within the City of Midland, Texas; requiring and authorizing the posting of appropriate signs at intersections; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two hundred dollars (\$200.00); and ordering publication. (ENGINEERING SERVICES) (First reading held July 9, 2013.)

ORDINANCE NO. 9170

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

Deputy City Secretary Moreno read the caption of Ordinance No. 9170.

Council Member Dufford moved to approve the second and final reading of Ordinance No. 9170 in accordance with the Charter of the City of Midland; seconded by Council Member Morales. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James. NAY: None. ABSTAIN: None. ABSENT: Sparks.

PUBLIC HEARINGS

30. At approximately 10:30 A.M. hold a public hearing and consider an ordinance on a request by Kenneth Huseman for a zone change from FD, Future Development to LR-2, Local Retail District on a 6.08-acre tract of land (Tract 1), to LI, Light Industrial District a 40.90-acre tract of land (Tract 2), to PD, Planned District for a Housing Development a 37.72-acre tract of land (Tract 6), to 1F-3, One-Family Dwelling District a 55.83-acre tract of land (Tract 10), from PD, Planned District for a Shopping Center, to LR-2, Local Retail District a 13.70-acre tract of land (Tract 3), to PD, Planned District for a Housing Development a 16.61-acre tract of land (Tract 4), to BP, Business Park District a 21.82-acre tract of land (Tract 7), from BP, Business Park District to PD, Planned District for a Housing Development a 34.39-acre tract of land (Tract 5), to 1F-3, One-Family Dwelling District a 2.77-acre tract of land (Tract 9), from LR-2, Local Retail District to BP, Business Park District a 0.74- (DEVELOPMENT SERVICES)

ORDINANCE NO. 9171

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 6.08-ACRE TRACT OF LAND ("TRACT 1") WHICH IS PRESENTLY ZONED FD, FUTURE DEVELOPMENT DISTRICT, TO BE USED AS AN LR-2, LOCAL RETAIL DISTRICT; BY PERMITTING A 40.90-ACRE TRACT OF LAND ("TRACT 2") WHICH IS PRESENTLY ZONED FD, FUTURE DEVELOPMENT DISTRICT, TO BE USED AS AN LI, LIGHT INDUSTRIAL DISTRICT; BY PERMITTING A 13.70-ACRE TRACT OF LAND ("TRACT 3") WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A SHOPPING CENTER, TO BE USED AS AN LR-2, LOCAL RETAIL DISTRICT; BY PERMITTING A 16.61-ACRE TRACT OF LAND ("TRACT 4") WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A SHOPPING CENTER, TO BE

USED AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT; BY PERMITTING A 34.39-ACRE TRACT OF LAND ("TRACT 5") WHICH IS PRESENTLY ZONED BP, BUSINESS PARK DISTRICT, TO BE USED AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT; BY PERMITTING A 37.72-ACRE TRACT OF LAND ("TRACT 6") WHICH IS PRESENTLY ZONED FD, FUTURE DEVELOPMENT DISTRICT, TO BE USED AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT; BY PERMITTING A 21.82-ACRE TRACT OF LAND ("TRACT 7") WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A SHOPPING CENTER, TO BE USED AS A BP, BUSINESS PARK DISTRICT; BY PERMITTING A 0.74-ACRE TRACT OF LAND ("TRACT 8") WHICH IS PRESENTLY ZONED LR-2, LOCAL RETAIL DISTRICT, TO BE USED AS A BP, BUSINESS PARK DISTRICT; BY PERMITTING A 2.77-ACRE TRACT OF LAND ("TRACT 9") WHICH IS PRESENTLY ZONED BP, BUSINESS PARK DISTRICT, TO BE USED AS A 1F-3, ONE-FAMILY DWELLING DISTRICT; BY PERMITTING A 55.83-ACRE TRACT OF LAND ("TRACT 10") WHICH IS PRESENTLY ZONED FD, FUTURE DEVELOPMENT DISTRICT, TO BE USED AS A 1F-3, ONE-FAMILY DWELLING DISTRICT; ALL OF SAID TRACTS BEING OUT OF SECTION 12, BLOCK 40, T-2-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS; ALL OF SAID TRACTS BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS MADE A PART HEREOF; SAID TRACTS ARE GENERALLY LOCATED ON THE SOUTH SIDE OF WEST INTERSTATE HIGHWAY 20, SOUTH OF LOOP 250; PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

Interim Planning Division Manager Ken VanDyne gave an overview of the item noting the Traffic Impact Study showed that the road network proposed was rated level "F" which means gridlock, stop and go traffic, and a higher chance of accidents. He explained the road issues will be addressed by having each tract, as it is developed, with internal roads, widening of intersections and installation of traffic signals to bring up to a "C" level or better. The developer is receptive to the plan.

Mayor Perry opened the public hearing at 11:21 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Deputy City Secretary Moreno read the caption of Ordinance No. 9171.

Council Member Dufford moved approval of the first of two readings of Ordinance No. 9171 in accordance with the Charter of the City of Midland; seconded by Council Member James. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James. NAY: None. ABSTAIN: None. ABSENT: Sparks.

31. At approximately 10:33 A.M. hold a public hearing and consider an ordinance on a request by Rednecks Draffhouse for an Amended Specific Use Permit with Term for the sale of all alcoholic beverages, for on-premises consumption, in a lounge, on a 5,000 square foot portion of Lot 1, Block 1, Mesa Verde Addition, City and County of Midland, Texas. (Generally located on the southwest corner of the intersection of N. Midland Drive and Neely Avenue.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9172

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF THE PROPERTY DESCRIBED AS A 5,000 SQUARE FOOT PORTION OF LOT 1, BLOCK 1, MESA VERDE ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTHWEST CORNER OF THE INTERSECTION OF NORTH MIDLAND DRIVE AND NEELY 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 THE SALE OF ALL ALCOHOLIC BEVERAGES IN A LOUNGE 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

Interim Planning Division Manager Ken VanDyne gave an overview of the item noting it was a request for an existing SUP in a strip mall to expand its current operation into the suite next door, adding an additional 140 seats. Their hours will remain the same. Three letters of objection were received.

Police Chief Price Robinson answered questions about police calls to the area.

Council Member Trost suggested that Police Officers might need to be hired as security.

Mayor Perry opened the public hearing at 11:30 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Deputy City Secretary Moreno read the caption of Ordinance No. 9172.

Building Official Steve Thorpe reported that when Mr. Roumell took over the property the expansion had already taken place. He brought it to the City's attention and brought in people to ensure that the expansion had been done correctly and was up to code.

Gene Roumell, applicant, reported that their peak hours are Friday and Saturday, They keep two floor managers on at all times on those nights. He expressed concern about having to pay \$35 per hour, per night, for two police officers. He noted he has not increased his capacity because the expansion was done with a previous owner. He further noted that he was the one who brought the discrepancy to the City's attention. When asked if he would consider hiring one police officer Mr. Roumell responded that the rules require two officers. He likes to do business the right way and he works closely with TABC. His business just celebrated its first anniversary and he does not want to needlessly spend extra money and potentially jeopardize his business.

Council Member Morales moved approval of the first of two readings of Ordinance No. 9172 in accordance with the Charter of the City of Midland; seconded by Council Member James. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James. NAY: None. ABSTAIN: None. ABSENT: Sparks.

32. At approximately 10:36 A.M. hold a public hearing and consider a resolution on a request by Butch Corey / Heart of America for a Temporary Land Use Permit for a Carnival on Lot 1 Block 17, Skyline Terrace, Unit 2, City and County of Midland, Texas.

(Generally located on the southwest corner of the intersection of W. Loop 250 North and N. Midkiff Road.) (DEVELOPMENT SERVICES)

RESOLUTION NO. 2013 - 218

RESOLUTION AUTHORIZING THE TEMPORARY USE OF LAND FOR A CARNIVAL ON LOT 1, BLOCK 17, SKYLINE TERRACE, UNIT 2, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTHWEST CORNER OF THE INTERSECTION OF WEST LOOP 250 NORTH AND NORTH MIDKIFF ROAD); AND MAKING SAID PERMIT SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; AND PROVIDING THAT THE CHIEF OF POLICE SHALL ENSURE THAT ALL PARTICIPANTS ARE LICENSED PURSUANT TO TITLE V, CHAPTER 9 OF THE MIDLAND CITY CODE

Interim Planning Division Manager Ken VanDyne gave an overview of the item noting it was for the bi-annual carnival held at the mall to be held Friday, August 16 through Sunday, August 25 with operating hours of 5:00 p.m. to 11:00 p.m. Monday through Friday, and Saturday and Sunday from 2:00 p.m. to midnight. No alcoholic beverages will be sold and staff recommended approval.

Council Member Love noted that this date as the same as the Midland County Fair and asked if the applicant was aware of that fact.

Mayor Perry opened the public hearing at 11:42 a.m.

Lindsey Keys, 4511 N. Midkiff, reported that the mall is aware that the events take place at the same time. She noted the contracts had been negotiated before she became a part of the mall team and that in the future they will check the dates prior to scheduling.

There being no one else wishing to speak, the public hearing was closed at 11:44 a.m.

Council Member James moved to adopt Resolution No. 2013 - 218; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Morales, Trost, Perry, Dufford, James. NAY: None. ABSTAIN: Love. ABSENT: Sparks.

33. At approximately 10:39 a.m. hold a public hearing and consider a resolution expressing the intent of the Midland City Council to continue in effect Title VI, "Police Regulations", Chapter 9, "Curfew Hours for Minors", of the Midland City Code pursuant to Texas Local Government Code Section 370.002. (POLICE)

RESOLUTION NO. 2013 - 219

RESOLUTION EXPRESSING THE INTENT OF THE MIDLAND CITY COUNCIL TO CONTINUE IN EFFECT TITLE VI, "POLICE REGULATIONS", CHAPTER 9, "CURFEW HOURS FOR MINORS", OF THE MIDLAND CITY CODE PURSUANT TO TEXAS LOCAL GOVERNMENT CODE SECTION 370.002

City Manager Sharp reported that every few years the Council is required to renew the curfew hours.

Mayor Perry opened the public hearing at 11:45 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Council Member James moved to adopt Resolution No. 2013 - 219; seconded by Council Member Morales. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James. NAY: None. ABSTAIN: None. ABSENT: Sparks.

MISCELLANEOUS

34. Consider a motion approving a proposed preliminary plat of Southwest Crossing, being a 254.33-acre tract of land out of Section 12, Block 40, T-2-S, T&P RR Co. Survey, City and County of Midland, Texas. (Generally located on the south side of West Interstate Highway 20, south of South Loop 250 West.) (DEVELOPMENT SERVICES)

Interim Planning Division Manager Ken VanDyne gave an overview of the item noting these were the first two pieces and they will be looking at the Traffic Impact Study.

Council Member Trost moved to approve a motion approving a proposed preliminary plat of Southwest Crossing, being a 254.33-acre tract of land out of Section 12, Block 40, T-2-S, T&P RR Co. Survey, City and County of Midland, Texas. (Generally located on the south side of West Interstate Highway 20, south of South Loop 250 West.); seconded by Council Member Morales. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James. NAY: None. ABSTAIN: None. ABSENT: Sparks.

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

Council Member Dufford moved to appoint Brad Bullock to the Planning & Zoning Commission; seconded by Council Member James. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James. NAY: None. ABSTAIN: None. ABSENT: Sparks.

Council Member Morales moved to reappoint Larry Edgerton to the Permian Basin Community Centers for Mental Health and Mental Retardation; seconded by Council Member James. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James. NAY: None. ABSTAIN: None. ABSENT: Sparks.

EXECUTIVE SESSION

36. 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 551.087 Deliberate Economic Development Negotiations.

a.1. Discuss business prospects that the City seeks to have, locate, stay, or expand in or near the City of Midland, Texas, and discuss possible incentives.

b. Section 551.072 Deliberation Regarding Real Property.

b.1. Discuss the purchase, exchange, lease or value of real property described as Acres: 0.321, Block 035, Lots 5 & 6, Block 35 Addition, Original Town,

Midland, Midland County, Texas.

- b.2. Discuss the purchase, exchange, lease or value of real property described as Acres: 0.321; Block: 035, Lots 7 & 8, Original Town, Midland, Midland County, Texas.
- b.3. Discuss the purchase, exchange, lease or value of real property described as Acres: 1.0 acres more or less, Lots 7-12, Block 039, Original Town Addition, City of Midland, Midland County, Texas.
- b.4. Discuss the purchase, exchange, lease or value of real property described as Acres: 1.0 acres more or less, Block 38, Lots 1-6, Original Town, City of Midland, Midland County, Texas.

Mayor Perry recessed the meeting to Executive Session at 12:01 p.m. The entire Council met in Executive Session until 1:55 p.m.

All of the business at hand having been completed, the meeting adjourned at 1:55 p.m.

PASSED AND APPROVED the 13th day of August, 2013.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

**MIDLAND CITY COUNCIL
MINUTES
August 06, 2013**

The City Council convened in a Special Session in the Council Chamber, City Hall, Midland, Texas, at 9:00 a.m. on August 06, 2013.

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

Council Members absent: Mayor W. Wesley Perry.

Mayor Pro Tem Sparks called the meeting to order at 9:01 a.m.

PUBLIC HEARINGS

1. At approximately 9:00 a.m. hold a public hearing regarding a proposal establishing the ad valorem tax rate of \$0.431927 per \$100 taxable assessed valuation for the Fiscal Year 2013-2014. (FINANCE)

Finance Director Bob McNaughton reported this was the first of two public hearings on the proposed tax rate noting this was an increase of 2.78 percent over the effective rate from the previous year. The second public hearing will be held on Tuesday, August 13 at 6 p.m. He emphasized that this is a proposed rate and not necessarily the rate that will be adopted. It is the maximum rate that can be adopted. He clarified that the effective rate would yield the same tax dollars received as the previous year.

When asked what the rate meant for someone who had an average \$100,000, Mr. McNaughton noted that if their home valuation remained the same, a taxpayer would pay \$29 less than the previous year. The average home last year was valued at \$175,000 and this year it is valued at \$189,000. For a person with an average home it would mean a \$9.24 increase.

City Manager Courtney Sharp reported that the tax rate is almost a three cent decrease but the effective rate is a 2.78 percent increase. That increase will pay for six more firefighters, two police officers and two code officers. He answered questions about the recruitment budget.

Mayor Pro Tem Sparks noted that the public hearing for the budget will be held at a later date noting this was a public hearing for the tax rate.

Mayor Pro Tem Sparks opened the public hearing at 9:16 a.m.

Andy Shaffer, 206 Windridge Circle, built his retirement home in 2004 because he wanted to live in a small West Texas town. Things have drastically changed in Midland since 2004. His property valuation has gone up 66 percent noting that directly affects his taxes. Since he is retired he has no way of increasing his pay. He reported the percentages his taxes have increased and asked the City to keep the effective rate the same as the previous year. He suggested that by keeping the same rate it will actually

increase due to the number of new businesses moving to Midland.

Mary Mabry, 3511 Boyd Avenue, has lived in Midland since 1961. She asked why the City needed to increase her taxes when they had enough money to give to special interest groups, specifically to Energy Towers that would have no benefit to her. She stated many people would feel better if a new City Hall was built at the old courthouse location rather than Energy Towers. She asked the Council to consider not raising the taxes.

Mayor Pro Tem Sparks asked if there is a point in time when a person's tax value on a homestead does not change. City Attorney Stretcher responded there was not.

Eddie Montoya, 4115 Harvard Drive, wanted to give an update on the status of the Midland Hispanic Chamber of Commerce noting he was looking forward to discussing it on August 13.

There being no one else wishing to speak, the public hearing was closed at 9:31 a.m.

2. Consider a motion to place on the City Council's agenda for its August 20, 2013 meeting as an action item an ordinance establishing tax rate. (FINANCE)

Council Member Love moved to approve a motion to place on the City Council's agenda for its August 20, 2013 meeting as an action item an ordinance establishing tax rate; seconded by Council Member Morales. The motion carried by the following vote: AYE: Love, Morales, Trost, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Perry.

All of the business at hand having been completed, the meeting adjourned at 9:32 a.m.

PASSED AND APPROVED the 13th day of August, 2013.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 8/13/2013

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution ratifying the emergency purchase of electrical work to replace wiring in vandalized light poles at Grande Stadium from D & E Electric LLC for the Parks Division.

Purpose:

Approval to ratify the purchase of electrical work for the replacement of wiring in vandalized light poles at Grande Stadium at the Scharbauer Sports Complex.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$58,335.38 Scharbauer Sports Complex Fund

Discussion:

In December 2012, D & E Electric was contacted on an emergency basis to remove, rewire and replace 33 vandalized light poles at Grande Stadium. After repeated thefts, multiple suspects were arrested and D & E was able to complete the work in the latter part of June 2013. As a result of repeated thefts, the cost exceeded the \$50,000.00 City Management purchase limit. Please see the memo from Tina Jauz, Community Services Director for further discussion.

Therefore, please consider approval of a resolution authorizing the ratification of this purchase from Coby Easterwood Sole MBR dba D & E Electric LLC of Midland, Texas for a total cost of \$58,335.38.

RESOLUTION NO. _____

**RESOLUTION RATIFYING EMERGENCY ACTIONS
TAKEN TO REPLACE WIRING IN THIRTY-THREE (33)
VANDALIZED LIGHT POLES AT THE SCHARBAUER
SPORTS COMPLEX AT A COST OF \$58,335.38; AND
WAIVING THE FORMAL BIDDING REQUIREMENT**

WHEREAS, thirty-three (33) light poles at the City of Midland's Scharbauer Sports Complex were recently found to have been vandalized; and

WHEREAS, the City Council accepts the City Manager's determination that the repair of said light poles is of an emergency nature and finds it necessary ratify actions taken to have the light poles repaired by Coby Easterwood Sole MBR, dba D&E Electric, L.L.C., of Midland, Texas, at a cost of \$58,335.38; and

WHEREAS, the Council finds the fees charged for said services to be fair and reasonable; and

WHEREAS, the Texas Local Government Code Section 252.022 exempts from the formal requirements of advertising for and receiving competitive bids a procurement necessary to preserve or protect the City's property or the public health or safety of the City's residents;

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

SECTION ONE. That the City Manager's determination that repair of the light poles is of an emergency nature is hereby adopted and approved.

SECTION TWO. That the emergency actions taken to have the thirty-three (33) vandalized light poles at the Scharbauer Sports Complex repaired at a cost of \$58,335.38 are hereby ratified and approved.

SECTION THREE. That the City Treasurer is hereby authorized and directed to pay Coby Easterwood Sole MBR, dba D&E Electric, L.L.C., of Midland, Texas, for said repairs from funds available in the Fiscal Year 2012 – 2013 Scharbauer Sports Complex Fund (620) Sports Complex (620) Non-Departmental (0625) Maintenance of Buildings and Grounds Budget account upon proper receipt of invoices or statements approved by the City Manager.

On motion of Council member _____, seconded by Council member

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, General Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

CITY OF MIDLAND
Community Services Department
Interoffice Memorandum

Date: July 30, 2013
To: Tommy Hudson, Deputy City Manager
From: Tina Jauz, Community Services Director
Subject: Scharbauer Sports Complex – Electrical Repairs

In the fall of 2012, the parking lot lights at Scharbauer Sports Complex were repeatedly vandalized. The copper wiring in the light poles was removed, rendering the lights inoperable.

Patrol officers arrested multiple suspects accused of stealing copper wire located in the parking lot lights. The suspects have not yet been tried for these offenses. City staff is in contact with the District Attorney's office, seeking restitution from the suspects if they are found guilty of the felony charges.

Repairing the lights is a very expensive and time consuming process, involving the use of a crane to take the poles down and then put them back in place once the light has been rewired. The total bill from the electrical contractor to complete the repairs is \$58,335.38.

The sum of \$58,335.38 is to be funded from Scharbauer Sports Complex Maintenance Funds 620 - 620 – 0625 – 4010.



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 8/13/2013

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving a contract for paving, sidewalks, alleys and streets for the Engineering Services Department.

Purpose:

Approval of a resolution awarding a contract for the City of Midland Paving: Alley, Street and Sidewalk (COMPASS) Project for the Engineering Services Department.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$1,500,000.00 2012 GPCO Street Improvements Bond Fund (\$1,000,000 for labor and \$500,000 for materials)

Discussion:

Two bids were received for the paving of alleys, streets and sidewalks in various locations within the City of Midland. We recommend awarding the contract to the low bidder, Onyx Contractors Operations, LP of Midland, Texas. Please see the City Engineer's memo for further discussion.

Therefore, please consider approval of a resolution awarding a contract for the City of Midland Paving: Alley, Street and Sidewalk Project to Onyx Contractors Operations, LP of Midland, Texas for a not to exceed cost of \$1,000,000.00.

RESOLUTION NO.

**RESOLUTION AWARDING THE CITY OF MIDLAND
PAVING: ALLEY, STREET AND SIDEWALK
("COMPASS") PROJECT TO ONYX CONTRACTORS
OPERATIONS, LP, OF MIDLAND, TEXAS, AT AN
AMOUNT NOT TO EXCEED \$1,000,000.00; AND
APPROPRIATING FUNDS**

WHEREAS, the City Manager advertised the City of Midland Paving: Alley, Street and Sidewalk ("Compass") Project for competitive bids; and

WHEREAS, Onyx Contractors Operations, LP, has submitted the lowest and most responsible bid for the performance of said project in an amount not to exceed \$1,000,000.00, as shown on the bid tabulation attached hereto as Exhibit "A" and incorporated herein for all legal purposes; and

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

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

SECTION ONE. That the Mayor and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a contract with Onyx Contractors Operations, LP, for said project at a cost not to exceed \$1,000,000.00, said contract being on file in the office of the City Secretary, referenced by the date and number of this Resolution.

SECTION TWO. That the sum of \$1,500,000.00 is hereby appropriated from the 2012 GPCO Street Improvements Bond Fund (163) Unappropriated Fund Balance (5650) to the following projects in the following amounts:

- COMPASS Labor Project (9057).....\$1,000,000.00
- COMPASS Materials Project (9058).....\$500,000.00

SECTION THREE. That the City Treasurer is hereby authorized and directed to pay Onyx Contractors Operations, LP, pursuant to the terms of said contract from funds appropriated herein, upon receipt of proper invoices or statements approved by the City

Manager.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, General Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

Project # P13-04 City of Midland Paving: Alleys, Streets, and Sidewalks

Project # P13-04 Midland Paving: Alleys, Streets, and Sidewalks)		(City of		ENGINEER		ONYX		REECE ALBERT	
				Quantity	Unit	Unit Price	Total	Unit Price	Total
Base Bid									
Item	Description								
1	Unclassified excavation (less then 12") (≥25 CY)	1315	CY	\$12.00	\$15,780.00	\$20.00	\$26,300.00	\$14.90	\$19,593.50
2	Unclassified excavation (less then 12")(<25 CY)	1315	CY	\$15.00	\$19,725.00	\$18.00	\$23,670.00	\$20.95	\$27,549.25
3	Concrete removal (less the 6" thickness)(≥ 100 SY)	1315	SY	\$10.00	\$13,150.00	\$18.00	\$23,670.00	\$19.75	\$25,971.25
4	Concrete removal (less the 6" thickness)(< 100 SY)	1315	SY	\$12.50	\$16,437.50	\$15.00	\$19,725.00	\$39.80	\$52,337.00
5	Concrete Curb and Gutter removal	640	LF	\$7.00	\$4,480.00	\$5.00	\$3,200.00	\$5.70	\$3,648.00
6	Addition for removal for reinforcement in flatwork	657	SY	\$5.00	\$3,285.00	\$3.00	\$1,971.00	\$0.95	\$624.15
7	Addition for removal of reinforcement in curb and gutter	320	LF	\$2.00	\$640.00	\$2.00	\$640.00	\$2.35	\$752.00
8	Cold Milling (0"-4" thickness)(≥1000 SY)	5000	SY	\$3.00	\$15,000.00	\$3.75	\$18,750.00	\$3.80	\$19,000.00
9	Cold Milling (0"-4" thickness)(<1000 SY)	5000	SY	\$9.00	\$45,000.00	\$3.75	\$18,750.00	\$5.20	\$26,000.00
10	Place/Shape/Compact imported flexible base (≥1000 SY)	1315	SY	\$5.00	\$6,575.00	\$5.50	\$7,232.50	\$12.75	\$16,766.25
11	Place/Shape/Compact imported flexible base (<1000 SY)	1315	SY	\$10.00	\$13,150.00	\$5.25	\$6,903.75	\$27.05	\$35,570.75
12	Scarify/Shape/Compact Existing/Imported Material (≥1000 SY)	1315	SY	\$7.50	\$9,862.50	\$7.50	\$9,862.50	\$7.40	\$9,731.00
13	Scarify/Shape/Compact Existing/Imported Material (<1000 SY)	1315	SY	\$15.00	\$19,725.00	\$7.25	\$9,533.75	\$16.10	\$21,171.50
14	Shape/Compact Existing/Imported Material (≥1000 SY)	1315	SY	\$5.00	\$6,575.00	\$5.50	\$7,232.50	\$7.40	\$9,731.00
15	Shape/Compact Existing/Imported Material (<1000 SY)	1315	SY	\$10.00	\$13,150.00	\$5.25	\$6,903.75	\$16.10	\$21,171.50
16	Reclaim/Shape/Compact Existing/Imported Material (≥1000 SY)	1315	SY	\$10.00	\$13,150.00	\$7.50	\$9,862.50	\$10.55	\$13,873.25
17	Reclaim/Shape/Compact Existing/Imported Material (<1000 SY)	1315	SY	\$20.00	\$26,300.00	\$7.25	\$9,533.75	\$29.40	\$38,661.00
18	Concrete Pavement/Flatwork – thickness varies (≥ 100 SY)	1315	SY	\$15.00	\$19,725.00	\$20.00	\$26,300.00	\$50.25	\$66,078.75
19	Concrete Pavement/Flatwork – thickness varies (< 100 SY)	1315	SY	\$22.50	\$29,587.50	\$18.00	\$23,670.00	\$125.75	\$165,361.25
20	HMAC – Type D (2"-4" thickness) (≥ 1000 SY)	150	TN	\$40.00	\$6,000.00	\$87.50	\$13,125.00	\$39.10	\$5,865.00
21	HMAC – Type D (2"-4" thickness) (< 1000 SY)	150	TN	\$60.00	\$9,000.00	\$87.50	\$13,125.00	\$79.50	\$11,925.00
22	HMAC – Type C (2"-4" thickness) (≥ 1000 SY)	150	TN	\$40.00	\$6,000.00	\$87.50	\$13,125.00	\$39.00	\$5,850.00
23	HMAC – Type C (2"-4" thickness) (< 1000 SY)	150	TN	\$60.00	\$9,000.00	\$70.00	\$10,500.00	\$79.40	\$11,910.00
24	Chip Seal w/ Type 5 Aggregate (≥ 1000 SY)	1315	SY	\$3.00	\$3,945.00	\$13.41	\$17,634.15	\$3.50	\$4,602.50
25	Chip Seal w/ Type 5 Aggregate (< 1000 SY)	1315	SY	\$9.00	\$11,835.00	\$13.41	\$17,634.15	\$5.20	\$6,838.00
26	24" Curb & Gutter (6" Barrier)	640	LF	\$12.00	\$7,680.00	\$17.00	\$10,880.00	\$14.60	\$9,344.00
27	24" Curb & Gutter (Mountable)	640	LF	\$12.00	\$7,680.00	\$17.00	\$10,880.00	\$14.60	\$9,344.00
28	24" Laydown Curb & Gutter (1" Barrier)	320	LF	\$12.00	\$3,840.00	\$17.00	\$5,440.00	\$14.60	\$4,672.00
29	Integral Curb & Gutter	320	LF	\$8.00	\$2,560.00	\$17.00	\$5,440.00	\$14.00	\$4,480.00
30	Concrete Driveway/Alley Approach	700	SF	\$3.00	\$2,100.00	\$7.00	\$4,900.00	\$4.90	\$3,430.00
31	Sidewalks (4" nominal thickness)	3200	SF	\$4.00	\$12,800.00	\$2.00	\$6,400.00	\$6.40	\$20,480.00
32	Handicap Ramps	250	SF	\$15.00	\$3,750.00	\$4.00	\$1,000.00	\$21.50	\$5,375.00
33	Adjustment to grade of manhole covers	25	EA	\$750.00	\$18,750.00	\$300.00	\$7,500.00	\$695.00	\$17,375.00
34	Adjustment to grade of water valve boxes	50	EA	\$500.00	\$25,000.00	\$250.00	\$12,500.00	\$405.00	\$20,250.00
35	Sawcut Asphalt (full depth)	200	LF	\$2.00	\$400.00	\$2.00	\$400.00	\$2.80	\$560.00
36	Sawcut Concrete (full depth)	200	LF	\$9.00	\$1,800.00	\$3.25	\$650.00	\$8.45	\$1,690.00
37	Cement	200	TN	\$65.00	\$13,000.00	\$32.50	\$6,500.00	\$224.00	\$44,800.00
38	Place flowable fill	250	CY	\$15.00	\$3,750.00	\$54.00	\$13,500.00	\$120.45	\$30,112.50
39	Place prime coat (0.20-0.25 GAL/SY)	500	GAL	\$6.00	\$3,000.00	\$1.50	\$750.00	\$6.00	\$3,000.00
40	Job site safety, traffic control, and erosion/sediment control		%	12%	\$53,182.50	8%	\$34,047.54	25.13%	\$199,907.74
				Items 1-39 Total		\$443,187.50		\$795,494.40	
				TOTAL BASE BID		\$496,370.00		\$995,402.14	



MEMO

TO: Regina Stephenson; City of Midland, Purchasing Manager
FR: David D. Beard, P.E.; City of Midland, City Engineer
DA: 2 August 2013
RE: City of Midland Paving: Alleys, Streets and Sidewalks (COMPASS) – Bid Tabulation
Project No. P13-04 ♦ RFB 6637-13

Regina --

Engineering staff has reviewed the bid tabulation for the COMPASS project. Onyx Contractors Operations, LP of Midland, TX was the low bidder. Onyx has a track record of successfully completing work in the City of Midland and surrounding areas. Although the bids received were significantly different when comparing the Base Bid, Onyx bid was within 8% of the Engineer's estimate. In addition, the unit prices appear to be in line with current pricing trends. Therefore, I am recommending award of the COMPASS project to Onyx Contractors Operations, LP in the amount of \$1,000,000 for the labor and \$500,000 for the material. Below is the funding language:

That the sum of \$1,500,000 is hereby appropriated from the 2012 GPCO Street Improvements Bond Fund (163) Unappropriated Fund Balance (5650) to the following projects in the following amounts:

COMPASS Labor Project (9057) \$1,000,000
COMPASS Materials Project (9058) \$ 500,000

City of Midland

David D. Beard, P.E.
City Engineer



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 8/13/2013

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving the sole source purchase of 500 - 520RA single port MXU's (radios) for the Customer Service Division.

Purpose:

Approval of a resolution authorizing the purchase of MXU's (radios) for the automatic meter reading system.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$60,000.00 Water & Sewer Fund

Discussion:

The City installs water meters with automatic meter read encoders that require a radio to communicate with the recording equipment. Sensus is the manufacturer of the recording equipment and the receivers are proprietary, therefore, the transmitters (MXUs) have to be compatible making them a sole source procurement. Western Industrial Supply LLC is the exclusive authorized distributor of Sensus, Inc. products in West Texas.

Therefore, please consider approval of a resolution authorizing the purchase of 500 MXU's from Western Industrial Supply LLC of Odessa, Texas for a total cost of \$60,000.00.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE PURCHASE OF FIVE HUNDRED (500) 520RA SINGLE PORT RADIOS FOR USE WITH THE CITY'S AUTOMATIC WATER METER READING SYSTEM, FROM WESTERN INDUSTRIAL SUPPLY, L.L.C., OF ODESSA, TEXAS, AT A TOTAL COST OF \$60,000.00; AND SAID PURCHASE WAS NOT BID BUT PURCHASED AS A SOLE SOURCE

WHEREAS, the City Manager approved the single source bid for five hundred (500) 520RA single port radios for use with the City's automatic water meter reading system for the Customer Service Division; and

WHEREAS, the single source provider, Western Industrial Supply, L.L.C., of Odessa, Texas, submitted a total bid for said radios in the estimated amount of \$60,000.00, as shown on the quote sheet attached hereto as Exhibit "A" and incorporated herein for all purposes; and

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

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

WHEREAS, the City Council finds it to be in the public interest to purchase said radios from Western Industrial Supply, L.L.C., of Odessa, Texas;

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

SECTION ONE. That the City Manager is hereby authorized and directed to purchase said radios at a total estimated cost of \$60,000.00.

SECTION TWO. That the City Treasurer is hereby authorized and directed to pay Western Industrial Supply, L.L.C., of Odessa, Texas, for said radios at a price not to exceed \$60,000.00, from funds available in the Fiscal Year 2012 – 2013 Water and Sewer Fund (300) Finance (035) Meter Shop (0340) Water Meters (2195) budget account upon proper receipt of invoices or statements approved by the City Manager.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, General Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

City of Midland - Tabulation

FILE # 6774-13			Western Ind Supply LLC Odessa, TX Mike Clinton (432) 366-8873	
MXU's (radios)				
ITEM	QTY	DESCRIPTION	COST EA.	TOTAL
1	500	520RA Single Port MXUs (radios)	\$120.00	\$60,000.00



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 8/13/2013

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving the sole source purchase of 2 – XG-75 portable radios with accessories, 10 – XM-100F-D02 mobile radios with accessories, 3 – EX55-PBU8B portable radios with accessories and 1 – MAHK-S8MEX mobile radios with accessories for the Communication and Information Systems Department.

Purpose:

Approval of a resolution authorizing the purchase of 2 – XG-75 portable radios with accessories, 10 – XM-100F-D02 mobile radios with accessories, 3 – EX55-PU8B portable radios with accessories and 1 – MAHK-S8MEX mobile radios with accessories for the Communication and Information Systems Department.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$71,276.25 General Fund

Discussion:

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

Therefore, please consider approval of a resolution authorizing the purchase of these radios from Holsum Bakers, Inc. dba Caprock Communications of Midland, Texas for a total cost of \$71,276.25.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE PURCHASE OF SIXTEEN (16) MOBILE RADIOS IN ASSORTED CONFIGURATIONS, WITH ACCESSORIES, FROM HOLSUM BAKERS, INCORPORATED, DBA CAPROCK COMMUNICATIONS OF MIDLAND, TEXAS; SAID PURCHASE WAS NOT BID BUT PURCHASED AS A SOLE SOURCE; AND THE COSTS FOR THE RADIOS SHALL BE APPROXIMATELY \$71,276.25

WHEREAS, the City Manager approved the single source bid for sixteen (16) mobile radios in assorted configurations with related accessories for the Communication and Information Systems Department; and

WHEREAS, the single source provider, Holsum Bakers, Inc., dba Caprock Communications, of Midland, Texas, submitted a total bid for said radios and related accessories in the estimated amount of \$71,276.25, as shown on the quote sheets attached hereto as Exhibit “A” and incorporated herein for all purposes; and

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

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

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

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

SECTION ONE. That the City Manager is hereby authorized and directed to purchase said radios and related equipment at a total estimated cost of \$71,276.25.

SECTION TWO. That the City Treasurer is hereby authorized and directed to pay Holsum Bakers, Inc., dba Caprock Communications, for said radios and related accessories at a price not to exceed \$71,276.25, from funds available in the Fiscal Year 2012 – 2013 General Fund (001) Communications and Information Systems (030) Communications Maintenance (0033) Communication and Video Equipment (8481) budget account upon

proper receipt of invoices or statements approved by the City Manager.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, General Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

Caprock
Communications

HARRIS Mobile Communications
Authorized Dealer

1202 W. Florida
Midland, TX 79702

☆☆☆☆☆Five Star Premier

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

Cost and Equipment Requirements

Prepared for: DAVID FLORES, CITY OF MIDLAND

Qty.	Description	Unit	Price
2	EVXG-PB78B, XG-75 PORTABLE, 764-870MHZ SCAN	\$1790.00	\$3580.00
2	MAEV-NNC5X, ANTENNA WHIP	\$40.00	\$80.00
2	MAEV-PKGPP, FEATURE P25 TRUNKING AND PROVOICE	\$2010.00	\$4020.00
4	MAEV-PA2U, LI-ION BATTERY 3600mah	\$150.00	\$600.00
2	MAEV-NCH9T, DESK CHARGER	\$120.00	\$240.00
2	MAEV-NAE9D, SPEAKER MICROPHONE	\$135.00	\$270.00
2	MAEV-NHC2C, LEATHER CASE WITH BELT LOOP	\$60.00	\$120.00
2	EVXG-NPL4F, FEATURE PHASE 2 P25	\$250.00	\$500.00
SUBTOTAL			\$9410.00
COM DISCOUNT			-\$2352.50
Extended Total:			\$7057.50

Installation and Maintenance:

Remarks: This is a quote for two Harris XG-75 portable radios with P25 trunking and Provoice features and listed accessories.

Terms:

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

Delivered Approximately days from receipt of order

Quotation prepared by: Dan Ruiz

Date: July 18, 2013

Accepted by: Date:

State Tax added where applicable

**M/A COM Mobile Communications
Authorized Dealer**

☆☆☆☆☆Five Star Premier

Cost and Equipment Requirements

Qty.	Description	Unit	Price
10	XM-100F-D02, UNITY MOBILE RADIO	\$3082.00	\$30820.00
10	XMPKGPP, FEATURE, EDACS AND P25 TRUNKING	\$2380.00	\$23800.00
10	XMPL4F, FEATURE PHASE 2 P25 OPERATION	\$250.00	\$2500.00
10	XMCP9F, REMOTE MOUNT CH721 SYSTEM CONTROL UNIT	\$825.00	\$8250.00
10	XMMC7Z, STANDARD MICROPHONE	\$ 80.00	\$800.00
10	XMZN7R, REMOTE MOUNT ACCY. KIT	\$360.00	\$3600.00
10	FEATURE, VHF, UHF, AND 800 MHZ		
	SUBTOTAL		\$69770.00
	LESS COM DISCOUNT 25%		-\$17442.50

Extended Total: \$52327.50

Installation and Maintenance:

Remarks: This is a quote for 10 UNITY mobiles, with listed accessories and features.

Terms:

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

Delivered Approximately _____ days from receipt of order

Quotation prepared by: Dan Ruiz

Date: JULY 18, 2013

Accepted by: _____ Date: _____

State Tax added where applicable

M/A COM Mobile Communications
Authorized Dealer

☆☆☆☆☆Five Star Premier

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

Prepared for: DAVID FLORES, CITY OF MIDLAND

Installation and Maintenance:

Terms:

Delivered Approximately days from receipt of order

Quotation prepared by: Dan Ruiz

Date: January 31, 2013

Accepted by: _____ Date: _____

State Tax added where applicable

**M/A COM Mobile Communications
Authorized Dealer**

☆☆☆☆☆Five Star Premier



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 8/13/2013

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving the purchase of 3 refuse bodies and 1 cart body through HGAC from Kann Manufacturing Corporation of Guttenberg, Iowa for the Garage Division.

Purpose:

Approval of a resolution authorizing the purchase of 3 refuse bodies and 1 cart body for refuse trucks for the Garage Division.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$409,597.00 Garage Fund

Discussion:

This is a scheduled replacement of 4 refuse trucks. The cab and chassis' that the refuse bodies will be mounted on will be solicited in the near future. These truck bodies are available on the Houston-Galveston Area Council (H-GAC). We are members of this cooperative and Subchapter F, Section 271.102 of the Local Government Code provides that a local government may participate in a cooperative purchasing program and that purchasing goods or services under subchapter F satisfies any state law requiring the local government to seek competitive bids for those purchases.

Therefore, please consider approval of a resolution authorizing the purchase of 3 refuse bodies and 1 cart body manufactured by Kann Manufacturing Corporation of Guttenberg, Iowa for a total cost of \$409,597.00.

RESOLUTION NO. _____

**RESOLUTION APPROVING THE PURCHASE OF
THREE (3) REFUSE BODIES AND ONE (1) CART BODY,
FOR REFUSE TRUCKS FOR THE GARAGE DIVISION,
THROUGH THE HOUSTON-GALVESTON AREA
COUNCIL OF GOVERNMENTS (HGAC) AT A TOTAL
COST OF \$409,597.00; AND THIS ITEM WAS NOT BID
BUT PURCHASED THROUGH A COUNCIL OF
GOVERNMENTS**

WHEREAS, the Houston-Galveston Area Council (HGAC) is a cooperative purchasing agency with which the City participates on purchases; and

WHEREAS, Kann Manufacturing Corporation, of Guttenberg, Iowa, has submitted a total proposed cost to the City of \$409,597.00 for the purchase of three (3) refuse bodies and one (1) cart body, for refuse trucks, through the HGAC, as shown on the pricing worksheets attached hereto as Exhibit “A” and incorporated herein for all legal purposes; and

WHEREAS, the Council finds the price proposed by Kann Manufacturing Corporation through the HGAC for said refuse bodies and cart body to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to purchase said refuse bodies and cart body through the HGAC;

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

SECTION ONE. That the City Manager is hereby authorized and directed to purchase said refuse bodies and cart body referred to above through the Houston-Galveston Area Council, at a total estimated cost of \$409,597.00.

SECTION TWO. That the City Treasurer is hereby authorized and directed to pay for said refuse bodies and cart body from funds available in the Fiscal Year 2012 – 2013 Garage Fund (750) General Services (040) Garage (0752) Other Equipment (8530) budget account upon proper receipt of invoices or statements approved by the City Manager.

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

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

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

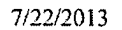
Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, General Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



10.4



Kann Manufacturing Corporation
P.O. Box 400 - 210 Regent Street - Guttenberg, Iowa 52052
Phone: 563-252-2035 - Fax: 563-252-3069 - Email: sales@kannmfg.com

QUOTE

Date	Quote #
03/28/12	2246

Quote To: HGAC

Ship To: HGAC

Contact
Customer
Telephone

Fax

Terms	Expiry Date	Salesperson	Ship Via
NET 30 DAYS	07/31/14	BK	NOT INCLUDED IN QUOTE

Qty	Part #	Description	Unit Price	Ext. Price
		CG05: 31 YD COMMERCIAL SIDE LOADER - EJECT TO DUMP		
1.0	3530664	BODY ASSY 31YD SS LOAD SLEC NT	54,895.00	54,895.00
1.0	3701881-02	PAINT, MISC MATL PPG#FDGH CC/S	2,800.00	2,800.00
7.0	1800306-18	PPG#FDGH 90604 NC, INT WHT	100.00	700.00
1.0	4530021	DBL/SNGL HOOK LOAD OPTION SLC	3,040.00	3,040.00
1.0	3530085	LIGHTS, TLGT LED STD KE/SL/CC	1,175.00	1,175.00
1.0	4700338	STROBE LIGHT (TARGET)	260.00	260.00
1.0	4530006	LIGHTS, SIDE WORK OPTION SLC	165.00	165.00
1.0	5000174	31 YD SLEC CHAS HYD PKG-MCK MR	33,103.00	33,103.00

OPTION:
GRABBER - ADD \$5,200
SINGLE COLOR CAMERA SYSTEM - ADD \$1,280

Sub Total: 96,138.00

Federal Excise Tax: 0.00

Freight Total: 0.00

Total: 96,138.00

-Customer is responsible for throttle advance programming if required.

- F.O.B. Kann Manufacturing Corporation. Freight charge is estimated based upon fuel cost at the time of quotation. The charge is subject to change at the time of delivery.

- Modifications to customer supplied chassis will be at the customer's expense and will be added to the customer's invoice. Customers will be notified prior to any modifications.

- If Kann Manufacturing Corporation facilitates the customer purchase of a chassis, C.O.D. terms on both chassis and body will supercede all other specified terms found in this agreement.

*** Ordering Information:

Page 1 of 2

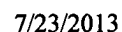
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KANN Manufacturing Corp.
PO Box 400
Guttenberg, IA 52052
563-252-2035 Phone

HGAC 2013
City of Midland, TX
Additional Unpublished Options

Loading Lights	\$97.00
Body Side Ladder	\$254.00
Filter Bypass/Tank Diffuser	<u>\$500.00</u>
Total Additional Unpublished Options	\$851.00

7/22/2013 2:28 PM





Kann Manufacturing Corporation
P.O. Box 400 – 210 Regent Street – Guttenberg, Iowa 52052
Phone: 563-252-2035 – Fax: 563-252-3069 – Email: sales@kannmfg.com

QUOTE

Date	Quote #
03/28/12	2247

Quote To: HGAC

Ship To: HGAC

Contact
Customer
Telephone

Fax

Terms	Expiry Date	Salesperson	Ship Via
NET 30 DAYS	07/31/14	BK	NOT INCLUDED IN QUOTE

Qty	Part #	Description	Unit Price	Ext. Price
		#CG15: 28 YARD AUTOMATED SIDE LOADER		
1.0	3750262	BODY ASSY 28YD SLA	91,620.00	91,620.00
1.0	3701881-02	PAINT, MISC MATL PPG#FDGH CC/S	2,800.00	2,800.00
7.0	1800306-18	PPG#FDGH 90604 NC, INT WHT	100.00	700.00
1.0	4700338	STROBE LIGHT (TARGET)	260.00	260.00
1.0	3530085	LIGHTS, TLGT LED STD KE/SL/CC	1,175.00	1,175.00
1.0	4530006	LIGHTS, SIDE WORK FENDER MNT	165.00	165.00

OPTIONS:
SINGLE COLOR CAMERA SYSTEM - ADD \$1,280

Sub Total: 96,720.00

Federal Excise Tax: 0.00

Freight Total: 0.00

Total: 96,720.00

-Customer is responsible for throttle advance programming if required.

- F.O.B. Kann Manufacturing Corporation. Freight charge is estimated based upon fuel cost at the time of quotation. The charge is subject to change at the time of delivery.

- Modifications to customer supplied chassis will be at the customer's expense and will be added to the customer's invoice. Customers will be notified prior to any modifications.

- If Kann Manufacturing Corporation facilitates the customer purchase of a chassis, C.O.D. terms on both chassis and body will supercede all other specified terms found in this agreement.

*** Ordering Information:

Order date: _____ Number of Units Ordered: _____ Customer's P.O. #: _____



Kann Manufacturing Corporation
P.O. Box 400 – 210 Regent Street – Guttenberg, Iowa 52052
Phone: 563-252-2035 – Fax: 563-252-3069 – Email: sales@kannmfg.com

QUOTE

Date	Quote #
03/28/12	2247

Customer Order Authorization Signature: _____

Kann Manager Authorization: RT _____



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 8/13/2013

TO: City Council / City Manager

FROM: Marv Esterly, Director of Airports

SUBJECT: Consider a resolution awarding the project described as Terminal Vehicle Parking Expansion (9019) at Midland International Airport to Jones Bros. of Odessa, Texas, and appropriate necessary funds.

Purpose:

Consider a resolution awarding the project described as Terminal Vehicle Parking Expansion (9019) at Midland International Airport to Jones Bros. of Odessa, Texas, and appropriate necessary funds.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Construction Phase Engineering Fee - \$15,000.00
Construction Phase Administration Costs - \$5,000.00
Construction Phase Surveying and Testing - \$40,000.00
Resident Project Representative (RPR) - \$55,000.00
Jones Bros. Dirt & Paving (Base Bid) - \$1,684,554.35
Oncor Electrical Service (est.) - \$45,000.00
Construction Contingencies - \$85,000.00
Total Construction Phase Cost - \$1,929,554.35

That the sum of \$1,929,554.35 is hereby appropriated from the Airport Operating Fund (500) Unappropriated Fund Balance (5650) to the Terminal Vehicle Parking Expansion (9019).

Discussion:

On September 11, 2012, the Department of Airports presented a parking lot study regarding recommended changes to Airport Parking and plans for a future long-term covered parking lot. Council concurred with the need for additional covered parking and authorized the design phase of this project. This project is covered under Parkhill, Smith & Cooper's Amendment #3 of their Professional Services Agreement.

On June 11, 2013, City Council authorized the advertisement of bids and on July 31, 2013, bids were received and opened (see attached bid tabs). Jones Bros. of Odessa, Texas was the low bid for this project and met all of the requirements contained in the advertised specifications. Due to higher than expected bids that exceeded our project estimates, the Department of Airports recommends that the additive alternate not be considered.

In the near future, the Department of Airports anticipates bringing to City Council recommendations on increase parking rates to help pay for the cost of this new parking facility.

RESOLUTION NO.

RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT WITH JONES BROS. OF ODESSA, TEXAS, FOR THE PROJECT DESCRIBED AS TERMINAL VEHICLE PARKING EXPANSION (9019) AT THE MIDLAND INTERNATIONAL AIRPORT; THE COUNCIL PREVIOUSLY AUTHORIZED ADVERTISEMENT FOR BIDS FOR THE PROJECT; THE TOTAL ESTIMATED COST OF SAID PROJECT IS \$1,929,554.35; AND APPROPRIATING FUNDS

WHEREAS, the City Council previously approved the plans and specifications and authorized advertisement for bids for the Project described as Terminal Vehicle Parking Expansion (9019) at Midland International Airport; and

WHEREAS, the bids were opened in the City Secretary's office and after reviewing said bids it was determined that Jones Bros. of Odessa, Texas, having met all the specified requirements and submitted the lowest and most advantageous bid for said project; and

WHEREAS, the City Council finds the price proposed by Jones Bros., to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to award a contract to Jones Bros., for said project;

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

SECTION ONE. That the Mayor and the City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a contract with Jones Bros. for the project described as Terminal Vehicle Parking Expansion (9019), at a total estimated cost of \$1,929,554.35.

SECTION TWO. That the sum of \$1,929,554.35 is hereby appropriated from the Airport Operating Fund (500) Unappropriated Fund Balance (5650) to the Terminal Vehicle Parking Expansion (9019).

SECTION THREE. That the City Treasurer is hereby authorized and directed to pay Jones Bros., pursuant to the terms of the contract, at a price not to exceed a total of

\$1,929,554.35 upon receipt of proper invoice or statement executed by the City Manager.

SECTION FOUR. That said contract shall be on file in the office of the City Secretary referenced by the number and date of this resolution.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

Robert McNaughton, Director of Finance

APPROVED AS TO CONTENT
AND COMPLETENESS:

Marv Esterly, Director of Airports

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



MIDLAND INTERNATIONAL AIRPORT
MAF Terminal Vehicle Parking Expansion Phase I
July 31, 2013 @ 2:00 P.M.

Bidder	Bid Bond	Financial/Quals.	Addendum #1	Addendum #2	Addendum #3	Base Bid	Additive Alternate 1	Total
Mid-Tex of Midland, Inc. 5206 West Wadley Midland, Texas 79707	X	X	X	X	X	\$1,762,515.59 \$1,763,000.00	\$220,993.27 \$221,000.00	\$1,983,508.86 \$1,984,000.00
Jones Bros. Dirt & Paving Contractors, Inc. 1401 S. Grandview Odessa, Texas 79761	X	X	X	X	X	\$1,684,554.35	\$205,260.37	\$1,889,814.72
Campbell Construction Co. P.O. Box 11293 Midland, Texas 79702	X	X	X	X	X	\$2,042,067.14 \$1,872,944.00	\$252,901.87 \$240,384.00	\$2,294,969.01 \$2,113,328.00



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 8/13/2013

TO: City Council / City Manager

FROM: Marv Esterly, Director of Airports

SUBJECT: Consider a resolution authorizing the Mayor, City Manager and City Attorney to execute Federal Aviation Administration Grant #54 from the Federal Aviation Administration (FAA) upon receipt.

Purpose:

Consider a resolution authorizing the Mayor, City Manager and City Attorney to execute Federal Aviation Administration Grant #54 from the Federal Aviation Administration (FAA) upon receipt.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Estimated Grant Proceeds - \$3,404,500.00

Discussion:

In anticipation of the receipt of Federal Grant #54 in the estimated amount of \$3,404,500, the Department of Airports is requesting City Council's approval to allow the Mayor, City Manager and the City Attorney to execute this grant agreement upon receipt. These grant proceeds will fund 90% of the FAA eligible portions of the following new projects:

Construction Phase, Northwest Taxiway Extension Project - Phase II
Construction Phase, Perimeter Emergency Roadway and Gates Rehabilitation
Design Phase, Lighting Cable Replacement
Design Phase, Entrance road and Signage
Design Phase, Access Control Software and Cable

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE MAYOR, CITY MANAGER, AND THE CITY ATTORNEY TO EXECUTE FEDERAL AVIATION ADMINISTRATION GRANT NUMBER 54 IN THE ESTIMATED AMOUNT OF \$3,404,500.00 UPON RECEIPT FROM THE FEDERAL AVIATION ADMINISTRATION; SAID GRANT WILL FUND NINETY PERCENT (90%) OF THE FAA ELIGIBLE PORTION OF PROJECTS AT THE MIDLAND INTERNATIONAL AIRPORT; SAID GRANT FUNDS ARE TO BE DEPOSITED IN THE AIRPORT FUND UPON RECEIPT

WHEREAS, the Federal Aviation Administration (“FAA”) has offered Grant Number 54 in the estimated amount of \$3,404,500.00; and

WHEREAS, the funds will be used to fund ninety percent (90%) of the FAA eligible portions of the following new projects described as:

Construction Phase, Northwest Taxiway Extension Project - Phase II
Construction Phase, Perimeter Emergency Roadway and Gates Rehabilitation
Design Phase, Lighting Cable Replacement
Design Phase, Entrance Road and Signage
Design Phase, Access Control Software and Cable; and

WHEREAS, the City Council finds it to be in the public interest to accept the FAA Grant Number 54;

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

SECTION ONE. That the Mayor, City Manager, and the City Attorney are hereby authorized to execute the Grant Agreement for FAA Grant Number 54, which shall be on file in the Office of the City Secretary referenced by the number and date of this resolution, thereby accepting the estimated amount of \$3,404,500.00 in funding. Said grant funds are to be deposited in the Airport Fund upon receipt.

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

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

Robert McNaughton, Director of Finance

APPROVED AS TO CONTENT
AND COMPLETENESS:

Marv Esterly, Director of Airports

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



DATE: August 6, 2013

TO: The Honorable Mayor and City Council Members

FROM: Keith Stretcher, City Attorney

SUBJECT: T-Bar Project

The Midland County Fresh Water Supply District No. 1 constructed the T-Bar Infrastructure from the T-Bar Ranch to approximately one mile north of State Highway 191 and approximately one-quarter mile west of Farm to Market Road 1788 (The Delivery Point). The City requested that the District construct additional infrastructure related to the T-Bar Project (the Extended Infrastructure).

The proposed resolution authorizes the Mayor to execute a Lease and Operating Agreement with the Midland County Fresh Water Supply District No. 1 regarding the Extended Infrastructure. The Extended Infrastructure included a chlorine injection station, a two million gallon elevated storage tank and all valves and other appurtenances necessary to deliver the water according to the Wholesale Water Delivery Agreement. The Extended Infrastructure also included a 48-inch concrete pressure pipe extended to State Highway 158 from the Delivery Point and a 16-inch PVC water line along State Highway 191 to State Highway 158. The Extended Infrastructure also consisted of a 16-inch PVC water line that connects to the Performing Arts Center Booster Station from the water line along State Highway 191.

The proposed resolution authorizes the City to operate and maintain the Extended Infrastructure and authorizes the City to lease from the District the real and personal property associated with the Extended Infrastructure. The Lease and Operating Agreement was an Exhibit to the Wholesale Water Delivery Contract between the District and the City. The proposed resolution formalizes the action approved by the

Council when the Council approved the Wholesale Water Delivery Contract with the District.

If you have any questions or if I may be of any assistance do not hesitate to contact me.

KS/lo

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A LEASE AND OPERATING AGREEMENT WITH THE MIDLAND COUNTY FRESH WATER SUPPLY DISTRICT NO. 1; THE DISTRICT HAS ACQUIRED RIGHT-OF-WAY AND DESIGNED, CONSTRUCTED, INSTALLED, AND FINANCED, CERTAIN INFRASTRUCTURE INCLUDING WELLS AND PIPELINES TO DELIVER GROUNDWATER OWNED BY THE CITY FROM BENEATH THOSE CERTAIN TRACTS OF LAND LOCATED IN WINKLER AND LOVING COUNTIES TO A DELIVERY POINT LOCATED APPROXIMATELY AT THE INTERSECTION OF HIGHWAY 191 AND FM 1788; AND THE DISTRICT HAS CONSTRUCTED EXTENDED INFRASTRUCTURE RELATED TO THE T-BAR PROJECT AT THE REQUEST OF THE CITY; AND THE CITY WILL OPERATE AND MAINTAIN THE EXTENDED INFRASTRUCTURE

WHEREAS, the City Council finds it to be in the public interest to authorize the Mayor to execute a Lease and Operating Agreement with the Midland County Fresh Water Supply District No. 1; and

WHEREAS, the District has acquired right-of-way for the design, construction and installation of infrastructure and has financed certain infrastructure including wells and pipelines to deliver groundwater owned by the City from beneath those certain tracts of land located in Winkler and Loving Counties to a delivery point located approximately at the intersection of Highway 191 and FM 1788 as required under the Wholesale Water Delivery Contract; and

WHEREAS, the District has constructed extended infrastructure at the request of the City;

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

THAT the Mayor is hereby authorized and directed to execute, on behalf of the City of Midland, a Lease and Operating Agreement with the Midland County Fresh Water Supply District No. 1. The Lease and Operating Agreement is attached hereto, marked as Exhibit “A” and incorporated herein for all purposes.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

LEASE AND OPERATING AGREEMENT

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

KNOW ALL BY THESE PRESENTS:

THIS LEASE AND OPERATING AGREEMENT (the "**Agreement**") is entered into this ____ day of August, 2013 (the "**Effective Date**") between the CITY OF MIDLAND, TEXAS, a Texas home-rule city (the "**City**"), and the MIDLAND COUNTY FRESH WATER SUPPLY DISTRICT NO.1, a freshwater supply district created pursuant to Chapter 53 of the Texas Water Code and the provisions of Article XVI, Section 59 of the Texas Constitution (the "**District**"). In this Agreement, the City and District are sometimes individually referred to as a "**Party**" and collectively referred to as the "**Parties**".

WHEREAS, the City and the District entered into that certain Wholesale Water Delivery Contract (the "**Contract**") whereby the District agreed to acquire right-of-way for, design, construct, install, and finance certain infrastructure (the "**Infrastructure**") including wells and pipelines to deliver groundwater owned by the City from beneath those certain tracts of land located in Winkler and Loving Counties (the "**T-Bar Ranch**") to a delivery point located approximately at the intersection of Hwy 191 and FM 1788 (the "**Delivery Point**"); and

WHEREAS, further at the request of the City, the District is acquiring right-of-way, designing, constructing, installing and financing certain improvements including a pipeline, an elevated storage tank, and an injection station beyond the Delivery Point as more particularly described in **Exhibit A** attached hereto (the "**Extended Infrastructure**"), a distribution system to properties adjacent to State Highway 191 as more particularly described in **Exhibit B** (herein referred to as the "**Extended Infrastructure Distribution System**");

WHEREAS, upon completion of the Extended Infrastructure, the District desires to lease to City the real and personal property associated with the Extended Infrastructure, and to grant to City the rights and obligations to operate and maintain the Extended Infrastructure, and the City desires to lease from the District the real and personal property associated with the Extended Infrastructure, and to undertake the operations and maintenance of the Extended Infrastructure; and

WHEREAS, upon completion of the Extended Infrastructure Distribution System, the District desires to Lease to the City the real and personal property associated with the Extended Infrastructure Distribution System, and to grant to the City the right and obligations to operate and maintain the Extended Infrastructure Distribution System, and the City desires to Lease from the District the real and personal property associated with the Extended Infrastructure Distribution System, and to undertake the operations and maintenance of the Extended Infrastructure Distribution System.

NOW, THEREFORE, for good and valuable consideration and the mutual covenants provided for herein and those covenants contained in the Contract, the Parties agree as follows:

Exhibit "A"

ARTICLE I.

LEASE

1.1 **Grant of Lease.** District hereby leases to City all that certain real property and improvements located thereon in Midland County, Texas as more particularly described on **Exhibit A** attached hereto, together with all rights and easements necessary for the operation and maintenance of the Extended Infrastructure, including rights of ingress to and egress from the Extended Infrastructure. District shall at no time during the Term (as defined below) restrict or prohibit City from accessing the Extended Infrastructure and performing its obligations under Article II below.

1.2 **Amendment Lease.** District and City hereby agree to amend this Lease to include the Extended Infrastructure Distribution System at such time as construction is completed on the Extended Infrastructure Distribution System.

1.3 **Term of Lease.** This Agreement shall commence on the Effective Date and shall terminate the earlier of (i) fifty (50) years thereafter; or (ii) the date upon which the City takes ownership of the Extended Infrastructure under the terms of the Contract (the "***Term***").

ARTICLE II.

OPERATIONS AND MAINTENANCE

2.1 **Operations and Maintenance of the Extended Infrastructure.** Throughout the Term of this Agreement, City shall, at its own expense, be solely responsible for the maintenance, operation, repair, replacement, and inspection of the Extended Infrastructure. City shall not be obligated to upgrade the Extended Infrastructure at its expense, but only to maintain the Extended Infrastructure in the same condition as of the Effective Date. City may, at its own expense and sole discretion, install or place in or on, or attach or affix to, the Extended Infrastructure such additional equipment or accessories as may be necessary or convenient to use the Extended Infrastructure for its intended purpose, provided that such equipment or accessories do not impair the value or utility of the Extended Infrastructure.

ARTICLE III.

MISCELLANEOUS

3.1 **Notices.** Any notices given under this Agreement will be effective if (i) forwarded to a Party by hand-delivery; (ii) transmitted to a Party by confirmed telecopy; or (iii) deposited with the U.S. Postal Service, postage prepaid, certified, to the address of the Party indicated below:

CITY:

City of Midland
City Hall
300 N. Loraine
Midland, Texas 79701
Attn: Courtney Sharp
Telephone: (432) 685-7202
Facsimile: (432) 686-1600
Email: csharp@midlandtexas.gov

with copy to:

Midland City Attorney
City Hall
300 N. Loraine
Midland, Texas 79701
Telephone: (432) 685-7254
Facsimile: (432) 686-1643

DISTRICT:

Midland County Fresh Water Supply
District No. 1
1700 West Wall Street, Suite 210
Midland, Texas 79701
Attn: Jose Cuevas, President
Telephone: (432) 681-6199
Facsimile: (432) 697-9758
Email: jcuevas@jumburrito.com

with copy to:

Stubbeman, McRae, Sealy, Laughlin &
Browder, Inc.
550 West Texas Ave., Suite 800
Midland, Texas 79701
Attn: Robert Rendall
Telephone: (432) 682-1616
Facsimile: (432) 682-4884
Email: rrendall@stubbemanlawfirm.com

3.2 **Counterparts; Effect of Partial Execution.** This Agreement may be executed simultaneously in multiple counterparts, each of which will be deemed an original, but all of which will constitute the same instrument.

3.3 **Severability, Waiver.** Any provision of this Agreement found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of this Agreement. The waiver by any party of any breach of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach thereof.

3.4 **Applicable Law; Venue.** This Agreement will be construed in accordance with Texas law. Venue for any action arising hereunder will be exclusively in Midland County, Texas, and the Parties hereby agree that Midland County is the proper venue for any such action

since the leased premises and place for performance of the obligations hereunder, including, but not limited to the operations and maintenance of the Extended Infrastructure is in Midland County.

3.5 Authority. Each Party represents and warrants that it has the full right, power and authority to execute this Agreement.

(Signature Pages Follow)

(Signature page of City to Lease and Operating Agreement)

CITY:

ATTEST:

CITY OF MIDLAND, TEXAS:

Amy M. Turner, City Secretary

By: _____
Printed Name: W. Wesley Perry
Title: Mayor

Date: _____

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

This instrument was acknowledged before me on this ____ day of August, 2013, by W. Wesley Perry, Mayor of the City of Midland, Texas, on behalf of said City.

Notary Public - State of Texas

Approved as to Content:

By: _____
Printed Name: Courtney B. Sharp
Title: City Manager
Date: _____

Approved as to Form:

By: _____
Printed Name: Keith Stretcher
Title: City Attorney
Date: _____

(Signature page of District to Lease and Operating Agreement)

ATTEST:

DISTRICT:

**MIDLAND COUNTY FRESH WATER
SUPPLY DISTRICT NO. 1:**

By: _____

Printed Name: Jose Cuevas

Title: President

Date: _____

STATE OF TEXAS

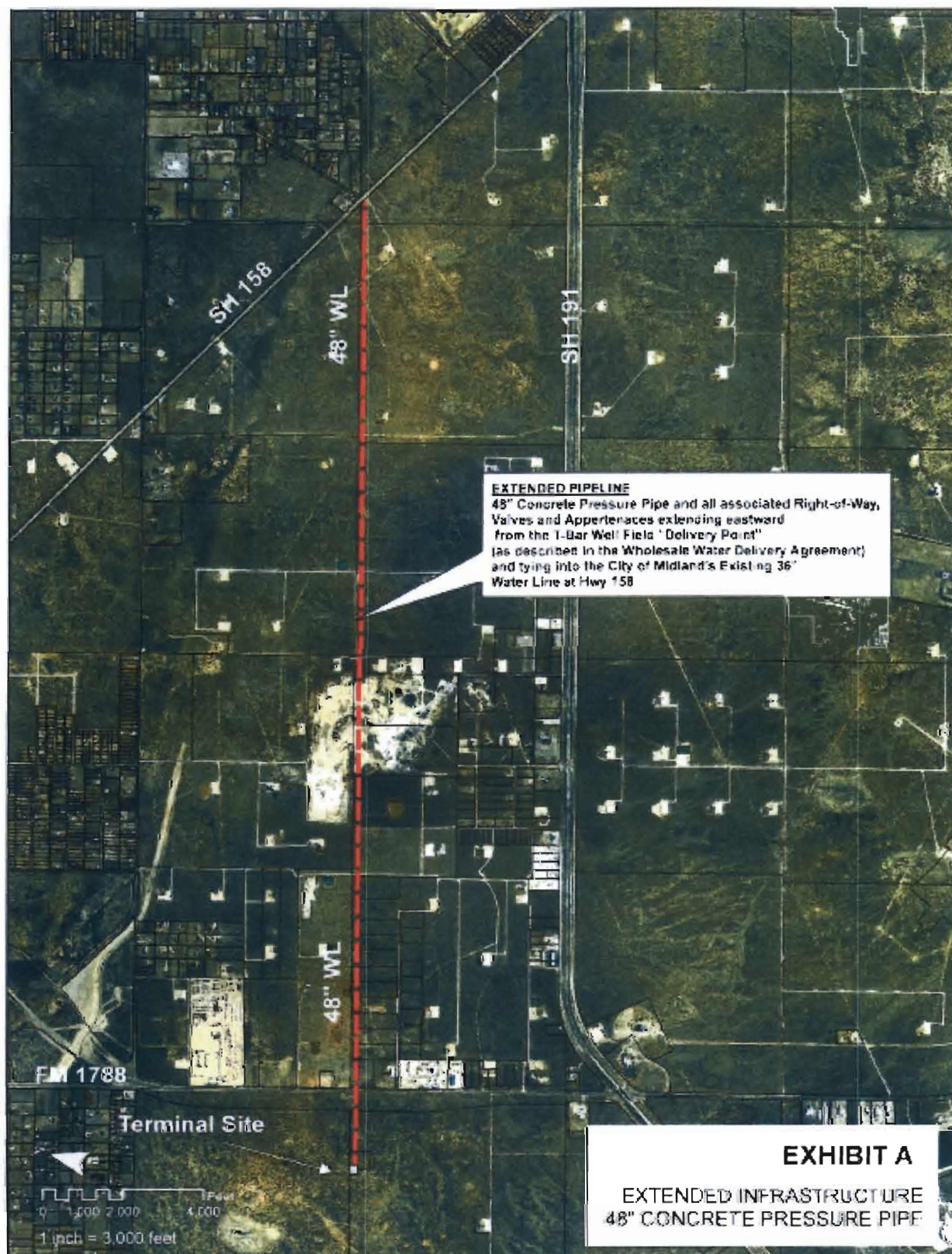
§
§

COUNTY OF MIDLAND

§

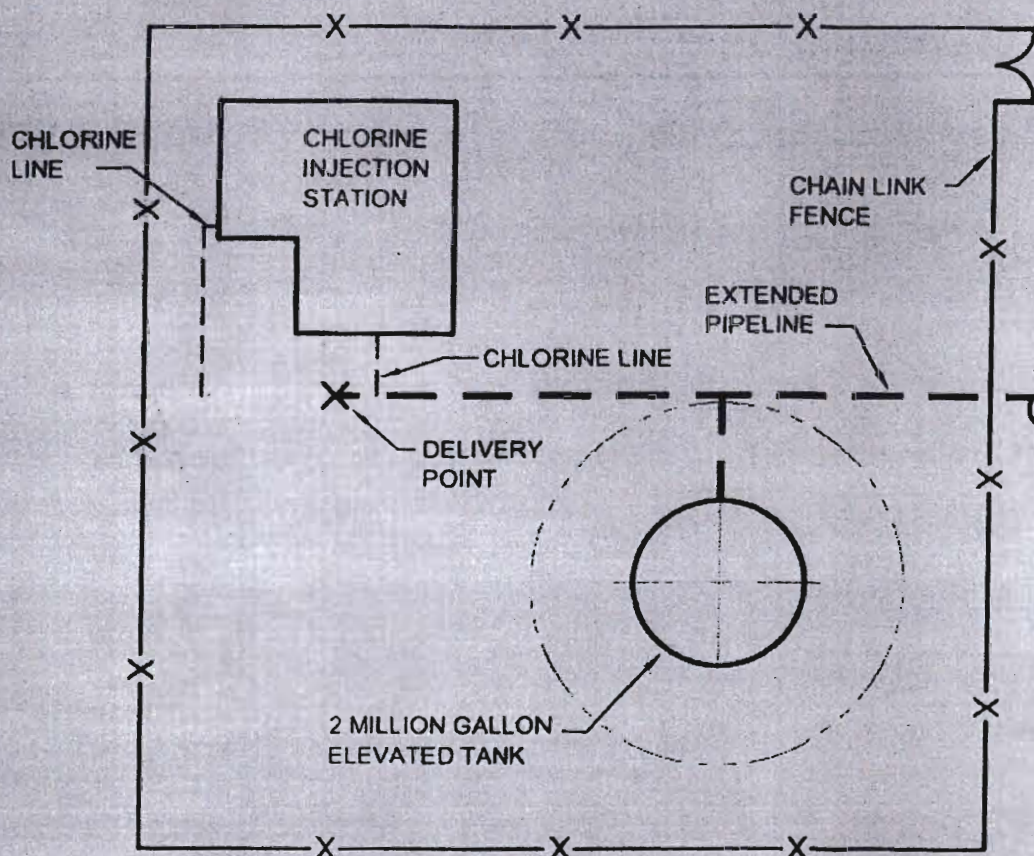
This instrument was acknowledged before me on this ____ day of August, 2013, by Jose Cuevas, President of Midland County Fresh Water Supply District No. 1, on behalf of said District.

Notary Public - State of Texas



**EXHIBIT A
(CONTINUED)**

Water is delivered to the City of Midland at the Delivery Point within the Terminal Site located near the intersection of TX 191 and FM 1788. The Extended Infrastructure at the Terminal Site includes a Chlorine Injection Station, a Two Million Gallon Elevated Storage Tank and all valves and other appurtenances necessary to deliver the Water according to the Wholesale Water Delivery Agreement.



1864865.16



City of Midland
CITY ATTORNEY'S OFFICE
Office Memorandum

DATE: August 8, 2013

TO: The Honorable Mayor and City Council Members

FROM: John Ohnemiller, First Assistant City Attorney

SUBJECT: APPROVAL OF A SEWER LINE EASEMENT

The proposed resolution approves a sewer line easement that will provide service for a large area west of Holiday Hill Road, including Fasken's planned development in that area. Western-T Corporation initially will grant the easement to Vineyard Reserve, LLC (a Fasken entity), and then Vineyard will assign the easement to the City of Midland. Western-T's adjacent property is subject to a City ordinance that imposes a maximum \$433-per-acre sewer line service area fee at the time of platting. The resolution sets the value of the easement Western-T is granting at \$49,400, and further provides Western-T a credit in this amount at such time as Western-T decides to plat any portion of its adjacent property.

Council Member Jeff Sparks and our office worked with representatives of both Vineyard and Western-T, including Chuck Hedges, representing Vineyard, and Rick Davis, representing Javaid Anwar and Western-T, in order to reach a proposed agreement on this matter that was mutually acceptable to all parties.

If you have any questions about this matter, please do not hesitate to contact me or City Attorney Keith Stretcher at 685-7253.

JO/lo

RESOLUTION NO. _____

RESOLUTION APPROVING A 20-FOOT SEWER LINE EASEMENT LOCATED IN SECTION 8, BLOCK 39, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS; PROVIDING THAT SAID EASEMENT SHALL BE IN A FORM ACCEPTABLE TO WESTERN-T CORPORATION, VINEYARD RESERVE, LLC, AND THE CITY OF MIDLAND; AUTHORIZING THE CITY OF MIDLAND'S ACCEPTANCE OF SAID EASEMENT CONTINGENT UPON INSPECTION AND APPROVAL OF THE SEWER LINE LOCATED THEREIN; DETERMINING THE VALUE OF SAID EASEMENT TO BE \$49,400; AND PROVIDING WESTERN-T CORPORATION A CREDIT IN SAID AMOUNT AT THE TIME OF PLATTING

WHEREAS, the City Council finds it to be in the public interest to approve a 20-foot sewer line easement located in Section 8, Block 39, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas; and

WHEREAS, the City Council finds it to be in the public interest to make the City of Midland's acceptance of said easement contingent upon the inspection and approval of the sewer line located therein; and

WHEREAS, Western-T Corporation is granting said easement across its property and the City Council finds and determines that the fair market value of said easement is \$49,400.00; and

WHEREAS, City of Midland Ordinance No. 8515 established the Northwest Sewer Line Improvement Phase II service area, which authorizes the City Manager to collect a fee when landowners or developers plat property within said service area; and

WHEREAS, the City Council finds it to be in the public interest to provide Western-T Corporation a credit in said amount at such time as Western-T Corporation plats its adjacent 649.68-acre tract or any portion thereof, which is subject to Ordinance No. 8515;

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

SECTION ONE. That the 20-foot sewer line easement located in the Section 8, Block 39, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas, is hereby

approved.

The easement shall be in a form acceptable to Western-T Corporation, Vineyard Reserve, LLC, and the City of Midland.

The location and length of the pipeline and said property are more specifically described in Exhibit "A", which is attached hereto and incorporated herein.

SECTION TWO. That the City Manager is hereby authorized and directed to accept the assignment of said easement, on behalf of the City of Midland, after the sewer line located therein is inspected and approved by the Engineering Services Department.

The City Manager is hereby authorized and directed to negotiate and execute any and all documents or agreements necessary for the City of Midland's acceptance of said easement.

SECTION THREE. That a credit in the amount of \$49,400.00 is hereby approved for Western-T Corporation, its successors or assigns, as the landowner or developer of the 649.68-acre tract of land out of Section 8, Block 39, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas, at the time such landowner or developer plats said 649.68-acre tract or any portion thereof.

Said 649.68-acre tract is more specifically described in Exhibit "B", which is attached hereto and incorporated herein.

SECTION FOUR. That the \$49,400.00 credit set forth in Section Three hereof shall be applied as an offset against costs due from such landowner or developer to the City of Midland pursuant to the provisions of City of Midland Ordinance No. 8515.

SECTION FIVE. That upon the City of Midland's acceptance of said easement as set forth herein, the City Secretary is hereby authorized and directed to file the assignment, or other such legal instrument indicating the City's acceptance, in the Deed Records of Midland County, Texas.

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

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

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Jose Ortiz, Engineering Services Director

APPROVED AS TO FORM:

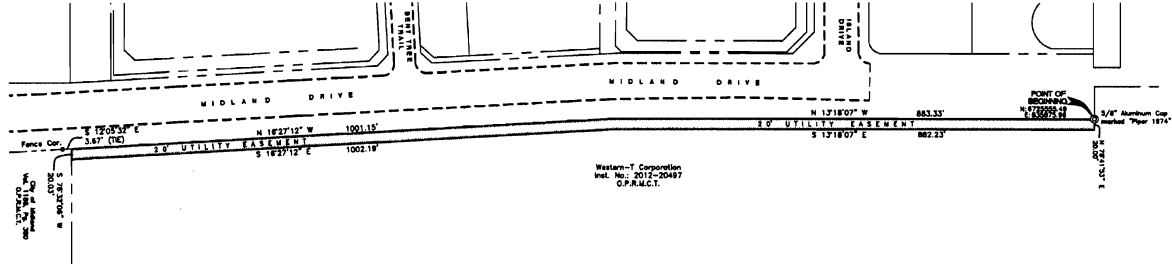
Keith Stretcher, City Attorney

EXHIBIT 'A'

20' SANITARY SEWER EASEMENT

Section 8, Block 39, T-1-S, T. & P. RR. Co. Survey, City and County of Midland, Texas

SCALE: 1" = 140'



Western-T Corporation
Inst. No.: 2012-20487
O.P.R.M.C.T.

LEGEND

- ⊙ - DENOTES MONUMENT AS NOTED
- ⊙ - DENOTES SET 1/2" IRON ROD W/RED PLASTIC CAP MARKED "WEST CO. MIDLAND"
- - DENOTES BOUNDARY LINE

WEST COMPANY
OF MIDLAND, INC.
SURVEYING - PLANNING - ENGINEERING
110 S. LEWIS ST., SUITE 110
MIDLAND, TEXAS 79701
TEL: (409) 552-0000 FAX: (409) 552-0000
JUNE 2013

NOTE: Coordinates, Bearings, Distances and Areas shown hereon are Lambert Grid and Conform to the "Texas Coordinate System", Texas North Central Zone, North American Datum of 1983.



I HEREBY CERTIFY THAT THIS PLAT WAS MADE FROM NOTES TAKEN IN THE FIELD IN A BONA FIDE SURVEY MADE UNDER MY SUPERVISION.

MARCUS L. HOSTAS
EX-153 P.L.S. No. 5643

SPR. 13/CHLDR/DRMHS/2011200/P-SEWER SEWER EASEMENT

EXHIBIT ' A '
20' SANITARY SEWER EASEMENT

Section 8, Block 39, T-1-S, T. & P. RR. Co. Survey, City and County of Midland, Texas

LEGAL DESCRIPTION of a 20 foot wide sewer easement located in Section 8, Block 39, T-1-S, T. & P. RR. Co. Survey, Midland County, Texas, and being further described by metes and bounds as follows:

BEGINNING at (N: 672555.49, E: 835875.96) a 5/8 inch Aluminum Cap marked "Piper 1974" found for the Northwest corner of this tract in the East right-of-way line of Midland Drive, (120' R.O.W.), and a West line of a tract of land to Western-T Corporation as described in the Special Warranty Deed filed of record in Instrument No. 2012-20497, Official Public Records of Midland County, Texas;

THENCE N 76°41'53" E in and across said Western-T tract a distance of 20.00 feet to the Northeast corner of this tract;

THENCE S 13°18'07" E in and across said Western-T tract a distance of 882.23 feet to an interior corner of this tract;

THENCE S 16°27'12" E in and across said Western-T tract a distance of 1002.19 feet to the Southeast corner of this tract in the South line of said Western-T tract, and the North line of a tract to the City of Midland as described in Vol. 1188, Pg. 360, Official Public Records of Midland County, Texas;

THENCE S 76°32'06" W with the South line of said Western-T tract and the North line of said City of Midland Tract, a distance of 20.03 feet to the Southwest corner of this tract in the East right-of-way line of said Midland drive and being in a West line of said Western-T tract, from which point a fence corner post bears S 12°05'32" E a distance of 3.67 feet;

THENCE N 16°27'12" W with the East right-of-way line of said Midland drive and a West line of said Western-T tract a distance of 1001.15 feet to an exterior corner of this tract;

THENCE N 13°18'07" W with the East right-of-way line of said Midland drive and a West line of said Western-T tract a distance of 883.33 feet to the POINT OF BEGINNING, subject tract contains a total of 0.865 acres of land.

NOTE: Coordinates, Bearings, Distances and Area shown hereon are Lambert Grid and Conform to the Texas Coordinate System*, Texas North Central Zone, North American Datum of 1983.

WEST COMPANY

W
OF MIDLAND, INC.
SURVEYING - ENGINEERING - LANDSCAPE
110 W. 10TH STREET, SUITE 110
MIDLAND, TEXAS 79701
TEL: (409) 697-8888 FAX: (409) 697-8888
JUNE 2013



HEREBY CERTIFY THAT THIS PLAT WAS MADE FROM NOTES TAKEN IN THE FIELD IN A BONA FIDE SURVEY MADE UNDER MY SUPERVISION.

6/14/13
Marcus L. Hostas
MARCUS L. HOSTAS TEXAS S.S. No. 5643

DRAWN BY: CHL/DAVIDSON/2011180/PLAT/20' SANITARY SEWER EASEMENT

Exhibit "B"

METES AND BOUNDS DESCRIPTION

FIELD NOTE DESCRIPTION OF THE SURVEY OF A 649.68 ACRE TRACT OF LAND OUT OF SECTION 8, BLOCK 39, T-1-S, T&P RR CO SURVEY, MIDLAND COUNTY, TEXAS, SAID 649.68 ACRE TRACT DESCRIBED MORE FULLY BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A 1/2" IRON ROD AT AN 8" CORNER POST BEARS S.65°00'00"W. 8.00 FEET FOR THE SE CORNER OF THIS TRACT AND THE SW CORNER OF SECTION 9, SAME BLOCK AND TOWNSHIP AND, SAME BEING THE NE CORNER OF SECTION 8 AND THE NW CORNER OF SECTION 9, BLOCK "X", H.P. HILLIARD SURVEY;

THENCE S.75°40'58"W. 5258.52 FEET ALONG THE COMMON LINE BETWEEN SECTION 8, BLOCK 39, T-1-S AND SECTION 8, BLOCK "X", H.P. HILLIARD SURVEY TO A 1/2" REINF BAR SET FOR THE MOST SOUTHERLY SW CORNER OF THIS TRACT IN THE EAST RIGHT-OF-WAY LINE OF MIDLAND DRIVE;

THENCE ALONG THE EAST RIGHT-OF-WAY LINE OF MIDLAND DRIVE AS FOLLOWS: N.17°18'20"W. 1001.15 FEET AND N.14°09'15"W. 883.33 FEET TO A 1/2" REINF BAR SET FOR A CORNER OF THIS TRACT;

THENCE S.75°50'45"W. 60.00 FEET TO A 1/2" REINF BAR SET IN THE WEST LINE OF SAID SECTION 8 FOR THE MOST WESTERLY SW CORNER OF THIS TRACT;

THENCE N.14°09'15"W. 3409.98 FEET ALONG THE WEST LINE OF SAID SECTION 8 BEING THE EAST LINE OF SECTION 7, BLOCK 39, T-1-S, TO A G.I.P. FOUND FOR THE NW CORNER OF THIS TRACT, SAME BEING THE NE CORNER OF SAID SECTION 7;

THENCE N.75°35'34"E. 5363.93 FEET ALONG THE NORTH LINE OF SAID SECTION 8, SAME BEING THE SOUTH LINE OF SECTION 5, BLOCK 39, T-1-S TO A 5/8" ALUMINUM CAP MARKED "RPLS 1974" FOR THE NE CORNER OF THIS TRACT, SAME BEING THE NW CORNER OF SECTION 9, BLOCK 39, T-1-S;

THENCE S.14°15'31"E. 5301.70 FEET ALONG THE EAST LINE OF SAID SECTION 8, SAME BEING THE WEST LINE OF SECTION 9 TO THE PLACE OF BEGINNING.



City Council Agenda

Approved for Agenda:
CSharp
City Manager's Office

MEETING DATE: 8/13/2013

TO: City Council / City Manager

FROM: Jim Nichols, Assistant City Manager

SUBJECT: Consider a Resolution Accepting the Property Located at 310 W. Texas Avenue (Known As The Building of the Southwest)

Purpose:

Consider a resolution accepting the property located at 310 W. Texas Avenue (known as the Building of the Southwest).

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

The City will pay \$2,685.06 for the closing costs associated with accepting the building. Funds are available in the Fiscal Year 2012 – 2013 General Fund (001) NonDepartmental (150) NonDepartmental (0150) Miscellaneous (6990) budget account.

Discussion:

Representatives of the owners of the Building of the Southwest and Western United Life Building (located at 310 and 304 W. Texas Avenue, Midland, Texas, respectively) approached the City several years ago about the possibility of partnering on the redevelopment of one of the sites. Their desire is to convert the Western United Life Building into a boutique hotel. They have offered the City the unencumbered deed to the Building of the Southwest site in exchange for the provision of parking to accommodate their proposed hotel. City staff has worked with their project representatives for over a year to develop a set of deal points that will serve as the foundation to a formal contractual agreement between them and the City. These deal points outline the responsibilities and expectations of both parties as relates to this project.

As a sign of good faith, the City is being offered ownership of the Building of the Southwest site, in advance of the formal agreement being completed. One of the obligations associated with accepting this property is the need to raze it. Upon completion of the hotel project along with the accomplishment of various milestones along the way, the City will then be obligated to provide approximately 210 parking spots to accommodate the hotel within a 1-block radius of the property. Some of that marking may be included on the Building of the Southwest site.

Should the developer fail to meet any of the obligations outlined within the deal points, the City would maintain ownership of the Building of the Southwest site but we would be under no obligation to provide any parking for the proposed hotel, unless an exception to the agreement is granted by the Council.

In the spirit of revitalizing our downtown and removing a building that has been an eyesore and public nuisance for many years, staff recommends that Council approve this resolution and accept the Building of the Southwest property.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE ACCEPTANCE OF LOTS 7 AND 8, BLOCK 35, ORIGINAL TOWN, CITY AND COUNTY OF MIDLAND, TEXAS (COMMONLY KNOWN AS THE BUILDING OF THE SOUTHWEST AND LOCATED AT 310 WEST TEXAS AVENUE); DIRECTING THE CITY MANAGER TO OBTAIN A DEED FROM THE OWNER; AUTHORIZING THE CITY MANAGER TO NEGOTIATE, EXECUTE AND FILE ALL DOCUMENTS NECESSARY FOR THE ACCEPTANCE OF SAID PROPERTY; AUTHORIZING PAYMENT FOR CLOSING COSTS; AND ORDERING RECORDATION

WHEREAS, the owner of Lots 7 and 8, Block 35, Original Town, City and County of Midland, Texas, has agreed to dedicate said property to the City of Midland; and

WHEREAS, the City Council finds it to be in the public interest to authorize the acceptance of said property;

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

SECTION ONE. That the owner's dedication of Lots 7 and 8, Block 35, Original Town, City and County of Midland, Texas, to the City of Midland is hereby accepted.

SECTION TWO. That the City Manager is hereby authorized and directed to obtain a deed from the owner which dedicates said property to the City of Midland.

SECTION THREE. That the City Manager is hereby authorized and directed to negotiate, execute and file all documents necessary for the City of Midland's acceptance of said property.

SECTION FOUR. That the City Treasurer is hereby authorized and directed to pay all closing costs related to said dedication from funds available in the Fiscal Year 2012-2013 General Fund (001) Nondepartmental (150) Nondepartmental (0150) Miscellaneous (6990) budget upon receipt of proper invoice or statement therefor executed by the City Manager.

SECTION FIVE. That the City Secretary is hereby authorized and directed to file the deed for said property in the Deed Records of Midland County, Texas.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

FINAL Fuel Hotel Deal Points

(effective 7/31/13)

1. Building of the Southwest and associated land will be deeded to the City by July 12, 2013, with no encumbrances with the specific intention that such property will be razed by the City of Midland (the "City.")
2. Developer will be provided adequate parking spaces within one block of any property corner of the proposed hotel (in the Western United Life Building) and in a parking facility, if one is developed within reasonable proximity to the hotel. As part of the total parking necessary to accommodate the hotel, a minimum of 10 parking spaces will be provided on the Building of the Southwest site at the time the hotel opens, if no restaurant/bar/eatery is included in the hotel. If a restaurant/bar/eatery is included with the hotel and remains in continuous operation, the parking necessary to meet the calculated needs of the eatery will be provided on the Building of the Southwest site, up to the parking limits of the site. Parking space quantity will be based on City of Midland code requirements, and for the entire hotel is currently estimated to be 210 parking spaces.
3. The Building of the Southwest site will not be developed in a manner that competes with the allowed usage of the Fuel Hotel project. The City shall make the final determination on what types of uses and developments will be considered as competing with the Fuel Hotel project.
4. The future hotel will be developed to include the following amenities:

Room amenities

- Each room to have a separate sitting room
- 42" LCD cable television
- Free wi-fi
- Rain-shower heads
- Archive bath products
- Wood-panel floors and shutters
- Coffee maker
- Iron and ironing board
- Hair dryer
- Full size kitchen w/ full size fridge and dishwasher
- King and queen size pillow top beds

Hotel amenities

- 142-room all suite hotel
- Room sizes varying from 500 sf to 800 sf
- Lounge and exercise room on every floor
- Bar and lounge w/ specialty drinks and ice cold beer selections in lobby
- Café and full-service restaurant
- Luxurious spa

- 24-hour fitness center
 - 24-hour business center (fax/copy/print)
 - 24-hour concierge accommodations and local recommendations
 - Valet or self-parking garage
5. Parking will be provided through a 99-year lease, or other such lease terms as deemed acceptable by the City's Legal Office. The first 20 years of the lease will be at no cost to the developer as long as the developed property remains in active use as a development which is acceptable to the City. For the remainder of the lease, the parking shall be provided at the full value of comparable parking in downtown Midland as long as the developed property remains in active use as a development which is acceptable to the City. The City shall maintain the right to reevaluate the comparable value of parking in Midland upon which to base an adjustment to the parking lease rate, but shall do so no more frequently than once per calendar year.
 6. Should the project usage change over the life of the lease, any additional parking necessitated by the change in usage will be negotiated with the City regarding price and term, but only if the new use remains acceptable to the City.
 7. Should the project usage change over the life of the lease to one that is not deemed acceptable by the City, or if the room/hotel amenities are not provided as noted in item 3, the developer shall have 90 days to address/cure the issue(s). After the 90-day period, if the identified issues have not been corrected to the satisfaction of the City, the provision of parking to any degree and for no cost shall be considered null and void.
 8. If the project developer does not satisfy any of the obligations noted herein, the City's requirement to provide parking in any form shall be null and void. However, the City will maintain responsibility to raze the Building of the Southwest.
 9. Evidence of adequate financial backing must be provided to City by October 15, 2013. This evidence shall include current documentation from a bank or other lending institution stating that they are providing a specific funding level to support the hotel project without disclaimers, caveats, or exceptions.
 10. Acceptable redevelopment uses of the former Western United Life building include:
 - a. Hotel
 - b. High density residential complex
 - c. Other uses as acceptable to City
 11. Hotel project will secure all required permits by September 30, 2013.
 12. Hotel project will break ground by November 29, 2013. "Break ground" shall be defined as the initiation of continued, sustained, and meaningful construction toward the completion of the project. Construction work shall be performed by licensed, bonded contractors who have a formal agreement with the property owner to perform their specific work. The performance of minor tasks that do not substantially lead toward the completion of the project or tasks performed by individuals who are not part of the contracted construction team will not satisfy the requirement that the project break ground. The hotel project must secure Certificates of Occupancy (C of O's) from the City within 24 months of the date of ground breaking.



City of Midland
Office Memorandum

DATE: 8/13/2013

TO: The Honorable Mayor and City Council Members

FROM: Amy Turner, City Secretary

SUBJECT: Consider a resolution allocating \$142,992 from the Hotel/Motel Construction Fund and appropriating \$90,000 from the Hotel/Motel Unappropriated Fund Balance to the Bill Williams Softball Complex Renovations Project.

During the FY 2012-2013 budget process, the Hotel/Motel Tax Advisory Board recommended and the City Council approved funding for Midland Softball Association (MSA) to build an addition to the Bill Williams Softball Complex Concession building. After hiring an architect to develop the plans for the project, it was conveyed that ADA renovations are required for the restrooms if any construction to the concession facility occurs.

The costs for the ADA renovations are estimated at \$60,000. In addition, an increase in local construction costs, as well as costs for the architectural plans and the construction oversight of the project, is approximately \$30,000 higher than originally estimated.

Therefore, Midland Softball Association requests \$90,000 in additional funding from Hotel-Motel funds in order to move forward with the ADA renovations and expansion of the Concession facility at the Bill Williams Sports Complex. Total cost of the completed project will be \$232,720.

Additionally, \$142,992 needs to be moved from Midland Softball Association's Hotel/Motel account to Project 9054 to ensure that funds will be available if the project goes beyond the end of FY 2012-2013.

Fiscal Impact:

That the sum of \$142,992 is hereby allocated from the Hotel / Motel Fund (090) Administration (005) Interfund Transfer (0199) Hotel / Motel Construction Fund (6323) to the Bill Williams Softball Complex Renovations Project (9054), and

That the sum of \$90,000 is hereby appropriated from the Hotel / Motel Fund (090) Unappropriated Fund Balance (5650) to the Bill Williams Softball Complex Renovations Project (9054).

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE ALLOCATION OF FUNDS FROM THE HOTEL/MOTEL CONSTRUCTION FUND AND APPROPRIATING FUNDS FOR THE BILL WILLIAMS SOFTBALL COMPLEX RENOVATIONS PROJECT

WHEREAS, the City Council approved funding for Midland Softball Association to build an addition to the Bill Williams Softball Complex Concession building; and

WHEREAS, Americans with Disabilities Act renovations are required for the Bill Williams Softball Complex Renovations Project; and

WHEREAS, the Americans with Disabilities Act renovations and construction cost for the Bill Williams Softball Complex Renovations Project are estimated at \$90,000.00; and

WHEREAS, the City Council finds it to be in the public interest to appropriate funds to build an addition to the Bill Williams Softball Complex Concession building;

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

SECTION ONE. That the sum of \$142,992 is hereby allocated from the Hotel / Motel Fund (090) Administration (005) Interfund Transfer (0199) Hotel / Motel Construction Fund (6323) to the Bill Williams Softball Complex Renovations Project (9054).

SECTION TWO. That the sum of \$90,000 is hereby appropriated from the Hotel / Motel Fund (090) Unappropriated Fund Balance (5650) to the Bill Williams Softball Complex Renovations Project (9054).

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

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

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: 8/13/2013

TO: City Council / City Manager

FROM: Steve Thorpe, Building Official

SUBJECT: Resolution to grant a variance to Ordinance 8769 (January 1, 2010 Oil and Gas Well Drilling Ordinance) to allow building permits for residences, to be issued in the future, where the proposed residence, either in whole or part is no closer than 374.8 feet of an existing oil and gas well.

Purpose:

Resolution to grant a variance to Ordinance 8769 (January 1, 2010 Oil and Gas Well Drilling Ordinance) to allow building permits for residences, to be issued in the future, where the proposed building, either in whole or part is no closer than 374.8 feet of an existing oil and gas wells. The land is known as Stonebridge addition being 16.61 acres out of Section 1, Block X H.P. Hilliard Survey, addresses are 1120 Milltown Road, Block 4, Lot 11, Stonebridge Addition, 1122 Milltown Road, Block 4, Lot 12, Stonebridge Addition, and 1200 Milltown Road, Block 4, Lot 13, Stonebridge Addition.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

None

Discussion:

Ordinance 8769 states from the application filing date of the oil and gas well permit, any building permit for construction of a building within 500 feet of the well, requires a distance variance.

Upon granting of the variance a building permit for a building meeting the allowed distance may be issued. The ordinance states, "In no event shall a building permit be issued by the City of Midland for any private residence or commercial building to be constructed, either in whole or in part, within three hundred (300) feet of a previously permitted but undrilled Oil and Gas Well or one hundred thirty-five (135) feet of an existing oil and gas well or within one hundred fifty (150) feet of a previously permitted tank battery."

Previously variances have been granted for other properties within the city limits to allow permits to be issued for residences and commercial buildings as close as 135 feet of an existing oil and gas well. Therefore staff recommends approval of this variance.

Attachments: Signed Letter; Survey

RESOLUTION NO. _____

RESOLUTION GRANTING A VARIANCE FOR LOTS 11-13, BLOCK 4, STONEBRIDGE ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (COMMONLY KNOWN AS 1120, 1122 AND 1200 MILLTOWN ROAD), BY PERMITTING CONSTRUCTION OF RESIDENCES WHERE NO PORTION OF ANY STRUCTURE IS CLOSER THAN 374.8 FEET OF AN OIL AND GAS WELL; AND AUTHORIZING ISSUANCE OF BUILDING PERMITS

WHEREAS, pursuant to Section 6-1-23(H)(2)(c) of the City Code of Midland, Texas, the owner of the property described in Section One hereof has applied for a variance in order to receive building permits for the construction of residences where no portion of any structure is closer than 374.8 feet of an oil and gas well; and

WHEREAS, the City Council finds and determines that granting a variance for such purpose will not present a health or safety risk to the applicant or subsequent occupants of the structures;

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

SECTION ONE. That a variance is hereby granted for Lots 11-13, Block 4, Stonebridge Addition, City and County of Midland, Texas, by permitting construction of a residence where no portion of the structure is closer than 374.8 feet of an oil and gas well.

SECTION TWO. That the Building Official is hereby authorized and directed to issue building permits to the applicant and to other appropriate parties, entities, individuals, successors or assigns for such purpose with the following notation: "This building permit is issued for a structure to be constructed on a lot or tract located within five hundred feet of a previously permitted Oil and Gas Well but no portion of the structure shall be closer than 374.8 feet of a previously permitted Oil and Gas Well."

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

the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



July 8, 2013

Steve Thorpe
City of Midland
300 N. Loraine Street
Midland, TX 79701

Re: Stonebridge Addition, Well Variance for Wimberley 1, well #1

Dear Mr. Thorpe:

I, Mark Payne, being an owner of Stonebridge Addition (being 16.61 Acres out of Section 1, Block X H.P. Hilliard Survey) am writing to request a variance be granted from Ordinance #8498 of the "Midland Texas Code of Ordinances" regarding "Oil and gas well permits issued on or after March 1, 2007" with an effective date of March 1, 2007.

The Wimberley 1, well #1 by Midland Energy, Inc was permitted on August 26, 2008 by the Midland City Council. The attached exhibit "A" shows the location of this well in relation to the proposed single family home lots in the subdivision. In order to develop these lots, residences will need to be built within the 500 foot radius from the well.

The distances from Wimberley 1, well #1 to the nearest lot lines are shown on the table on Exhibit "A". The shortest will be at least 374.8 feet from Wimberley 1, well #1. The Final plat was submitted to the City Planning and Zoning Commission and was approved on March 14, 2011.

Paragraph G. 3 of Ordinance #88498 states that: "An owner of private residences or commercial structures may request a variance from the City Council in order to receive a building permit for the construction of a residence or building within 500 feet of any previously permitted oil and gas well." I request that the city grant a variance from the stated section of the City of Midland Code of Ordinances to obtain a building permit for the requested lots. I also ask you to place this item on the agenda of the Midland City Council, at the next possible date, in order to consider this request.

Sincerely,

Innovative Land Development, Inc

Mark Payne
Mark Payne, President

ACKNOWLEDGMENT

STATE OF TEXAS

§

§

COUNTY OF MIDLAND

§

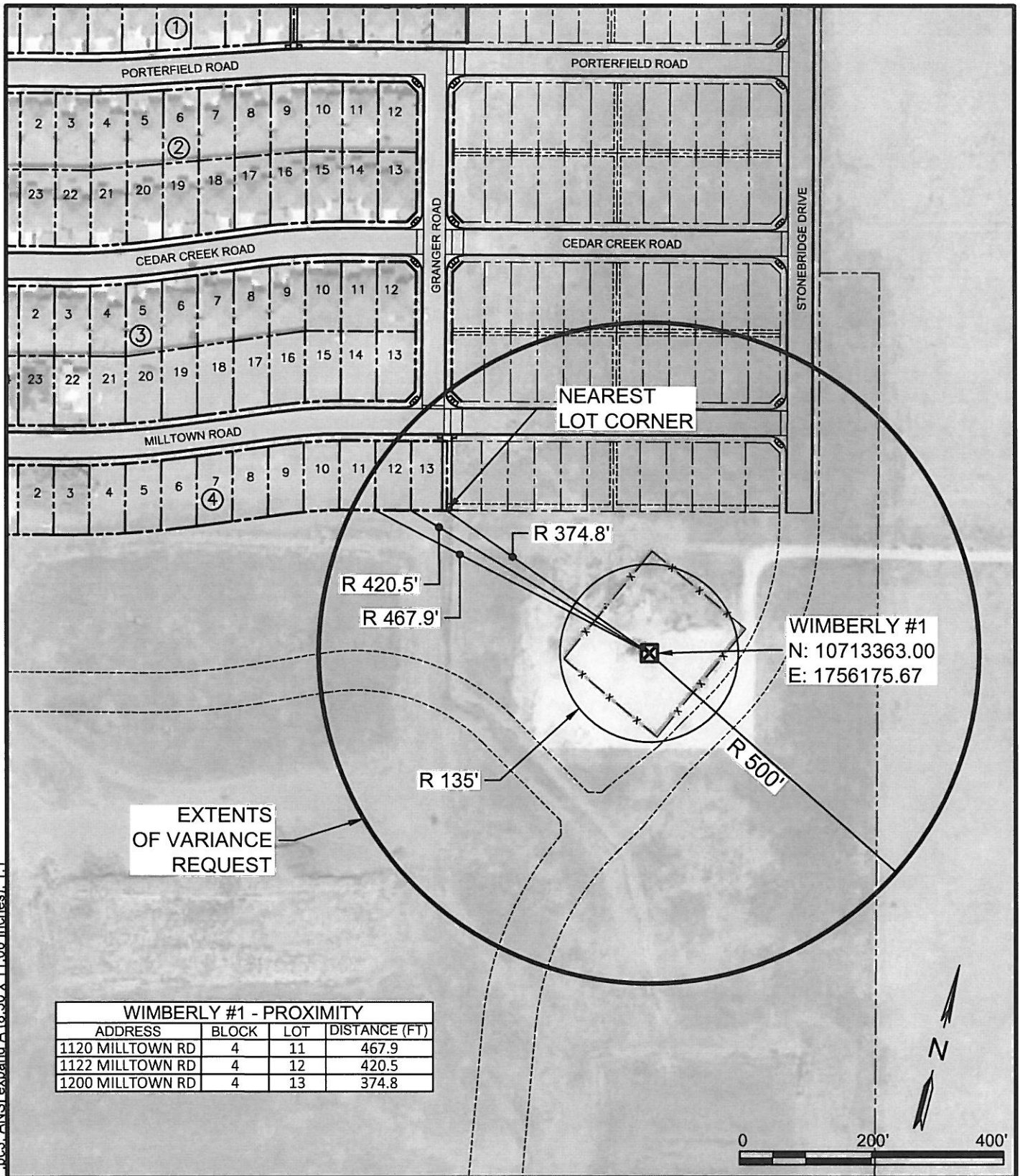
BEFORE ME, the undersigned Notary Public, on this 8th day of July, 2013, personally appeared, Mark Payne, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed and in the capacity therein stated.

Jamie Pruitt
Notary Public

STAMP:



\\Data1\Projects\2012\19842.12\CADD\01_CIVIL\ExhibitsWellVariance_Phase1.dwg, EX-A, 7/10/2013 8:13:53 AM, J\$quyres, DWG To PDF.pc3, ANSI expand A (8.50 x 11.00 inches), 1:1



WIMBERLY #1 - PROXIMITY			
ADDRESS	BLOCK	LOT	DISTANCE (FT)
1120 MILLTOWN RD	4	11	467.9
1122 MILLTOWN RD	4	12	420.5
1200 MILLTOWN RD	4	13	374.8

INNOVATIVE LAND DEVELOPMENT, INC.
STONEBRIDGE ADDITION, PHASE 1
WIMBERLY #1 WELLHEAD

PARKHILL SMITH & COOPER
PSC VARIANCE FOR EXISTING WELL

Issue: 1
Project No: 01.9836.07

Date: 7/9/2013
Sheet: EX-A



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: August 13, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Ron Jenkins, Oil & Gas Compliance Coordinator

SUBJECT: Consider a resolution approving the issuance of a permit to Vector Oil & Gas LP (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (Barron #4) located 838 feet from the north line and 2,186 feet from the west line located in Section 6, Block "X", H. P. Hilliard Survey, City and County of Midland, Texas. (Generally located on the west side of Oriole Drive, approximately 840 feet south of Mockingbird Lane. – District 1)

Purpose:

To consider a resolution approving the issuance of a permit to Vector Oil & Gas LP (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (Barron #4) located 838 feet from the north line and 2,186 feet from the west line located in Section 6, Block "X", H. P. Hilliard Survey, City and County of Midland, Texas. The required 30-day public comment has passed and the Council may consider this request. Two letters of objection received.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to process this application.

Discussion:

The Oil and Gas Advisory Committee has reviewed this well site in detail and recommends approval of the application. No variances requested. Vector Oil & Gas LP is not requesting any variances. The fencing and landscaping will be consistent with the same style and material to be constructed in the proposed subdivision. Road repair can be consolidated with existing agreement.

Attachments: Application; Location map; Exhibit - Drill site map, Exhibit – Flow Line Location.

RESOLUTION NO. _____

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO VECTOR OIL & GAS LP (“OPERATOR”) TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 838 FEET FROM THE NORTH LINE AND 2,186 FEET FROM THE WEST LINE, SECTION 6, BLOCK “X”, H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF ORIOLE DRIVE, APPROXIMATELY 840 FEET SOUTH OF MOCKINGBIRD LANE); AND PROVIDING THAT SAID PERMIT DOES NOT REQUIRE A NEW ROAD REPAIR AGREEMENT BUT SHALL BE CONSOLIDATED UNDER AN EXISTING ROAD REPAIR AGREEMENT

WHEREAS, on December 8, 2009, the City Council of the City of Midland duly approved Ordinance No. 8769 which amended Title VI, “Police Regulations,” Chapter 1, “General Offenses,” of the City Code of Midland, Texas, so as to establish Section 23, “Oil and Gas Well Permits issued on or after January 1, 2010,” which governs the granting or rejecting of Oil and Gas Well Permits; and

WHEREAS, the purpose of said section is to establish reasonable and uniform limitations, safeguards, and regulations for present and future operations related to the exploring, drilling, developing, producing, transporting and storing of oil or gas or other substances produced in association with oil and gas within the City of Midland to protect the health, safety, and general welfare of the public and the orderly development of the City of Midland; abate or prevent potential public nuisances; minimize the potential adverse impact to surface and mineral owners, protect the quality of the environment and encourage the orderly production of available mineral resources; and

WHEREAS, Section 6-1-23(C) of the City Code of Midland, Texas, makes it an offense to knowingly drill or participate in the drilling of any well or to re-enter any well within the corporate limits of the City of Midland without a permit having first been issued by the authority of the City Council; and

WHEREAS, Operator has submitted an application to the City of Midland to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, notice of the public hearing on this matter was provided in accordance with Section 6-1-23(H)(1) and a public hearing was held on July 9, 2013; and

WHEREAS, subsequent to said public hearing, and in accordance with Section 6-1-23(H)(1), the City Council allowed the public and Operator thirty (30) days to submit written input to the City Manager regarding Operator's application to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, the City Council has considered those issues set forth in Section 6-1-23(I) in determining whether to grant or deny a permit to Operator to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, the City Council finds it to be in the public interest to approve the issuance of a permit to Operator to drill an oil and gas well on the property described in Section Two hereof;

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

SECTION ONE. That the above recitals are hereby adopted and approved by the City Council of the City of Midland.

SECTION TWO. That the Mayor is hereby authorized and directed to execute a permit, on behalf of the City of Midland, that will allow Operator to drill an oil and gas well within the City limits located 838 feet from the north line and 2,186 feet from the west line, Section 6, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas. Said permit is attached hereto as Exhibit "A" and incorporated herein for all legal purposes.

SECTION THREE. That said permit does not require a new road repair agreement but shall be consolidated under the existing road repair agreement between Operator and the City of Midland for Operator's wells located on the property described in Section Two hereof.

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

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on August 13, 2013, considered the application of Vector Oil & Gas LP, dated April 3, 2013, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with the Midland City Code, Ordinance 8769, to drill an oil and gas well, in the application of Vector Oil & Gas LP, dated April 3, 2013, and filed with the Oil & Gas Compliance Officer and incorporated herein for all legal purposes.

The location of Vector Oil & Gas LP, Barron #4 oil and gas well shall be 838 feet from the north line and 2,186 feet from the west line, Section 6, Blk X, H.P. Hilliard Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in that application of Vector Oil & Gas LP, which is incorporated herein. Further, all operations done under this permit shall be done and accomplished in strict accordance with the Midland City Code, Ordinance 8769, which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit. Also, all operations done under this permit shall be done and accomplished in strict accordance and compliance with the General Conditions, which are attached hereto marked as Exhibit "A" and incorporated into and made a part of this permit for all purposes. All operations done and required under this permit shall be done and accomplished in strict accordance and compliance with the Specific Conditions which are attached hereto, marked as Exhibit "B", and incorporated into and made a part of this permit for all purposes.

This permit shall be effective from August 13, 2013, through August 13, 2014, and so long thereafter as oil or gas is produced or until such time as the permittee has permanently abandoned the operations of the well or facility for which this permit is issued.

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

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts the permittee from its responsibilities or obligations as to third parties. The issuance of this permit only means that the permittee has, at this time, complied with Ordinance No. 8769 and that the Midland City Council, as a regulatory body, will allow the permittee to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize the recipient to act with impunity as to third parties, nor does it insulate the permittee from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize the permit holder from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a "negative pronouncement" that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. The permittee has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield the permittee from third party tort liability stemming from the consequences of the permitted activity.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, utility and drainage rights-of-way.

This permit shall constitute a written contract for purposes of insurance requirements.

In addition to the requirements of the Midland City Code, Ordinance 8769, and the requirements of this permit, including the General and Specific Conditions incorporated herein, Vector Oil & Gas LP, shall develop, maintain and operate the well described herein in accordance with the conditions, limitations and safeguards contained in Vector Oil & Gas LP, application for said well. Vector Oil & Gas LP, application for said well is incorporated herein by reference for all legal purposes.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS _____ day of August, 2013.

CITY OF MIDLAND, TEXAS

BY: _____

W. Wesley Perry, Mayor

UNDERSTOOD AND AGREE THIS _____ day of August, 2013.

Vector Oil & Gas LP

By: _____

Michael W Wallace, Vice President of Operations

OIL AND GAS PERMIT: ORDINANCE 8769 GENERAL CONDITIONS- EXHIBIT "A"

(K)

General Conditions of all Oil and Gas Well Permits.

1.

General Obligations of Operator.

The Operator shall be required to:

a.

Comply with the terms and conditions of this Section, the Midland City Code, the rules and regulations of the Railroad Commission, and any other state or federal agency that enforces land use, mineral use, or environmental protection regulations.

b.

Promptly clear Drill and Operation sites of litter, trash, refuse and other substances used, allowed, or occurring in the operations, and after abandonment or completion, grade, level, and restore such property to the same surface conditions as nearly as practicable as existed before operations.

c.

Indemnify and hold harmless the City of Midland, the City's officers, agents and employees, from any and all claims, losses, damages, causes of action, suits, and liability of any kind, including all expenses of litigation, court costs, and attorney's fees, for injury to or death of any Person, or for damage to any property arising out of or in connection with the work done by Operator under an Oil and Gas well permit: where such injuries, death or damages are caused by Operator's sole negligence or the joint negligence of the Operator and any other Person or entity.

d.

Promptly pay all fines, penalties and other assessments imposed due to breach of any of the conditions herein. If the Operator does not agree that a breach has occurred, the Operator may file a written objection with the City Manager within ten (10) days of being notified of the alleged breach. The City Manager shall review the objections and give the Operator the opportunity to be heard and present facts that the Operator deems relevant.

e.

Promptly restore to its former condition any public property damaged by the oil and gas operation.

f.

Except as permitted by Subsection U, hereof, Operator shall not, either directly or indirectly, assign all or any part of an Oil and Gas Well Permit.

g.

If required by the Permit, Operator shall execute a "Road Repair Agreement" between itself and the City of Midland and submit all necessary information and insurance and guarantees to the City prior to the issuance of any Oil and Gas Well Permit under this Section.

2.

Irrevocable Letter of Credit, Certificate of Deposit, or Surety Bond.

Prior to the issuance of an Oil and Gas well permit, the Operator shall provide the City Attorney with a guarantee in the form of an irrevocable letter of credit, certificate of deposit, or surety bond in the name of the City. The Applicant shall be entitled to receive the interest earned if the certificate of deposit reaches maturity. The letter of credit, certificate of deposit, or surety bond must satisfy the following:

a.

The letter of credit, certificate of deposit or surety bond shall be issued by a reliable bank or insurance carrier authorized to do business in the State of Texas;

b.

The letter of credit, certificate of deposit or surety bond shall be effective starting on or before the effective date of the Oil and Gas Well Permit;

c.

The letter of credit, certificate of deposit or surety bond shall be in the amount of twenty-five thousand dollars (\$25,000.00);

d.

The letter of credit, certificate of deposit or surety bond shall remain in full force and effect for a period of three years; and

e.

The letter of credit, certificate of deposit or surety bond shall authorize the City of Midland to draw upon such credit in the event the City Manager, or his designee, determines said credit is needed to remedy any violation of this Section.

If the well is still producing or if the well has not been abandoned or plugged, the Operator must renew the letter of credit, certificate of deposit or surety bond on or before one hundred twenty (120) days prior to the expiration of the letter of credit, certificate of deposit or surety bond.

The City of Midland may draw upon the letter of credit, certificate of deposit or surety bond to recover costs of repairs, modifications, or construction to remedy any violations by the Operator under this Section. The City may make partial or full draws of the letter of credit, certificate of deposit or surety bond. The City may draw upon the letter of credit, certificate of deposit or surety bond in the event the City has not received a new letter of credit, certificate of deposit or surety bond within the one hundred twenty (120) day renewal time period required above.

The Operator shall maintain the principal amount of \$25,000.00 in the form of a letter of credit, certificate of deposit or surety bond at all times throughout the term of the permit. In the event such letter of credit, certificate of deposit or surety bond is not restored to \$25,000.00 within ten (10) days after the date of the reduction of the letter of credit, certificate of deposit or surety bond, the City may draw and receive the remaining balance of the letter of credit, certificate of deposit or surety bond, and the Oil and Gas Well Permit shall be suspended on such date and the Operator's right to operate under Oil and Gas Well Permit shall immediately cease until the Operator files the required letter of credit, or certificate of deposit or surety bond.

If an operator has three (3) or more Oil and Gas Well Permits in effect which have been approved by the City Council, the Operator may petition the Council to consolidate the letter of credits, certificate of deposits or surety bonds into one letter of credit, certificate of deposit or surety bond that would cover all Oil and Gas Wells in the City limits. The consolidated letter of credit, certificate of deposit or surety bond shall be in an amount determined by the City Council as sufficient to cover the costs of repairs, modifications, construction or to remedy violations by the Operator but in no event shall the amount be less than \$75,000.00.

3.

Insurance.

In addition to the letter of credit, certificate of deposit or surety bond required above, the Operator shall carry a policy or policies of insurance issued by an admitted insurer or eligible surplus lines insurer authorized to do business in the State of Texas. In the event such insurance policy or policies are cancelled, any Oil and Gas Well Permit issued under this Section shall be suspended on such date of cancellation and the Operator's right to operate under such Oil and Gas Well Permit shall immediately cease until the Operator files additional insurance as required herein.

- a. General requirements applicable to all policies.
 - i. The City, the City's officials, employees, agents and officers shall be endorsed as an "Additional Insured" on all policies, except under Operator's Workers Compensation Policy.
 - ii. All policies shall be written on an occurrence basis, except for Environmental Pollution Liability (Seepage and Pollution coverage) and Excess and Umbrella Liability, which may be on a claims-made basis.
 - iii. All policies shall be written by an admitted insurer or eligible surplus lines insurer authorized to do business in the State of Texas.
 - iv. Deductibles shall be listed on the Certificate of Insurance and shall be on a "per occurrence" basis unless otherwise stipulated herein.
 - v. Certificates of Insurance shall be delivered to the City of Midland, P.O. Box 1152, Midland, Texas 79702, Attn: City Attorney's Office, evidencing all the required coverages, including endorsements, prior to the issuance of an Oil and Gas Well Permit under this Section.
 - vi. All policies shall be endorsed with a waiver of subrogation providing rights of recovery in favor of the City.
 - vii. Any failure on the part of the City to request required insurance documentation shall not constitute a waiver of the insurance requirements specified herein.
 - viii. Each policy shall be endorsed to provide the City a minimum thirty (30) day notice of cancellation, non-renewal, and/or material change in policy terms or coverage. A ten (10) day notice shall be acceptable in the event of non-payment of premium.
 - ix. During the term of any Oil and Gas Well Permit issued hereunder, the Operator shall report, in writing, within thirty (30) days of the occurrence, to the City Manager, any known

loss occurrence which could give rise to a liability claim or lawsuit or which could result in a property loss.

x.

Upon request, certified copies of all insurance policies shall be furnished to the City.

xi.

Operator shall have the right to maintain a qualified, self-insurance plan and/or maintain prudent levels of self-insured retentions for insurance coverage required in this section; however, Operator shall remain financially obligated for all self-insured retention amounts and deductibles. To the extent of the liabilities assumed by the Operator, Operator's insurance shall be primary coverage as to any liabilities of the City.

b.

Standard Commercial General Liability Policy.

This coverage must include premises, operations, blowout or explosion, products, completed operations, sudden and accidental pollution, blanket contractual liability, underground resources damage, broad form property damage, independent contractors protective liability, accidental death and personal injury. This coverage shall be a minimum Combined Single Limit of \$1,000,000.00 per occurrence for Bodily Injury, Accidental Death, and Property Injury.

c.

Excess or Umbrella Liability.

\$1,000,000	Excess, if the Operator has a stand-alone Environmental Pollution Liability (EPL) policy.
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\$10,000,000	Excess, if the Operator does not have a stand-alone EPL policy. Coverage must include an endorsement for sudden or accidental pollution. If Seepage and Pollution coverage is written on a "claims made" basis, the Operator must maintain continuous coverage and purchase Extended Coverage Period when necessary.
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d.

Environmental Pollution Liability Coverage.

Operator shall purchase and maintain in force for the duration of any Oil and Gas Well Permit issued hereunder, insurance for environmental pollution liability applicable to bodily injury, property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense or settlement of claims; all in connection with any loss arising from the insured site.

Coverage shall be maintained in an amount of at least \$1,000,000 per loss, with an annual aggregate of at least \$10,000,000.

Coverage shall apply to sudden and accidental pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids or gases, refuse material or other irritants, contaminants or pollutants.

e.

Workers Compensation and Employers Liability Insurance.

i.

Workers Compensation benefits shall be Texas Statutory Limits.

ii.

Employers Liability shall be a minimum of \$1,000,000.00 per accident.

iii.

Such coverage shall include a waiver of subrogation in favor of the City of Midland and provide coverage in accordance with applicable State and Federal laws.

f.

Automobile Liability Insurance.

i.

Combined single limit of \$1,000,000.00 per occurrence for bodily injury and property damage.

ii.

Coverage must include all owned, hired and not-owned automobiles.

g.

Certificates of Insurance.

i.

The company must be licensed or authorized to do business in the State of Texas.

ii.

The insurance set forth by the insurance company must be underwritten on forms that have been approved by the Texas State Board of Insurance or ISO or an equivalent policy form acceptable to the City, with the exception of environmental pollution liability and control of well coverage.

iii.

Set forth all endorsements and insurance coverage according to requirements and instructions contained herein.

iv.

Shall specifically set forth the notice of cancellation, termination, or change in coverage provisions to the City. All policies shall be endorsed to read "THIS POLICY WILL NOT BE CANCELLED OR NON-RENEWED WITHOUT THIRTY (30) DAYS ADVANCE WRITTEN NOTICE TO THE OWNER AND THE CITY, EXCEPT WHEN THIS POLICY IS BEING CANCELLED FOR NONPAYMENT OF PREMIUM, IN WHICH CASE, TEN (10) DAYS ADVANCE WRITTEN NOTICE IS REQUIRED".

v.

Original endorsements affecting coverage required by this section shall be furnished with the certificates of insurance.

vi.

At the request of an Operator, the Council may grant a variance to insurance requirements if the Council determines that the insurance procured by the Operator is sufficient to protect the City. A variance of this type may be required because of a change in underwriting policies of admitted insurance carriers.

Indemnification.

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

Notice.

The notices provided in this permit may be served in person or by registered or certified mail. Operator shall within ten (10) days notify the City Manager in writing of any change in such agent or mailing address unless operations in the City are discontinued and abandonment is complete.

Notice addresses are as follows:

City of Midland
Attn: Office of the City Manager
P. O. Box 1152
Midland, Texas 79702

OPERATOR: _____
Michael W. Wallace, Vice President of Operations

Vector Oil & Gas LP
508 West Wall Street; Suite 1200
Midland, Texas 79701
(432)686-4327

OIL AND GAS WELL PERMIT: ORDINANCE 8769 SPECIFIC CONDITIONS-EXHIBIT "B"

(L)

Specific conditions of all Oil and Gas Well Permits; On-Site Requirements.

1.

Abandoned wells. All wells shall be abandoned in accordance with the rules of the Railroad Commission and pursuant to Subsection (O) of this Section.

2.

Automated audible alarm system. After completion, the appropriate system for flowing gas and/or flowing oil wells must be maintained to provide warnings for a substantial drop in pressure, or the release of any oil or gas, or a fire. Said audible alarm system must be approved by the Fire Marshal prior to installation of production equipment at the flowing gas and/or flowing oil well site.

3.

Blowout prevention. In all cases, ram-type and annular Blowout Preventers shall be used on all wells being drilled. In cases where Re-working is being performed on a Well, ram-type or annular Blowout Preventers shall be used. Protection shall be provided to prevent blowout during Drilling operations as required by and in conformance with the requirements of the Railroad Commission and the recommendations of the American Petroleum Institute. In addition to the Blowout Preventers stated above, all drilling must be equipped with flow lines and valves commensurate with the working pressures involved as required by the Railroad Commission each Blowout Preventer shall be a double-ram design with blinds and pipe. After surface casing has been set and cemented to surface, each Blowout Preventer shall be tested and witnessed by Operator's personnel and the results of such test shall be documented in the Operator's well file. Testing expenses shall be the responsibility of the Operator. The Operator shall provide a complete report of the well blowout prevention test to the City Manager within fifteen (15) days of the test.

4.

Casing. The surface portions of the Well shall be cased with cement circulated to the surface. All surface and intermediate casing must comply with all applicable rules of the Railroad Commission and the Texas Commission on Environmental Quality.

5.

Compliance. Operator shall comply at all times with all applicable federal, state and City requirements.

6.

Discharge. No person shall place, deposit, discharge, or cause or permit to be placed, deposited or discharged, any oil, naphtha, petroleum, asphalt, tar, hydrocarbon substances or any refuse including water or brine from any oil and gas operation or the contents of any container used in connection with any oil and gas operation in, into, or upon any Right-of-way, alleys, streets, lots, storm

drain, ditch or sewer, sanitary drain without permits from the appropriate City departments, or any body of water or onto any private property in the City.

7.

Drilling notice. The operator shall provide at least a forty eight (48)-hour notice to the City Manager prior to mobilizing the Drilling Equipment. In addition to notification to the City Manager, the operator shall provide a notice to the owners of at least forty eight (48) hours or more prior to mobilizing the drilling equipment through a publication in the Midland Reporter Telegram and a posting in the City Secretary's Office.

8.

Drill stem testing. No drill stem testing shall be allowed.

9.

Dust, vibration, odors. All drilling and production operations shall be conducted in such a manner as to minimize, so far as practicable, dust, vibration, or noxious odors, and shall be in accordance with the best accepted practices incident to drilling for the production of oil, gas and other hydrocarbon substances in urban areas. All equipment used shall be so constructed and operated so that, vibrations, dust, odor or other harmful or annoying substances or effect will be minimized by the operations carried on at any Drill Site or Operation Site or from anything incident thereto, to the injury or annoyance of persons living in the vicinity; nor shall the site or structures thereon be permitted to become dilapidated, unsightly or unsafe. Proven technological improvements in industry standards of drilling and production in this area shall be adopted as they become available if capable of reducing factors of dust, vibration and odor.

10.

Electric lines. All electric lines going under City roadways must be bored and encased pursuant to city standards. All electric lines to production facilities may be overhead service unless the surrounding neighborhood is developed with underground electric service. If the surrounding neighborhood is developed with underground electric service, then all electric lines to production facilities shall be buried underground.

11.

Electric motors. Only electric prime movers or motors shall be permitted for the purpose of pumping wells. No electric power shall be generated on location. All electrical installations and equipment shall conform to the City ordinances and the appropriate national codes.

12.

Emergency response plan. Prior to the commencement of any oil or gas production activities, Operator shall submit to the City Manager an emergency response plan establishing written procedures to minimize any hazard resulting from drilling, completion or producing of oil and gas wells. Said plan shall use existing guidelines established by the Railroad Commission, Texas Commission on Environmental Quality, Department of Transportation and/or the Environmental Protection Agency and City Fire Code. A copy of the Emergency Response Plan shall be kept at the Operator's office.

13.

Equipment painted. All production equipment on the site shall be painted beige and maintained at all times, including pumping units, tanks, buildings and structures. The City shall regularly inspect all painted structures and inform Operator when repainting is necessary. Operator shall repaint within sixty (60) days written notice from City. When requiring re-painting of such facilities, the City Manager shall consider the deterioration of the quality of the material of which such facility or structure is constructed, the degree of rust, and its appearance. Upon request of the Operator, a color other than beige may be approved by the City Council.

14.

Explosives. Use of an explosive perforating gun during completion operations and during plugging operations and down-hole operations that require such explosives shall be allowed.

15.

Fire notice. In the event of a fire or discovery of a fire, smoke, or unauthorized release of flammable or hazardous materials on any property, the Operator shall immediately report such condition to the Fire Department in accordance with the City of Midland Fire Code. The reporting limits for hazardous materials release shall conform to the requirements of the Railroad Commission and not exceed any state or federal permitting limit.

16.

Fire prevention; sources of ignition. Firefighting apparatus and supplies as approved by the Fire Marshal and required by any applicable federal, state, or local law shall be provided by the Operator, at the Operator's cost, and shall be maintained on the drilling site at all times during drilling and/or reworking operations. The Operator shall be responsible for the maintenance and upkeep of such equipment.

17.

Fracing operations. No fracing or formation fracture stimulation operations may take place before 7:00 a.m. or after 7:00 p.m.

18.

Fresh water wells. The measurements required by this Subsection shall be in a direct line from the closest Oil and Gas well to the fresh water well.

a.

Upon request of an owner of a fresh water well within 860 feet of an Oil and Gas well, who has been duly notified, Operator shall provide the City Manager with a "pre-drilling" and "post-drilling" water analysis from any such existing fresh water well(s).

b.

Operator shall conduct and fund annual testing for water wells that have been tested pursuant to Subsection (L)18.a. above. This testing program shall continue for the production life of The Well plus three years for a producing well, or for a period of one (1) year for a dry hole.

19.

Compressors. No onsite compressor used to "lift gas" shall be used. No compressor of any type shall be used. In the event Operator determines the use of such compressor is necessary, a detailed plan shall be submitted by Operator to the City Council for consideration. An on-site compressor plan shall include the following information:

- a. The physical size of the compressor;
- b. The power source of the compressor;
- c. The horsepower of the compressor;
- d. The noise of the compressor; and
- e. The manufacturer of the compressor.

No compressor of any type shall be used unless a plan is approved by the City Council.

20.

Gas emission or burning restricted. Operator shall not allow, cause or permit gases to be vented into the atmosphere or to be burned by open flame except as provided by law or as permitted by the Railroad Commission. If the venting of gases into the atmosphere or the burning of gases by open flame is authorized as provided by law or as permitted by the Railroad Commission, then such vent or open flame shall not be located closer than three hundred thirty (330) feet from any building not used in operations on the drilling site and such vent or open flame shall be screened in an effort to minimize detrimental effects to adjacent owners. Operator shall provide notice to the Fire Marshall prior to any open flaring of gas. Gas may not be flared unless for a limited time when completing, or recompleting a well, and only if flaring will not constitute a fire hazard to other owners. If flaring gas, it shall not be burned at a rate greater than 3,000 mcf/d. No gas may be flared between the hours of 7:00 p.m. and 7:00 a.m., except in an emergency.

21.

Gas processing onsite. Except for a conventional gas separator or line heater, no refinery, processing, treating, dehydrating or absorption plant of any kind shall be constructed, established or maintained on the premises without prior written consent of the City Manager.

22.

Grass, weeds, trash. All Drill sites and Operation sites shall be kept clear of high grass, weeds, and combustible trash within a radius of one hundred (100) feet around any Tanks, production facilities, or producing wells.

23.

Hazardous plan. Hazardous Materials Management Plan (HMMP) and all Material Safety Data Sheets (MSDS) for all hazardous materials that will be located, or stored, on the Operations Site shall be submitted to the City Manager.

24.

Lights. Except under emergency circumstances, operator shall not Operate any lights located at the Drill Site. To the extent practicable, and taking into account safety considerations, emergency site lighting shall be directed downward and internally so as to avoid glare on public roads and adjacent dwellings and buildings within three hundred (300) feet. This paragraph does not apply during initial Drilling Operations.

25.

Monitoring for H₂S gas. If required by the Railroad Commission, equipment for the monitoring of H₂S gas shall be used during Drilling. The Operator will comply with all requirements found in Statewide Rule 36 of the Railroad Commission, as amended. Within sixty (60) days after completion, and annually thereafter, Operator shall submit to the City Manager results of testing to determine the concentration of H₂S produced from the Well. If the results of the H₂S testing proves to be one hundred (100) PPM H₂S or greater, the Operator is responsible for determining the one hundred (100) PPM H₂S radius of exposure for each Well and production facility. Wells and facilities where the concentration of H₂S is equal to or greater than one hundred (100) PPM will be considered "Sour." Safety systems described herein must be approved by the Fire Marshall.

a.

The following safety alarms and equipment are required at the well site of all wells that are capable of producing at a sustained rate of at least one hundred twenty-five (125) barrels of oil per day and/or three hundred (300) MCF of gas per day and for "sour" wells whose one hundred (100) PPM H₂S radius of exposure is greater than fifteen (15) feet:

i.

H₂S monitors located along the fencing, as set forth in Subsection M (for "sour" wells only).

ii.

Automated audible alarms to provide warnings for a substantial drop in pressure or for the presence of H₂S in concentrations greater than one hundred (100) PPM.

iii.

Automated valve to shut-in production from the well if a substantial drop in pressure or if the presence of H₂S in concentrations greater than one hundred (100) PPM is detected.

b.

The following safety alarms and equipment are required at "Sour" Tank battery facilities:

i.

H₂S monitors located along the fencing, as set forth in Subsection M.

ii.

Automated audible alarm to provide warnings for the presence of H₂S in concentrations greater one hundred (100) PPM.

iii.

An electrical device capable of shutting down power to all "Sour" wells producing into the battery in the event H₂S in concentrations great than 100 PPM is detected.

26.

Muffling exhaust. Exhaust from any internal combustion engine or compressor, stationary or mounted on wheels, used in connection with the Drilling of any well or for use on any production equipment shall not be discharged into the open air unless it is equipped with an exhaust muffler, or mufflers or an exhaust muffler box constructed of noncombustible materials sufficient to suppress noise and disruptive vibrations and prevent the escape of obnoxious gases, fumes or ignited carbon or soot.

27.

Pits. The following applies for pits used for Drilling and completion operations:

a.

No pit shall be placed in a floodplain without obtaining a floodplain development permit from the City Department of Development Services.

b.

No fresh water pit may be placed in any City recognized drainage way, FEMA floodplain or floodway. Construction of the fresh water pit must comply with all City, state and federal regulations.

c.

The use of earthen pits shall be allowed so long as the construction, use, dewatering and closure of such pits meets or exceeds the requirements of the applicable Railroad Commission rules and Texas Commission on Environmental Quality rules. In addition to compliance with applicable Railroad Commission rules, and Texas Commission on Environmental Quality rules, such earthen reserve pits shall also meet the following requirements;

(i)

the maximum size of a reserve pit shall be no greater than two hundred (200) feet by two hundred (200) feet;

(ii)

The pits shall be lined with a plastic liner having a minimum thickness of eight (8) mil reinforced polyethylene;

(iii)

Reserve pits used in Drilling operations shall be fenced on all open sides during such operations and shall be enclosed on all sides once Drilling operations have ceased;

(iv)

Reserve pits shall be closed within one hundred (180) days of the cessation of drilling operations;

(v)

Drill cuttings may be disposed of on the Drill Site using a deep burial method provided that the burial pit containing the cuttings is located entirely within one hundred thirty five (135) feet of the surface location of the Well, provided that all free water has been removed prior to burying the cuttings, and an impermeable liner is placed above the cuttings prior to covering the cuttings and liner with top soil, and provided that the burial pit is constructed in such a manner that the cuttings will be covered with a minimum of thirty six (36) inches of clean, compactable soil. A survey and description of the location of any closed pit used in connection with the Drill Site shall be recorded in the property records of the county in which the real property is located.

28.

Salt water wells. No commercial salt-water disposal wells that receive water by truck shall be located within the City of Midland. In the event the operator determines that the use of a non-commercial salt-water well is necessary, a detailed plan shall be submitted by the operator to the City Council for consideration. No salt water disposal well of any type shall be used unless a plan is approved by the City Council.

29.

Signs.

a.

A sign shall be immediately and prominently displayed at the gate on the temporary and permanent site fencing erected pursuant to Subsection (M) of this Section. Such sign shall be durable material, maintained in good condition and, unless otherwise required by the Railroad Commission, shall have a surface area of not less than two square feet not more than four square feet and shall be lettered with the following:

i.

Well name and number;

ii.

Name of operator;

iii.

The emergency 911 number; and

iv.

A 24-hour phone number that will provide an emergency phone number of Operator's Representatives as stated in Subsection F.

b.

Permanent weatherproof signs reading "DANGER NO SMOKING OR OPEN FLAME ALLOWED IN THIS AREA" shall be posted immediately upon completion of the well site fencing at the entrance of the well site and tank battery or in any other location approved or designated by the Fire Chief of the City. Sign lettering for this sign shall be two (2) inches or greater in height and shall be red on a white background or white on a red background. Each sign shall include the emergency notification numbers of the Fire Department and the Operator, well and lease designations required by the Texas Railroad Commission.

c.

Provide a National Fire Prevention Association (NFPA) 704 diamond hazard identification signs are required at the entrance to the Operation Site adjacent to the Operator's sign if chemicals are present. A label must be located on each chemical Tank indicating exact chemicals that may be contained in such Tank. Text shall be minimum two inches or greater in height, contrasting with the background color.

30.

Storage of equipment. Storage of equipment and materials shall be minimized and limited to the immediate operational needs of the well. Lumber, pipes, empty drums, trucks, trailers, automobiles, junk tubing, casing and rods shall not be left on the operation site except when drilling or reworking operations are being conducted on the site.

No vehicle or item of machinery shall be parked or stored on any Street, Right-of-Way or in any driveway, alley or upon any Operation Site which constitutes a fire hazard or an obstruction to or interference with fighting or controlling fires except that equipment which is necessary for Drilling or production operations on the site. The Fire Department shall be the entity that determines whether any equipment on the site shall constitute a fire hazard.

31.

Tank Battery Facilities. At the tank battery for either oil and/or gas Wells a sensor for fire detection should be appropriately placed near heater treaters, separators, and oil storage tanks that would allow an automated valve placed at the header to be closed in the event of a detected fire. All storage tanks shall be equipped with a secondary containment system. The secondary containment system shall be a minimum of three (3) feet in height and one and one-half (1½) times the contents of the total tank volume. Drip pots shall be provided at the pump out connection to contain the liquids from the storage tanks. No storage tank shall be over sixteen 16 feet in height. All storage tanks shall be built on an adequate foundation with a twelve 12-mil liner being placed

beneath each tank, extending a minimum of three (3) feet beyond the edge of each tank.

Operator must use portable steel storage tanks or fiberglass tanks for storing all fluids from the well. Tanks must meet the American Petroleum Institute standards. All tanks must have a vent line, lightning arrester and pressure relief valve. All tanks must be enclosed by a fence as required by Section (M) herein. No tank shall exceed sixteen (16) feet in height. No tank battery shall be constructed within five hundred (500) feet of any Occupied Residence, Occupied Commercial Structure or Occupied Public Building, unless a variance is granted by the City Council.

Drilling mud, cuttings, liquid hydrocarbons and all other field refuse derived or resulting from or connected with the drilling, re-working or deepening of any well shall be discharged into a steel pit or an approved earthen pit. All disposals must be in accordance with the rules of the Railroad Commission and with a plan submitted to and approved by the City Manager. Water stored in on-site tanks shall be removed as necessary.

All refuse shall be disposed of in such a manner as to comply with the applicable air and water pollution control regulations of the state, the conditions of this permit, and any applicable ordinance of the City.

Temporary flowback tanks shall be removed within ninety (90) days after completion date of the well at the pad site unless permission is obtained from the City Manager to extend the time period for no more than thirty (30) days. Completion date is that date which is stated as the "completion or recompletion date" shown on the Form W-2 or G-I filed with the Railroad Commission.

All tanks shall be set back pursuant to the standards of the Railroad Commission and the National Fire Protection Association, but in all cases, shall be at one hundred (135) feet from any street or alley right-of-way, three hundred thirty (330) feet from any public athletic field, and five hundred (500) feet from an Occupied Residence, Occupied Commercial Structure or Occupied Public Building, church, public or private school, hospital, nursing home, college or university or daycare center unless a variance is granted by the Midland City Council. Operator shall institute operational practices involving the daily monitoring of tank integrity and fluid levels within each tank. The use of a remote monitoring system is acceptable.

No meters, storage tanks, separation facilities, or other aboveground facilities, other than the well head and flow lines, shall be placed in a floodway identified by FEMA on the most current FIRM or the 100-year floodplain without a floodplain development permit obtained from the Department of Development services.

All fluids and tank bottoms will be disposed of in accordance with Railroad Commission regulations.

32.

Valves. Each flowing high volume well must have an automated shut-off valve to shut-in the well's production at the Operation Site for either a fire or

abnormal change in pressure. The fire department shall have access to the Operation Site and the shut-off valve in an emergency.

33.

Work hours for site development. No construction activities involving the excavation of, demolition of, alteration to, or repair work on any access road or pad site shall occur before 7:00 a.m. or after 7:00 p.m.

34.

Wellhead status after fracing. The wellhead between the time of Drilling/completion and tank battery construction, shall be:

a.

Surrounded with a six (6) foot tall temporary chain link fence having a gate and lock until permanent fencing is installed;

b.

The gate shall be locked at all times, except when the Operator is involved in active operations;

c.

The cellar shall be filled or closed; and

d.

The Bradenhead shall be piped to the surface and open to the atmosphere or have an observable and adequate pressure gauge with operable test valve.

35.

Inspections. In accordance within applicable law, the City Manager, or his designee, at his sole cost, risk and expense shall have a right of entry to the Drill Site/Operation Site and may, at his discretion, visit the Drill Site/Operation Site to make sure operator is in compliance with the requirements of this Section.

36.

Violation. In the event a violation of this ordinance is determined by the City's official (or officials), the City may act in any or all of the following ways:

a.

The City, through its designated official (or officials), may issue a notice of violation to the Operator, its agent, agents, employees or independent contractors (whether on site or not), or to any Person participating in the Drilling of the Well. Such notice may include a citation to appear before the Midland Municipal Court.

b.

If the City Manager, or his designee, finds the Operator to be in violation of any requirement of the applicable Oil and Gas well permit, then the City reserves the right after giving ten (10) business days written notice to the Operator regarding such violation, to draw upon the letter of credit, certificate of deposit or surety bond as outlined in Subsection (K) of this Section, in order to remedy such violation. In the event that a violation is not capable of being remedied within such ten (10) business day period, then Operator must have commenced efforts

to remedy such violation within said ten (10) business day period and thereafter continue with such efforts to remedy said violation with due diligence until completed, and as long as the Operator continues with efforts to remedy a violation with due diligence, the City shall not draw against the letter of credit, certificate of deposit or surety bond. In the event the City makes a claim on the letter of credit, certificate of deposit or surety bond pursuant to the terms hereof, reinstatement of the full amount of the letter of credit, certificate of deposit or surety bond shall be a condition to the cure of the violation leading to such claim. Alternatively, if the City Manager finds the Operator to be in violation of any requirement of the applicable Oil and Gas Well Permit, the City Manager shall give written notice to the Operator that unless all violations are corrected within ten (10) business days of the Operator's receipt of notice of the violation, the City Manager shall recommend to the City Council that the Oil and Gas Well Permit be cancelled by the City Council. In the event that a violation is not capable of being remedied within such ten (10) business-day period, then Operator must have commenced efforts to remedy said violation within said ten (10) business-day period and thereafter continue with such efforts to remedy said violation with due diligence until completed, and as long as the Operator continues with efforts to remedy a violation with due diligence, as determined by the City, the City shall not draw against the letter of credit, certificate of deposit or surety bond. If the City Council determines to consider the cancelling of the permit, it shall give the Operator written notice of the date and time of the hearing and shall give the Operator the opportunity to be heard and present facts the Operator deems relevant. The cancelling of a permit requires the majority vote of the City Council.

c.

Prosecution of violations of this Section shall be given priority and expedited upon the Municipal Court docket. Provided, however, that this subsection does not grant or guarantee Persons cited a right to expedited consideration of their citation before the Midland Municipal Court.

d.

In the event that there exists an imminent threat to public health and safety, a certified peace officer, in conjunction with the Railroad Commission, may order the temporary cessation of operations. An Operator may appeal the order to an appropriate Court in Midland County, Texas and request an expedited hearing. With respect to the contestation of an order issued pursuant to this subsection, an Operator retains all of its legal remedies.

M.

Fencing and landscaping.

1.

Fences.

A fencing plan shall be submitted, said plan containing a description of the building materials, dimensions, and locations of the proposed fence/walls and gates. The plan shall take into consideration the surrounding area and neighborhood.

At a minimum, tank battery facilities, wellheads and any production equipment associated with Oil and Gas wells shall be enclosed by a chain link fence at least seven (7) feet in height with beige-colored slats woven through the chain link, topped with three (3) strands of barbed wire angled outward or concertina wire, and shall be equipped with a locking gate. Gates shall be provided with a combination catch and locking attachment for a padlock, and shall be kept locked except when being used for access to the operation site. Operator must provide the City Fire Chief with a "Knox Padlock" or "Knox Box with a key" to access the Operation Site to be used only in case of an emergency.

The City Council may require additional or a different type of fencing to the extent necessary to conform with architectural standards and building materials existing on lots and/or lands immediately adjacent to the well and within five (500) feet of the Well at the time the Oil and Gas Well Permit is issued.

Additionally, if at any time within twenty-four (24) months following the issuance of an Oil and Gas Well Permit, a structure intended for permanent occupancy is constructed within five hundred (500) feet of the Well, the City Council may require the operator to undertake a one-time revision of the fencing plan to account for architectural standards and building materials associated with such structure to the extent that the revised fencing plan is consistent with, but not better than, the architectural standards and building materials associated with such structure.

Fences shall not be required on drill sites during drilling, completion or re-working operations as long as 24-hour on-site supervision is provided.

2.

Landscaping.

a.

The City will require tree preservation and/or planting measures.

i.

A minimum number of eight trees shall be required to be planted within 25 feet from the outside perimeter of the wall or walls required herein.

ii.

At least 75 percent of the trees shall be evergreen.

iii.

The minimum size of each tree planted will be at least four inches in diameter measured one foot above ground level.

iv.

All trees that die within three years of the date of project completion will be replaced by another replacement tree. The replacement tree carries the same three-year replacement requirement. A replacement of any tree that dies within three years of planting will be replaced by the Operator or agent and a new three-year guarantee will begin at the time of replacement.

b.

The following list of trees is considered desirable. Planting of trees for this list is acceptable. Other trees will be considered by the City Manager. The approval of additional species will be judged on adaptability, long-term health and growing characteristic of the tree type.

Scientific Name	Common Name
Pinus elarica	Afghan Pine, Mondell Pine
Pinus Sylvestris	Russian Pine
Ulmas Crassifolia	Cedar Elm

c.

Operator may submit a plan in lieu of subparagraphs (M)2.a and b above. The Operator must describe the type, number, and location of trees to be planted under this Section. The City Council may consider any proposal prepared in accordance with this subparagraph. Any alternative plan shall not be effective unless approved by the City Council.

d.

Operator shall submit an irrigation plan detailing the measures to be taken to adequately irrigate all landscaping, including indicating the proposed water source for irrigation, and the proposed efforts to replace dead or dying screening vegetation. Upon request by the Operator, the City may provide access to fresh water to be used for such irrigation if water is readily available and in conformance with City policies and procedures.

e.

In such instances, where City water is not available, a variance may be requested. Additionally, when City water becomes available, the provisions of this subsection shall be required.

(N)

Cleanup and Maintenance.

1.

Cleanup after well servicing. After the well has been completed or plugged and abandoned, the Operator shall clean the drill site or operation site, complete restoration activities and repair all damage to public property caused by such operations within one hundred eighty (180) days.

2.

Clean-up after spills, leaks and malfunctions. After any Railroad Commission reportable spill, leak or malfunction, the Operator shall remove or cause to be removed to the satisfaction of the City Fire Chief and the City Manager all refuse materials from any public or private property affected by such spill, leak or malfunction. Clean-up operations must begin immediately. The Operator shall comply with all requirements found in Statewide Rule 91 of the Railroad Commission, as amended. If Statewide Rule 91 requires reporting of the spill, the operator shall comply with the notification and reporting requirements found in Statewide Rule 20 of the Railroad Commission, as amended. Upon request the Operator shall furnish the City Manager with all information filed with the Railroad Commission. If the Operator fails to begin site clean-up immediately the City Manager may then employ any cleanup expert or experts or other contractors or suppliers of special services, or may incur any other expenses for labor and material which the City Manager deems necessary to clean-up such spill, leak or malfunction. The City shall then be able to collect from operator the costs involved in the site clean-up. The City may collect from the posted letter of credit, certificate of deposit or surety bond or any other legal means.

3.

Free from debris. The public street entrance and property on which a well site is located shall at all times be kept free of mud, debris, pools of water or other liquids, contaminated soil, weeds, brush, trash or other refuse material within a radius of one hundred (100) feet around any production facilities, tanks and producing wells.

4.

Painting. All production equipment shall be painted beige and maintained at all times, including pumping units, tanks, secondary containment and buildings or structures. When requiring painting of such facilities, the City Manager shall consider the deterioration of the quality of the material of which such facility or structure is constructed, the degree of rust, and its appearance.

5.

Blowouts. In the event of the loss of control of any well, Operator shall immediately take all reasonable steps to regain control regardless of any other provision of this permit and shall provide the City Manager with the same information as required to be filed with the Railroad Commission under Statewide Rule 20 as soon as practicable.

6.

Cleanup after Drilling/Completion. After the well has been drilled and completed, the Operator shall clean the Drill site, complete restoration activities and repair all damage to public property caused by such operations within ninety (90) days as specified previously in Subsection (L)27.

O.

Drilled and Abandoned Wells.

1.

Surface Requirements for Plugged and Abandoned Well. Whenever abandonment occurs pursuant to the requirements of the Railroad Commission, the Operator so abandoning shall be responsible for the restoration of the Operation site to its original condition as nearly as practicable, in conformity with the requirements of this permit underground pipelines associated with operations shall be purged of all fluids and may be abandoned in place.

2.

Surface Requirements for Drilled and Abandoned Well. Abandonment shall be approved by the City Manager after restoration of the Drill Site has been accomplished in conformity with the following requirements at the discretion of the City Manager:

a.

The Derrick and all appurtenant equipment thereto shall be removed from Drill site;

b.

All tanks, towers, and other surface installations shall be removed from the Drill site;

c.

All concrete foundations, above ground piping, wood, guy anchors and other foreign materials regardless of depth, except surface casing, shall be removed from the site, unless otherwise directed by the Railroad Commission;

d.

All holes and depressions shall be filled with clean, compactable soil;

e.

All, refuse and trash shall be removed from the Drill Site; and

f.

During abandonment, Operator shall comply with all applicable subsections in this section; and

g.

The drill site shall be restored, as close as practicable, to its original condition.

h.

Unless modified by the approved plan, deep burying of pits within the drill site perimeter is permitted. A survey and description of the location of any closed pit used in connection with the drill site shall be recorded in the property records of the county in which the real property is located. In any event the Operator shall comply with Subsection (L), Paragraph 27.

3.

Abandoned well requirement. The Operator shall furnish the following to the City Manager:

a.

A copy of the W-3A "Notice of Intention to Plug & Abandon" and W-3 "Plugging Record" forms on the same date these forms are submitted to the Railroad Commission.

b.

Prior 48-hour notice of intention to abandon under the provisions of this section and stating the date such work will be commenced. Abandonment may then be commenced on or subsequent to the date so stated.

c.

All wells shall be abandoned in accordance with the rules of the Railroad Commission; however, all well casings and cellars shall be cut and removed to a depth of at least three feet below the surface. A permanent abandonment marker, with the well identity and location permanently inscribed, shall be welded to the casing.

4.

Abandonment requirements prior to new construction. All abandoned or deserted wells or drill sites shall meet the most current abandonment requirements of the Railroad Commission prior to the issuance of any building permit for development of the property. No structure shall be built over an abandoned well.

P.

Certificate of Request for Inspection and Extension of Permit.

On or before ninety (90) days prior to each annual anniversary date of Operator's Oil and Gas Well Permit, Operator shall submit to the City Manager a Certificate of Request for Inspection of Permit. The Certificate of Request for Inspection of Permit must state the location and name of the well and the date the permit was granted by the City Council. The Certificate of Request for Inspection of Permit must be signed by the Operator before a notary public stating that the well is in compliance with the permit and all applicable Ordinances. The Certificate of Request for Inspection of Permit must be accompanied by an application and inspection fee of \$300.00. The City Manager shall grant a one-year inspection approval on the oil/gas drilling permit if the Operator is in compliance with the permit and all applicable ordinances as they apply to the

inspected well. Prior to authorizing the inspection approval, the City Manager, or his designee, shall inspect the oil and gas well site that is subject to the oil/gas drilling permit. The City Manager shall issue his decision in writing, within thirty (30) days of receiving the Certificate for Request for Inspection of Permit, either granting or denying the inspection of the oil/gas drilling permit.

The Operator may appeal the City Manager's denial of an oil/gas drilling permit inspection by submitting, in writing, an appeal to the City Council within thirty (30) days of the City Manager's written denial of the oil and gas well permit inspection. If an appeal is received by the City Council, a hearing shall be set before a meeting of the City Council to consider the denial of the oil/gas drilling permit inspection. The City Council shall hear and consider the recommendation of the City Manager, or his designee, before deciding whether or not to uphold the City Manager's decision. The Operator shall be allowed to speak and present any relevant evidence for consideration by the City Council prior to a vote of the council. A majority vote of the City Council shall be required to uphold the denial of the Oil and Gas Well Permit inspection by the City Manager. An inspection that is approved shall be valid for one (1) year from the inspection date.

(Q)

Measurement.

The measurement of all distances set forth herein shall be calculated from the proposed surface location of the well and tank batteries in a straight line, without regard to intervening structures or objects, to the closest exterior point of the object.

(R)

Effect of denial of oil and gas well permit.

If an application for an Oil and Gas Well Permit is denied by the City Council, nothing herein contained shall prevent a new permit application from being submitted to the City Council for the same proposed Oil and Gas Well or a different location for a well. A new application may also be filed on any of the mineral estate owned or leased by the applicant. Once all of the Operator's administrative and legislative remedies have been exhausted herein, the Operator may appeal or challenge the denial of an application in an appropriate Court in Midland County Texas under applicable state or federal law.

(S)

Amendment to Oil and Gas Well Permit.

1.

Amendment required. Within one hundred eighty (180) days after an Operator has been granted an Oil and Gas Well Permit, an Operator may submit an application to the City to amend an existing Oil and Gas Well Permit to commence Drilling from a new Drill site that is not shown on (or incorporated by reference as part of) the existing Oil and Gas Well Permit.

2.

Application Requirement for Amendment to Permit. An application for an amended Oil and Gas Well Permit shall meet all the requirements of this

Section, shall be in writing, shall be on forms provided by the City, shall be signed by the Operator, and shall include the following:

- a. An amendment fee of \$1,000.00.
- b. A description of the proposed amendments.
- c. Any changes to the information previously submitted with the application for the existing oil/gas drilling permit (if such information has not previously been provided to the City).
- d. Such additional information as is reasonably required by the City to demonstrate compliance with the original oil/gas drilling permit.
- e. Such additional information as is reasonably required by the City to prevent imminent destruction of property or injury to persons.

3.

Review of Application for Amendment to Permit. All applications for an amended oil/gas drilling permit shall be considered in accordance with the factors listed in Subsection (I) herein. The City Council may elect to consider the application for an amended oil/gas drilling permit without the requirement of a public hearing.

4.

Standard of review.

- a. **No Material Change from Existing Permit.** If the activities proposed by the amendment are not materially different from the activities covered by the existing Oil and Gas Well Permit, and are otherwise in conformance with the requirements of this section, other applicable City Ordinances, the Oil/Gas Drilling Permit then the City Council shall approve the Amended Application.
- b. **Material Change from Existing Permit.** If the activities proposed by the amendment are materially different from the activities covered by the existing Oil/Gas Well Permit, are not in conformance with the requirements of this Section, other applicable City Ordinances, the Oil/Gas Well Permit, or if, in the judgment of the City Council, the activities proposed by the amendment might create a risk of imminent destruction of property or injury to persons or property or that were not otherwise taken into consideration by the existing Oil/Gas Well Permit, the City Council may require the amendment to be processed as a new Oil and Gas Well Permit Application.

T.

Independent Contractor. Operator understands and agrees that Operator, its employees, servants, agents, and representatives, shall at no time represent themselves to be employees, servants, agents, and/or representatives of the City. The City shall not have any control over the means or methods by which Operator shall perform its obligations hereunder. Operator shall furnish all equipment and materials necessary to perform hereunder and shall at all times be acting as an independent contractor. No action by either party should be construed to create a partnership, joint venture, or other dual enterprise between the parties.

U.

Assignability; Transfer Permit.

1.

The Operator shall not, either directly or indirectly, assign, sell, or transfer any part of the Oil and Gas Well Permit, or any interest, right, duty, obligation or privilege under the permit, except in accordance with this Subsection.

2.

An Oil and Gas Well Permit may be transferred upon written request by the Operator with the consent of the City Council:

a.

If the transferee agrees in writing to be bound by the terms and conditions of the current Oil and Gas Well Permit and road repair agreement;

b.

If all information previously provided to the City as part of the current Oil and Gas Well Permit is updated to reflect any changes; and

c.

If the transferee provides the insurance and security required by this section.

3.

In determining whether to approve the transfer permit, the City Council may consider the financial standing of the transferee and its record of compliance with respect to existing permits. Should the transfer permit be denied, the transferee may file an application for a new Oil and Gas Well Permit.

4.

The insurance and security provided by the transferor shall be released if the transfer permit is approved; provided, however, that the transfer shall not relieve the transferor from any liability to the City arising out of any activities conducted prior to the transfer, except to the extent that the transferee expressly agrees in writing to assume such liabilities as part of the transfer.

5.

Applications for the transfer of Oil and Gas Well Permits shall be filed with the City's planning department. A non-refundable administration fee shall be charged for each application in the amount of five hundred (\$500.00).

V.

Time Limit Requirements. The failure of the City Council to review and approve an Oil and Gas Well Permit within a specified time limit shall not cause the application for the Oil and Gas Well Permit to be deemed approved. If the City Council denies a request for a permit, the applicant may file a request with the City Council to re-consider the application. The applicant may present any new evidence to the council and may present any extenuating circumstances or other matters deemed relevant by the applicant. The decision of the City Council regarding the issuance of a permit is not final until the request for re-consideration is voted upon by the City Council.

W.

Indemnification. The oil and gas well permit may contain the following language:

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

X.

Incident Reports or Written Complaints. The Operator shall provide a copy of any "incident reports" or written complaints submitted to the Railroad Commission or any other state or federal agency within thirty (30) days after Operator has notice of the existence of such reports or complaints.

Y.

Expiration of permit. Drilling must commence on the Well covered by the Oil and Gas Well permit twelve (12) months of approval by the City Council, after which the Oil and Gas Well Permit shall automatically expire if no drilling has commenced. A permit extension for a maximum time period of six (6) months may be granted by the City Manager without reapplication after the City Manager receives a written request from the Operator.

Z.

Takings determination.

1.

Any aggrieved applicant that believes that an action taken pursuant to this Section by the City Council or any officer or employee of the City constitutes a taking under the Texas or United States Constitution or under other state law, may file an application with the City Council requesting a takings determination.

2.

The applicant seeking a takings determination from the Council shall file its appeal with the office of the City Secretary. The City Secretary shall then

forward the appeal to the City Council for consideration. An appeal fee in the amount of two hundred fifty (\$250.00) dollars shall accompany each filing.

3.

The appeal shall state the reasons that the applicant believes would support a finding that the City's actions constitute a taking under the Texas or United States Constitution or pursuant to other State law and shall include evidence substantiating the purported diminution in value of the applicant's real property.

4.

If the Council finds by a majority vote in favor of the applicant it may: (1) grant the relief requested, or (2) direct the City Manager to rescind action taken by City Staff that formed the basis of the takings determination appeal. If the Council denies the appeal, or after a favorable determination the City Council fails to take action as specified above, the applicant may appeal the decision or inaction of the City Council to the county or district court of the county in which the affected real property is located within thirty (30) days of the date that the Council issues its final decision or in the event the Council does not act on the application, then the operator may appeal to the county or district court after the expiration of one hundred twenty (120) days from the date the application is heard by the City Council.

Notice addresses are as follows:

City of Midland
Attn: Office of the City Manager
P. O. Box 1152
Midland, Texas 79702

OPERATOR: _____
Michael W. Wallace, Vice President of Operations

Vector Oil & Gas LP
508 West Wall Street; Suite 1200
Midland, Texas 79701
(432) 686-4327

0-13-005



APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information		
Date 4/3/2013	Operator Name (must match W-1) Vector Oil & Gas LP	Operator Address 508 West Wall Street; Suite 1200 Midland, Texas 79701
Representative Name Michael W. Wallace	Representative Address (within Midland City Limits) 508 West Wall Street; Suite 1200 Midland, Texas 79701	Rep. Tele. (432) 686-4327 Rep. Fax (432) 686-0302
Fee: \$4,000.00 Rec'd Yes ☒ No ☐	NOTE: All attachments need to bound and put in a binder before submitting.	Pages 1-4
Permit Compliance Contact (Choose 1): Option A: 24/7 Answering Services - No. 1 (Tele.): (432) 582-3190 No. 2 (Tele.):		
Option B: Company Compliance Representative (Name, Address, Local Telephone) (ATTACH STATEMENT AS EXHIBIT A): Exhibit A Attached		
Emergency Contact Representative (Name, Address, 24-Hour Tele. No.):		
Other Permitted Wells in City (ATTACH EXHIBIT B [see § J(26)]). See Exhibit B		
II. Mineral Ownership		
Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease):		
1. Attached to Exhibit C		
2.		
3.		
ATTACHED AS EXHIBIT C is (a Title Opinion by _____, a licensed Texas Attorney/Title Commitment by Abstract Company/a Take-off from _____, a Certified Petroleum Landman/an opinion letter from James H. Chandler a licensed Texas Attorney) indicating that [Operator] has a legal right to develop the mineral estate that is the subject of this Application. [See § J(5)].		
III. Surface Ownership & Use		
General Description of Current Surface Use (within 860 feet of proposed surface location): Vacant land with some single family dwellings and pens outside of the leased area but within 860 feet of the proposed location.		
ATTACHED AS EXHIBIT D is (a Title Opinion by _____, a licensed Texas Attorney/a Take-off from _____, a Certified Petroleum Landman/Current Tax Roll from Midland Central Appraisal District), which lists the name(s) and address(es) of all surface owners within 860 feet of the surface well location. [See § J(7)].		

ATTACHED AS EXHIBIT E is a (map/p lat/satellite/aerial photo) depicting all Residences, commercial structures, public buildings, all publicly dedicated Streets and alleys, Rights of Way, and permanent accessory structures surrounding the proposed Drill Site. The (map/p lat/satellite/aerial photo) includes two circles, as required by the Ordinance—one depicting a 500 foot radius and one depicting an 860 foot radius from the proposed well's surface location. [See § J(10)].

ATTACHED AS EXHIBIT F is a copy of the notification letter(s) sent to 100 percent of the surface owners, Certified Mail, Return Receipt Requested. [See § J(36)].

IV. Well & Operations Information

Proposed Well Name: Barron #4

Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary)[See § J(11) and § L(4)]:

See attached Exhibit G

Legal Description of Proposed Well Site:

838' FNL & 2186' FWL Section 6, Blk X, H.P. Hilliard Survey, Midland County, Texas

ATTACHED AS EXHIBIT G is the Location Site Plan [See § J(9)].

ATTACHED AS EXHIBIT H is the Map with the proposed transportation route(s) and road(s) for equipment, chemicals, or refuse products used or produced in the proposed oil and gas operations. [See § J(12)].

ATTACHED AS EXHIBIT I is a copy of the approved Texas Railroad Commission permit to drill (Form W-1), together with all attachments (also file copy of W-1 with City Secretary before commencement of drilling operations). [See § J(16) and (20)].

ATTACHED AS EXHIBIT J is a copy of the required TCEQ report as to depth of usable quality ground water. [See § J(17)].

ATTACHED AS EXHIBIT K (if applicable) is the list of alternative locations developed in consultation with the Oil & Gas Advisory Committee. [See § J(27)].

ATTACHED AS EXHIBIT L is the Fencing and Irrigation Plan. [See § J(30)].

ATTACHED AS EXHIBIT M is the Road Repair Agreement and Letter of Credit/Certificate of Deposit/Surety Bond in the amount of at least \$25,000. Option (if applicable): Applicant would further state that no City-owned streets or alleys will be used by the Operator in connection with its oil and gas operations and as a result, requests a waiver from the Council of this requirement. Option B (if applicable): Because Applicant has three Road Repair Agreements in effect that have been approved by the Council, Applicant requests that the Council consolidate all agreements into one and is filing the necessary \$75,000 letter of credit/certificate of deposit/surety bond in conjunction with this request. [See § J(31)].

ATTACHED AS EXHIBIT N is the Concept Plan depicting the proposed Operations Site (which includes tanks, roads, power lines, and pipeline routes). [See § J(32)].

Description of Public Utilities required during (1) drilling and (2) operations:

(1) Drilling: None

(2) Operations: Sharyland Utilities L.P.

Description of water source to be used during Drilling:

Water to be trucked onto well site as well as, use of water wells on location (See plat Exhibit N)

Description of all electric lines to production facilities (reference exhibits as necessary) [See § L(10)]:

Exhibit N

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]: Exhibit O

Trench and encapsulate per RRC Rule 27 (c) (10) (v)

V. Additional Required Exhibits

ATTACHED AS EXHIBIT P is the *Letter of Credit/Certificate of Deposit* in accordance with Subsection (K)(2). [See § J(18)].

ATTACHED AS EXHIBIT Q are Tax certificates from Midland Central Appraisal District to be submitted indicating that all taxes on personal and real property, including minerals, owned by Applicant are current. [See § J(29)].

ATTACHED AS EXHIBIT R is the required Insurance Certificate. [See § J(19) and § K(3)].

ATTACHED AS EXHIBIT S (if applicable) is the Drainage Plan approved by the City Engineer relating to Applicant's proposed operations. [See § J(21)].

ATTACHED AS EXHIBIT T is Applicant's Emergency Action Response Plan. [See § J(22)].

ATTACHED AS EXHIBIT U is Applicant's Hazardous Materials Management Plan, a copy of which has been submitted and is on file with the Midland Fire Department. [See § J(23)].

Vector Oil & Gas LP

[NAME OF COMPANY]

By Michael W. Wallace
Its Michael W. Wallace

State of Texas)

County of Midland)

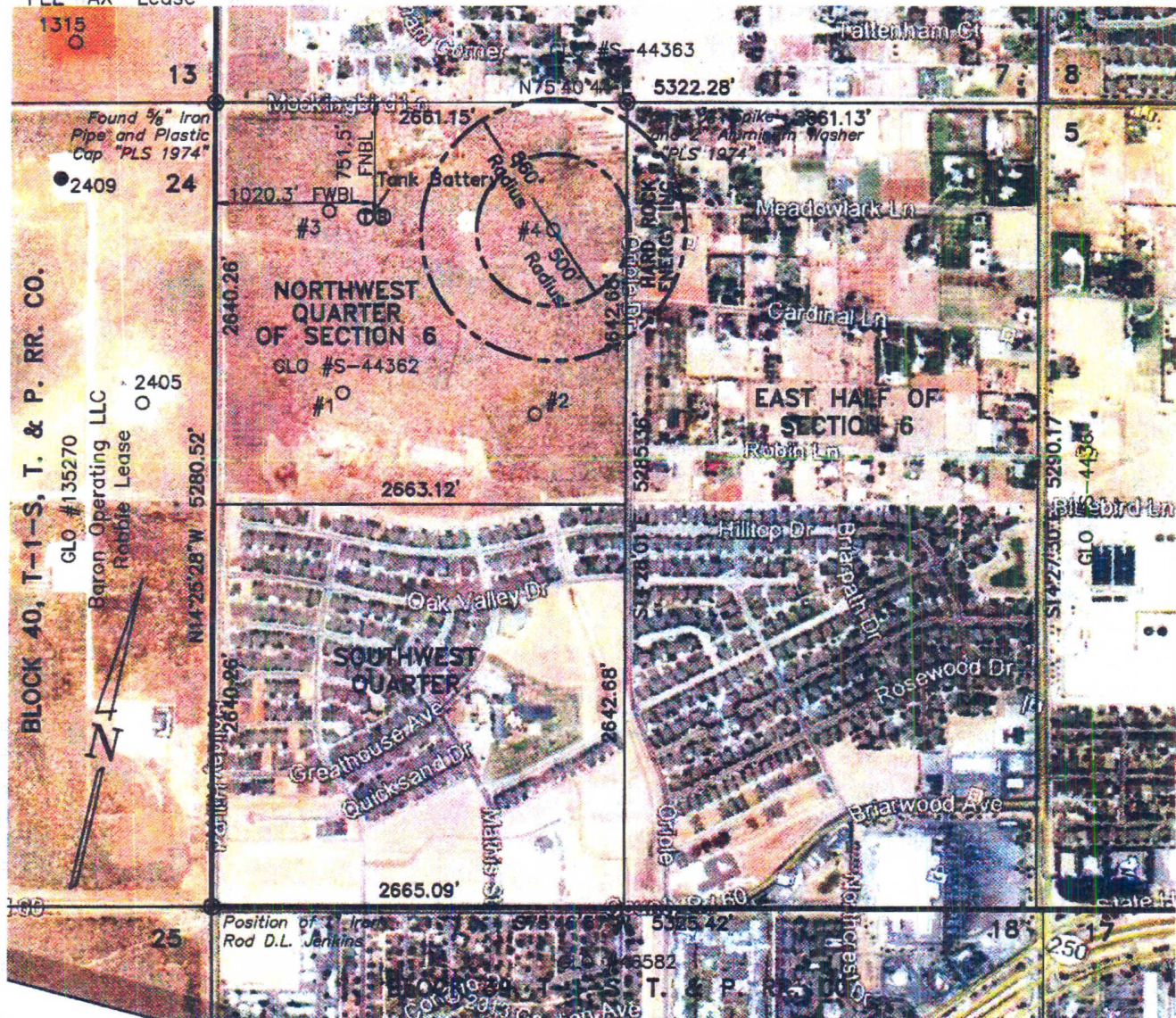
Michael W. Wallace on April 2, 2013, personally appeared before me, and being first duly sworn declared he/she signed the application in the capacity designated, if any, and further states that he/she has read the above application and attached exhibits and the statements therein are true and correct to the best of their knowledge.

Keri R. Waddell
Notary Public, State of Texas



Faskin Oil and
Ranch, LTD
FEE "AX" Lease

HARD ROCK ENERGY INC.



Drawing File: HolidayHill5.Dwg; Drawn by: Gene M. Rodriguez; Scale: 1"=1000'; Date: 2/18/13

PLAT SHOWING A 500' AND 860' RADIUS OF
PROPOSED BARRON #4 BEING 838.0' FNL & 2186.4' FWL
IN SECTION 6 BLOCK X, H.P. HILLIARD SURVEY,
MIDLAND COUNTY, TEXAS

Bearings, distances, and coordinates are relative to the Texas State Plane Coordinate System,
1983/96CORS NAD, Central Zone.

Prepared for:
Vector Oil & Gas L.P.
3141 Hood St. Ste 350
Dallas, Tx 75219



PIPER SURVEYING

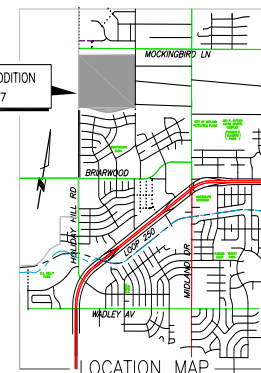
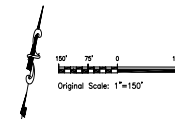
P.O. BOX 60432; MIDLAND, TEXAS 79711; 432.550.7810

DRILL SITE

BARRON #4

0-13-005

Being 155.99 Ac.
Located in
Section 6, Block X,
H.P. Hilliard Survey
City of Midland, Midland County, Texas



- PROPOSED PLAT LIMITS
- PROPOSED STREET ROW
- PHASING BOUNDARY
- ZONING BOUNDARY
- CITY LIMITS
- EXISTING SECTION CORNER
- EXISTING PLATTED LOTS & STREET R/W
- EXISTING EASEMENTS
- EXISTING WATER LINE
- EXISTING SEWER LINE & MANHOLE
- EXISTING FENCE
- EXISTING ELEVATION CONTOURS
(From CGM GIS Survey)
- PROPOSED PLATTED LOTS & STREET R/W
- PROPOSED EASEMENTS
- PROPOSED WATER LINE
- PROPOSED SEWER LINE & MANHOLE
- BURIED FLOW LINE AND ELECTRIC LINES
- GAS LINE



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: August 13, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Ron Jenkins, Oil & Gas Compliance Coordinator

SUBJECT: Consider a resolution approving the issuance of a permit to Midland Energy, Inc. (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits, (Wimberley 1 #4)* located 832 feet from the south line and 982 feet from the east line located in Section 1, Block X, H.P. Hilliard Survey, City and County of Midland, Texas. (Generally located on the north side of the E. Loop 250 North, north of N. Fairgrounds Road – District 1)

Purpose:

To consider a resolution approving the issuance of a permit to Midland Energy, Inc. (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits, (Wimberley 1 #4)* located 832 feet from the south line and 982 feet from the east line located in Section 1, Block X, H.P. Hilliard Survey, City and County of Midland, Texas. The required 30-day public comment has passed and the Council may consider this request. No letters of objection received.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to process this application.

Discussion:

The Oil and Gas Advisory Committee has reviewed this well site in detail and recommends approval of the application with updated letterhead on surface notification approval letters. Midland Energy, Inc. has addressed the recommendations and updated the application. The Committee is recommending the requested landscaping and irrigation variance and waiver of the road repair agreement.

Attachments: Application; Location map; Exhibit - Drill site map, Exhibit – Flow Line Location.

RESOLUTION NO. _____

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO MIDLAND ENERGY, INC. (“OPERATOR”) TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 832 FEET FROM THE SOUTH LINE AND 982 FEET FROM THE EAST LINE, SECTION 1, BLOCK “X”, H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTH SIDE OF EAST LOOP 250 NORTH, NORTH OF NORTH FAIRGROUNDS ROAD); AND WAIVING THE REQUIREMENT OF A ROAD REPAIR AGREEMENT

WHEREAS, on December 8, 2009, the City Council of the City of Midland duly approved Ordinance No. 8769 which amended Title VI, “Police Regulations,” Chapter 1, “General Offenses,” of the City Code of Midland, Texas, so as to establish Section 23, “Oil and Gas Well Permits issued on or after January 1, 2010,” which governs the granting or rejecting of Oil and Gas Well Permits; and

WHEREAS, the purpose of said section is to establish reasonable and uniform limitations, safeguards, and regulations for present and future operations related to the exploring, drilling, developing, producing, transporting and storing of oil or gas or other substances produced in association with oil and gas within the City of Midland to protect the health, safety, and general welfare of the public and the orderly development of the City of Midland; abate or prevent potential public nuisances; minimize the potential adverse impact to surface and mineral owners, protect the quality of the environment and encourage the orderly production of available mineral resources; and

WHEREAS, Section 6-1-23(C) of the City Code of Midland, Texas, makes it an offense to knowingly drill or participate in the drilling of any well or to re-enter any well within the corporate limits of the City of Midland without a permit having first been issued by the authority of the City Council; and

WHEREAS, Operator has submitted an application to the City of Midland to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, notice of the public hearing on this matter was provided in accordance

with Section 6-1-23(H)(1) and a public hearing was held on July 9, 2013; and

WHEREAS, subsequent to said public hearing, and in accordance with Section 6-1-23(H)(1), the City Council allowed the public and Operator thirty (30) days to submit written input to the City Manager regarding Operator's application to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, the City Council has considered those issues set forth in Section 6-1-23(I) in determining whether to grant or deny a permit to Operator to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, the City Council finds it to be in the public interest to approve the issuance of a permit to Operator to drill an oil and gas well on the property described in Section Two hereof;

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

SECTION ONE. That the above recitals are hereby adopted and approved by the City Council of the City of Midland.

SECTION TWO. That the Mayor is hereby authorized and directed to execute a permit, on behalf of the City of Midland, that will allow Operator to drill an oil and gas well within the City limits located 832 feet from the south line and 982 feet from the east line, Section 1, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas. Said permit is attached hereto as Exhibit "A" and incorporated herein for all legal purposes.

SECTION THREE. That the requirement of a Road Repair Agreement between Operator and the City of Midland is hereby waived in regard to said permit.

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

Council members voting "AYE":

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on August 13, 2013, considered the application of Midland Energy, Inc., dated April 25, 2013, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with the Midland City Code, Ordinance 8769, to drill an oil and gas well, in the application of Midland Energy, Inc., dated April 25, 2013, and filed with the Oil & Gas Compliance Officer and incorporated herein for all legal purposes.

The location of Midland Energy, Inc., Wimberley 1 #4 oil and gas well shall be 832 feet from the south line and 982 feet from the east line, Section 1, Block X, H.P. Hillard Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in that application of Midland Energy, Inc., which is incorporated herein. Further, all operations done under this permit shall be done and accomplished in strict accordance with the Midland City Code, Ordinance 8769, which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit. Also, all operations done under this permit shall be done and accomplished in strict accordance and compliance with the General Conditions, which are attached hereto marked as Exhibit "A" and incorporated into and made a part of this permit for all purposes. All operations done and required under this permit shall be done and accomplished in strict accordance and compliance with the Specific Conditions which are attached hereto, marked as Exhibit "B", and incorporated into and made a part of this permit for all purposes.

This permit shall be effective from August 13, 2013, through August 13, 2014, and so long thereafter as oil or gas is produced or until such time as the permittee has permanently abandoned the operations of the well or facility for which this permit is issued.

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

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts the permittee from its responsibilities or obligations as to third parties. The issuance of this permit only means that the permittee has, at this time, complied with Ordinance No. 8769 and that the Midland City Council, as a regulatory body, will allow the permittee to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize the recipient to act with impunity as to third parties, nor does it insulate the permittee from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize the permit holder from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a "negative pronouncement" that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. The permittee has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield the permittee from third party tort liability stemming from the consequences of the permitted activity.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, utility and drainage rights-of-way.

A variance granted for landscaping and irrigation to be consistent with the surface owner housing development plan.

A waiver granted for road repair agreement due to no city streets used by operator to access well or tank battery.

This permit shall constitute a written contract for purposes of insurance requirements.

In addition to the requirements of the Midland City Code, Ordinance 8769, and the requirements of this permit, including the General and Specific Conditions incorporated herein, Midland Energy, Inc., shall develop, maintain and operate the well described herein in accordance with the conditions, limitations and safeguards contained in Midland Energy, Inc., application for said well. Midland Energy, Inc., application for said well is incorporated herein by reference for all legal purposes.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS _____ day of August, 2013.

CITY OF MIDLAND, TEXAS

BY: _____

W. Wesley Perry, Mayor

UNDERSTOOD AND AGREE THIS _____ day of August, 2013.

Midland Energy, Inc.

By: _____

Don Hale, Director of Special Projects

OIL AND GAS PERMIT: ORDINANCE 8769 GENERAL CONDITIONS- EXHIBIT "A"

(K)

General Conditions of all Oil and Gas Well Permits.

1.

General Obligations of Operator.

The Operator shall be required to:

a.

Comply with the terms and conditions of this Section, the Midland City Code, the rules and regulations of the Railroad Commission, and any other state or federal agency that enforces land use, mineral use, or environmental protection regulations.

b.

Promptly clear Drill and Operation sites of litter, trash, refuse and other substances used, allowed, or occurring in the operations, and after abandonment or completion, grade, level, and restore such property to the same surface conditions as nearly as practicable as existed before operations.

c.

Indemnify and hold harmless the City of Midland, the City's officers, agents and employees, from any and all claims, losses, damages, causes of action, suits, and liability of any kind, including all expenses of litigation, court costs, and attorney's fees, for injury to or death of any Person, or for damage to any property arising out of or in connection with the work done by Operator under an Oil and Gas well permit: where such injuries, death or damages are caused by Operator's sole negligence or the joint negligence of the Operator and any other Person or entity.

d.

Promptly pay all fines, penalties and other assessments imposed due to breach of any of the conditions herein. If the Operator does not agree that a breach has occurred, the Operator may file a written objection with the City Manager within ten (10) days of being notified of the alleged breach. The City Manager shall review the objections and give the Operator the opportunity to be heard and present facts that the Operator deems relevant.

e.

Promptly restore to its former condition any public property damaged by the oil and gas operation.

f.

Except as permitted by Subsection U, hereof, Operator shall not, either directly or indirectly, assign all or any part of an Oil and Gas Well Permit.

g.

If required by the Permit, Operator shall execute a "Road Repair Agreement" between itself and the City of Midland and submit all necessary information and insurance and guarantees to the City prior to the issuance of any Oil and Gas Well Permit under this Section.

2.

Irrevocable Letter of Credit, Certificate of Deposit, or Surety Bond.

Prior to the issuance of an Oil and Gas well permit, the Operator shall provide the City Attorney with a guarantee in the form of an irrevocable letter of credit, certificate of deposit, or surety bond in the name of the City. The Applicant shall be entitled to receive the interest earned if the certificate of deposit reaches maturity. The letter of credit, certificate of deposit, or surety bond must satisfy the following:

a.

The letter of credit, certificate of deposit or surety bond shall be issued by a reliable bank or insurance carrier authorized to do business in the State of Texas;

b.

The letter of credit, certificate of deposit or surety bond shall be effective starting on or before the effective date of the Oil and Gas Well Permit;

c.

The letter of credit, certificate of deposit or surety bond shall be in the amount of twenty-five thousand dollars (\$25,000.00);

d.

The letter of credit, certificate of deposit or surety bond shall remain in full force and effect for a period of three years; and

e.

The letter of credit, certificate of deposit or surety bond shall authorize the City of Midland to draw upon such credit in the event the City Manager, or his designee, determines said credit is needed to remedy any violation of this Section.

If the well is still producing or if the well has not been abandoned or plugged, the Operator must renew the letter of credit, certificate of deposit or surety bond on or before one hundred twenty (120) days prior to the expiration of the letter of credit, certificate of deposit or surety bond.

The City of Midland may draw upon the letter of credit, certificate of deposit or surety bond to recover costs of repairs, modifications, or construction to remedy any violations by the Operator under this Section. The City may make partial or full draws of the letter of credit, certificate of deposit or surety bond. The City may draw upon the letter of credit, certificate of deposit or surety bond in the event the City has not received a new letter of credit, certificate of deposit or surety bond within the one hundred twenty (120) day renewal time period required above.

The Operator shall maintain the principal amount of \$25,000.00 in the form of a letter of credit, certificate of deposit or surety bond at all times throughout the term of the permit. In the event such letter of credit, certificate of deposit or surety bond is not restored to \$25,000.00 within ten (10) days after the date of the reduction of the letter of credit, certificate of deposit or surety bond, the City may draw and receive the remaining balance of the letter of credit, certificate of deposit or surety bond, and the Oil and Gas Well Permit shall be suspended on such date and the Operator's right to operate under Oil and Gas Well Permit shall immediately cease until the Operator files the required letter of credit, or certificate of deposit or surety bond.

If an operator has three (3) or more Oil and Gas Well Permits in effect which have been approved by the City Council, the Operator may petition the Council to consolidate the letter of credits, certificate of deposits or surety bonds into one letter of credit, certificate of deposit or surety bond that would cover all Oil and Gas Wells in the City limits. The consolidated letter of credit, certificate of deposit or surety bond shall be in an amount determined by the City Council as sufficient to cover the costs of repairs, modifications, construction or to remedy violations by the Operator but in no event shall the amount be less than \$75,000.00.

3.

Insurance.

In addition to the letter of credit, certificate of deposit or surety bond required above, the Operator shall carry a policy or policies of insurance issued by an admitted insurer or eligible surplus lines insurer authorized to do business in the State of Texas. In the event such insurance policy or policies are cancelled, any Oil and Gas Well Permit issued under this Section shall be suspended on such date of cancellation and the Operator's right to operate under such Oil and Gas Well Permit shall immediately cease until the Operator files additional insurance as required herein.

- a. General requirements applicable to all policies.
- i. The City, the City's officials, employees, agents and officers shall be endorsed as an "Additional Insured" on all policies, except under Operator's Workers Compensation Policy.
 - ii. All policies shall be written on an occurrence basis, except for Environmental Pollution Liability (Seepage and Pollution coverage) and Excess and Umbrella Liability, which may be on a claims-made basis.
 - iii. All policies shall be written by an admitted insurer or eligible surplus lines insurer authorized to do business in the State of Texas.
 - iv. Deductibles shall be listed on the Certificate of Insurance and shall be on a "per occurrence" basis unless otherwise stipulated herein.
 - v. Certificates of Insurance shall be delivered to the City of Midland, P.O. Box 1152, Midland, Texas 79702, Attn: City Attorney's Office, evidencing all the required coverages, including endorsements, prior to the issuance of an Oil and Gas Well Permit under this Section.
 - vi. All policies shall be endorsed with a waiver of subrogation providing rights of recovery in favor of the City.
 - vii. Any failure on the part of the City to request required insurance documentation shall not constitute a waiver of the insurance requirements specified herein.
 - viii. Each policy shall be endorsed to provide the City a minimum thirty (30) day notice of cancellation, non-renewal, and/or material change in policy terms or coverage. A ten (10) day notice shall be acceptable in the event of non-payment of premium.
 - ix. During the term of any Oil and Gas Well Permit issued hereunder, the Operator shall report, in writing, within thirty (30) days of the occurrence, to the City Manager, any known

loss occurrence which could give rise to a liability claim or lawsuit or which could result in a property loss.

x.

Upon request, certified copies of all insurance policies shall be furnished to the City.

xi.

Operator shall have the right to maintain a qualified, self-insurance plan and/or maintain prudent levels of self-insured retentions for insurance coverage required in this section; however, Operator shall remain financially obligated for all self-insured retention amounts and deductibles. To the extent of the liabilities assumed by the Operator, Operator's insurance shall be primary coverage as to any liabilities of the City.

b.

Standard Commercial General Liability Policy.

This coverage must include premises, operations, blowout or explosion, products, completed operations, sudden and accidental pollution, blanket contractual liability, underground resources damage, broad form property damage, independent contractors protective liability, accidental death and personal injury. This coverage shall be a minimum Combined Single Limit of \$1,000,000.00 per occurrence for Bodily Injury, Accidental Death, and Property Injury.

c.

Excess or Umbrella Liability.

\$1,000,000	Excess, if the Operator has a stand-alone Environmental Pollution Liability (EPL) policy.
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\$10,000,000	Excess, if the Operator does not have a stand-alone EPL policy. Coverage must include an endorsement for sudden or accidental pollution. If Seepage and Pollution coverage is written on a "claims made" basis, the Operator must maintain continuous coverage and purchase Extended Coverage Period when necessary.
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d.

Environmental Pollution Liability Coverage.

Operator shall purchase and maintain in force for the duration of any Oil and Gas Well Permit issued hereunder, insurance for environmental pollution liability applicable to bodily injury, property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense or settlement of claims; all in connection with any loss arising from the insured site.

Coverage shall be maintained in an amount of at least \$1,000,000 per loss, with an annual aggregate of at least \$10,000,000.

Coverage shall apply to sudden and accidental pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids or gases, refuse material or other irritants, contaminants or pollutants.

e.

Workers Compensation and Employers Liability Insurance.

i.

Workers Compensation benefits shall be Texas Statutory Limits.

ii.

Employers Liability shall be a minimum of \$1,000,000.00 per accident.

iii.

Such coverage shall include a waiver of subrogation in favor of the City of Midland and provide coverage in accordance with applicable State and Federal laws.

f.

Automobile Liability Insurance.

i.

Combined single limit of \$1,000,000.00 per occurrence for bodily injury and property damage.

ii.

Coverage must include all owned, hired and not-owned automobiles.

g.

Certificates of Insurance.

i.

The company must be licensed or authorized to do business in the State of Texas.

ii.

The insurance set forth by the insurance company must be underwritten on forms that have been approved by the Texas State Board of Insurance or ISO or an equivalent policy form acceptable to the City, with the exception of environmental pollution liability and control of well coverage.

iii.

Set forth all endorsements and insurance coverage according to requirements and instructions contained herein.

iv.

Shall specifically set forth the notice of cancellation, termination, or change in coverage provisions to the City. All policies shall be endorsed to read "THIS POLICY WILL NOT BE CANCELLED OR NON-RENEWED WITHOUT THIRTY (30) DAYS ADVANCE WRITTEN NOTICE TO THE OWNER AND THE CITY, EXCEPT WHEN THIS POLICY IS BEING CANCELLED FOR NONPAYMENT OF PREMIUM, IN WHICH CASE, TEN (10) DAYS ADVANCE WRITTEN NOTICE IS REQUIRED".

v.

Original endorsements affecting coverage required by this section shall be furnished with the certificates of insurance.

vi.

At the request of an Operator, the Council may grant a variance to insurance requirements if the Council determines that the insurance procured by the Operator is sufficient to protect the City. A variance of this type may be required because of a change in underwriting policies of admitted insurance carriers.

Indemnification.

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

Notice.

The notices provided in this permit may be served in person or by registered or certified mail. Operator shall within ten (10) days notify the City Manager in writing of any change in such agent or mailing address unless operations in the City are discontinued and abandonment is complete.

Notice addresses are as follows:

City of Midland
Attn: Office of the City Manager
P. O. Box 1152
Midland, Texas 79702

OPERATOR: _____
Don Hale, Director of Special Projects

Midland Energy, Inc.
110 N. Marienfeld, Ste 290
Midland, Texas 79702
(432) 687-2231

OIL AND GAS WELL PERMIT: ORDINANCE 8769 SPECIFIC CONDITIONS-EXHIBIT "B"

(L)

Specific conditions of all Oil and Gas Well Permits; On-Site Requirements.

1.

Abandoned wells. All wells shall be abandoned in accordance with the rules of the Railroad Commission and pursuant to Subsection (O) of this Section.

2.

Automated audible alarm system. After completion, the appropriate system for flowing gas and/or flowing oil wells must be maintained to provide warnings for a substantial drop in pressure, or the release of any oil or gas, or a fire. Said audible alarm system must be approved by the Fire Marshal prior to installation of production equipment at the flowing gas and/or flowing oil well site.

3.

Blowout prevention. In all cases, ram-type and annular Blowout Preventers shall be used on all wells being drilled. In cases where Re-working is being performed on a Well, ram-type or annular Blowout Preventers shall be used. Protection shall be provided to prevent blowout during Drilling operations as required by and in conformance with the requirements of the Railroad Commission and the recommendations of the American Petroleum Institute. In addition to the Blowout Preventers stated above, all drilling must be equipped with flow lines and valves commensurate with the working pressures involved as required by the Railroad Commission each Blowout Preventer shall be a double-ram design with blinds and pipe. After surface casing has been set and cemented to surface, each Blowout Preventer shall be tested and witnessed by Operator's personnel and the results of such test shall be documented in the Operator's well file. Testing expenses shall be the responsibility of the Operator. The Operator shall provide a complete report of the well blowout prevention test to the City Manager within fifteen (15) days of the test.

4.

Casing. The surface portions of the Well shall be cased with cement circulated to the surface. All surface and intermediate casing must comply with all applicable rules of the Railroad Commission and the Texas Commission on Environmental Quality.

5.

Compliance. Operator shall comply at all times with all applicable federal, state and City requirements.

6.

Discharge. No person shall place, deposit, discharge, or cause or permit to be placed, deposited or discharged, any oil, naphtha, petroleum, asphalt, tar, hydrocarbon substances or any refuse including water or brine from any oil and gas operation or the contents of any container used in connection with any oil and gas operation in, into, or upon any Right-of-way, alleys, streets, lots, storm

drain, ditch or sewer, sanitary drain without permits from the appropriate City departments, or any body of water or onto any private property in the City.

7.

Drilling notice. The operator shall provide at least a forty eight (48)-hour notice to the City Manager prior to mobilizing the Drilling Equipment. In addition to notification to the City Manager, the operator shall provide a notice to the owners of at least forty eight (48) hours or more prior to mobilizing the drilling equipment through a publication in the Midland Reporter Telegram and a posting in the City Secretary's Office.

8.

Drill stem testing. No drill stem testing shall be allowed.

9.

Dust, vibration, odors. All drilling and production operations shall be conducted in such a manner as to minimize, so far as practicable, dust, vibration, or noxious odors, and shall be in accordance with the best accepted practices incident to drilling for the production of oil, gas and other hydrocarbon substances in urban areas. All equipment used shall be so constructed and operated so that, vibrations, dust, odor or other harmful or annoying substances or effect will be minimized by the operations carried on at any Drill Site or Operation Site or from anything incident thereto, to the injury or annoyance of persons living in the vicinity; nor shall the site or structures thereon be permitted to become dilapidated, unsightly or unsafe. Proven technological improvements in industry standards of drilling and production in this area shall be adopted as they become available if capable of reducing factors of dust, vibration and odor.

10.

Electric lines. All electric lines going under City roadways must be bored and encased pursuant to city standards. All electric lines to production facilities may be overhead service unless the surrounding neighborhood is developed with underground electric service. If the surrounding neighborhood is developed with underground electric service, then all electric lines to production facilities shall be buried underground.

11.

Electric motors. Only electric prime movers or motors shall be permitted for the purpose of pumping wells. No electric power shall be generated on location. All electrical installations and equipment shall conform to the City ordinances and the appropriate national codes.

12.

Emergency response plan. Prior to the commencement of any oil or gas production activities, Operator shall submit to the City Manager an emergency response plan establishing written procedures to minimize any hazard resulting from drilling, completion or producing of oil and gas wells. Said plan shall use existing guidelines established by the Railroad Commission, Texas Commission on Environmental Quality, Department of Transportation and/or the Environmental Protection Agency and City Fire Code. A copy of the Emergency Response Plan shall be kept at the Operator's office.

13.

Equipment painted. All production equipment on the site shall be painted beige and maintained at all times, including pumping units, tanks, buildings and structures. The City shall regularly inspect all painted structures and inform Operator when repainting is necessary. Operator shall repaint within sixty (60) days written notice from City. When requiring re-painting of such facilities, the City Manager shall consider the deterioration of the quality of the material of which such facility or structure is constructed, the degree of rust, and its appearance. Upon request of the Operator, a color other than beige may be approved by the City Council.

14.

Explosives. Use of an explosive perforating gun during completion operations and during plugging operations and down-hole operations that require such explosives shall be allowed.

15.

Fire notice. In the event of a fire or discovery of a fire, smoke, or unauthorized release of flammable or hazardous materials on any property, the Operator shall immediately report such condition to the Fire Department in accordance with the City of Midland Fire Code. The reporting limits for hazardous materials release shall conform to the requirements of the Railroad Commission and not exceed any state or federal permitting limit.

16.

Fire prevention; sources of ignition. Firefighting apparatus and supplies as approved by the Fire Marshal and required by any applicable federal, state, or local law shall be provided by the Operator, at the Operator's cost, and shall be maintained on the drilling site at all times during drilling and/or reworking operations. The Operator shall be responsible for the maintenance and upkeep of such equipment.

17.

Fracing operations. No fracing or formation fracture stimulation operations may take place before 7:00 a.m. or after 7:00 p.m.

18.

Fresh water wells. The measurements required by this Subsection shall be in a direct line from the closest Oil and Gas well to the fresh water well.

a.

Upon request of an owner of a fresh water well within 860 feet of an Oil and Gas well, who has been duly notified, Operator shall provide the City Manager with a "pre-drilling" and "post-drilling" water analysis from any such existing fresh water well(s).

b.

Operator shall conduct and fund annual testing for water wells that have been tested pursuant to Subsection (L)18.a. above. This testing program shall continue for the production life of The Well plus three years for a producing well, or for a period of one (1) year for a dry hole.

19.

Compressors. No onsite compressor used to "lift gas" shall be used. No compressor of any type shall be used. In the event Operator determines the use of such compressor is necessary, a detailed plan shall be submitted by Operator to the City Council for consideration. An on-site compressor plan shall include the following information:

- a. The physical size of the compressor;
- b. The power source of the compressor;
- c. The horsepower of the compressor;
- d. The noise of the compressor; and
- e. The manufacturer of the compressor.

No compressor of any type shall be used unless a plan is approved by the City Council.

20.

Gas emission or burning restricted. Operator shall not allow, cause or permit gases to be vented into the atmosphere or to be burned by open flame except as provided by law or as permitted by the Railroad Commission. If the venting of gases into the atmosphere or the burning of gases by open flame is authorized as provided by law or as permitted by the Railroad Commission, then such vent or open flame shall not be located closer than three hundred thirty (330) feet from any building not used in operations on the drilling site and such vent or open flame shall be screened in an effort to minimize detrimental effects to adjacent owners. Operator shall provide notice to the Fire Marshall prior to any open flaring of gas. Gas may not be flared unless for a limited time when completing, or recompleting a well, and only if flaring will not constitute a fire hazard to other owners. If flaring gas, it shall not be burned at a rate greater than 3,000 mcf/d. No gas may be flared between the hours of 7:00 p.m. and 7:00 a.m., except in an emergency.

21.

Gas processing onsite. Except for a conventional gas separator or line heater, no refinery, processing, treating, dehydrating or absorption plant of any kind shall be constructed, established or maintained on the premises without prior written consent of the City Manager.

22.

Grass, weeds, trash. All Drill sites and Operation sites shall be kept clear of high grass, weeds, and combustible trash within a radius of one hundred (100) feet around any Tanks, production facilities, or producing wells.

23.

Hazardous plan. Hazardous Materials Management Plan (HMMP) and all Material Safety Data Sheets (MSDS) for all hazardous materials that will be located, or stored, on the Operations Site shall be submitted to the City Manager.

24.

Lights. Except under emergency circumstances, operator shall not Operate any lights located at the Drill Site. To the extent practicable, and taking into account safety considerations, emergency site lighting shall be directed downward and internally so as to avoid glare on public roads and adjacent dwellings and buildings within three hundred (300) feet. This paragraph does not apply during initial Drilling Operations.

25.

Monitoring for H₂S gas. If required by the Railroad Commission, equipment for the monitoring of H₂S gas shall be used during Drilling. The Operator will comply with all requirements found in Statewide Rule 36 of the Railroad Commission, as amended. Within sixty (60) days after completion, and annually thereafter, Operator shall submit to the City Manager results of testing to determine the concentration of H₂S produced from the Well. If the results of the H₂S testing proves to be one hundred (100) PPM H₂S or greater, the Operator is responsible for determining the one hundred (100) PPM H₂S radius of exposure for each Well and production facility. Wells and facilities where the concentration of H₂S is equal to or greater than one hundred (100) PPM will be considered "Sour." Safety systems described herein must be approved by the Fire Marshall.

a.

The following safety alarms and equipment are required at the well site of all wells that are capable of producing at a sustained rate of at least one hundred twenty-five (125) barrels of oil per day and/or three hundred (300) MCF of gas per day and for "sour" wells whose one hundred (100) PPM H₂S radius of exposure is greater than fifteen (15) feet:

i.

H₂S monitors located along the fencing, as set forth in Subsection M (for "sour" wells only).

ii.

Automated audible alarms to provide warnings for a substantial drop in pressure or for the presence of H₂S in concentrations greater than one hundred (100) PPM.

iii.

Automated valve to shut-in production from the well if a substantial drop in pressure or if the presence of H₂S in concentrations greater than one hundred (100) PPM is detected.

b.

The following safety alarms and equipment are required at "Sour" Tank battery facilities:

i.

H₂S monitors located along the fencing, as set forth in Subsection M.

ii.

Automated audible alarm to provide warnings for the presence of H₂S in concentrations greater one hundred (100) PPM.

iii.

An electrical device capable of shutting down power to all "Sour" wells producing into the battery in the event H₂S in concentrations great than 100 PPM is detected.

26.

Muffling exhaust. Exhaust from any internal combustion engine or compressor, stationary or mounted on wheels, used in connection with the Drilling of any well or for use on any production equipment shall not be discharged into the open air unless it is equipped with an exhaust muffler, or mufflers or an exhaust muffler box constructed of noncombustible materials sufficient to suppress noise and disruptive vibrations and prevent the escape of obnoxious gases, fumes or ignited carbon or soot.

27.

Pits. The following applies for pits used for Drilling and completion operations:

a.

No pit shall be placed in a floodplain without obtaining a floodplain development permit from the City Department of Development Services.

b.

No fresh water pit may be placed in any City recognized drainage way, FEMA floodplain or floodway. Construction of the fresh water pit must comply with all City, state and federal regulations.

c.

The use of earthen pits shall be allowed so long as the construction, use, dewatering and closure of such pits meets or exceeds the requirements of the applicable Railroad Commission rules and Texas Commission on Environmental Quality rules. In addition to compliance with applicable Railroad Commission rules, and Texas Commission on Environmental Quality rules, such earthen reserve pits shall also meet the following requirements;

(i)

the maximum size of a reserve pit shall be no greater than two hundred (200) feet by two hundred (200) feet;

(ii)

The pits shall be lined with a plastic liner having a minimum thickness of eight (8) mil reinforced polyethylene;

(iii)

Reserve pits used in Drilling operations shall be fenced on all open sides during such operations and shall be enclosed on all sides once Drilling operations have ceased;

(iv)

Reserve pits shall be closed within one hundred (180) days of the cessation of drilling operations;

(v)

Drill cuttings may be disposed of on the Drill Site using a deep burial method provided that the burial pit containing the cuttings is located entirely within one hundred thirty five (135) feet of the surface location of the Well, provided that all free water has been removed prior to burying the cuttings, and an impermeable liner is placed above the cuttings prior to covering the cuttings and liner with top soil, and provided that the burial pit is constructed in such a manner that the cuttings will be covered with a minimum of thirty six (36) inches of clean, compactable soil. A survey and description of the location of any closed pit used in connection with the Drill Site shall be recorded in the property records of the county in which the real property is located.

28.

Salt water wells. No commercial salt-water disposal wells that receive water by truck shall be located within the City of Midland. In the event the operator determines that the use of a non-commercial salt-water well is necessary, a detailed plan shall be submitted by the operator to the City Council for consideration. No salt water disposal well of any type shall be used unless a plan is approved by the City Council.

29.

Signs.

a.

A sign shall be immediately and prominently displayed at the gate on the temporary and permanent site fencing erected pursuant to Subsection (M) of this Section. Such sign shall be durable material, maintained in good condition and, unless otherwise required by the Railroad Commission, shall have a surface area of not less than two square feet not more than four square feet and shall be lettered with the following:

i.

Well name and number;

ii.

Name of operator;

iii.

The emergency 911 number; and

iv.

A 24-hour phone number that will provide an emergency phone number of Operator's Representatives as stated in Subsection F.

b.

Permanent weatherproof signs reading "DANGER NO SMOKING OR OPEN FLAME ALLOWED IN THIS AREA" shall be posted immediately upon completion of the well site fencing at the entrance of the well site and tank battery or in any other location approved or designated by the Fire Chief of the City. Sign lettering for this sign shall be two (2) inches or greater in height and shall be red on a white background or white on a red background. Each sign shall include the emergency notification numbers of the Fire Department and the Operator, well and lease designations required by the Texas Railroad Commission.

c.

Provide a National Fire Prevention Association (NFPA) 704 diamond hazard identification signs are required at the entrance to the Operation Site adjacent to the Operator's sign if chemicals are present. A label must be located on each chemical Tank indicating exact chemicals that may be contained in such Tank. Text shall be minimum two inches or greater in height, contrasting with the background color.

30.

Storage of equipment. Storage of equipment and materials shall be minimized and limited to the immediate operational needs of the well. Lumber, pipes, empty drums, trucks, trailers, automobiles, junk tubing, casing and rods shall not be left on the operation site except when drilling or reworking operations are being conducted on the site.

No vehicle or item of machinery shall be parked or stored on any Street, Right-of-Way or in any driveway, alley or upon any Operation Site which constitutes a fire hazard or an obstruction to or interference with fighting or controlling fires except that equipment which is necessary for Drilling or production operations on the site. The Fire Department shall be the entity that determines whether any equipment on the site shall constitute a fire hazard.

31.

Tank Battery Facilities. At the tank battery for either oil and/or gas Wells a sensor for fire detection should be appropriately placed near heater treaters, separators, and oil storage tanks that would allow an automated valve placed at the header to be closed in the event of a detected fire. All storage tanks shall be equipped with a secondary containment system. The secondary containment system shall be a minimum of three (3) feet in height and one and one-half (1½) times the contents of the total tank volume. Drip pots shall be provided at the pump out connection to contain the liquids from the storage tanks. No storage tank shall be over sixteen 16 feet in height. All storage tanks shall be built on an adequate foundation with a twelve 12-mil liner being placed

beneath each tank, extending a minimum of three (3) feet beyond the edge of each tank.

Operator must use portable steel storage tanks or fiberglass tanks for storing all fluids from the well. Tanks must meet the American Petroleum Institute standards. All tanks must have a vent line, lightning arrester and pressure relief valve. All tanks must be enclosed by a fence as required by Section (M) herein. No tank shall exceed sixteen (16) feet in height. No tank battery shall be constructed within five hundred (500) feet of any Occupied Residence, Occupied Commercial Structure or Occupied Public Building, unless a variance is granted by the City Council.

Drilling mud, cuttings, liquid hydrocarbons and all other field refuse derived or resulting from or connected with the drilling, re-working or deepening of any well shall be discharged into a steel pit or an approved earthen pit. All disposals must be in accordance with the rules of the Railroad Commission and with a plan submitted to and approved by the City Manager. Water stored in on-site tanks shall be removed as necessary.

All refuse shall be disposed of in such a manner as to comply with the applicable air and water pollution control regulations of the state, the conditions of this permit, and any applicable ordinance of the City.

Temporary flowback tanks shall be removed within ninety (90) days after completion date of the well at the pad site unless permission is obtained from the City Manager to extend the time period for no more than thirty (30) days. Completion date is that date which is stated as the "completion or recompletion date" shown on the Form W-2 or G-I filed with the Railroad Commission.

All tanks shall be set back pursuant to the standards of the Railroad Commission and the National Fire Protection Association, but in all cases, shall be at one hundred (135) feet from any street or alley right-of-way, three hundred thirty (330) feet from any public athletic field, and five hundred (500) feet from an Occupied Residence, Occupied Commercial Structure or Occupied Public Building, church, public or private school, hospital, nursing home, college or university or daycare center unless a variance is granted by the Midland City Council. Operator shall institute operational practices involving the daily monitoring of tank integrity and fluid levels within each tank. The use of a remote monitoring system is acceptable.

No meters, storage tanks, separation facilities, or other aboveground facilities, other than the well head and flow lines, shall be placed in a floodway identified by FEMA on the most current FIRM or the 100-year floodplain without a floodplain development permit obtained from the Department of Development services.

All fluids and tank bottoms will be disposed of in accordance with Railroad Commission regulations.

32.

Valves. Each flowing high volume well must have an automated shut-off valve to shut-in the well's production at the Operation Site for either a fire or

abnormal change in pressure. The fire department shall have access to the Operation Site and the shut-off valve in an emergency.

33.

Work hours for site development. No construction activities involving the excavation of, demolition of, alteration to, or repair work on any access road or pad site shall occur before 7:00 a.m. or after 7:00 p.m.

34.

Wellhead status after fracing. The wellhead between the time of Drilling/completion and tank battery construction, shall be:

a.

Surrounded with a six (6) foot tall temporary chain link fence having a gate and lock until permanent fencing is installed;

b.

The gate shall be locked at all times, except when the Operator is involved in active operations;

c.

The cellar shall be filled or closed; and

d.

The Bradenhead shall be piped to the surface and open to the atmosphere or have an observable and adequate pressure gauge with operable test valve.

35.

Inspections. In accordance within applicable law, the City Manager, or his designee, at his sole cost, risk and expense shall have a right of entry to the Drill Site/Operation Site and may, at his discretion, visit the Drill Site/Operation Site to make sure operator is in compliance with the requirements of this Section.

36.

Violation. In the event a violation of this ordinance is determined by the City's official (or officials), the City may act in any or all of the following ways:

a.

The City, through its designated official (or officials), may issue a notice of violation to the Operator, its agent, agents, employees or independent contractors (whether on site or not), or to any Person participating in the Drilling of the Well. Such notice may include a citation to appear before the Midland Municipal Court.

b.

If the City Manager, or his designee, finds the Operator to be in violation of any requirement of the applicable Oil and Gas well permit, then the City reserves the right after giving ten (10) business days written notice to the Operator regarding such violation, to draw upon the letter of credit, certificate of deposit or surety bond as outlined in Subsection (K) of this Section, in order to remedy such violation. In the event that a violation is not capable of being remedied within such ten (10) business day period, then Operator must have commenced efforts

to remedy such violation within said ten (10) business day period and thereafter continue with such efforts to remedy said violation with due diligence until completed, and as long as the Operator continues with efforts to remedy a violation with due diligence, the City shall not draw against the letter of credit, certificate of deposit or surety bond. In the event the City makes a claim on the letter of credit, certificate of deposit or surety bond pursuant to the terms hereof, reinstatement of the full amount of the letter of credit, certificate of deposit or surety bond shall be a condition to the cure of the violation leading to such claim. Alternatively, if the City Manager finds the Operator to be in violation of any requirement of the applicable Oil and Gas Well Permit, the City Manager shall give written notice to the Operator that unless all violations are corrected within ten (10) business days of the Operator's receipt of notice of the violation, the City Manager shall recommend to the City Council that the Oil and Gas Well Permit be cancelled by the City Council. In the event that a violation is not capable of being remedied within such ten (10) business-day period, then Operator must have commenced efforts to remedy said violation within said ten (10) business-day period and thereafter continue with such efforts to remedy said violation with due diligence until completed, and as long as the Operator continues with efforts to remedy a violation with due diligence, as determined by the City, the City shall not draw against the letter of credit, certificate of deposit or surety bond. If the City Council determines to consider the cancelling of the permit, it shall give the Operator written notice of the date and time of the hearing and shall give the Operator the opportunity to be heard and present facts the Operator deems relevant. The cancelling of a permit requires the majority vote of the City Council.

c.

Prosecution of violations of this Section shall be given priority and expedited upon the Municipal Court docket. Provided, however, that this subsection does not grant or guarantee Persons cited a right to expedited consideration of their citation before the Midland Municipal Court.

d.

In the event that there exists an imminent threat to public health and safety, a certified peace officer, in conjunction with the Railroad Commission, may order the temporary cessation of operations. An Operator may appeal the order to an appropriate Court in Midland County, Texas and request an expedited hearing. With respect to the contestation of an order issued pursuant to this subsection, an Operator retains all of its legal remedies.

M.

Fencing and landscaping.

1.

Fences.

A fencing plan shall be submitted, said plan containing a description of the building materials, dimensions, and locations of the proposed fence/walls and gates. The plan shall take into consideration the surrounding area and neighborhood.

At a minimum, tank battery facilities, wellheads and any production equipment associated with Oil and Gas wells shall be enclosed by a chain link fence at least seven (7) feet in height with beige-colored slats woven through the chain link, topped with three (3) strands of barbed wire angled outward or concertina wire, and shall be equipped with a locking gate. Gates shall be provided with a combination catch and locking attachment for a padlock, and shall be kept locked except when being used for access to the operation site. Operator must provide the City Fire Chief with a "Knox Padlock" or "Knox Box with a key" to access the Operation Site to be used only in case of an emergency.

The City Council may require additional or a different type of fencing to the extent necessary to conform with architectural standards and building materials existing on lots and/or lands immediately adjacent to the well and within five (500) feet of the Well at the time the Oil and Gas Well Permit is issued.

Additionally, if at any time within twenty-four (24) months following the issuance of an Oil and Gas Well Permit, a structure intended for permanent occupancy is constructed within five hundred (500) feet of the Well, the City Council may require the operator to undertake a one-time revision of the fencing plan to account for architectural standards and building materials associated with such structure to the extent that the revised fencing plan is consistent with, but not better than, the architectural standards and building materials associated with such structure.

Fences shall not be required on drill sites during drilling, completion or re-working operations as long as 24-hour on-site supervision is provided.

2.

Landscaping. Variance granted August 13, 2013.

Landscaping and irrigation is to be consistent with housing development of surface owner.

(N)

Cleanup and Maintenance.

1.

Cleanup after well servicing. After the well has been completed or plugged and abandoned, the Operator shall clean the drill site or operation site, complete restoration activities and repair all damage to public property caused by such operations within one hundred eighty (180) days.

2.

Clean-up after spills, leaks and malfunctions. After any Railroad Commission reportable spill, leak or malfunction, the Operator shall remove or cause to be removed to the satisfaction of the City Fire Chief and the City Manager all refuse materials from any public or private property affected by such spill, leak or malfunction. Clean-up operations must begin immediately. The Operator shall comply with all requirements found in Statewide Rule 91 of the Railroad Commission, as amended. If Statewide Rule 91 requires reporting of the spill, the operator shall comply with the notification and reporting requirements found in Statewide Rule 20 of the Railroad Commission, as amended. Upon request the Operator shall furnish the City Manager with all information filed with the Railroad Commission. If the Operator fails to begin site clean-up immediately the City Manager may then employ any cleanup expert or experts or other contractors or suppliers of special services, or may incur any other expenses for labor and material which the City Manager deems necessary to clean-up such spill, leak or malfunction. The City shall then be able to collect from operator the costs involved in the site clean-up. The City may collect from the posted letter of credit, certificate of deposit or surety bond or any other legal means.

3.

Free from debris. The public street entrance and property on which a well site is located shall at all times be kept free of mud, debris, pools of water or other liquids, contaminated soil, weeds, brush, trash or other refuse material within a radius of one hundred (100) feet around any production facilities, tanks and producing wells.

4.

Painting. All production equipment shall be painted beige and maintained at all times, including pumping units, tanks, secondary containment and buildings or structures. When requiring painting of such facilities, the City Manager shall consider the deterioration of the quality of the material of which such facility or structure is constructed, the degree of rust, and its appearance.

5.

Blowouts. In the event of the loss of control of any well, Operator shall immediately take all reasonable steps to regain control regardless of any other provision of this permit and shall provide the City Manager with the same information as required to be filed with the Railroad Commission under Statewide Rule 20 as soon as practicable.

6.

Cleanup after Drilling/Completion. After the well has been drilled and completed, the Operator shall clean the Drill site, complete restoration activities and repair all damage to public property caused by such operations within ninety (90) days as specified previously in Subsection (L)27.

O.

Drilled and Abandoned Wells.

1.

Surface Requirements for Plugged and Abandoned Well. Whenever abandonment occurs pursuant to the requirements of the Railroad Commission, the Operator so abandoning shall be responsible for the restoration of the Operation site to its original condition as nearly as practicable, in conformity with the requirements of this permit underground pipelines associated with operations shall be purged of all fluids and may be abandoned in place.

2.

Surface Requirements for Drilled and Abandoned Well. Abandonment shall be approved by the City Manager after restoration of the Drill Site has been accomplished in conformity with the following requirements at the discretion of the City Manager:

a.

The Derrick and all appurtenant equipment thereto shall be removed from Drill site;

b.

All tanks, towers, and other surface installations shall be removed from the Drill site;

c.

All concrete foundations, above ground piping, wood, guy anchors and other foreign materials regardless of depth, except surface casing, shall be removed from the site, unless otherwise directed by the Railroad Commission;

d.

All holes and depressions shall be filled with clean, compactable soil;

e.

All, refuse and trash shall be removed from the Drill Site; and

f.

During abandonment, Operator shall comply with all applicable subsections in this section; and

g.

The drill site shall be restored, as close as practicable, to its original condition.

h.

Unless modified by the approved plan, deep burying of pits within the drill site perimeter is permitted. A survey and description of the location of any closed pit used in connection with the drill site shall be recorded in the property records of the county in which the real property is located. In any event the Operator shall comply with Subsection (L), Paragraph 27.

3.

Abandoned well requirement. The Operator shall furnish the following to the City Manager:

a.

A copy of the W-3A "Notice of Intention to Plug & Abandon" and W-3 "Plugging Record" forms on the same date these forms are submitted to the Railroad Commission.

b.

Prior 48-hour notice of intention to abandon under the provisions of this section and stating the date such work will be commenced. Abandonment may then be commenced on or subsequent to the date so stated.

c.

All wells shall be abandoned in accordance with the rules of the Railroad Commission; however, all well casings and cellars shall be cut and removed to a depth of at least three feet below the surface. A permanent abandonment marker, with the well identity and location permanently inscribed, shall be welded to the casing.

4.

Abandonment requirements prior to new construction. All abandoned or deserted wells or drill sites shall meet the most current abandonment requirements of the Railroad Commission prior to the issuance of any building permit for development of the property. No structure shall be built over an abandoned well.

P.

Certificate of Request for Inspection and Extension of Permit.

On or before ninety (90) days prior to each annual anniversary date of Operator's Oil and Gas Well Permit, Operator shall submit to the City Manager a Certificate of Request for Inspection of Permit. The Certificate of Request for Inspection of Permit must state the location and name of the well and the date the permit was granted by the City Council. The Certificate of Request for Inspection of Permit must be signed by the Operator before a notary public stating that the well is in compliance with the permit and all applicable Ordinances. The Certificate of Request for Inspection of Permit must be accompanied by an application and inspection fee of \$300.00. The City Manager shall grant a one-year inspection approval on the oil/gas drilling permit if the Operator

is in compliance with the permit and all applicable ordinances as they apply to the inspected well. Prior to authorizing the inspection approval, the City Manager, or his designee, shall inspect the oil and gas well site that is subject to the oil/gas drilling permit. The City Manager shall issue his decision in writing, within thirty (30) days of receiving the Certificate for Request for Inspection of Permit, either granting or denying the inspection of the oil/gas drilling permit.

The Operator may appeal the City Manager's denial of an oil/gas drilling permit inspection by submitting, in writing, an appeal to the City Council within thirty (30) days of the City Manager's written denial of the oil and gas well permit inspection. If an appeal is received by the City Council, a hearing shall be set before a meeting of the City Council to consider the denial of the oil/gas drilling permit inspection. The City Council shall hear and consider the recommendation of the City Manager, or his designee, before deciding whether or not to uphold the City Manager's decision. The Operator shall be allowed to speak and present any relevant evidence for consideration by the City Council prior to a vote of the council. A majority vote of the City Council shall be required to uphold the denial of the Oil and Gas Well Permit inspection by the City Manager. An inspection that is approved shall be valid for one (1) year from the inspection date.

(Q)

Measurement.

The measurement of all distances set forth herein shall be calculated from the proposed surface location of the well and tank batteries in a straight line, without regard to intervening structures or objects, to the closest exterior point of the object.

(R)

Effect of denial of oil and gas well permit.

If an application for an Oil and Gas Well Permit is denied by the City Council, nothing herein contained shall prevent a new permit application from being submitted to the City Council for the same proposed Oil and Gas Well or a different location for a well. A new application may also be filed on any of the mineral estate owned or leased by the applicant. Once all of the Operator's administrative and legislative remedies have been exhausted herein, the Operator may appeal or challenge the denial of an application in an appropriate Court in Midland County Texas under applicable state or federal law.

(S)

Amendment to Oil and Gas Well Permit.

1.

Amendment required. Within one hundred eighty (180) days after an Operator has been granted an Oil and Gas Well Permit, an Operator may submit an application to the City to amend an existing Oil and Gas Well Permit to commence Drilling from a new Drill site that is not shown on (or incorporated by reference as part of) the existing Oil and Gas Well Permit.

2.

Application Requirement for Amendment to Permit. An application for an amended Oil and Gas Well Permit shall meet all the requirements of this Section, shall be in writing, shall be on forms provided by the City, shall be signed by the Operator, and shall include the following:

- a. An amendment fee of \$1,000.00.
- b. A description of the proposed amendments.
- c. Any changes to the information previously submitted with the application for the existing oil/gas drilling permit (if such information has not previously been provided to the City).
- d. Such additional information as is reasonably required by the City to demonstrate compliance with the original oil/gas drilling permit.
- e. Such additional information as is reasonably required by the City to prevent imminent destruction of property or injury to persons.

3.

Review of Application for Amendment to Permit. All applications for an amended oil/gas drilling permit shall be considered in accordance with the factors listed in Subsection (I) herein. The City Council may elect to consider the application for an amended oil/gas drilling permit without the requirement of a public hearing.

4.

Standard of review.

- a. **No Material Change from Existing Permit.** If the activities proposed by the amendment are not materially different from the activities covered by the existing Oil and Gas Well Permit, and are otherwise in conformance with the requirements of this section, other applicable City Ordinances, the Oil/Gas Drilling Permit then the City Council shall approve the Amended Application.
- b. **Material Change from Existing Permit.** If the activities proposed by the amendment are materially different from the activities covered by the existing Oil/Gas Well Permit, are not in conformance with the requirements of this Section, other applicable City Ordinances, the Oil/Gas Well Permit, or if, in the judgment of the City Council, the activities proposed by the amendment might create a risk of imminent destruction of property or injury to persons or property or that were not otherwise taken into consideration by the existing Oil/Gas Well

Permit, the City Council may require the amendment to be processed as a new Oil and Gas Well Permit Application.

T.

Independent Contractor. Operator understands and agrees that Operator, its employees, servants, agents, and representatives, shall at no time represent themselves to be employees, servants, agents, and/or representatives of the City. The City shall not have any control over the means or methods by which Operator shall perform its obligations hereunder. Operator shall furnish all equipment and materials necessary to perform hereunder and shall at all times be acting as an independent contractor. No action by either party should be construed to create a partnership, joint venture, or other dual enterprise between the parties.

U.

Assignability; Transfer Permit.

1.

The Operator shall not, either directly or indirectly, assign, sell, or transfer any part of the Oil and Gas Well Permit, or any interest, right, duty, obligation or privilege under the permit, except in accordance with this Subsection.

2.

An Oil and Gas Well Permit may be transferred upon written request by the Operator with the consent of the City Council:

a.

If the transferee agrees in writing to be bound by the terms and conditions of the current Oil and Gas Well Permit and road repair agreement;

b.

If all information previously provided to the City as part of the current Oil and Gas Well Permit is updated to reflect any changes; and

c.

If the transferee provides the insurance and security required by this section.

3.

In determining whether to approve the transfer permit, the City Council may consider the financial standing of the transferee and its record of compliance with respect to existing permits. Should the transfer permit be denied, the transferee may file an application for a new Oil and Gas Well Permit.

4.

The insurance and security provided by the transferor shall be released if the transfer permit is approved; provided, however, that the transfer shall not relieve the transferor from any liability to the City arising out of any activities conducted prior to the transfer, except to the extent that the transferee expressly agrees in writing to assume such liabilities as part of the transfer.

5.

Applications for the transfer of Oil and Gas Well Permits shall be filed with the City's planning department. A non-refundable administration fee shall be charged for each application in the amount of five hundred (\$500.00).

V.

Time Limit Requirements. The failure of the City Council to review and approve an Oil and Gas Well Permit within a specified time limit shall not cause the application for the Oil and Gas Well Permit to be deemed approved. If the City Council denies a request for a permit, the applicant may file a request with the City Council to re-consider the application. The applicant may present any new evidence to the council and may present any extenuating circumstances or other matters deemed relevant by the applicant. The decision of the City Council regarding the issuance of a permit is not final until the request for re-consideration is voted upon by the City Council.

W.

Indemnification. The oil and gas well permit may contain the following language:

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

X.

Incident Reports or Written Complaints. The Operator shall provide a copy of any "incident reports" or written complaints submitted to the Railroad Commission or any other state or federal agency within thirty (30) days after Operator has notice of the existence of such reports or complaints.

Y.

Expiration of permit. Drilling must commence on the Well covered by the Oil and Gas Well permit twelve (12) months of approval by the City Council, after which the Oil and Gas Well Permit shall automatically expire if no drilling has commenced. A permit extension for a maximum time period of six (6) months may be granted by the City Manager without reapplication after the City Manager receives a written request from the Operator.

Z.

Takings determination.

1.

Any aggrieved applicant that believes that an action taken pursuant to this Section by the City Council or any officer or employee of the City constitutes a taking under the Texas or United States Constitution or under other state law, may file an application with the City Council requesting a takings determination.

2.

The applicant seeking a takings determination from the Council shall file its appeal with the office of the City Secretary. The City Secretary shall then forward the appeal to the City Council for consideration. An appeal fee in the amount of two hundred fifty (\$250.00) dollars shall accompany each filing.

3.

The appeal shall state the reasons that the applicant believes would support a finding that the City's actions constitute a taking under the Texas or United States Constitution or pursuant to other State law and shall include evidence substantiating the purported diminution in value of the applicant's real property.

4.

If the Council finds by a majority vote in favor of the applicant it may: (1) grant the relief requested, or (2) direct the City Manager to rescind action taken by City Staff that formed the basis of the takings determination appeal. If the Council denies the appeal, or after a favorable determination the City Council fails to take action as specified above, the applicant may appeal the decision or inaction of the City Council to the county or district court of the county in which the affected real property is located within thirty (30) days of the date that the Council issues its final decision or in the event the Council does not act on the application, then the operator may appeal to the county or district court after the expiration of one hundred twenty (120) days from the date the application is heard by the City Council.

Notice addresses are as follows:

City of Midland
Attn: Office of the City Manager
P. O. Box 1152
Midland, Texas 79702

OPERATOR: _____
Don Hale, Director of Special Projects

Midland Energy, Inc.
110 N. Marienfeld, Ste. 290
Midland, Texas 79702
(432) 687-2222



APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information		
Date 4/25/13	Operator Name (must match W-1) Midland Energy, Inc.	Operator Address 110 N. Marienfeld, Ste 290 Midland, TX 79702
Representative Name Don Hale	Representative Address (within Midland City Limits) 3011 Garden City Hwy	Rep. Tele. 432-687-2222 Rep. Fax 432-687-2231
Fee: \$4,000.00 Rec'd Yes ☒ No ☐	NOTE: All attachments need to bound and put in a binder before submitting.	Pages 1-4
Permit Compliance Contact (Choose 1): Option A: Don Hale 24/7 Answering Services - No. 1 (Tele.): 432-687-2222 No. 2 (Tele.): 432-853-5000 Option B: Attached as Exhibit A Company Compliance Representative (Name, Address, Local Telephone) (ATTACH STATEMENT AS EXHIBIT A): Emergency Contact Representative (Name, Address, 24-Hour Tele. No.): Jim McCright - 432-853-7900 Greg Russell - 432-853-5033 Other Permitted Wells in City (ATTACH EXHIBIT B [see § J(26)]).		
II. Mineral Ownership		
Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease): 1. 2. 3.		
ATTACHED AS EXHIBIT C is (a Title Opinion by Mike Canon, a licensed Texas Attorney/Title Commitment by Abstract Company/a Take-off from, a Certified Petroleum Landman/an opinion letter from, a licensed Texas Attorney) indicating that [Operator] has a legal right to develop the mineral estate that is the subject of this Application. [See § J(5)].		
III. Surface Ownership & Use		
General Description of Current Surface Use (within 860 feet of proposed surface location): Ranch/Farm		
ATTACHED AS EXHIBIT D is (a Title Opinion by Mike Canon, a licensed Texas Attorney/a Take-off from, a Certified Petroleum Landman/Current Tax Roll from Midland Central Appraisal District), which lists the name(s) and address(es) of all surface owners within 860 feet of the surface well location. [See § J(7)].		

RECEIVED

APR 29 2013

CITY OF MIDLAND
PLANNING DIVISION OFFICE

II. Mineral Ownership

1. Loydene W. Davis, Trustee of the Wimberley Trust, 2601 Bowie Dr, Plano, TX 75025
2. Sammy Curtis Cook, as separate property, 9470 River Rd, College Station, TX 77845
3. Connie Romel Poor, as separate property, 3803 Calculus Rd., Dallas, TX 75244
4. Mary Katherine Cain, as separate property, 905 Happy Haven, Apt. 12, McQueeny, TX 78123
5. W.D. Wimberley, as separate property, 832 Oxford Dr., Odessa, TX 79764
6. Loyd V. Wimberley, as separate property, 6007 SCR 1185, Midland, TX 79706
7. Vivian King, as separate property, P.O. Box 823, Midlothian, TX 76065
8. Athena Diane Edminston, as separate property, 604 Jill Sue Circle, Pflugerville, TX 78660
9. Cecilia Marie Wilmes, as separate, 8 Oso Dr., Tijeras, NM 87059
10. Melvin James Coon, as separate property, 3250 Tower Ridge Dr., Corinth, TX 76210

ATTACHED AS EXHIBIT E is a (map/p lat/satellite/aerial photo) depicting all Residences, commercial structures, public buildings, all publicly dedicated Streets and alleys, Rights of Way, and permanent accessory structures surrounding the proposed Drill Site. The (map/p lat/satellite/aerial photo) includes two circles, as required by the Ordinance—one depicting a 500 foot radius and one depicting an 860 foot radius from the proposed well's surface location. [See § J(10)].

ATTACHED AS EXHIBIT F is a copy of the notification letter(s) sent to 100 percent of the surface owners, Certified Mail, Return Receipt Requested. [See § J(36)].

IV. Well & Operations Information

Proposed Well Name: Wimberley 1 #4

Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary)[See § J(11) and § L(4)]:

See Attached Exhibit V

Legal Description of Proposed Well Site:

832' FSL & 982' FEL, Sec 1, Blk. X, H.P. Hillard Survey

ATTACHED AS EXHIBIT G is the Location Site Plan [See § J(9)].

ATTACHED AS EXHIBIT H is the Map with the proposed transportation route(s) and road(s) for equipment, chemicals, or refuse products used or produced in the proposed oil and gas operations. [See § J(12)].

ATTACHED AS EXHIBIT I is a copy of the approved Texas Railroad Commission permit to drill (Form W-1), together with all attachments (also file copy of W-1 with City Secretary before commencement of drilling operations). [See § J(16) and (20)].

ATTACHED AS EXHIBIT J is a copy of the required TCEQ report as to depth of usable quality ground water. [See § J(17)].

ATTACHED AS EXHIBIT K (if applicable) is the list of alternative locations developed in consultation with the Oil & Gas Advisory Committee. [See § J(27)].

ATTACHED AS EXHIBIT L is the Fencing and Irrigation Plan. [See § J(30)].

ATTACHED AS EXHIBIT M is the Road Repair Agreement and Letter of Credit/Certificate of Deposit/Surety Bond in the amount of at least \$25,000. Option (if applicable): Applicant would further state that no City-owned streets or alleys will be used by the Operator in connection with its oil and gas operations and as a result, requests a waiver from the Council of this requirement. Option B (if applicable): Because Applicant has three Road Repair Agreements in effect that have been approved by the Council, Applicant requests that the Council consolidate all agreements into one and is filing the necessary \$75,000 letter of credit/certificate of deposit/surety bond in conjunction with this request. [See § J(31)].

ATTACHED AS EXHIBIT N is the Concept Plan depicting the proposed Operations Site (which includes tanks, roads, power lines, and pipeline routes). [See § J(32)].

Description of Public Utilities required during (1) drilling and (2) operations:

(1) Drilling: None

(2) Operations: Sharyland

Description of water source to be used during Drilling:

Truck/Private water well

Description of all electric lines to production facilities (reference exhibits as necessary) [See § L(10)]:

Buried electric lines

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]:

See Exhibit O

V. Additional Required Exhibits

ATTACHED AS EXHIBIT P is the *Letter of Credit/Certificate of Deposit* in accordance with Subsection (K)(2). [See § J(18)].

ATTACHED AS EXHIBIT Q are Tax certificates from Midland Central Appraisal District to be submitted indicating that all taxes on personal and real property, including minerals, owned by Applicant are current. [See § J(29)].

ATTACHED AS EXHIBIT R is the required Insurance Certificate. [See § J(19) and § K(3)].

ATTACHED AS EXHIBIT S (if applicable) is the Drainage Plan approved by the City Engineer relating to Applicant's proposed operations. [See § J(21)].

ATTACHED AS EXHIBIT T is Applicant's Emergency Action Response Plan. [See § J(22)].

ATTACHED AS EXHIBIT U is Applicant's Hazardous Materials Management Plan, a copy of which has been submitted and is on file with the Midland Fire Department. [See § J(23)].

Midland Energy, Inc.
[NAME OF COMPANY]

By Don Hale
Its General Manager of Operations

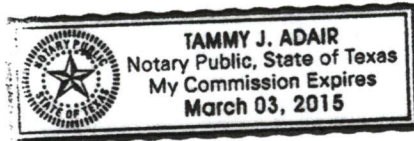
State of Texas

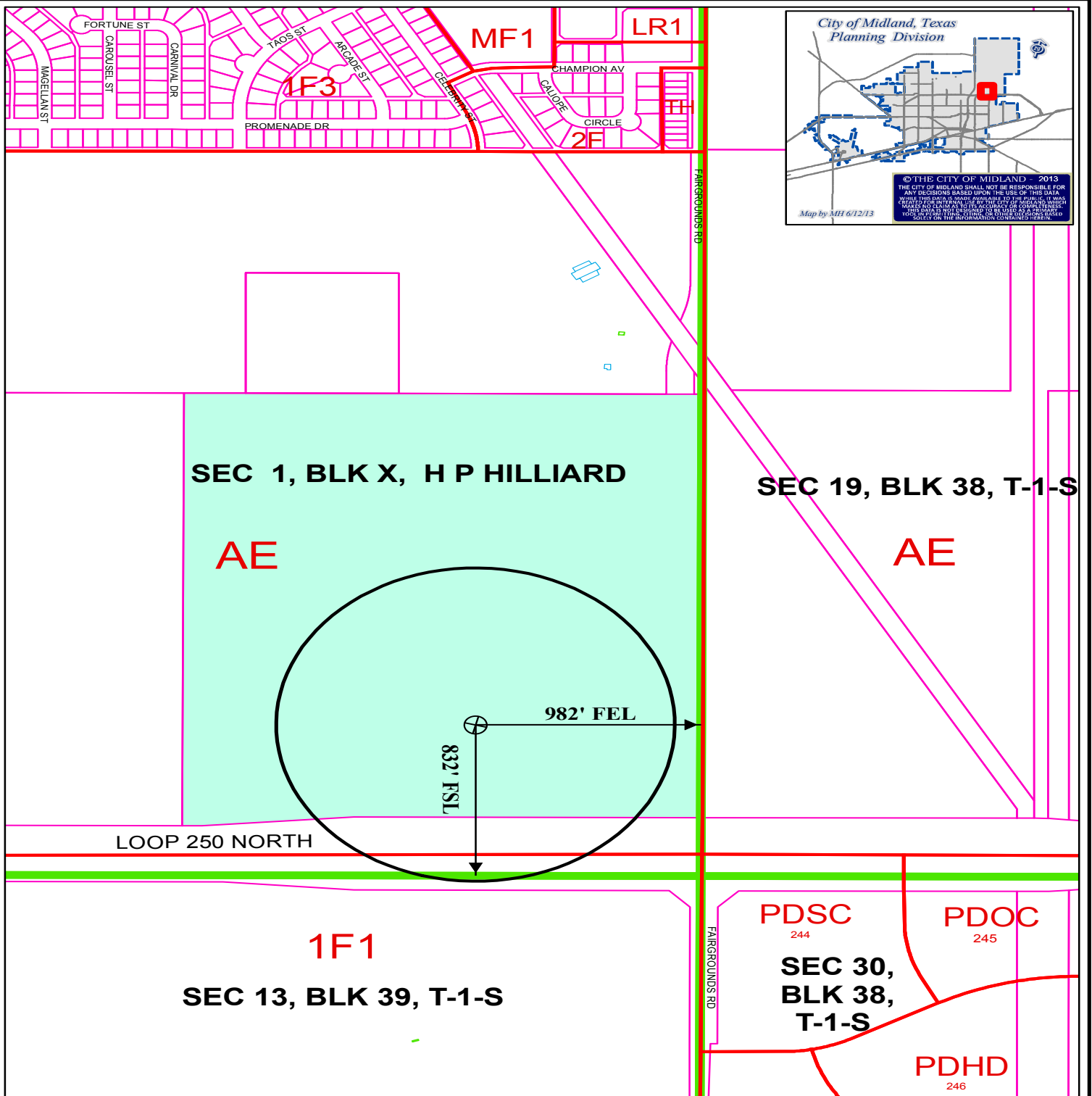
County of Midland)

Don Hale, personally appeared before me, and being first duly sworn declared he/she signed the application in the capacity designated, if any, and further states that he/she has read the above application and attached exhibits and the statements therein are true and correct to the best of their knowledge.

Tammy J. Adair
Notary Public, State of Texas

[SEAL]





LOCATION AND ZONING MAP

O - 13 - 007

Scale: 1" = 600'

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 832' FSL and 982' FEL, Section 1, Block "X", H. P. Hilliard Survey, Midland County, Texas.

Wimberley 1 #4

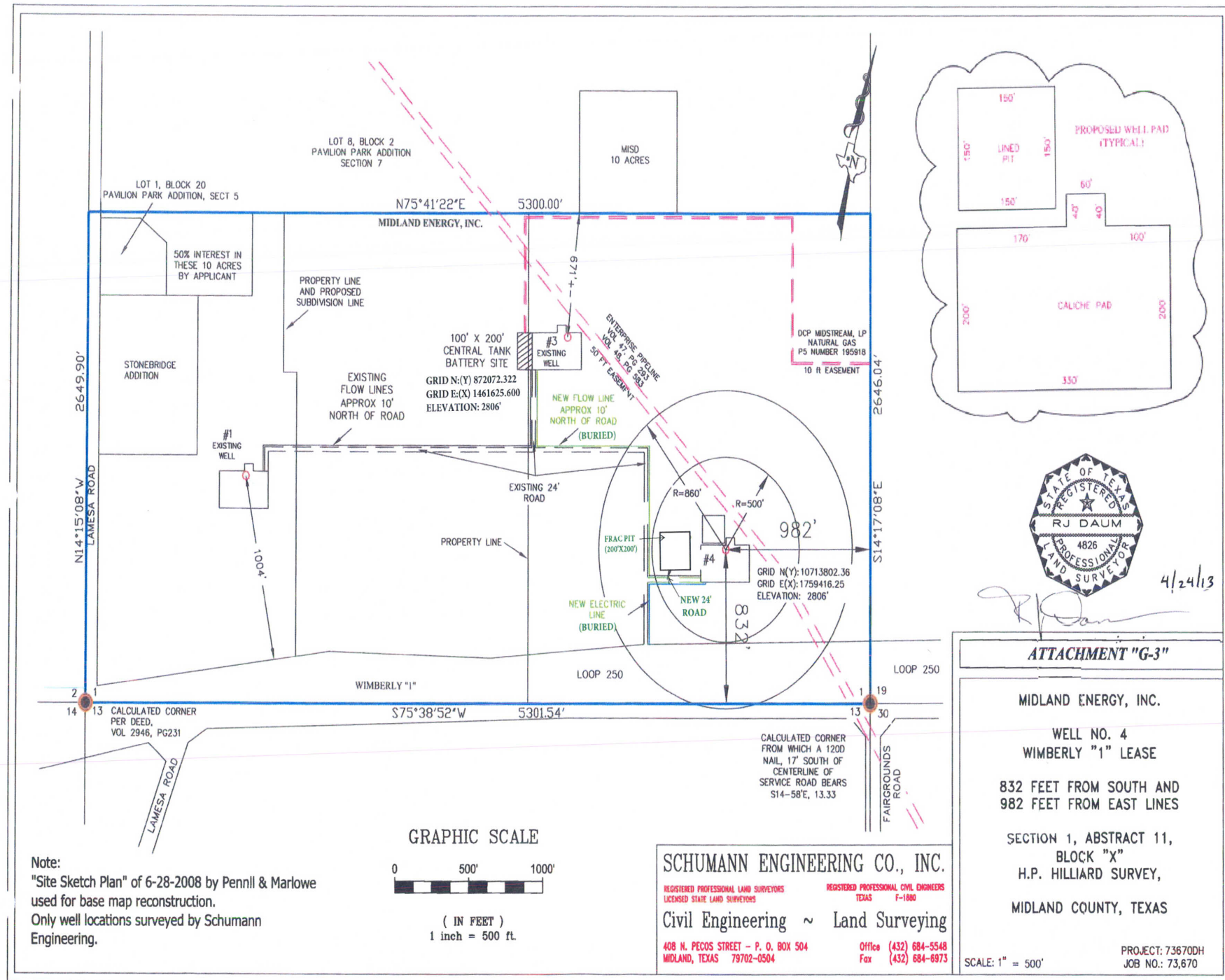
LEGEND

CITY PARCELS	PUBLIC BLDGS	CITY LIMITS
COUNTY PARCELS	PRIVATE BLDGS	860 FT. BUFFER
ZONING	ACCESSORY BLDGS	SURVEY SEC.

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	O1, O2	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY







City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: August 13, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Ron Jenkins, Oil & Gas Compliance Coordinator

SUBJECT: Consider a resolution approving the issuance of a permit to CrownQuest Operating, LLC (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (COM Nail #1) located 1,550 feet from the south line and 1,980 feet from the east line located in Section 36, Block 39, T-1-N, T&P RR Co. Survey, City of Midland and County of Martin, Texas. (Generally located on the east side of the State Hwy 349, approximately 2 ½ miles north of Arapahoe Road. – District 1)

Purpose:

To consider a resolution approving the issuance of a permit to CrownQuest Operating, LLC (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (COM Nail #1) located 1,550 feet from the south line and 1,980 feet from the east line located in Section 36, Block 39, T-1-N, T&P RR Co. Survey, City of Midland and County of Martin, Texas. The required 30-day public comment has passed and the Council may consider this request. No letters of objection received.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to process this application.

Discussion:

The Oil and Gas Advisory Committee has reviewed this well site in detail and recommends approval of the application with a title opinion including addresses, notation of the 860 ft. circle, a map clarification, language change for variance request concerning fencing and road repair agreement, include emergency phone numbers and make a correction to the MSDS. CrownQuest Operating, LLC has addressed the recommendations and updated the application. The Oil and Gas Advisory Committee recommends approval of

landscaping /irrigation variance, variance for having the required slats in fencing, waiver of road repair and having a right-of-way agreement prior to receiving permit.

Attachments: Application; Location map; Exhibit - Drill site map, Exhibit – Flow Line Location.

RESOLUTION NO. _____

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO CROWNQUEST OPERATING, LLC (“OPERATOR”) TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 1,550 FEET FROM THE SOUTH LINE AND 1,980 FEET FROM THE EAST LINE, SECTION 36, BLOCK 39, T-1-N, T&P RR CO. SURVEY, CITY OF MIDLAND AND MARTIN COUNTY, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF THE STATE HIGHWAY 349, APPROXIMATELY 2 ½ MILES NORTH OF ARAPAHOE ROAD); AND WAIVING THE REQUIREMENT OF A ROAD REPAIR AGREEMENT

WHEREAS, on December 8, 2009, the City Council of the City of Midland duly approved Ordinance No. 8769 which amended Title VI, “Police Regulations,” Chapter 1, “General Offenses,” of the City Code of Midland, Texas, so as to establish Section 23, “Oil and Gas Well Permits issued on or after January 1, 2010,” which governs the granting or rejecting of Oil and Gas Well Permits; and

WHEREAS, the purpose of said section is to establish reasonable and uniform limitations, safeguards, and regulations for present and future operations related to the exploring, drilling, developing, producing, transporting and storing of oil or gas or other substances produced in association with oil and gas within the City of Midland to protect the health, safety, and general welfare of the public and the orderly development of the City of Midland; abate or prevent potential public nuisances; minimize the potential adverse impact to surface and mineral owners, protect the quality of the environment and encourage the orderly production of available mineral resources; and

WHEREAS, Section 6-1-23(C) of the City Code of Midland, Texas, makes it an offense to knowingly drill or participate in the drilling of any well or to re-enter any well within the corporate limits of the City of Midland without a permit having first been issued by the authority of the City Council; and

WHEREAS, Operator has submitted an application to the City of Midland to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, notice of the public hearing on this matter was provided in accordance with Section 6-1-23(H)(1) and a public hearing was held on July 9, 2013; and

WHEREAS, subsequent to said public hearing, and in accordance with Section 6-1-23(H)(1), the City Council allowed the public and Operator thirty (30) days to submit written input to the City Manager regarding Operator's application to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, the City Council has considered those issues set forth in Section 6-1-23(I) in determining whether to grant or deny a permit to Operator to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, the City Council finds it to be in the public interest to approve the issuance of a permit to Operator to drill an oil and gas well on the property described in Section Two hereof;

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

SECTION ONE. That the above recitals are hereby adopted and approved by the City Council of the City of Midland.

SECTION TWO. That the Mayor is hereby authorized and directed to execute a permit, on behalf of the City of Midland, that will allow Operator to drill an oil and gas well within the City limits located 1,550 feet from the south line and 1,980 feet from the east line, Section 36, Block 39, T-1-N, T&P RR Co. Survey, City of Midland and Martin County, Texas. Said permit is attached hereto as Exhibit "A" and incorporated herein for all legal purposes.

SECTION THREE. That the requirement of a Road Repair Agreement between Operator and the City of Midland is hereby waived in regard to said permit.

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

the following vote:

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on August 13, 2013, considered the application of CrownQuest Operating, LLC, dated May 1, 2013, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with the Midland City Code, Ordinance 8769, to drill an oil and gas well, in the application of CrownQuest Operating, LLC dated May 1, 2013, and filed with the Oil & Gas Compliance Officer and incorporated herein for all legal purposes.

The location of CrownQuest Operating, LLC, COM Nail #1 oil and gas well shall be 1,550 feet from the south line and 1,980 feet from the east line, Section 36, Block 39, T-1-N, T&P RR Co. Survey, City of Midland and County of Martin, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in that application of Midland Energy, Inc., which is incorporated herein. Further, all operations done under this permit shall be done and accomplished in strict accordance with the Midland City Code, Ordinance 8769, which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit. Also, all operations done under this permit shall be done and accomplished in strict accordance and compliance with the General Conditions, which are attached hereto marked as Exhibit "A" and incorporated into and made a part of this permit for all purposes. All operations done and required under this permit shall be done and accomplished in strict accordance and compliance with the Specific Conditions which are attached hereto, marked as Exhibit "B", and incorporated into and made a part of this permit for all purposes.

This permit shall be effective from August 13, 2013, through August 13, 2014, and so long thereafter as oil or gas is produced or until such time as the permittee has permanently abandoned the operations of the well or facility for which this permit is issued.

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

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts the permittee from its responsibilities or obligations as to third parties. The issuance of this permit only means that the permittee has, at this time, complied with Ordinance No. 8769 and that the Midland City Council, as a regulatory body, will allow the permittee to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize the recipient to act with impunity as to third parties, nor does it insulate the permittee from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize the permit holder from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a "negative pronouncement" that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. The permittee has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield the permittee from third party tort liability stemming from the consequences of the permitted activity.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, utility and drainage rights-of-way.

A variance granted for having the required beige colored slats woven through the fencing until the surface is developed into airport.

A variance granted for landscaping and irrigation to be installed when the surface is developed into airport.

A waiver granted for road repair agreement due to no city streets used by operator to access well or tank battery.

This permit shall constitute a written contract for purposes of insurance requirements.

In addition to the requirements of the Midland City Code, Ordinance 8769, and the requirements of this permit, including the General and Specific Conditions incorporated herein, Midland Energy, Inc., shall develop, maintain and operate the well described herein in accordance with the conditions, limitations and safeguards contained in Midland Energy, Inc., application for said well. Midland Energy, Inc., application for said well is incorporated herein by reference for all legal purposes.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS _____ day of August, 2013.

CITY OF MIDLAND, TEXAS

BY: _____

W. Wesley Perry, Mayor

UNDERSTOOD AND AGREE THIS _____ day of August, 2013.

CrownQuest Operating, LLC

By: _____

Jeffrey T Beard, Land Manager

OIL AND GAS PERMIT: ORDINANCE 8769 GENERAL CONDITIONS- EXHIBIT "A"

(K)

General Conditions of all Oil and Gas Well Permits.

1.

General Obligations of Operator.

The Operator shall be required to:

a.

Comply with the terms and conditions of this Section, the Midland City Code, the rules and regulations of the Railroad Commission, and any other state or federal agency that enforces land use, mineral use, or environmental protection regulations.

b.

Promptly clear Drill and Operation sites of litter, trash, refuse and other substances used, allowed, or occurring in the operations, and after abandonment or completion, grade, level, and restore such property to the same surface conditions as nearly as practicable as existed before operations.

c.

Indemnify and hold harmless the City of Midland, the City's officers, agents and employees, from any and all claims, losses, damages, causes of action, suits, and liability of any kind, including all expenses of litigation, court costs, and attorney's fees, for injury to or death of any Person, or for damage to any property arising out of or in connection with the work done by Operator under an Oil and Gas well permit: where such injuries, death or damages are caused by Operator's sole negligence or the joint negligence of the Operator and any other Person or entity.

d.

Promptly pay all fines, penalties and other assessments imposed due to breach of any of the conditions herein. If the Operator does not agree that a breach has occurred, the Operator may file a written objection with the City Manager within ten (10) days of being notified of the alleged breach. The City Manager shall review the objections and give the Operator the opportunity to be heard and present facts that the Operator deems relevant.

e.

Promptly restore to its former condition any public property damaged by the oil and gas operation.

f.

Except as permitted by Subsection U, hereof, Operator shall not, either directly or indirectly, assign all or any part of an Oil and Gas Well Permit.

g.

If required by the Permit, Operator shall execute a "Road Repair Agreement" between itself and the City of Midland and submit all necessary information and insurance and guarantees to the City prior to the issuance of any Oil and Gas Well Permit under this Section.

2.

Irrevocable Letter of Credit, Certificate of Deposit, or Surety Bond.

Prior to the issuance of an Oil and Gas well permit, the Operator shall provide the City Attorney with a guarantee in the form of an irrevocable letter of credit, certificate of deposit, or surety bond in the name of the City. The Applicant shall be entitled to receive the interest earned if the certificate of deposit reaches maturity. The letter of credit, certificate of deposit, or surety bond must satisfy the following:

a.

The letter of credit, certificate of deposit or surety bond shall be issued by a reliable bank or insurance carrier authorized to do business in the State of Texas;

b.

The letter of credit, certificate of deposit or surety bond shall be effective starting on or before the effective date of the Oil and Gas Well Permit;

c.

The letter of credit, certificate of deposit or surety bond shall be in the amount of twenty-five thousand dollars (\$25,000.00);

d.

The letter of credit, certificate of deposit or surety bond shall remain in full force and effect for a period of three years; and

e.

The letter of credit, certificate of deposit or surety bond shall authorize the City of Midland to draw upon such credit in the event the City Manager, or his designee, determines said credit is needed to remedy any violation of this Section.

If the well is still producing or if the well has not been abandoned or plugged, the Operator must renew the letter of credit, certificate of deposit or surety bond on or before one hundred twenty (120) days prior to the expiration of the letter of credit, certificate of deposit or surety bond.

The City of Midland may draw upon the letter of credit, certificate of deposit or surety bond to recover costs of repairs, modifications, or construction to remedy any violations by the Operator under this Section. The City may make partial or full draws of the letter of credit, certificate of deposit or surety bond. The City may draw upon the letter of credit, certificate of deposit or surety bond in the event the City has not received a new letter of credit, certificate of deposit or surety bond within the one hundred twenty (120) day renewal time period required above.

The Operator shall maintain the principal amount of \$25,000.00 in the form of a letter of credit, certificate of deposit or surety bond at all times throughout the term of the permit. In the event such letter of credit, certificate of deposit or surety bond is not restored to \$25,000.00 within ten (10) days after the date of the reduction of the letter of credit, certificate of deposit or surety bond, the City may draw and receive the remaining balance of the letter of credit, certificate of deposit or surety bond, and the Oil and Gas Well Permit shall be suspended on such date and the Operator's right to operate under Oil and Gas Well Permit shall immediately cease until the Operator files the required letter of credit, or certificate of deposit or surety bond.

If an operator has three (3) or more Oil and Gas Well Permits in effect which have been approved by the City Council, the Operator may petition the Council to consolidate the letter of credits, certificate of deposits or surety bonds into one letter of credit, certificate of deposit or surety bond that would cover all Oil and Gas Wells in the City limits. The consolidated letter of credit, certificate of deposit or surety bond shall be in an amount determined by the City Council as sufficient to cover the costs of repairs, modifications, construction or to remedy violations by the Operator but in no event shall the amount be less than \$75,000.00.

3.

Insurance.

In addition to the letter of credit, certificate of deposit or surety bond required above, the Operator shall carry a policy or policies of insurance issued by an admitted insurer or eligible surplus lines insurer authorized to do business in the State of Texas. In the event such insurance policy or policies are cancelled, any Oil and Gas Well Permit issued under this Section shall be suspended on such date of cancellation and the Operator's right to operate under such Oil and Gas Well Permit shall immediately cease until the Operator files additional insurance as required herein.

- a. General requirements applicable to all policies.
- i. The City, the City's officials, employees, agents and officers shall be endorsed as an "Additional Insured" on all policies, except under Operator's Workers Compensation Policy.
 - ii. All policies shall be written on an occurrence basis, except for Environmental Pollution Liability (Seepage and Pollution coverage) and Excess and Umbrella Liability, which may be on a claims-made basis.
 - iii. All policies shall be written by an admitted insurer or eligible surplus lines insurer authorized to do business in the State of Texas.
 - iv. Deductibles shall be listed on the Certificate of Insurance and shall be on a "per occurrence" basis unless otherwise stipulated herein.
 - v. Certificates of Insurance shall be delivered to the City of Midland, P.O. Box 1152, Midland, Texas 79702, Attn: City Attorney's Office, evidencing all the required coverages, including endorsements, prior to the issuance of an Oil and Gas Well Permit under this Section.
 - vi. All policies shall be endorsed with a waiver of subrogation providing rights of recovery in favor of the City.
 - vii. Any failure on the part of the City to request required insurance documentation shall not constitute a waiver of the insurance requirements specified herein.
 - viii. Each policy shall be endorsed to provide the City a minimum thirty (30) day notice of cancellation, non-renewal, and/or material change in policy terms or coverage. A ten (10) day notice shall be acceptable in the event of non-payment of premium.
 - ix. During the term of any Oil and Gas Well Permit issued hereunder, the Operator shall report, in writing, within thirty (30) days of the occurrence, to the City Manager, any known

loss occurrence which could give rise to a liability claim or lawsuit or which could result in a property loss.

x.

Upon request, certified copies of all insurance policies shall be furnished to the City.

xi.

Operator shall have the right to maintain a qualified, self-insurance plan and/or maintain prudent levels of self-insured retentions for insurance coverage required in this section; however, Operator shall remain financially obligated for all self-insured retention amounts and deductibles. To the extent of the liabilities assumed by the Operator, Operator's insurance shall be primary coverage as to any liabilities of the City.

b.

Standard Commercial General Liability Policy.

This coverage must include premises, operations, blowout or explosion, products, completed operations, sudden and accidental pollution, blanket contractual liability, underground resources damage, broad form property damage, independent contractors protective liability, accidental death and personal injury. This coverage shall be a minimum Combined Single Limit of \$1,000,000.00 per occurrence for Bodily Injury, Accidental Death, and Property Injury.

c.

Excess or Umbrella Liability.

\$1,000,000	Excess, if the Operator has a stand-alone Environmental Pollution Liability (EPL) policy.
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\$10,000,000	Excess, if the Operator does not have a stand-alone EPL policy. Coverage must include an endorsement for sudden or accidental pollution. If Seepage and Pollution coverage is written on a "claims made" basis, the Operator must maintain continuous coverage and purchase Extended Coverage Period when necessary.
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d.

Environmental Pollution Liability Coverage.

Operator shall purchase and maintain in force for the duration of any Oil and Gas Well Permit issued hereunder, insurance for environmental pollution liability applicable to bodily injury, property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense or settlement of claims; all in connection with any loss arising from the insured site.

Coverage shall be maintained in an amount of at least \$1,000,000 per loss, with an annual aggregate of at least \$10,000,000.

Coverage shall apply to sudden and accidental pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids or gases, refuse material or other irritants, contaminants or pollutants.

e.

Workers Compensation and Employers Liability Insurance.

i.

Workers Compensation benefits shall be Texas Statutory Limits.

ii.

Employers Liability shall be a minimum of \$1,000,000.00 per accident.

iii.

Such coverage shall include a waiver of subrogation in favor of the City of Midland and provide coverage in accordance with applicable State and Federal laws.

f.

Automobile Liability Insurance.

i.

Combined single limit of \$1,000,000.00 per occurrence for bodily injury and property damage.

ii.

Coverage must include all owned, hired and not-owned automobiles.

g.

Certificates of Insurance.

i.

The company must be licensed or authorized to do business in the State of Texas.

ii.

The insurance set forth by the insurance company must be underwritten on forms that have been approved by the Texas State Board of Insurance or ISO or an equivalent policy form acceptable to the City, with the exception of environmental pollution liability and control of well coverage.

iii.

Set forth all endorsements and insurance coverage according to requirements and instructions contained herein.

iv.

Shall specifically set forth the notice of cancellation, termination, or change in coverage provisions to the City. All policies shall be endorsed to read "THIS POLICY WILL NOT BE CANCELLED OR NON-RENEWED WITHOUT THIRTY (30) DAYS ADVANCE WRITTEN NOTICE TO THE OWNER AND THE CITY, EXCEPT WHEN THIS POLICY IS BEING CANCELLED FOR NONPAYMENT OF PREMIUM, IN WHICH CASE, TEN (10) DAYS ADVANCE WRITTEN NOTICE IS REQUIRED".

v.

Original endorsements affecting coverage required by this section shall be furnished with the certificates of insurance.

vi.

At the request of an Operator, the Council may grant a variance to insurance requirements if the Council determines that the insurance procured by the Operator is sufficient to protect the City. A variance of this type may be required because of a change in underwriting policies of admitted insurance carriers.

Indemnification.

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

Notice.

The notices provided in this permit may be served in person or by registered or certified mail. Operator shall within ten (10) days notify the City Manager in writing of any change in such agent or mailing address unless operations in the City are discontinued and abandonment is complete.

Notice addresses are as follows:

City of Midland
Attn: Office of the City Manager
P. O. Box 1152
Midland, Texas 79702

OPERATOR: _____
Jeffrey T Beard, Land Manager

CrownQuest Operating, LLC
500 West Texas Ave. Suite 500
Midland, Texas 79701
(432) 818-0300

OIL AND GAS WELL PERMIT: ORDINANCE 8769 SPECIFIC CONDITIONS-EXHIBIT "B"

(L)

Specific conditions of all Oil and Gas Well Permits; On-Site Requirements.

1.

Abandoned wells. All wells shall be abandoned in accordance with the rules of the Railroad Commission and pursuant to Subsection (O) of this Section.

2.

Automated audible alarm system. After completion, the appropriate system for flowing gas and/or flowing oil wells must be maintained to provide warnings for a substantial drop in pressure, or the release of any oil or gas, or a fire. Said audible alarm system must be approved by the Fire Marshal prior to installation of production equipment at the flowing gas and/or flowing oil well site.

3.

Blowout prevention. In all cases, ram-type and annular Blowout Preventers shall be used on all wells being drilled. In cases where Re-working is being performed on a Well, ram-type or annular Blowout Preventers shall be used. Protection shall be provided to prevent blowout during Drilling operations as required by and in conformance with the requirements of the Railroad Commission and the recommendations of the American Petroleum Institute. In addition to the Blowout Preventers stated above, all drilling must be equipped with flow lines and valves commensurate with the working pressures involved as required by the Railroad Commission each Blowout Preventer shall be a double-ram design with blinds and pipe. After surface casing has been set and cemented to surface, each Blowout Preventer shall be tested and witnessed by Operator's personnel and the results of such test shall be documented in the Operator's well file. Testing expenses shall be the responsibility of the Operator. The Operator shall provide a complete report of the well blowout prevention test to the City Manager within fifteen (15) days of the test.

4.

Casing. The surface portions of the Well shall be cased with cement circulated to the surface. All surface and intermediate casing must comply with all applicable rules of the Railroad Commission and the Texas Commission on Environmental Quality.

5.

Compliance. Operator shall comply at all times with all applicable federal, state and City requirements.

6.

Discharge. No person shall place, deposit, discharge, or cause or permit to be placed, deposited or discharged, any oil, naphtha, petroleum, asphalt, tar, hydrocarbon substances or any refuse including water or brine from any oil and gas operation or the contents of any container used in connection with any oil and gas operation in, into, or upon any Right-of-way, alleys, streets, lots, storm

drain, ditch or sewer, sanitary drain without permits from the appropriate City departments, or any body of water or onto any private property in the City.

7.

Drilling notice. The operator shall provide at least a forty eight (48)-hour notice to the City Manager prior to mobilizing the Drilling Equipment. In addition to notification to the City Manager, the operator shall provide a notice to the owners of at least forty eight (48) hours or more prior to mobilizing the drilling equipment through a publication in the Midland Reporter Telegram and a posting in the City Secretary's Office.

8.

Drill stem testing. No drill stem testing shall be allowed.

9.

Dust, vibration, odors. All drilling and production operations shall be conducted in such a manner as to minimize, so far as practicable, dust, vibration, or noxious odors, and shall be in accordance with the best accepted practices incident to drilling for the production of oil, gas and other hydrocarbon substances in urban areas. All equipment used shall be so constructed and operated so that, vibrations, dust, odor or other harmful or annoying substances or effect will be minimized by the operations carried on at any Drill Site or Operation Site or from anything incident thereto, to the injury or annoyance of persons living in the vicinity; nor shall the site or structures thereon be permitted to become dilapidated, unsightly or unsafe. Proven technological improvements in industry standards of drilling and production in this area shall be adopted as they become available if capable of reducing factors of dust, vibration and odor.

10.

Electric lines. All electric lines going under City roadways must be bored and encased pursuant to city standards. All electric lines to production facilities may be overhead service unless the surrounding neighborhood is developed with underground electric service. If the surrounding neighborhood is developed with underground electric service, then all electric lines to production facilities shall be buried underground.

11.

Electric motors. Only electric prime movers or motors shall be permitted for the purpose of pumping wells. No electric power shall be generated on location. All electrical installations and equipment shall conform to the City ordinances and the appropriate national codes.

12.

Emergency response plan. Prior to the commencement of any oil or gas production activities, Operator shall submit to the City Manager an emergency response plan establishing written procedures to minimize any hazard resulting from drilling, completion or producing of oil and gas wells. Said plan shall use existing guidelines established by the Railroad Commission, Texas Commission on Environmental Quality, Department of Transportation and/or the Environmental Protection Agency and City Fire Code. A copy of the Emergency Response Plan shall be kept at the Operator's office.

13.

Equipment painted. All production equipment on the site shall be painted beige and maintained at all times, including pumping units, tanks, buildings and structures. The City shall regularly inspect all painted structures and inform Operator when repainting is necessary. Operator shall repaint within sixty (60) days written notice from City. When requiring re-painting of such facilities, the City Manager shall consider the deterioration of the quality of the material of which such facility or structure is constructed, the degree of rust, and its appearance. Upon request of the Operator, a color other than beige may be approved by the City Council.

14.

Explosives. Use of an explosive perforating gun during completion operations and during plugging operations and down-hole operations that require such explosives shall be allowed.

15.

Fire notice. In the event of a fire or discovery of a fire, smoke, or unauthorized release of flammable or hazardous materials on any property, the Operator shall immediately report such condition to the Fire Department in accordance with the City of Midland Fire Code. The reporting limits for hazardous materials release shall conform to the requirements of the Railroad Commission and not exceed any state or federal permitting limit.

16.

Fire prevention; sources of ignition. Firefighting apparatus and supplies as approved by the Fire Marshal and required by any applicable federal, state, or local law shall be provided by the Operator, at the Operator's cost, and shall be maintained on the drilling site at all times during drilling and/or reworking operations. The Operator shall be responsible for the maintenance and upkeep of such equipment.

17.

Fracing operations. No fracing or formation fracture stimulation operations may take place before 7:00 a.m. or after 7:00 p.m.

18.

Fresh water wells. The measurements required by this Subsection shall be in a direct line from the closest Oil and Gas well to the fresh water well.

a.

Upon request of an owner of a fresh water well within 860 feet of an Oil and Gas well, who has been duly notified, Operator shall provide the City Manager with a "pre-drilling" and "post-drilling" water analysis from any such existing fresh water well(s).

b.

Operator shall conduct and fund annual testing for water wells that have been tested pursuant to Subsection (L)18.a. above. This testing program shall continue for the production life of The Well plus three years for a producing well, or for a period of one (1) year for a dry hole.

19.

Compressors. No onsite compressor used to "lift gas" shall be used. No compressor of any type shall be used. In the event Operator determines the use of such compressor is necessary, a detailed plan shall be submitted by Operator to the City Council for consideration. An on-site compressor plan shall include the following information:

- a. The physical size of the compressor;
- b. The power source of the compressor;
- c. The horsepower of the compressor;
- d. The noise of the compressor; and
- e. The manufacturer of the compressor.

No compressor of any type shall be used unless a plan is approved by the City Council.

20.

Gas emission or burning restricted. Operator shall not allow, cause or permit gases to be vented into the atmosphere or to be burned by open flame except as provided by law or as permitted by the Railroad Commission. If the venting of gases into the atmosphere or the burning of gases by open flame is authorized as provided by law or as permitted by the Railroad Commission, then such vent or open flame shall not be located closer than three hundred thirty (330) feet from any building not used in operations on the drilling site and such vent or open flame shall be screened in an effort to minimize detrimental effects to adjacent owners. Operator shall provide notice to the Fire Marshall prior to any open flaring of gas. Gas may not be flared unless for a limited time when completing, or recompleting a well, and only if flaring will not constitute a fire hazard to other owners. If flaring gas, it shall not be burned at a rate greater than 3,000 mcf/d. No gas may be flared between the hours of 7:00 p.m. and 7:00 a.m., except in an emergency.

21.

Gas processing onsite. Except for a conventional gas separator or line heater, no refinery, processing, treating, dehydrating or absorption plant of any kind shall be constructed, established or maintained on the premises without prior written consent of the City Manager.

22.

Grass, weeds, trash. All Drill sites and Operation sites shall be kept clear of high grass, weeds, and combustible trash within a radius of one hundred (100) feet around any Tanks, production facilities, or producing wells.

23.

Hazardous plan. Hazardous Materials Management Plan (HMMP) and all Material Safety Data Sheets (MSDS) for all hazardous materials that will be located, or stored, on the Operations Site shall be submitted to the City Manager.

24.

Lights. Except under emergency circumstances, operator shall not Operate any lights located at the Drill Site. To the extent practicable, and taking into account safety considerations, emergency site lighting shall be directed downward and internally so as to avoid glare on public roads and adjacent dwellings and buildings within three hundred (300) feet. This paragraph does not apply during initial Drilling Operations.

25.

Monitoring for H₂S gas. If required by the Railroad Commission, equipment for the monitoring of H₂S gas shall be used during Drilling. The Operator will comply with all requirements found in Statewide Rule 36 of the Railroad Commission, as amended. Within sixty (60) days after completion, and annually thereafter, Operator shall submit to the City Manager results of testing to determine the concentration of H₂S produced from the Well. If the results of the H₂S testing proves to be one hundred (100) PPM H₂S or greater, the Operator is responsible for determining the one hundred (100) PPM H₂S radius of exposure for each Well and production facility. Wells and facilities where the concentration of H₂S is equal to or greater than one hundred (100) PPM will be considered "Sour." Safety systems described herein must be approved by the Fire Marshall.

a.

The following safety alarms and equipment are required at the well site of all wells that are capable of producing at a sustained rate of at least one hundred twenty-five (125) barrels of oil per day and/or three hundred (300) MCF of gas per day and for "sour" wells whose one hundred (100) PPM H₂S radius of exposure is greater than fifteen (15) feet:

i.

H₂S monitors located along the fencing, as set forth in Subsection M (for "sour" wells only).

ii.

Automated audible alarms to provide warnings for a substantial drop in pressure or for the presence of H₂S in concentrations greater than one hundred (100) PPM.

iii.

Automated valve to shut-in production from the well if a substantial drop in pressure or if the presence of H₂S in concentrations greater than one hundred (100) PPM is detected.

b.

The following safety alarms and equipment are required at "Sour" Tank battery facilities:

i.

H₂S monitors located along the fencing, as set forth in Subsection M.

ii.

Automated audible alarm to provide warnings for the presence of H₂S in concentrations greater one hundred (100) PPM.

iii.

An electrical device capable of shutting down power to all "Sour" wells producing into the battery in the event H₂S in concentrations great than 100 PPM is detected.

26.

Muffling exhaust. Exhaust from any internal combustion engine or compressor, stationary or mounted on wheels, used in connection with the Drilling of any well or for use on any production equipment shall not be discharged into the open air unless it is equipped with an exhaust muffler, or mufflers or an exhaust muffler box constructed of noncombustible materials sufficient to suppress noise and disruptive vibrations and prevent the escape of obnoxious gases, fumes or ignited carbon or soot.

27.

Pits. The following applies for pits used for Drilling and completion operations:

a.

No pit shall be placed in a floodplain without obtaining a floodplain development permit from the City Department of Development Services.

b.

No fresh water pit may be placed in any City recognized drainage way, FEMA floodplain or floodway. Construction of the fresh water pit must comply with all City, state and federal regulations.

c.

The use of earthen pits shall be allowed so long as the construction, use, dewatering and closure of such pits meets or exceeds the requirements of the applicable Railroad Commission rules and Texas Commission on Environmental Quality rules. In addition to compliance with applicable Railroad Commission rules, and Texas Commission on Environmental Quality rules, such earthen reserve pits shall also meet the following requirements;

(i)

the maximum size of a reserve pit shall be no greater than two hundred (200) feet by two hundred (200) feet;

(ii)

The pits shall be lined with a plastic liner having a minimum thickness of eight (8) mil reinforced polyethylene;

(iii)

Reserve pits used in Drilling operations shall be fenced on all open sides during such operations and shall be enclosed on all sides once Drilling operations have ceased;

(iv)

Reserve pits shall be closed within one hundred (180) days of the cessation of drilling operations;

(v)

Drill cuttings may be disposed of on the Drill Site using a deep burial method provided that the burial pit containing the cuttings is located entirely within one hundred thirty five (135) feet of the surface location of the Well, provided that all free water has been removed prior to burying the cuttings, and an impermeable liner is placed above the cuttings prior to covering the cuttings and liner with top soil, and provided that the burial pit is constructed in such a manner that the cuttings will be covered with a minimum of thirty six (36) inches of clean, compactable soil. A survey and description of the location of any closed pit used in connection with the Drill Site shall be recorded in the property records of the county in which the real property is located.

28.

Salt water wells. No commercial salt-water disposal wells that receive water by truck shall be located within the City of Midland. In the event the operator determines that the use of a non-commercial salt-water well is necessary, a detailed plan shall be submitted by the operator to the City Council for consideration. No salt water disposal well of any type shall be used unless a plan is approved by the City Council.

29.

Signs.

a.

A sign shall be immediately and prominently displayed at the gate on the temporary and permanent site fencing erected pursuant to Subsection (M) of this Section. Such sign shall be durable material, maintained in good condition and, unless otherwise required by the Railroad Commission, shall have a surface area of not less than two square feet not more than four square feet and shall be lettered with the following:

i.

Well name and number;

ii.

Name of operator;

iii.

The emergency 911 number; and

iv.

A 24-hour phone number that will provide an emergency phone number of Operator's Representatives as stated in Subsection F.

b.

Permanent weatherproof signs reading "DANGER NO SMOKING OR OPEN FLAME ALLOWED IN THIS AREA" shall be posted immediately upon completion of the well site fencing at the entrance of the well site and tank battery or in any other location approved or designated by the Fire Chief of the City. Sign lettering for this sign shall be two (2) inches or greater in height and shall be red on a white background or white on a red background. Each sign shall include the emergency notification numbers of the Fire Department and the Operator, well and lease designations required by the Texas Railroad Commission.

c.

Provide a National Fire Prevention Association (NFPA) 704 diamond hazard identification signs are required at the entrance to the Operation Site adjacent to the Operator's sign if chemicals are present. A label must be located on each chemical Tank indicating exact chemicals that may be contained in such Tank. Text shall be minimum two inches or greater in height, contrasting with the background color.

30.

Storage of equipment. Storage of equipment and materials shall be minimized and limited to the immediate operational needs of the well. Lumber, pipes, empty drums, trucks, trailers, automobiles, junk tubing, casing and rods shall not be left on the operation site except when drilling or reworking operations are being conducted on the site.

No vehicle or item of machinery shall be parked or stored on any Street, Right-of-Way or in any driveway, alley or upon any Operation Site which constitutes a fire hazard or an obstruction to or interference with fighting or controlling fires except that equipment which is necessary for Drilling or production operations on the site. The Fire Department shall be the entity that determines whether any equipment on the site shall constitute a fire hazard.

31.

Tank Battery Facilities. At the tank battery for either oil and/or gas Wells a sensor for fire detection should be appropriately placed near heater treaters, separators, and oil storage tanks that would allow an automated valve placed at the header to be closed in the event of a detected fire. All storage tanks shall be equipped with a secondary containment system. The secondary containment system shall be a minimum of three (3) feet in height and one and one-half (1½) times the contents of the total tank volume. Drip pots shall be provided at the pump out connection to contain the liquids from the storage tanks. No storage tank shall be over sixteen 16 feet in height. All storage tanks shall be built on an adequate foundation with a twelve 12-mil liner being placed

beneath each tank, extending a minimum of three (3) feet beyond the edge of each tank.

Operator must use portable steel storage tanks or fiberglass tanks for storing all fluids from the well. Tanks must meet the American Petroleum Institute standards. All tanks must have a vent line, lightning arrester and pressure relief valve. All tanks must be enclosed by a fence as required by Section (M) herein. No tank shall exceed sixteen (16) feet in height. No tank battery shall be constructed within five hundred (500) feet of any Occupied Residence, Occupied Commercial Structure or Occupied Public Building, unless a variance is granted by the City Council.

Drilling mud, cuttings, liquid hydrocarbons and all other field refuse derived or resulting from or connected with the drilling, re-working or deepening of any well shall be discharged into a steel pit or an approved earthen pit. All disposals must be in accordance with the rules of the Railroad Commission and with a plan submitted to and approved by the City Manager. Water stored in on-site tanks shall be removed as necessary.

All refuse shall be disposed of in such a manner as to comply with the applicable air and water pollution control regulations of the state, the conditions of this permit, and any applicable ordinance of the City.

Temporary flowback tanks shall be removed within ninety (90) days after completion date of the well at the pad site unless permission is obtained from the City Manager to extend the time period for no more than thirty (30) days. Completion date is that date which is stated as the "completion or recompletion date" shown on the Form W-2 or G-I filed with the Railroad Commission.

All tanks shall be set back pursuant to the standards of the Railroad Commission and the National Fire Protection Association, but in all cases, shall be at one hundred (135) feet from any street or alley right-of-way, three hundred thirty (330) feet from any public athletic field, and five hundred (500) feet from an Occupied Residence, Occupied Commercial Structure or Occupied Public Building, church, public or private school, hospital, nursing home, college or university or daycare center unless a variance is granted by the Midland City Council. Operator shall institute operational practices involving the daily monitoring of tank integrity and fluid levels within each tank. The use of a remote monitoring system is acceptable.

No meters, storage tanks, separation facilities, or other aboveground facilities, other than the well head and flow lines, shall be placed in a floodway identified by FEMA on the most current FIRM or the 100-year floodplain without a floodplain development permit obtained from the Department of Development services.

All fluids and tank bottoms will be disposed of in accordance with Railroad Commission regulations.

32.

Valves. Each flowing high volume well must have an automated shut-off valve to shut-in the well's production at the Operation Site for either a fire or

abnormal change in pressure. The fire department shall have access to the Operation Site and the shut-off valve in an emergency.

33.

Work hours for site development. No construction activities involving the excavation of, demolition of, alteration to, or repair work on any access road or pad site shall occur before 7:00 a.m. or after 7:00 p.m.

34.

Wellhead status after fracing. The wellhead between the time of Drilling/completion and tank battery construction, shall be:

a.

Surrounded with a six (6) foot tall temporary chain link fence having a gate and lock until permanent fencing is installed;

b.

The gate shall be locked at all times, except when the Operator is involved in active operations;

c.

The cellar shall be filled or closed; and

d.

The Bradenhead shall be piped to the surface and open to the atmosphere or have an observable and adequate pressure gauge with operable test valve.

35.

Inspections. In accordance within applicable law, the City Manager, or his designee, at his sole cost, risk and expense shall have a right of entry to the Drill Site/Operation Site and may, at his discretion, visit the Drill Site/Operation Site to make sure operator is in compliance with the requirements of this Section.

36.

Violation. In the event a violation of this ordinance is determined by the City's official (or officials), the City may act in any or all of the following ways:

a.

The City, through its designated official (or officials), may issue a notice of violation to the Operator, its agent, agents, employees or independent contractors (whether on site or not), or to any Person participating in the Drilling of the Well. Such notice may include a citation to appear before the Midland Municipal Court.

b.

If the City Manager, or his designee, finds the Operator to be in violation of any requirement of the applicable Oil and Gas well permit, then the City reserves the right after giving ten (10) business days written notice to the Operator regarding such violation, to draw upon the letter of credit, certificate of deposit or surety bond as outlined in Subsection (K) of this Section, in order to remedy such violation. In the event that a violation is not capable of being remedied within such ten (10) business day period, then Operator must have commenced efforts

to remedy such violation within said ten (10) business day period and thereafter continue with such efforts to remedy said violation with due diligence until completed, and as long as the Operator continues with efforts to remedy a violation with due diligence, the City shall not draw against the letter of credit, certificate of deposit or surety bond. In the event the City makes a claim on the letter of credit, certificate of deposit or surety bond pursuant to the terms hereof, reinstatement of the full amount of the letter of credit, certificate of deposit or surety bond shall be a condition to the cure of the violation leading to such claim. Alternatively, if the City Manager finds the Operator to be in violation of any requirement of the applicable Oil and Gas Well Permit, the City Manager shall give written notice to the Operator that unless all violations are corrected within ten (10) business days of the Operator's receipt of notice of the violation, the City Manager shall recommend to the City Council that the Oil and Gas Well Permit be cancelled by the City Council. In the event that a violation is not capable of being remedied within such ten(10)business-day period, then Operator must have commenced efforts to remedy said violation within said ten (10) business-day period and thereafter continue with such efforts to remedy said violation with due diligence until completed, and as long as the Operator continues with efforts to remedy a violation with due diligence, as determined by the City, the City shall not draw against the letter of credit, certificate of deposit or surety bond. If the City Council determines to consider the cancelling of the permit, it shall give the Operator written notice of the date and time of the hearing and shall give the Operator the opportunity to be heard and present facts the Operator deems relevant. The cancelling of a permit requires the majority vote of the City Council.

c.

Prosecution of violations of this Section shall be given priority and expedited upon the Municipal Court docket. Provided, however, that this subsection does not grant or guarantee Persons cited a right to expedited consideration of their citation before the Midland Municipal Court.

d.

In the event that there exists an imminent threat to public health and safety, a certified peace officer, in conjunction with the Railroad Commission, may order the temporary cessation of operations. An Operator may appeal the order to an appropriate Court in Midland County, Texas and request an expedited hearing. With respect to the contestation of an order issued pursuant to this subsection, an Operator retains all of its legal remedies.

M.

Fencing and landscaping.

1.

Fences. Variance Granted August 13 not requiring the slats woven into chain link fence until the surface is developed into airport.

A fencing plan shall be submitted, said plan containing a description of the building materials, dimensions, and locations of the proposed fence/walls and gates. The plan shall take into consideration the surrounding area and neighborhood.

At a minimum, tank battery facilities, wellheads and any production equipment associated with Oil and Gas wells shall be enclosed by a chain link fence at least seven (7) feet in height with beige-colored slats woven through the chain link, topped with three (3) strands of barbed wire angled outward or concertina wire, and shall be equipped with a locking gate. Gates shall be provided with a combination catch and locking attachment for a padlock, and shall be kept locked except when being used for access to the operation site. Operator must provide the City Fire Chief with a "Knox Padlock" or "Knox Box with a key" to access the Operation Site to be used only in case of an emergency.

The City Council may require additional or a different type of fencing to the extent necessary to conform with architectural standards and building materials existing on lots and/or lands immediately adjacent to the well and within five (500) feet of the Well at the time the Oil and Gas Well Permit is issued.

Additionally, if at any time within twenty-four (24) months following the issuance of an Oil and Gas Well Permit, a structure intended for permanent occupancy is constructed within five hundred (500) feet of the Well, the City Council may require the operator to undertake a one-time revision of the fencing plan to account for architectural standards and building materials associated with such structure to the extent that the revised fencing plan is consistent with, but not better than, the architectural standards and building materials associated with such structure.

Fences shall not be required on drill sites during drilling, completion or re-working operations as long as 24-hour on-site supervision is provided.

2.

Landscaping. Variance granted August 13, 2013.

Landscaping and irrigation is to be installed when the surface is developed into airport.

(N)

Cleanup and Maintenance.

1.

Cleanup after well servicing. After the well has been completed or plugged and abandoned, the Operator shall clean the drill site or operation site, complete restoration activities and repair all damage to public property caused by such operations within one hundred eighty (180) days.

2.

Clean-up after spills, leaks and malfunctions. After any Railroad Commission reportable spill, leak or malfunction, the Operator shall remove or cause to be removed to the satisfaction of the City Fire Chief and the City Manager all refuse materials from any public or private property affected by such spill, leak or malfunction. Clean-up operations must begin immediately. The Operator shall comply with all requirements found in Statewide Rule 91 of the Railroad Commission, as amended. If Statewide Rule 91 requires reporting of the spill, the operator shall comply with the notification and reporting requirements found in Statewide Rule 20 of the Railroad Commission, as amended. Upon request the Operator shall furnish the City Manager with all information filed with the Railroad Commission. If the Operator fails to begin site clean-up immediately the City Manager may then employ any cleanup expert or experts or other contractors or suppliers of special services, or may incur any other expenses for labor and material which the City Manager deems necessary to clean-up such spill, leak or malfunction. The City shall then be able to collect from operator the costs involved in the site clean-up. The City may collect from the posted letter of credit, certificate of deposit or surety bond or any other legal means.

3.

Free from debris. The public street entrance and property on which a well site is located shall at all times be kept free of mud, debris, pools of water or other liquids, contaminated soil, weeds, brush, trash or other refuse material within a radius of one hundred (100) feet around any production facilities, tanks and producing wells.

4.

Painting. All production equipment shall be painted beige and maintained at all times, including pumping units, tanks, secondary containment and buildings or structures. When requiring painting of such facilities, the City Manager shall consider the deterioration of the quality of the material of which such facility or structure is constructed, the degree of rust, and its appearance.

5.

Blowouts. In the event of the loss of control of any well, Operator shall immediately take all reasonable steps to regain control regardless of any other provision of this permit and shall provide the City Manager with the same

information as required to be filed with the Railroad Commission under Statewide Rule 20 as soon as practicable.

6.

Cleanup after Drilling/Completion. After the well has been drilled and completed, the Operator shall clean the Drill site, complete restoration activities and repair all damage to public property caused by such operations within ninety (90) days as specified previously in Subsection (L)27.

O.

Drilled and Abandoned Wells.

1.

Surface Requirements for Plugged and Abandoned Well. Whenever abandonment occurs pursuant to the requirements of the Railroad Commission, the Operator so abandoning shall be responsible for the restoration of the Operation site to its original condition as nearly as practicable, in conformity with the requirements of this permit underground pipelines associated with operations shall be purged of all fluids and may be abandoned in place.

2.

Surface Requirements for Drilled and Abandoned Well. Abandonment shall be approved by the City Manager after restoration of the Drill Site has been accomplished in conformity with the following requirements at the discretion of the City Manager:

a.

The Derrick and all appurtenant equipment thereto shall be removed from Drill site;

b.

All tanks, towers, and other surface installations shall be removed from the Drill site;

c.

All concrete foundations, above ground piping, wood, guy anchors and other foreign materials regardless of depth, except surface casing, shall be removed from the site, unless otherwise directed by the Railroad Commission;

d.

All holes and depressions shall be filled with clean, compactable soil;

e.

All, refuse and trash shall be removed from the Drill Site; and

f.

During abandonment, Operator shall comply with all applicable subsections in this section; and

g.

The drill site shall be restored, as close as practicable, to its original condition.

h.

Unless modified by the approved plan, deep burying of pits within the drill site perimeter is permitted. A survey and description of the location of any closed pit used in connection with the drill site shall be recorded in the property records of the county in which the real property is located. In any event the Operator shall comply with Subsection (L), Paragraph 27.

3.

Abandoned well requirement. The Operator shall furnish the following to the City Manager:

a.

A copy of the W-3A "Notice of Intention to Plug & Abandon" and W-3 "Plugging Record" forms on the same date these forms are submitted to the Railroad Commission.

b.

Prior 48-hour notice of intention to abandon under the provisions of this section and stating the date such work will be commenced. Abandonment may then be commenced on or subsequent to the date so stated.

c.

All wells shall be abandoned in accordance with the rules of the Railroad Commission; however, all well casings and cellars shall be cut and removed to a depth of at least three feet below the surface. A permanent abandonment marker, with the well identity and location permanently inscribed, shall be welded to the casing.

4.

Abandonment requirements prior to new construction. All abandoned or deserted wells or drill sites shall meet the most current abandonment requirements of the Railroad Commission prior to the issuance of any building permit for development of the property. No structure shall be built over an abandoned well.

P.

Certificate of Request for Inspection and Extension of Permit.

On or before ninety (90) days prior to each annual anniversary date of Operator's Oil and Gas Well Permit, Operator shall submit to the City Manager a Certificate of Request for Inspection of Permit. The Certificate of Request for Inspection of Permit must state the location and name of the well and the date the permit was granted by the City Council. The Certificate of Request for Inspection of Permit must be signed by the Operator before a notary public stating that the well is in compliance with the permit and all applicable Ordinances. The Certificate of Request for Inspection of Permit must

be accompanied by an application and inspection fee of \$300.00. The City Manager shall grant a one-year inspection approval on the oil/gas drilling permit if the Operator is in compliance with the permit and all applicable ordinances as they apply to the inspected well. Prior to authorizing the inspection approval, the City Manager, or his designee, shall inspect the oil and gas well site that is subject to the oil/gas drilling permit. The City Manager shall issue his decision in writing, within thirty (30) days of receiving the Certificate for Request for Inspection of Permit, either granting or denying the inspection of the oil/gas drilling permit.

The Operator may appeal the City Manager's denial of an oil/gas drilling permit inspection by submitting, in writing, an appeal to the City Council within thirty (30) days of the City Manager's written denial of the oil and gas well permit inspection. If an appeal is received by the City Council, a hearing shall be set before a meeting of the City Council to consider the denial of the oil/gas drilling permit inspection. The City Council shall hear and consider the recommendation of the City Manager, or his designee, before deciding whether or not to uphold the City Manager's decision. The Operator shall be allowed to speak and present any relevant evidence for consideration by the City Council prior to a vote of the council. A majority vote of the City Council shall be required to uphold the denial of the Oil and Gas Well Permit inspection by the City Manager. An inspection that is approved shall be valid for one (1) year from the inspection date.

(Q)

Measurement.

The measurement of all distances set forth herein shall be calculated from the proposed surface location of the well and tank batteries in a straight line, without regard to intervening structures or objects, to the closest exterior point of the object.

(R)

Effect of denial of oil and gas well permit.

If an application for an Oil and Gas Well Permit is denied by the City Council, nothing herein contained shall prevent a new permit application from being submitted to the City Council for the same proposed Oil and Gas Well or a different location for a well. A new application may also be filed on any of the mineral estate owned or leased by the applicant. Once all of the Operator's administrative and legislative remedies have been exhausted herein, the Operator may appeal or challenge the denial of an application in an appropriate Court in Midland County Texas under applicable state or federal law.

(S)

Amendment to Oil and Gas Well Permit.

1.

Amendment required. Within one hundred eighty (180) days after an Operator has been granted an Oil and Gas Well Permit, an Operator may submit an application to the City to amend an existing Oil and Gas Well Permit to commence Drilling from a new Drill site that is not shown on (or incorporated by reference as part of) the existing Oil and Gas Well Permit.

2.

Application Requirement for Amendment to Permit. An application for an amended Oil and Gas Well Permit shall meet all the requirements of this Section, shall be in writing, shall be on forms provided by the City, shall be signed by the Operator, and shall include the following:

a.

An amendment fee of \$1,000.00.

b.

A description of the proposed amendments.

c.

Any changes to the information previously submitted with the application for the existing oil/gas drilling permit (if such information has not previously been provided to the City).

d.

Such additional information as is reasonably required by the City to demonstrate compliance with the original oil/gas drilling permit.

e.

Such additional information as is reasonably required by the City to prevent imminent destruction of property or injury to persons.

3.

Review of Application for Amendment to Permit. All applications for an amended oil/gas drilling permit shall be considered in accordance with the factors listed in Subsection (I) herein. The City Council may elect to consider the application for an amended oil/gas drilling permit without the requirement of a public hearing.

4.

Standard of review.

a.

No Material Change from Existing Permit. If the activities proposed by the amendment are not materially different from the activities covered by the existing Oil and Gas Well Permit, and are otherwise in conformance with the requirements of this section, other applicable City Ordinances, the Oil/Gas Drilling Permit then the City Council shall approve the Amended Application.

b.

Material Change from Existing Permit. If the activities proposed by the amendment are materially different from the activities covered by the existing Oil/Gas Well Permit, are not in conformance with the requirements of this Section, other applicable City Ordinances, the Oil/Gas Well Permit, or if, in the judgment of the City Council, the activities proposed by the amendment might create a risk of imminent destruction of property or injury to persons or property or that were not otherwise taken into consideration by the existing Oil/Gas Well

Permit, the City Council may require the amendment to be processed as a new Oil and Gas Well Permit Application.

T.

Independent Contractor. Operator understands and agrees that Operator, its employees, servants, agents, and representatives, shall at no time represent themselves to be employees, servants, agents, and/or representatives of the City. The City shall not have any control over the means or methods by which Operator shall perform its obligations hereunder. Operator shall furnish all equipment and materials necessary to perform hereunder and shall at all times be acting as an independent contractor. No action by either party should be construed to create a partnership, joint venture, or other dual enterprise between the parties.

U.

Assignability; Transfer Permit.

1.

The Operator shall not, either directly or indirectly, assign, sell, or transfer any part of the Oil and Gas Well Permit, or any interest, right, duty, obligation or privilege under the permit, except in accordance with this Subsection.

2.

An Oil and Gas Well Permit may be transferred upon written request by the Operator with the consent of the City Council:

a.

If the transferee agrees in writing to be bound by the terms and conditions of the current Oil and Gas Well Permit and road repair agreement;

b.

If all information previously provided to the City as part of the current Oil and Gas Well Permit is updated to reflect any changes; and

c.

If the transferee provides the insurance and security required by this section.

3.

In determining whether to approve the transfer permit, the City Council may consider the financial standing of the transferee and its record of compliance with respect to existing permits. Should the transfer permit be denied, the transferee may file an application for a new Oil and Gas Well Permit.

4.

The insurance and security provided by the transferor shall be released if the transfer permit is approved; provided, however, that the transfer shall not relieve the transferor from any liability to the City arising out of any activities conducted prior to the transfer, except to the extent that the transferee expressly agrees in writing to assume such liabilities as part of the transfer.

5.

Applications for the transfer of Oil and Gas Well Permits shall be filed with the City's planning department. A non-refundable administration fee shall be charged for each application in the amount of five hundred (\$500.00).

V.

Time Limit Requirements. The failure of the City Council to review and approve an Oil and Gas Well Permit within a specified time limit shall not cause the application for the Oil and Gas Well Permit to be deemed approved. If the City Council denies a request for a permit, the applicant may file a request with the City Council to re-consider the application. The applicant may present any new evidence to the council and may present any extenuating circumstances or other matters deemed relevant by the applicant. The decision of the City Council regarding the issuance of a permit is not final until the request for re-consideration is voted upon by the City Council.

W.

Indemnification. The oil and gas well permit may contain the following language:

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

X.

Incident Reports or Written Complaints. The Operator shall provide a copy of any "incident reports" or written complaints submitted to the Railroad Commission or any other state or federal agency within thirty (30) days after Operator has notice of the existence of such reports or complaints.

Y.

Expiration of permit. Drilling must commence on the Well covered by the Oil and Gas Well permit twelve (12) months of approval by the City Council, after which the Oil and Gas Well Permit shall automatically expire if no drilling has commenced. A permit extension for a maximum time period of six (6) months may be granted by the City Manager without reapplication after the City Manager receives a written request from the Operator.

Z.

Takings determination.

1.

Any aggrieved applicant that believes that an action taken pursuant to this Section by the City Council or any officer or employee of the City constitutes a taking under the Texas or United States Constitution or under other state law, may file an application with the City Council requesting a takings determination.

2.

The applicant seeking a takings determination from the Council shall file its appeal with the office of the City Secretary. The City Secretary shall then forward the appeal to the City Council for consideration. An appeal fee in the amount of two hundred fifty (\$250.00) dollars shall accompany each filing.

3.

The appeal shall state the reasons that the applicant believes would support a finding that the City's actions constitute a taking under the Texas or United States Constitution or pursuant to other State law and shall include evidence substantiating the purported diminution in value of the applicant's real property.

4.

If the Council finds by a majority vote in favor of the applicant it may: (1) grant the relief requested, or (2) direct the City Manager to rescind action taken by City Staff that formed the basis of the takings determination appeal. If the Council denies the appeal, or after a favorable determination the City Council fails to take action as specified above, the applicant may appeal the decision or inaction of the City Council to the county or district court of the county in which the affected real property is located within thirty (30) days of the date that the Council issues its final decision or in the event the Council does not act on the application, then the operator may appeal to the county or district court after the expiration of one hundred twenty (120) days from the date the application is heard by the City Council.

Notice addresses are as follows:

City of Midland
Attn: Office of the City Manager
P. O. Box 1152
Midland, Texas 79702

OPERATOR: _____
Jeffrey T Beard, Land Manager

CrownQuest Operating, LLC
500 West Texas Ave. Suite 500
Midland, Texas 79701
(432) 818-0300



APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

RECEIVED

MAY - 1 2013

CITY OF MIDLAND
PLANNING DIVISION OFFICE

I. General Information

Date 5/1/13	Operator Name (must match W-1) CrownQuest Operating, LLC	Operator Address 500 West Texas Ave., Suite 500 Midland, Texas 79701
Representative Name Jeffrey T. Beard	Representative Address (within Midland City Limits) 500 West Texas Ave., Suite 500 Midland, Texas 79701	Rep. Tele. 432-818-0300 Rep. Fax 432-687-4804
Fee: \$4,000.00 Rec'd Yes ☒ No ☐	NOTE: All attachments need to bound and put in a binder before submitting.	Pages 1-4
Permit Compliance Contact (Choose 1): Option A: Jeffrey T. Beard		
24/7 Answering Services - No. 1 (Tele.): 432-212-9308 No. 2 (Tele.): 432-818-0300		
Option B: David Kuhnert, 500 West Texas Ave., Suite 500 Midland, Texas 79701 Phone: 432-269-6404		
Company Compliance Representative (Name, Address, Local Telephone) (ATTACH STATEMENT AS EXHIBIT A):		
Emergency Contact Representative (Name, Address, 24-Hour Tele. No.): David Kuhnert, 500 West Texas Ave., Suite 500 Midland, Texas 79701 Phone: 432-269-6404		
Other Permitted Wells in City (ATTACH EXHIBIT B [see § J(26)]). None		

II. Mineral Ownership

Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease):

- 1.
2. See attached Title Opinion
- 3.

ATTACHED AS EXHIBIT C is (a Title Opinion by Albert Sherman, a licensed Texas Attorney/Title Commitment by Abstract Company/a Take-off from , a Certified Petroleum Landman/an opinion letter from , a licensed Texas Attorney) indicating that [Operator] has a legal right to develop the mineral estate that is the subject of this Application. [See § J(5)].

III. Surface Ownership & Use

General Description of Current Surface Use (within 860 feet of proposed surface location):

Pasture Land

ATTACHED AS EXHIBIT D is (a Title Opinion by Albert Sherman, a licensed Texas Attorney/a Take-off from , a Certified Petroleum Landman/Current Tax Roll from Midland Central Appraisal District), which lists the name(s) and address(es) of all surface owners within 860 feet of the surface well location. [See § J(7)].

ATTACHED AS EXHIBIT E is a (map/p lat/satellite/aerial photo) depicting all Residences, commercial structures, public buildings, all publicly dedicated Streets and alleys, Rights of Way, and permanent accessory structures surrounding the proposed Drill Site. The (map/p lat/satellite/aerial photo) includes two circles, as required by the Ordinance—one depicting a 500 foot radius and one depicting an 860 foot radius from the proposed well's surface location. [See § J(10)].

ATTACHED AS EXHIBIT F is a copy of the notification letter(s) sent to 100 percent of the surface owners, Certified Mail, Return Receipt Requested. [See § J(36)].

IV. Well & Operations Information

Proposed Well Name: COM Nail #1

Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary)[See § J(11) and § L(4)]:

See Attached Exhibit V

Legal Description of Proposed Well Site:

1,550'FSL, 1,980FEL of Section 36, Block 39, T1N T&P RR Co. Survey, Martin County, Texas

ATTACHED AS EXHIBIT G is the Location Site Plan [See § J(9)].

ATTACHED AS EXHIBIT H is the Map with the proposed transportation route(s) and road(s) for equipment, chemicals, or refuse products used or produced in the proposed oil and gas operations. [See § J(12)].

ATTACHED AS EXHIBIT I is a copy of the approved Texas Railroad Commission permit to drill (Form W-1), together with all attachments (also file copy of W-1 with City Secretary before commencement of drilling operations). [See § J(16) and (20)].

ATTACHED AS EXHIBIT J is a copy of the required TCEQ report as to depth of usable quality ground water. [See § J(17)].

ATTACHED AS EXHIBIT K (if applicable) is the list of alternative locations developed in consultation with the Oil & Gas Advisory Committee. [See § J(27)].

ATTACHED AS EXHIBIT L is the Fencing and Irrigation Plan. [See § J(30)].

ATTACHED AS EXHIBIT M is the Road Repair Agreement and Letter of Credit/Certificate of Deposit/Surety Bond in the amount of at least \$25,000. Option (if applicable): Applicant would further state that no City-owned streets or alleys will be used by the Operator in connection with its oil and gas operations and as a result, requests a waiver from the Council of this requirement. Option B (if applicable): Because Applicant has three Road Repair Agreements in effect that have been approved by the Council, Applicant requests that the Council consolidate all agreements into one and is filing the necessary \$75,000 letter of credit/certificate of deposit/surety bond in conjunction with this request. [See § J(31)].

ATTACHED AS EXHIBIT N is the Concept Plan depicting the proposed Operations Site (which includes tanks, roads, power lines, and pipeline routes). [See § J(32)].

Description of Public Utilities required during (1) drilling and (2) operations:

- (1) **Drilling:** None
- (2) **Operations:** Sharyland Utilities

Description of water source to be used during Drilling:

Water to be hauled by truck to location

Description of all electric lines to production facilities (reference exhibits as necessary) [See § L(10)]:

Overhead electric lines

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]:

See attached Exhibit O

V. Additional Required Exhibits

ATTACHED AS EXHIBIT P is the *Letter of Credit/Certificate of Deposit* in accordance with Subsection (K)(2). [See § J(18)].

ATTACHED AS EXHIBIT Q are Tax certificates from Midland Central Appraisal District to be submitted indicating that all taxes on personal and real property, including minerals, owned by Applicant are current. [See § J(29)].

ATTACHED AS EXHIBIT R is the required Insurance Certificate. [See § J(19) and § K(3)].

ATTACHED AS EXHIBIT S (if applicable) is the Drainage Plan approved by the City Engineer relating to Applicant's proposed operations. [See § J(21)].

ATTACHED AS EXHIBIT T is Applicant's Emergency Action Response Plan. [See § J(22)].

ATTACHED AS EXHIBIT U is Applicant's Hazardous Materials Management Plan, a copy of which has been submitted and is on file with the Midland Fire Department. [See § J(23)].

CrownQuest Operating, LLC

[NAME OF COMPANY]

By Jeffrey T. Beard

Its Land Manager

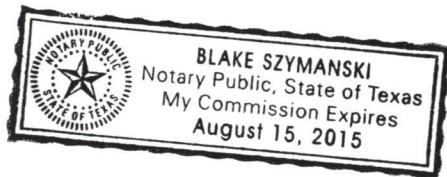
County of Midland)

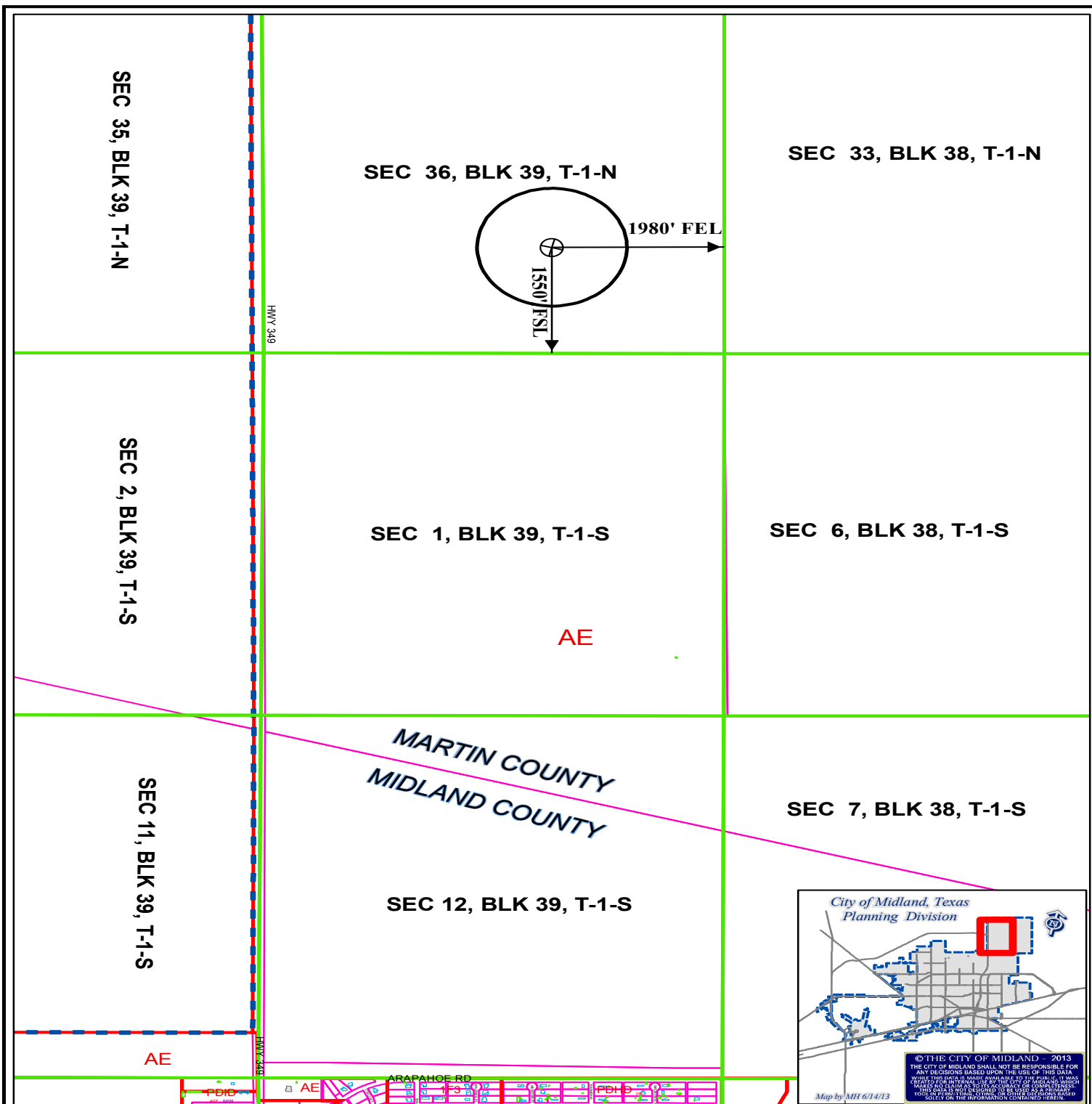
State of Texas)

Jeffrey T. Beard, personally appeared before me, and being first duly sworn declared he/she signed the application in the capacity designated, if any, and further states that he/she has read the above application and attached exhibits and the statements therein are true and correct to the best of their knowledge.

[Signature]
Notary Public, State of Texas

[SEAL]





LOCATION AND ZONING MAP

O - 13 - 008

Scale: 1" = 1,600'

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 1550' FSL and 1980' FEL, Section 36, Block 39, T-1-N, T & P RR Co. Survey, Martin County, Texas.

COM Nail #1

LEGEND

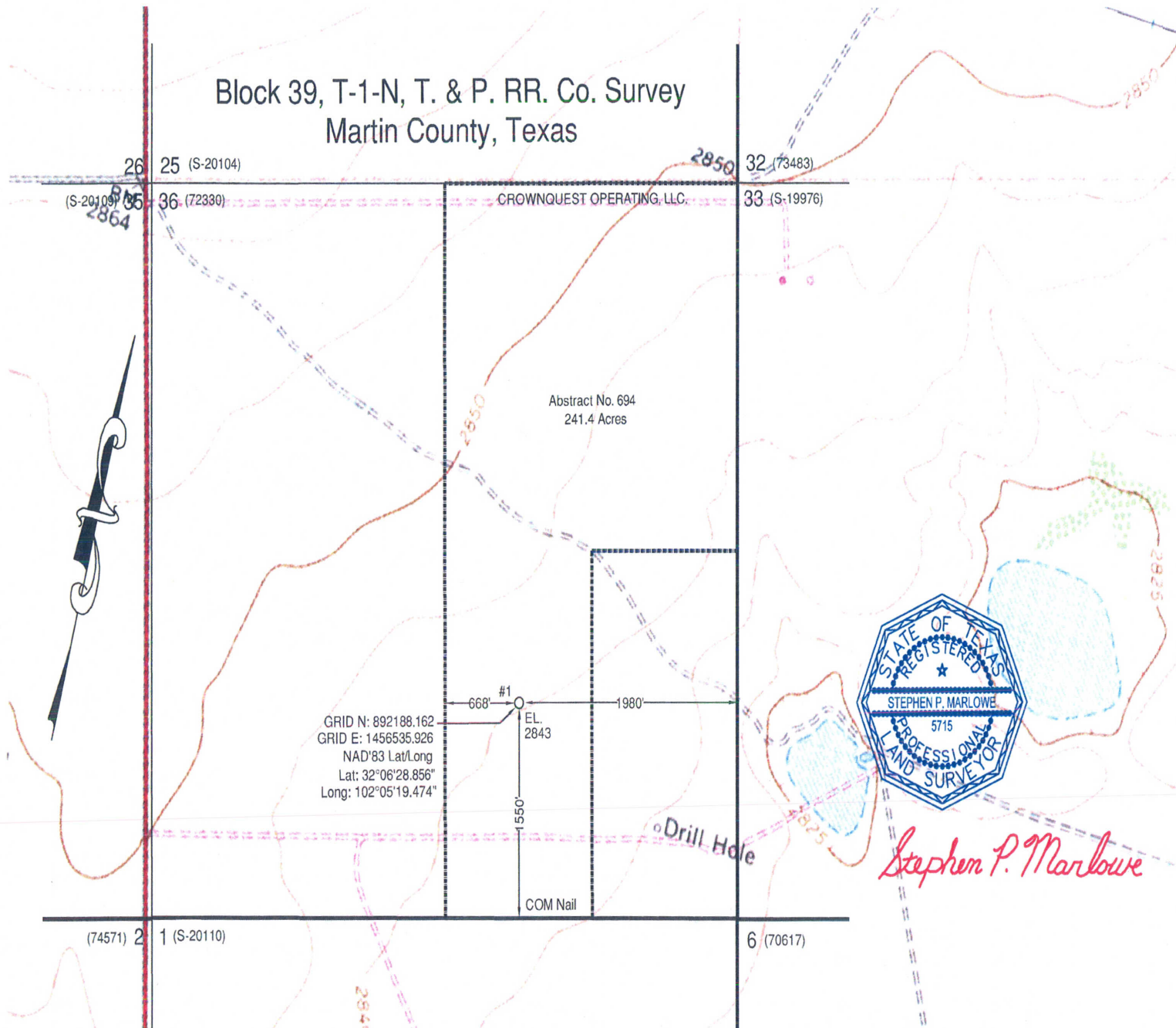
	CITY PARCELS		PUBLIC BLDGS		CITY LIMITS
	COUNTY PARCELS		PRIVATE BLDGS		860 FT. BUFFER
	ZONING		ACCESSORY BLDGS		SURVEY SEC.

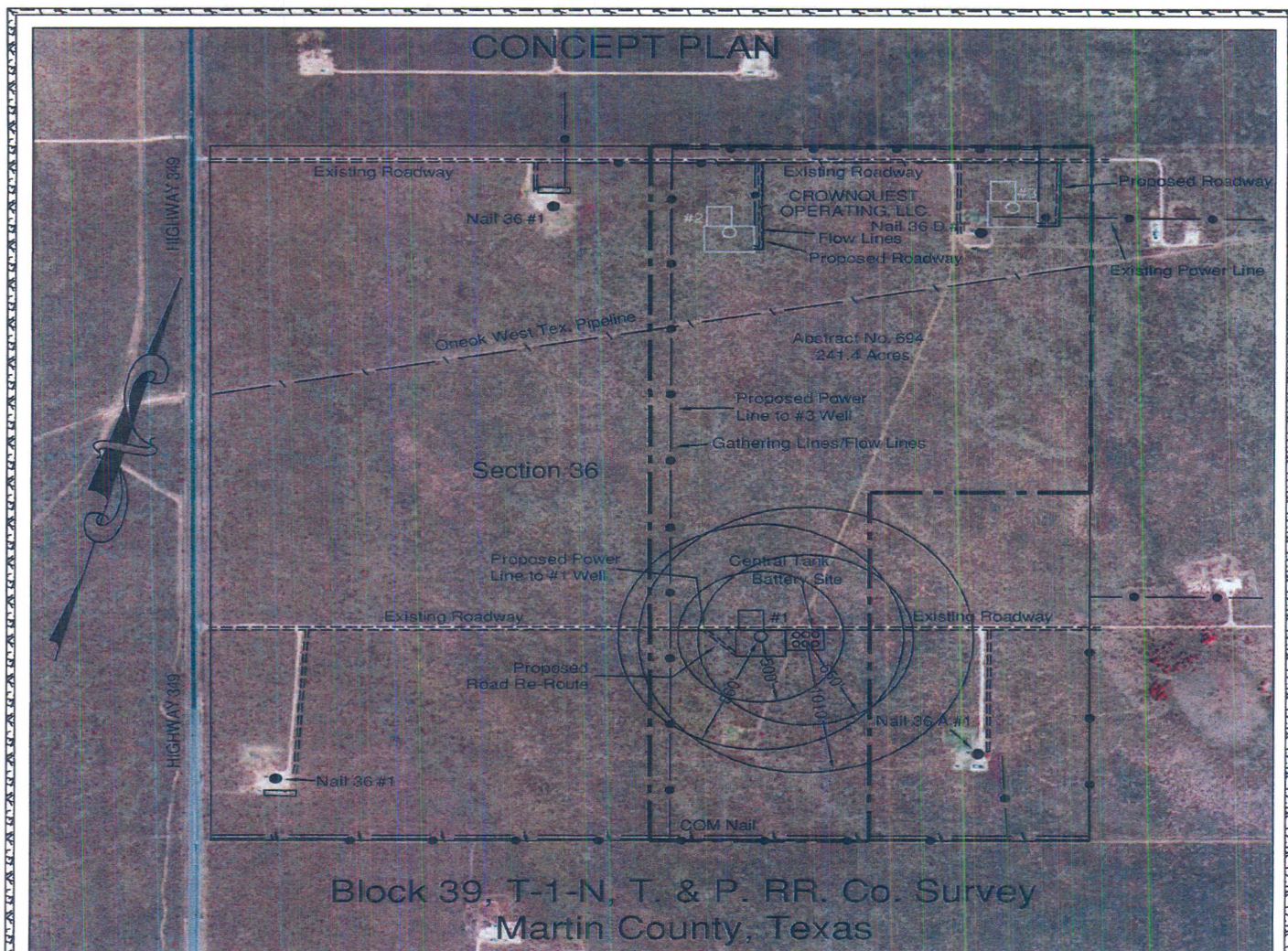
ZONING DISTRICTS:

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

20.41

Block 39, T-1-N, T. & P. RR. Co. Survey Martin County, Texas





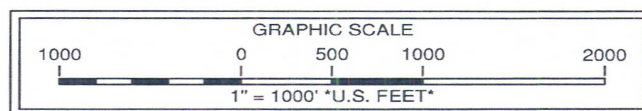
LEGEND:

- x — Fence
- ● — Overhead Power Line
- \ — Pipeline (As described)
- --- — Road (As described)
- E — Buried Electric Line
- +++++ Railroad Tracks
- - - - Well Lease Line
- - Well (As described)

COM Nail #1
Lat: 32°06'28.86"N
Long: 102°05'19.47"W

Center of Battery Facility
Lat: 32°06'29.36"N
Long: 102°05'16.36"W

Note: Lat/Longs shown herein are NAD'83 Datum.



Stephen P. Marlowe
REGISTERED PROFESSIONAL LAND SURVEYOR NO. 5715



August 3, 2012

120803B10

P.O. Box 51622, Midland, Texas, 79710 (432) 570-6256 Fax (432) 682-3262

CONCEPT PLAN

CROWNQUEST OPERATING, LLC.
CONCEPT PLAN
COM Nail #1
1550 FSL & 1980' FEL
Section 36, Block 39, T-1-N
T. & P. RR. Co. Survey
Martin County, Texas

Scale: 1" = 1000'



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: August 13, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Ron Jenkins, Oil & Gas Compliance Coordinator

SUBJECT: Consider a resolution approving the issuance of a permit to CrownQuest Operating, LLC (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (COM Nail #2) located 660 feet from the north line and 2,173 feet from the east line located in Section 36, Block 39, T-1-N, T&P RR Co. Survey, City of Midland and County of Martin, Texas. (Generally located on the east side of the State Hwy 349, approximately 3 miles north of Arapahoe Road. – District 1)

Purpose:

To consider a resolution approving the issuance of a permit to CrownQuest Operating, LLC (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (COM Nail #2) located 660 feet from the north line and 2,173 feet from the east line located in Section 36, Block 39, T-1-N, T&P RR Co. Survey, City of Midland and County of Martin, Texas. The required 30-day public comment has passed and the Council may consider this request. No letters of objection received.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to process this application.

Discussion:

The Oil and Gas Advisory Committee has reviewed this well site in detail and recommends approval of the application with a title opinion including addresses, notation of the 860 ft. circle, a map clarification, language change for variance request concerning fencing and road repair agreement, include emergency phone numbers and make a correction to the MSDS. CrownQuest Operating, LLC has addressed the recommendations and updated the application. The Oil and Gas Advisory Committee recommends approval of

landscaping/irrigation variance, variance for having the required slats in fencing, waiver of road repair and having a right-of-way-agreement prior to receiving permit.

Attachments: Application; Location map; Exhibit - Drill site map, Exhibit – Flow Line Location.

RESOLUTION NO. _____

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO CROWNQUEST OPERATING, LLC (“OPERATOR”) TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 660 FEET FROM THE NORTH LINE AND 2,173 FEET FROM THE EAST LINE, SECTION 36, BLOCK 39, T-1-N, T&P RR CO. SURVEY, CITY OF MIDLAND AND MARTIN COUNTY, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF THE STATE HIGHWAY 349, APPROXIMATELY 3 MILES NORTH OF ARAPAHOE ROAD); AND WAIVING THE REQUIREMENT OF A ROAD REPAIR AGREEMENT

WHEREAS, on December 8, 2009, the City Council of the City of Midland duly approved Ordinance No. 8769 which amended Title VI, “Police Regulations,” Chapter 1, “General Offenses,” of the City Code of Midland, Texas, so as to establish Section 23, “Oil and Gas Well Permits issued on or after January 1, 2010,” which governs the granting or rejecting of Oil and Gas Well Permits; and

WHEREAS, the purpose of said section is to establish reasonable and uniform limitations, safeguards, and regulations for present and future operations related to the exploring, drilling, developing, producing, transporting and storing of oil or gas or other substances produced in association with oil and gas within the City of Midland to protect the health, safety, and general welfare of the public and the orderly development of the City of Midland; abate or prevent potential public nuisances; minimize the potential adverse impact to surface and mineral owners, protect the quality of the environment and encourage the orderly production of available mineral resources; and

WHEREAS, Section 6-1-23(C) of the City Code of Midland, Texas, makes it an offense to knowingly drill or participate in the drilling of any well or to re-enter any well within the corporate limits of the City of Midland without a permit having first been issued by the authority of the City Council; and

WHEREAS, Operator has submitted an application to the City of Midland to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, notice of the public hearing on this matter was provided in accordance with Section 6-1-23(H)(1) and a public hearing was held on July 9, 2013; and

WHEREAS, subsequent to said public hearing, and in accordance with Section 6-1-23(H)(1), the City Council allowed the public and Operator thirty (30) days to submit written input to the City Manager regarding Operator's application to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, the City Council has considered those issues set forth in Section 6-1-23(I) in determining whether to grant or deny a permit to Operator to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, the City Council finds it to be in the public interest to approve the issuance of a permit to Operator to drill an oil and gas well on the property described in Section Two hereof;

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

SECTION ONE. That the above recitals are hereby adopted and approved by the City Council of the City of Midland.

SECTION TWO. That the Mayor is hereby authorized and directed to execute a permit, on behalf of the City of Midland, that will allow Operator to drill an oil and gas well within the City limits located 660 feet from the north line and 2,173 feet from the east line, Section 36, Block 39, T-1-N, T&P RR Co. Survey, City of Midland and Martin County, Texas. Said permit is attached hereto as Exhibit "A" and incorporated herein for all legal purposes.

SECTION THREE. That the requirement of a Road Repair Agreement between Operator and the City of Midland is hereby waived in regard to said permit.

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

the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on August 13, 2013, considered the application of CrownQuest Operating, LLC, dated May 1, 2013, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with the Midland City Code, Ordinance 8769, to drill an oil and gas well, in the application of CrownQuest Operating, LLC dated May 1, 2013, and filed with the Oil & Gas Compliance Officer and incorporated herein for all legal purposes.

The location of CrownQuest Operating, LLC, COM Nail #2 oil and gas well shall be 660 feet from the north line and 2,173 feet from the east line, Section 36, Block 39, T-1-N, T&P RR Co. Survey, City of Midland and County of Martin, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in that application of Midland Energy, Inc., which is incorporated herein. Further, all operations done under this permit shall be done and accomplished in strict accordance with the Midland City Code, Ordinance 8769, which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit. Also, all operations done under this permit shall be done and accomplished in strict accordance and compliance with the General Conditions, which are attached hereto marked as Exhibit "A" and incorporated into and made a part of this permit for all purposes. All operations done and required under this permit shall be done and accomplished in strict accordance and compliance with the Specific Conditions which are attached hereto, marked as Exhibit "B", and incorporated into and made a part of this permit for all purposes.

This permit shall be effective from August 13, 2013, through August 13, 2014, and so long thereafter as oil or gas is produced or until such time as the permittee has permanently abandoned the operations of the well or facility for which this permit is issued.

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

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts the permittee from its responsibilities or obligations as to third parties. The issuance of this permit only means that the permittee has, at this time, complied with Ordinance No. 8769 and that the Midland City Council, as a regulatory body, will allow the permittee to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize the recipient to act with impunity as to third parties, nor does it insulate the permittee from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize the permit holder from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a "negative pronouncement" that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. The permittee has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield the permittee from third party tort liability stemming from the consequences of the permitted activity.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, utility and drainage rights-of-way.

A variance granted for having the required beige colored slats woven through the fencing until the surface is developed into airport.

A variance granted for landscaping and irrigation to be installed when the surface is developed into airport.

A waiver granted for road repair agreement due to no city streets used by operator to access well or tank battery.

This permit shall constitute a written contract for purposes of insurance requirements.

In addition to the requirements of the Midland City Code, Ordinance 8769, and the requirements of this permit, including the General and Specific Conditions incorporated herein, CrownQuest Operating, LLC, shall develop, maintain and operate the well described herein in accordance with the conditions, limitations and safeguards contained in CrownQuest Operating, LLC, application for said well. CrownQuest Operating, LLC, application for said well is incorporated herein by reference for all legal purposes.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS _____ day of August, 2013.

CITY OF MIDLAND, TEXAS

BY: _____

W. Wesley Perry, Mayor

UNDERSTOOD AND AGREE THIS _____ day of August, 2013.

CrownQuest Operating, LLC

By: _____

Jeffrey T Beard, Land Manager

OIL AND GAS PERMIT: ORDINANCE 8769 GENERAL CONDITIONS- EXHIBIT "A"

(K)

General Conditions of all Oil and Gas Well Permits.

1.

General Obligations of Operator.

The Operator shall be required to:

a.

Comply with the terms and conditions of this Section, the Midland City Code, the rules and regulations of the Railroad Commission, and any other state or federal agency that enforces land use, mineral use, or environmental protection regulations.

b.

Promptly clear Drill and Operation sites of litter, trash, refuse and other substances used, allowed, or occurring in the operations, and after abandonment or completion, grade, level, and restore such property to the same surface conditions as nearly as practicable as existed before operations.

c.

Indemnify and hold harmless the City of Midland, the City's officers, agents and employees, from any and all claims, losses, damages, causes of action, suits, and liability of any kind, including all expenses of litigation, court costs, and attorney's fees, for injury to or death of any Person, or for damage to any property arising out of or in connection with the work done by Operator under an Oil and Gas well permit: where such injuries, death or damages are caused by Operator's sole negligence or the joint negligence of the Operator and any other Person or entity.

d.

Promptly pay all fines, penalties and other assessments imposed due to breach of any of the conditions herein. If the Operator does not agree that a breach has occurred, the Operator may file a written objection with the City Manager within ten (10) days of being notified of the alleged breach. The City Manager shall review the objections and give the Operator the opportunity to be heard and present facts that the Operator deems relevant.

e.

Promptly restore to its former condition any public property damaged by the oil and gas operation.

f.

Except as permitted by Subsection U, hereof, Operator shall not, either directly or indirectly, assign all or any part of an Oil and Gas Well Permit.

g.

If required by the Permit, Operator shall execute a "Road Repair Agreement" between itself and the City of Midland and submit all necessary information and insurance and guarantees to the City prior to the issuance of any Oil and Gas Well Permit under this Section.

2.

Irrevocable Letter of Credit, Certificate of Deposit, or Surety Bond.

Prior to the issuance of an Oil and Gas well permit, the Operator shall provide the City Attorney with a guarantee in the form of an irrevocable letter of credit, certificate of deposit, or surety bond in the name of the City. The Applicant shall be entitled to receive the interest earned if the certificate of deposit reaches maturity. The letter of credit, certificate of deposit, or surety bond must satisfy the following:

a.

The letter of credit, certificate of deposit or surety bond shall be issued by a reliable bank or insurance carrier authorized to do business in the State of Texas;

b.

The letter of credit, certificate of deposit or surety bond shall be effective starting on or before the effective date of the Oil and Gas Well Permit;

c.

The letter of credit, certificate of deposit or surety bond shall be in the amount of twenty-five thousand dollars (\$25,000.00);

d.

The letter of credit, certificate of deposit or surety bond shall remain in full force and effect for a period of three years; and

e.

The letter of credit, certificate of deposit or surety bond shall authorize the City of Midland to draw upon such credit in the event the City Manager, or his designee, determines said credit is needed to remedy any violation of this Section.

If the well is still producing or if the well has not been abandoned or plugged, the Operator must renew the letter of credit, certificate of deposit or surety bond on or before one hundred twenty (120) days prior to the expiration of the letter of credit, certificate of deposit or surety bond.

The City of Midland may draw upon the letter of credit, certificate of deposit or surety bond to recover costs of repairs, modifications, or construction to remedy any violations by the Operator under this Section. The City may make partial or full draws of the letter of credit, certificate of deposit or surety bond. The City may draw upon the letter of credit, certificate of deposit or surety bond in the event the City has not received a new letter of credit, certificate of deposit or surety bond within the one hundred twenty (120) day renewal time period required above.

The Operator shall maintain the principal amount of \$25,000.00 in the form of a letter of credit, certificate of deposit or surety bond at all times throughout the term of the permit. In the event such letter of credit, certificate of deposit or surety bond is not restored to \$25,000.00 within ten (10) days after the date of the reduction of the letter of credit, certificate of deposit or surety bond, the City may draw and receive the remaining balance of the letter of credit, certificate of deposit or surety bond, and the Oil and Gas Well Permit shall be suspended on such date and the Operator's right to operate under Oil and Gas Well Permit shall immediately cease until the Operator files the required letter of credit, or certificate of deposit or surety bond.

If an operator has three (3) or more Oil and Gas Well Permits in effect which have been approved by the City Council, the Operator may petition the Council to consolidate the letter of credits, certificate of deposits or surety bonds into one letter of credit, certificate of deposit or surety bond that would cover all Oil and Gas Wells in the City limits. The consolidated letter of credit, certificate of deposit or surety bond shall be in an amount determined by the City Council as sufficient to cover the costs of repairs, modifications, construction or to remedy violations by the Operator but in no event shall the amount be less than \$75,000.00.

3.

Insurance.

In addition to the letter of credit, certificate of deposit or surety bond required above, the Operator shall carry a policy or policies of insurance issued by an admitted insurer or eligible surplus lines insurer authorized to do business in the State of Texas. In the event such insurance policy or policies are cancelled, any Oil and Gas Well Permit issued under this Section shall be suspended on such date of cancellation and the Operator's right to operate under such Oil and Gas Well Permit shall immediately cease until the Operator files additional insurance as required herein.

- a. General requirements applicable to all policies.
- i. The City, the City's officials, employees, agents and officers shall be endorsed as an "Additional Insured" on all policies, except under Operator's Workers Compensation Policy.
 - ii. All policies shall be written on an occurrence basis, except for Environmental Pollution Liability (Seepage and Pollution coverage) and Excess and Umbrella Liability, which may be on a claims-made basis.
 - iii. All policies shall be written by an admitted insurer or eligible surplus lines insurer authorized to do business in the State of Texas.
 - iv. Deductibles shall be listed on the Certificate of Insurance and shall be on a "per occurrence" basis unless otherwise stipulated herein.
 - v. Certificates of Insurance shall be delivered to the City of Midland, P.O. Box 1152, Midland, Texas 79702, Attn: City Attorney's Office, evidencing all the required coverages, including endorsements, prior to the issuance of an Oil and Gas Well Permit under this Section.
 - vi. All policies shall be endorsed with a waiver of subrogation providing rights of recovery in favor of the City.
 - vii. Any failure on the part of the City to request required insurance documentation shall not constitute a waiver of the insurance requirements specified herein.
 - viii. Each policy shall be endorsed to provide the City a minimum thirty (30) day notice of cancellation, non-renewal, and/or material change in policy terms or coverage. A ten (10) day notice shall be acceptable in the event of non-payment of premium.
 - ix. During the term of any Oil and Gas Well Permit issued hereunder, the Operator shall report, in writing, within thirty (30) days of the occurrence, to the City Manager, any known

loss occurrence which could give rise to a liability claim or lawsuit or which could result in a property loss.

x.

Upon request, certified copies of all insurance policies shall be furnished to the City.

xi.

Operator shall have the right to maintain a qualified, self-insurance plan and/or maintain prudent levels of self-insured retentions for insurance coverage required in this section; however, Operator shall remain financially obligated for all self-insured retention amounts and deductibles. To the extent of the liabilities assumed by the Operator, Operator's insurance shall be primary coverage as to any liabilities of the City.

b.

Standard Commercial General Liability Policy.

This coverage must include premises, operations, blowout or explosion, products, completed operations, sudden and accidental pollution, blanket contractual liability, underground resources damage, broad form property damage, independent contractors protective liability, accidental death and personal injury. This coverage shall be a minimum Combined Single Limit of \$1,000,000.00 per occurrence for Bodily Injury, Accidental Death, and Property Injury.

c.

Excess or Umbrella Liability.

\$1,000,000	Excess, if the Operator has a stand-alone Environmental Pollution Liability (EPL) policy.
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\$10,000,000	Excess, if the Operator does not have a stand-alone EPL policy. Coverage must include an endorsement for sudden or accidental pollution. If Seepage and Pollution coverage is written on a "claims made" basis, the Operator must maintain continuous coverage and purchase Extended Coverage Period when necessary.
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d.

Environmental Pollution Liability Coverage.

Operator shall purchase and maintain in force for the duration of any Oil and Gas Well Permit issued hereunder, insurance for environmental pollution liability applicable to bodily injury, property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense or settlement of claims; all in connection with any loss arising from the insured site.

Coverage shall be maintained in an amount of at least \$1,000,000 per loss, with an annual aggregate of at least \$10,000,000.

Coverage shall apply to sudden and accidental pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids or gases, refuse material or other irritants, contaminants or pollutants.

e.

Workers Compensation and Employers Liability Insurance.

i.

Workers Compensation benefits shall be Texas Statutory Limits.

ii.

Employers Liability shall be a minimum of \$1,000,000.00 per accident.

iii.

Such coverage shall include a waiver of subrogation in favor of the City of Midland and provide coverage in accordance with applicable State and Federal laws.

f.

Automobile Liability Insurance.

i.

Combined single limit of \$1,000,000.00 per occurrence for bodily injury and property damage.

ii.

Coverage must include all owned, hired and not-owned automobiles.

g.

Certificates of Insurance.

i.

The company must be licensed or authorized to do business in the State of Texas.

ii.

The insurance set forth by the insurance company must be underwritten on forms that have been approved by the Texas State Board of Insurance or ISO or an equivalent policy form acceptable to the City, with the exception of environmental pollution liability and control of well coverage.

iii.

Set forth all endorsements and insurance coverage according to requirements and instructions contained herein.

iv.

Shall specifically set forth the notice of cancellation, termination, or change in coverage provisions to the City. All policies shall be endorsed to read "THIS POLICY WILL NOT BE CANCELLED OR NON-RENEWED WITHOUT THIRTY (30) DAYS ADVANCE WRITTEN NOTICE TO THE OWNER AND THE CITY, EXCEPT WHEN THIS POLICY IS BEING CANCELLED FOR NONPAYMENT OF PREMIUM, IN WHICH CASE, TEN (10) DAYS ADVANCE WRITTEN NOTICE IS REQUIRED".

v.

Original endorsements affecting coverage required by this section shall be furnished with the certificates of insurance.

vi.

At the request of an Operator, the Council may grant a variance to insurance requirements if the Council determines that the insurance procured by the Operator is sufficient to protect the City. A variance of this type may be required because of a change in underwriting policies of admitted insurance carriers.

Indemnification.

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

Notice.

The notices provided in this permit may be served in person or by registered or certified mail. Operator shall within ten (10) days notify the City Manager in writing of any change in such agent or mailing address unless operations in the City are discontinued and abandonment is complete.

Notice addresses are as follows:

City of Midland
Attn: Office of the City Manager
P. O. Box 1152
Midland, Texas 79702

OPERATOR: _____
Jeffrey T Beard, Land Manager

CrownQuest Operating, LLC
500 West Texas Ave. Suite 500
Midland, Texas 79701
(432) 818-0300

OIL AND GAS WELL PERMIT: ORDINANCE 8769 SPECIFIC CONDITIONS-EXHIBIT "B"

(L)

Specific conditions of all Oil and Gas Well Permits; On-Site Requirements.

1.

Abandoned wells. All wells shall be abandoned in accordance with the rules of the Railroad Commission and pursuant to Subsection (O) of this Section.

2.

Automated audible alarm system. After completion, the appropriate system for flowing gas and/or flowing oil wells must be maintained to provide warnings for a substantial drop in pressure, or the release of any oil or gas, or a fire. Said audible alarm system must be approved by the Fire Marshal prior to installation of production equipment at the flowing gas and/or flowing oil well site.

3.

Blowout prevention. In all cases, ram-type and annular Blowout Preventers shall be used on all wells being drilled. In cases where Re-working is being performed on a Well, ram-type or annular Blowout Preventers shall be used. Protection shall be provided to prevent blowout during Drilling operations as required by and in conformance with the requirements of the Railroad Commission and the recommendations of the American Petroleum Institute. In addition to the Blowout Preventers stated above, all drilling must be equipped with flow lines and valves commensurate with the working pressures involved as required by the Railroad Commission each Blowout Preventer shall be a double-ram design with blinds and pipe. After surface casing has been set and cemented to surface, each Blowout Preventer shall be tested and witnessed by Operator's personnel and the results of such test shall be documented in the Operator's well file. Testing expenses shall be the responsibility of the Operator. The Operator shall provide a complete report of the well blowout prevention test to the City Manager within fifteen (15) days of the test.

4.

Casing. The surface portions of the Well shall be cased with cement circulated to the surface. All surface and intermediate casing must comply with all applicable rules of the Railroad Commission and the Texas Commission on Environmental Quality.

5.

Compliance. Operator shall comply at all times with all applicable federal, state and City requirements.

6.

Discharge. No person shall place, deposit, discharge, or cause or permit to be placed, deposited or discharged, any oil, naphtha, petroleum, asphalt, tar, hydrocarbon substances or any refuse including water or brine from any oil and gas operation or the contents of any container used in connection with any oil and gas operation in, into, or upon any Right-of-way, alleys, streets, lots, storm

drain, ditch or sewer, sanitary drain without permits from the appropriate City departments, or any body of water or onto any private property in the City.

7.

Drilling notice. The operator shall provide at least a forty eight (48)-hour notice to the City Manager prior to mobilizing the Drilling Equipment. In addition to notification to the City Manager, the operator shall provide a notice to the owners of at least forty eight (48) hours or more prior to mobilizing the drilling equipment through a publication in the Midland Reporter Telegram and a posting in the City Secretary's Office.

8.

Drill stem testing. No drill stem testing shall be allowed.

9.

Dust, vibration, odors. All drilling and production operations shall be conducted in such a manner as to minimize, so far as practicable, dust, vibration, or noxious odors, and shall be in accordance with the best accepted practices incident to drilling for the production of oil, gas and other hydrocarbon substances in urban areas. All equipment used shall be so constructed and operated so that, vibrations, dust, odor or other harmful or annoying substances or effect will be minimized by the operations carried on at any Drill Site or Operation Site or from anything incident thereto, to the injury or annoyance of persons living in the vicinity; nor shall the site or structures thereon be permitted to become dilapidated, unsightly or unsafe. Proven technological improvements in industry standards of drilling and production in this area shall be adopted as they become available if capable of reducing factors of dust, vibration and odor.

10.

Electric lines. All electric lines going under City roadways must be bored and encased pursuant to city standards. All electric lines to production facilities may be overhead service unless the surrounding neighborhood is developed with underground electric service. If the surrounding neighborhood is developed with underground electric service, then all electric lines to production facilities shall be buried underground.

11.

Electric motors. Only electric prime movers or motors shall be permitted for the purpose of pumping wells. No electric power shall be generated on location. All electrical installations and equipment shall conform to the City ordinances and the appropriate national codes.

12.

Emergency response plan. Prior to the commencement of any oil or gas production activities, Operator shall submit to the City Manager an emergency response plan establishing written procedures to minimize any hazard resulting from drilling, completion or producing of oil and gas wells. Said plan shall use existing guidelines established by the Railroad Commission, Texas Commission on Environmental Quality, Department of Transportation and/or the Environmental Protection Agency and City Fire Code. A copy of the Emergency Response Plan shall be kept at the Operator's office.

13.

Equipment painted. All production equipment on the site shall be painted beige and maintained at all times, including pumping units, tanks, buildings and structures. The City shall regularly inspect all painted structures and inform Operator when repainting is necessary. Operator shall repaint within sixty (60) days written notice from City. When requiring re-painting of such facilities, the City Manager shall consider the deterioration of the quality of the material of which such facility or structure is constructed, the degree of rust, and its appearance. Upon request of the Operator, a color other than beige may be approved by the City Council.

14.

Explosives. Use of an explosive perforating gun during completion operations and during plugging operations and down-hole operations that require such explosives shall be allowed.

15.

Fire notice. In the event of a fire or discovery of a fire, smoke, or unauthorized release of flammable or hazardous materials on any property, the Operator shall immediately report such condition to the Fire Department in accordance with the City of Midland Fire Code. The reporting limits for hazardous materials release shall conform to the requirements of the Railroad Commission and not exceed any state or federal permitting limit.

16.

Fire prevention; sources of ignition. Firefighting apparatus and supplies as approved by the Fire Marshal and required by any applicable federal, state, or local law shall be provided by the Operator, at the Operator's cost, and shall be maintained on the drilling site at all times during drilling and/or reworking operations. The Operator shall be responsible for the maintenance and upkeep of such equipment.

17.

Fracing operations. No fracing or formation fracture stimulation operations may take place before 7:00 a.m. or after 7:00 p.m.

18.

Fresh water wells. The measurements required by this Subsection shall be in a direct line from the closest Oil and Gas well to the fresh water well.

a.

Upon request of an owner of a fresh water well within 860 feet of an Oil and Gas well, who has been duly notified, Operator shall provide the City Manager with a "pre-drilling" and "post-drilling" water analysis from any such existing fresh water well(s).

b.

Operator shall conduct and fund annual testing for water wells that have been tested pursuant to Subsection (L)18.a. above. This testing program shall continue for the production life of The Well plus three years for a producing well, or for a period of one (1) year for a dry hole.

19.

Compressors. No onsite compressor used to "lift gas" shall be used. No compressor of any type shall be used. In the event Operator determines the use of such compressor is necessary, a detailed plan shall be submitted by Operator to the City Council for consideration. An on-site compressor plan shall include the following information:

- a. The physical size of the compressor;
- b. The power source of the compressor;
- c. The horsepower of the compressor;
- d. The noise of the compressor; and
- e. The manufacturer of the compressor.

No compressor of any type shall be used unless a plan is approved by the City Council.

20.

Gas emission or burning restricted. Operator shall not allow, cause or permit gases to be vented into the atmosphere or to be burned by open flame except as provided by law or as permitted by the Railroad Commission. If the venting of gases into the atmosphere or the burning of gases by open flame is authorized as provided by law or as permitted by the Railroad Commission, then such vent or open flame shall not be located closer than three hundred thirty (330) feet from any building not used in operations on the drilling site and such vent or open flame shall be screened in an effort to minimize detrimental effects to adjacent owners. Operator shall provide notice to the Fire Marshall prior to any open flaring of gas. Gas may not be flared unless for a limited time when completing, or recompleting a well, and only if flaring will not constitute a fire hazard to other owners. If flaring gas, it shall not be burned at a rate greater than 3,000 mcf/d. No gas may be flared between the hours of 7:00 p.m. and 7:00 a.m., except in an emergency.

21.

Gas processing onsite. Except for a conventional gas separator or line heater, no refinery, processing, treating, dehydrating or absorption plant of any kind shall be constructed, established or maintained on the premises without prior written consent of the City Manager.

22.

Grass, weeds, trash. All Drill sites and Operation sites shall be kept clear of high grass, weeds, and combustible trash within a radius of one hundred (100) feet around any Tanks, production facilities, or producing wells.

23.

Hazardous plan. Hazardous Materials Management Plan (HMMP) and all Material Safety Data Sheets (MSDS) for all hazardous materials that will be located, or stored, on the Operations Site shall be submitted to the City Manager.

24.

Lights. Except under emergency circumstances, operator shall not Operate any lights located at the Drill Site. To the extent practicable, and taking into account safety considerations, emergency site lighting shall be directed downward and internally so as to avoid glare on public roads and adjacent dwellings and buildings within three hundred (300) feet. This paragraph does not apply during initial Drilling Operations.

25.

Monitoring for H₂S gas. If required by the Railroad Commission, equipment for the monitoring of H₂S gas shall be used during Drilling. The Operator will comply with all requirements found in Statewide Rule 36 of the Railroad Commission, as amended. Within sixty (60) days after completion, and annually thereafter, Operator shall submit to the City Manager results of testing to determine the concentration of H₂S produced from the Well. If the results of the H₂S testing proves to be one hundred (100) PPM H₂S or greater, the Operator is responsible for determining the one hundred (100) PPM H₂S radius of exposure for each Well and production facility. Wells and facilities where the concentration of H₂S is equal to or greater than one hundred (100) PPM will be considered "Sour." Safety systems described herein must be approved by the Fire Marshall.

a.

The following safety alarms and equipment are required at the well site of all wells that are capable of producing at a sustained rate of at least one hundred twenty-five (125) barrels of oil per day and/or three hundred (300) MCF of gas per day and for "sour" wells whose one hundred (100) PPM H₂S radius of exposure is greater than fifteen (15) feet:

i.

H₂S monitors located along the fencing, as set forth in Subsection M (for "sour" wells only).

ii.

Automated audible alarms to provide warnings for a substantial drop in pressure or for the presence of H₂S in concentrations greater than one hundred (100) PPM.

iii.

Automated valve to shut-in production from the well if a substantial drop in pressure or if the presence of H₂S in concentrations greater than one hundred (100) PPM is detected.

b.

The following safety alarms and equipment are required at "Sour" Tank battery facilities:

i.

H₂S monitors located along the fencing, as set forth in Subsection M.

ii.

Automated audible alarm to provide warnings for the presence of H₂S in concentrations greater one hundred (100) PPM.

iii.

An electrical device capable of shutting down power to all "Sour" wells producing into the battery in the event H₂S in concentrations great than 100 PPM is detected.

26.

Muffling exhaust. Exhaust from any internal combustion engine or compressor, stationary or mounted on wheels, used in connection with the Drilling of any well or for use on any production equipment shall not be discharged into the open air unless it is equipped with an exhaust muffler, or mufflers or an exhaust muffler box constructed of noncombustible materials sufficient to suppress noise and disruptive vibrations and prevent the escape of obnoxious gases, fumes or ignited carbon or soot.

27.

Pits. The following applies for pits used for Drilling and completion operations:

a.

No pit shall be placed in a floodplain without obtaining a floodplain development permit from the City Department of Development Services.

b.

No fresh water pit may be placed in any City recognized drainage way, FEMA floodplain or floodway. Construction of the fresh water pit must comply with all City, state and federal regulations.

c.

The use of earthen pits shall be allowed so long as the construction, use, dewatering and closure of such pits meets or exceeds the requirements of the applicable Railroad Commission rules and Texas Commission on Environmental Quality rules. In addition to compliance with applicable Railroad Commission rules, and Texas Commission on Environmental Quality rules, such earthen reserve pits shall also meet the following requirements;

(i)

the maximum size of a reserve pit shall be no greater than two hundred (200) feet by two hundred (200) feet;

(ii)

The pits shall be lined with a plastic liner having a minimum thickness of eight (8) mil reinforced polyethylene;

(iii)

Reserve pits used in Drilling operations shall be fenced on all open sides during such operations and shall be enclosed on all sides once Drilling operations have ceased;

(iv)

Reserve pits shall be closed within one hundred (180) days of the cessation of drilling operations;

(v)

Drill cuttings may be disposed of on the Drill Site using a deep burial method provided that the burial pit containing the cuttings is located entirely within one hundred thirty five (135) feet of the surface location of the Well, provided that all free water has been removed prior to burying the cuttings, and an impermeable liner is placed above the cuttings prior to covering the cuttings and liner with top soil, and provided that the burial pit is constructed in such a manner that the cuttings will be covered with a minimum of thirty six (36) inches of clean, compactable soil. A survey and description of the location of any closed pit used in connection with the Drill Site shall be recorded in the property records of the county in which the real property is located.

28.

Salt water wells. No commercial salt-water disposal wells that receive water by truck shall be located within the City of Midland. In the event the operator determines that the use of a non-commercial salt-water well is necessary, a detailed plan shall be submitted by the operator to the City Council for consideration. No salt water disposal well of any type shall be used unless a plan is approved by the City Council.

29.

Signs.

a.

A sign shall be immediately and prominently displayed at the gate on the temporary and permanent site fencing erected pursuant to Subsection (M) of this Section. Such sign shall be durable material, maintained in good condition and, unless otherwise required by the Railroad Commission, shall have a surface area of not less than two square feet not more than four square feet and shall be lettered with the following:

i.

Well name and number;

ii.

Name of operator;

iii.

The emergency 911 number; and

iv.

A 24-hour phone number that will provide an emergency phone number of Operator's Representatives as stated in Subsection F.

b.

Permanent weatherproof signs reading "DANGER NO SMOKING OR OPEN FLAME ALLOWED IN THIS AREA" shall be posted immediately upon completion of the well site fencing at the entrance of the well site and tank battery or in any other location approved or designated by the Fire Chief of the City. Sign lettering for this sign shall be two (2) inches or greater in height and shall be red on a white background or white on a red background. Each sign shall include the emergency notification numbers of the Fire Department and the Operator, well and lease designations required by the Texas Railroad Commission.

c.

Provide a National Fire Prevention Association (NFPA) 704 diamond hazard identification signs are required at the entrance to the Operation Site adjacent to the Operator's sign if chemicals are present. A label must be located on each chemical Tank indicating exact chemicals that may be contained in such Tank. Text shall be minimum two inches or greater in height, contrasting with the background color.

30.

Storage of equipment. Storage of equipment and materials shall be minimized and limited to the immediate operational needs of the well. Lumber, pipes, empty drums, trucks, trailers, automobiles, junk tubing, casing and rods shall not be left on the operation site except when drilling or reworking operations are being conducted on the site.

No vehicle or item of machinery shall be parked or stored on any Street, Right-of-Way or in any driveway, alley or upon any Operation Site which constitutes a fire hazard or an obstruction to or interference with fighting or controlling fires except that equipment which is necessary for Drilling or production operations on the site. The Fire Department shall be the entity that determines whether any equipment on the site shall constitute a fire hazard.

31.

Tank Battery Facilities. At the tank battery for either oil and/or gas Wells a sensor for fire detection should be appropriately placed near heater treaters, separators, and oil storage tanks that would allow an automated valve placed at the header to be closed in the event of a detected fire. All storage tanks shall be equipped with a secondary containment system. The secondary containment system shall be a minimum of three (3) feet in height and one and one-half (1½) times the contents of the total tank volume. Drip pots shall be provided at the pump out connection to contain the liquids from the storage tanks. No storage tank shall be over sixteen 16 feet in height. All storage tanks shall be built on an adequate foundation with a twelve 12-mil liner being placed

beneath each tank, extending a minimum of three (3) feet beyond the edge of each tank.

Operator must use portable steel storage tanks or fiberglass tanks for storing all fluids from the well. Tanks must meet the American Petroleum Institute standards. All tanks must have a vent line, lightning arrester and pressure relief valve. All tanks must be enclosed by a fence as required by Section (M) herein. No tank shall exceed sixteen (16) feet in height. No tank battery shall be constructed within five hundred (500) feet of any Occupied Residence, Occupied Commercial Structure or Occupied Public Building, unless a variance is granted by the City Council.

Drilling mud, cuttings, liquid hydrocarbons and all other field refuse derived or resulting from or connected with the drilling, re-working or deepening of any well shall be discharged into a steel pit or an approved earthen pit. All disposals must be in accordance with the rules of the Railroad Commission and with a plan submitted to and approved by the City Manager. Water stored in on-site tanks shall be removed as necessary.

All refuse shall be disposed of in such a manner as to comply with the applicable air and water pollution control regulations of the state, the conditions of this permit, and any applicable ordinance of the City.

Temporary flowback tanks shall be removed within ninety (90) days after completion date of the well at the pad site unless permission is obtained from the City Manager to extend the time period for no more than thirty (30) days. Completion date is that date which is stated as the "completion or recompletion date" shown on the Form W-2 or G-I filed with the Railroad Commission.

All tanks shall be set back pursuant to the standards of the Railroad Commission and the National Fire Protection Association, but in all cases, shall be at one hundred (135) feet from any street or alley right-of-way, three hundred thirty (330) feet from any public athletic field, and five hundred (500) feet from an Occupied Residence, Occupied Commercial Structure or Occupied Public Building, church, public or private school, hospital, nursing home, college or university or daycare center unless a variance is granted by the Midland City Council. Operator shall institute operational practices involving the daily monitoring of tank integrity and fluid levels within each tank. The use of a remote monitoring system is acceptable.

No meters, storage tanks, separation facilities, or other aboveground facilities, other than the well head and flow lines, shall be placed in a floodway identified by FEMA on the most current FIRM or the 100-year floodplain without a floodplain development permit obtained from the Department of Development services.

All fluids and tank bottoms will be disposed of in accordance with Railroad Commission regulations.

32.

Valves. Each flowing high volume well must have an automated shut-off valve to shut-in the well's production at the Operation Site for either a fire or

abnormal change in pressure. The fire department shall have access to the Operation Site and the shut-off valve in an emergency.

33.

Work hours for site development. No construction activities involving the excavation of, demolition of, alteration to, or repair work on any access road or pad site shall occur before 7:00 a.m. or after 7:00 p.m.

34.

Wellhead status after fracing. The wellhead between the time of Drilling/completion and tank battery construction, shall be:

a.

Surrounded with a six (6) foot tall temporary chain link fence having a gate and lock until permanent fencing is installed;

b.

The gate shall be locked at all times, except when the Operator is involved in active operations;

c.

The cellar shall be filled or closed; and

d.

The Bradenhead shall be piped to the surface and open to the atmosphere or have an observable and adequate pressure gauge with operable test valve.

35.

Inspections. In accordance within applicable law, the City Manager, or his designee, at his sole cost, risk and expense shall have a right of entry to the Drill Site/Operation Site and may, at his discretion, visit the Drill Site/Operation Site to make sure operator is in compliance with the requirements of this Section.

36.

Violation. In the event a violation of this ordinance is determined by the City's official (or officials), the City may act in any or all of the following ways:

a.

The City, through its designated official (or officials), may issue a notice of violation to the Operator, its agent, agents, employees or independent contractors (whether on site or not), or to any Person participating in the Drilling of the Well. Such notice may include a citation to appear before the Midland Municipal Court.

b.

If the City Manager, or his designee, finds the Operator to be in violation of any requirement of the applicable Oil and Gas well permit, then the City reserves the right after giving ten (10) business days written notice to the Operator regarding such violation, to draw upon the letter of credit, certificate of deposit or surety bond as outlined in Subsection (K) of this Section, in order to remedy such violation. In the event that a violation is not capable of being remedied within such ten (10) business day period, then Operator must have commenced efforts

to remedy such violation within said ten (10) business day period and thereafter continue with such efforts to remedy said violation with due diligence until completed, and as long as the Operator continues with efforts to remedy a violation with due diligence, the City shall not draw against the letter of credit, certificate of deposit or surety bond. In the event the City makes a claim on the letter of credit, certificate of deposit or surety bond pursuant to the terms hereof, reinstatement of the full amount of the letter of credit, certificate of deposit or surety bond shall be a condition to the cure of the violation leading to such claim. Alternatively, if the City Manager finds the Operator to be in violation of any requirement of the applicable Oil and Gas Well Permit, the City Manager shall give written notice to the Operator that unless all violations are corrected within ten (10) business days of the Operator's receipt of notice of the violation, the City Manager shall recommend to the City Council that the Oil and Gas Well Permit be cancelled by the City Council. In the event that a violation is not capable of being remedied within such ten (10) business-day period, then Operator must have commenced efforts to remedy said violation within said ten (10) business-day period and thereafter continue with such efforts to remedy said violation with due diligence until completed, and as long as the Operator continues with efforts to remedy a violation with due diligence, as determined by the City, the City shall not draw against the letter of credit, certificate of deposit or surety bond. If the City Council determines to consider the cancelling of the permit, it shall give the Operator written notice of the date and time of the hearing and shall give the Operator the opportunity to be heard and present facts the Operator deems relevant. The cancelling of a permit requires the majority vote of the City Council.

c.

Prosecution of violations of this Section shall be given priority and expedited upon the Municipal Court docket. Provided, however, that this subsection does not grant or guarantee Persons cited a right to expedited consideration of their citation before the Midland Municipal Court.

d.

In the event that there exists an imminent threat to public health and safety, a certified peace officer, in conjunction with the Railroad Commission, may order the temporary cessation of operations. An Operator may appeal the order to an appropriate Court in Midland County, Texas and request an expedited hearing. With respect to the contestation of an order issued pursuant to this subsection, an Operator retains all of its legal remedies.

M.

Fencing and landscaping.

1.

Fences. Variance Granted August 13 not requiring the slats woven into chain link fence until the surface is developed into airport.

A fencing plan shall be submitted, said plan containing a description of the building materials, dimensions, and locations of the proposed fence/walls and gates. The plan shall take into consideration the surrounding area and neighborhood.

At a minimum, tank battery facilities, wellheads and any production equipment associated with Oil and Gas wells shall be enclosed by a chain link fence at least seven (7) feet in height with beige-colored slats woven through the chain link, topped with three (3) strands of barbed wire angled outward or concertina wire, and shall be equipped with a locking gate. Gates shall be provided with a combination catch and locking attachment for a padlock, and shall be kept locked except when being used for access to the operation site. Operator must provide the City Fire Chief with a "Knox Padlock" or "Knox Box with a key" to access the Operation Site to be used only in case of an emergency.

The City Council may require additional or a different type of fencing to the extent necessary to conform with architectural standards and building materials existing on lots and/or lands immediately adjacent to the well and within five (500) feet of the Well at the time the Oil and Gas Well Permit is issued.

Additionally, if at any time within twenty-four (24) months following the issuance of an Oil and Gas Well Permit, a structure intended for permanent occupancy is constructed within five hundred (500) feet of the Well, the City Council may require the operator to undertake a one-time revision of the fencing plan to account for architectural standards and building materials associated with such structure to the extent that the revised fencing plan is consistent with, but not better than, the architectural standards and building materials associated with such structure.

Fences shall not be required on drill sites during drilling, completion or re-working operations as long as 24-hour on-site supervision is provided.

2.

Landscaping. Variance granted August 13, 2013.

Landscaping and irrigation is to be installed when the surface is developed into airport.

(N)

Cleanup and Maintenance.

1.

Cleanup after well servicing. After the well has been completed or plugged and abandoned, the Operator shall clean the drill site or operation site, complete restoration activities and repair all damage to public property caused by such operations within one hundred eighty (180) days.

2.

Clean-up after spills, leaks and malfunctions. After any Railroad Commission reportable spill, leak or malfunction, the Operator shall remove or cause to be removed to the satisfaction of the City Fire Chief and the City Manager all refuse materials from any public or private property affected by such spill, leak or malfunction. Clean-up operations must begin immediately. The Operator shall comply with all requirements found in Statewide Rule 91 of the Railroad Commission, as amended. If Statewide Rule 91 requires reporting of the spill, the operator shall comply with the notification and reporting requirements found in Statewide Rule 20 of the Railroad Commission, as amended. Upon request the Operator shall furnish the City Manager with all information filed with the Railroad Commission. If the Operator fails to begin site clean-up immediately the City Manager may then employ any cleanup expert or experts or other contractors or suppliers of special services, or may incur any other expenses for labor and material which the City Manager deems necessary to clean-up such spill, leak or malfunction. The City shall then be able to collect from operator the costs involved in the site clean-up. The City may collect from the posted letter of credit, certificate of deposit or surety bond or any other legal means.

3.

Free from debris. The public street entrance and property on which a well site is located shall at all times be kept free of mud, debris, pools of water or other liquids, contaminated soil, weeds, brush, trash or other refuse material within a radius of one hundred (100) feet around any production facilities, tanks and producing wells.

4.

Painting. All production equipment shall be painted beige and maintained at all times, including pumping units, tanks, secondary containment and buildings or structures. When requiring painting of such facilities, the City Manager shall consider the deterioration of the quality of the material of which such facility or structure is constructed, the degree of rust, and its appearance.

5.

Blowouts. In the event of the loss of control of any well, Operator shall immediately take all reasonable steps to regain control regardless of any other provision of this permit and shall provide the City Manager with the same

information as required to be filed with the Railroad Commission under Statewide Rule 20 as soon as practicable.

6.

Cleanup after Drilling/Completion. After the well has been drilled and completed, the Operator shall clean the Drill site, complete restoration activities and repair all damage to public property caused by such operations within ninety (90) days as specified previously in Subsection (L)27.

O.

Drilled and Abandoned Wells.

1.

Surface Requirements for Plugged and Abandoned Well. Whenever abandonment occurs pursuant to the requirements of the Railroad Commission, the Operator so abandoning shall be responsible for the restoration of the Operation site to its original condition as nearly as practicable, in conformity with the requirements of this permit underground pipelines associated with operations shall be purged of all fluids and may be abandoned in place.

2.

Surface Requirements for Drilled and Abandoned Well. Abandonment shall be approved by the City Manager after restoration of the Drill Site has been accomplished in conformity with the following requirements at the discretion of the City Manager:

a.

The Derrick and all appurtenant equipment thereto shall be removed from Drill site;

b.

All tanks, towers, and other surface installations shall be removed from the Drill site;

c.

All concrete foundations, above ground piping, wood, guy anchors and other foreign materials regardless of depth, except surface casing, shall be removed from the site, unless otherwise directed by the Railroad Commission;

d.

All holes and depressions shall be filled with clean, compactable soil;

e.

All, refuse and trash shall be removed from the Drill Site; and

f.

During abandonment, Operator shall comply with all applicable subsections in this section; and

g.

The drill site shall be restored, as close as practicable, to its original condition.

h.

Unless modified by the approved plan, deep burying of pits within the drill site perimeter is permitted. A survey and description of the location of any closed pit used in connection with the drill site shall be recorded in the property records of the county in which the real property is located. In any event the Operator shall comply with Subsection (L), Paragraph 27.

3.

Abandoned well requirement. The Operator shall furnish the following to the City Manager:

a.

A copy of the W-3A "Notice of Intention to Plug & Abandon" and W-3 "Plugging Record" forms on the same date these forms are submitted to the Railroad Commission.

b.

Prior 48-hour notice of intention to abandon under the provisions of this section and stating the date such work will be commenced. Abandonment may then be commenced on or subsequent to the date so stated.

c.

All wells shall be abandoned in accordance with the rules of the Railroad Commission; however, all well casings and cellars shall be cut and removed to a depth of at least three feet below the surface. A permanent abandonment marker, with the well identity and location permanently inscribed, shall be welded to the casing.

4.

Abandonment requirements prior to new construction. All abandoned or deserted wells or drill sites shall meet the most current abandonment requirements of the Railroad Commission prior to the issuance of any building permit for development of the property. No structure shall be built over an abandoned well.

P.

Certificate of Request for Inspection and Extension of Permit.

On or before ninety (90) days prior to each annual anniversary date of Operator's Oil and Gas Well Permit, Operator shall submit to the City Manager a Certificate of Request for Inspection of Permit. The Certificate of Request for Inspection of Permit must state the location and name of the well and the date the permit was granted by the City Council. The Certificate of Request for Inspection of Permit must be signed by the Operator before a notary public stating that the well is in compliance with the permit and all applicable Ordinances. The Certificate of Request for Inspection of Permit must

be accompanied by an application and inspection fee of \$300.00. The City Manager shall grant a one-year inspection approval on the oil/gas drilling permit if the Operator is in compliance with the permit and all applicable ordinances as they apply to the inspected well. Prior to authorizing the inspection approval, the City Manager, or his designee, shall inspect the oil and gas well site that is subject to the oil/gas drilling permit. The City Manager shall issue his decision in writing, within thirty (30) days of receiving the Certificate for Request for Inspection of Permit, either granting or denying the inspection of the oil/gas drilling permit.

The Operator may appeal the City Manager's denial of an oil/gas drilling permit inspection by submitting, in writing, an appeal to the City Council within thirty (30) days of the City Manager's written denial of the oil and gas well permit inspection. If an appeal is received by the City Council, a hearing shall be set before a meeting of the City Council to consider the denial of the oil/gas drilling permit inspection. The City Council shall hear and consider the recommendation of the City Manager, or his designee, before deciding whether or not to uphold the City Manager's decision. The Operator shall be allowed to speak and present any relevant evidence for consideration by the City Council prior to a vote of the council. A majority vote of the City Council shall be required to uphold the denial of the Oil and Gas Well Permit inspection by the City Manager. An inspection that is approved shall be valid for one (1) year from the inspection date.

(Q)

Measurement.

The measurement of all distances set forth herein shall be calculated from the proposed surface location of the well and tank batteries in a straight line, without regard to intervening structures or objects, to the closest exterior point of the object.

(R)

Effect of denial of oil and gas well permit.

If an application for an Oil and Gas Well Permit is denied by the City Council, nothing herein contained shall prevent a new permit application from being submitted to the City Council for the same proposed Oil and Gas Well or a different location for a well. A new application may also be filed on any of the mineral estate owned or leased by the applicant. Once all of the Operator's administrative and legislative remedies have been exhausted herein, the Operator may appeal or challenge the denial of an application in an appropriate Court in Midland County Texas under applicable state or federal law.

(S)

Amendment to Oil and Gas Well Permit.

1.

Amendment required. Within one hundred eighty (180) days after an Operator has been granted an Oil and Gas Well Permit, an Operator may submit an application to the City to amend an existing Oil and Gas Well Permit to commence Drilling from a new Drill site that is not shown on (or incorporated by reference as part of) the existing Oil and Gas Well Permit.

2.

Application Requirement for Amendment to Permit. An application for an amended Oil and Gas Well Permit shall meet all the requirements of this Section, shall be in writing, shall be on forms provided by the City, shall be signed by the Operator, and shall include the following:

a.

An amendment fee of \$1,000.00.

b.

A description of the proposed amendments.

c.

Any changes to the information previously submitted with the application for the existing oil/gas drilling permit (if such information has not previously been provided to the City).

d.

Such additional information as is reasonably required by the City to demonstrate compliance with the original oil/gas drilling permit.

e.

Such additional information as is reasonably required by the City to prevent imminent destruction of property or injury to persons.

3.

Review of Application for Amendment to Permit. All applications for an amended oil/gas drilling permit shall be considered in accordance with the factors listed in Subsection (I) herein. The City Council may elect to consider the application for an amended oil/gas drilling permit without the requirement of a public hearing.

4.

Standard of review.

a.

No Material Change from Existing Permit. If the activities proposed by the amendment are not materially different from the activities covered by the existing Oil and Gas Well Permit, and are otherwise in conformance with the requirements of this section, other applicable City Ordinances, the Oil/Gas Drilling Permit then the City Council shall approve the Amended Application.

b.

Material Change from Existing Permit. If the activities proposed by the amendment are materially different from the activities covered by the existing Oil/Gas Well Permit, are not in conformance with the requirements of this Section, other applicable City Ordinances, the Oil/Gas Well Permit, or if, in the judgment of the City Council, the activities proposed by the amendment might create a risk of imminent destruction of property or injury to persons or property or that were not otherwise taken into consideration by the existing Oil/Gas Well

Permit, the City Council may require the amendment to be processed as a new Oil and Gas Well Permit Application.

T.

Independent Contractor. Operator understands and agrees that Operator, its employees, servants, agents, and representatives, shall at no time represent themselves to be employees, servants, agents, and/or representatives of the City. The City shall not have any control over the means or methods by which Operator shall perform its obligations hereunder. Operator shall furnish all equipment and materials necessary to perform hereunder and shall at all times be acting as an independent contractor. No action by either party should be construed to create a partnership, joint venture, or other dual enterprise between the parties.

U.

Assignability; Transfer Permit.

1.

The Operator shall not, either directly or indirectly, assign, sell, or transfer any part of the Oil and Gas Well Permit, or any interest, right, duty, obligation or privilege under the permit, except in accordance with this Subsection.

2.

An Oil and Gas Well Permit may be transferred upon written request by the Operator with the consent of the City Council:

a.

If the transferee agrees in writing to be bound by the terms and conditions of the current Oil and Gas Well Permit and road repair agreement;

b.

If all information previously provided to the City as part of the current Oil and Gas Well Permit is updated to reflect any changes; and

c.

If the transferee provides the insurance and security required by this section.

3.

In determining whether to approve the transfer permit, the City Council may consider the financial standing of the transferee and its record of compliance with respect to existing permits. Should the transfer permit be denied, the transferee may file an application for a new Oil and Gas Well Permit.

4.

The insurance and security provided by the transferor shall be released if the transfer permit is approved; provided, however, that the transfer shall not relieve the transferor from any liability to the City arising out of any activities conducted prior to the transfer, except to the extent that the transferee expressly agrees in writing to assume such liabilities as part of the transfer.

5.

Applications for the transfer of Oil and Gas Well Permits shall be filed with the City's planning department. A non-refundable administration fee shall be charged for each application in the amount of five hundred (\$500.00).

V.

Time Limit Requirements. The failure of the City Council to review and approve an Oil and Gas Well Permit within a specified time limit shall not cause the application for the Oil and Gas Well Permit to be deemed approved. If the City Council denies a request for a permit, the applicant may file a request with the City Council to re-consider the application. The applicant may present any new evidence to the council and may present any extenuating circumstances or other matters deemed relevant by the applicant. The decision of the City Council regarding the issuance of a permit is not final until the request for re-consideration is voted upon by the City Council.

W.

Indemnification. The oil and gas well permit may contain the following language:

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

X.

Incident Reports or Written Complaints. The Operator shall provide a copy of any "incident reports" or written complaints submitted to the Railroad Commission or any other state or federal agency within thirty (30) days after Operator has notice of the existence of such reports or complaints.

Y.

Expiration of permit. Drilling must commence on the Well covered by the Oil and Gas Well permit twelve (12) months of approval by the City Council, after which the Oil and Gas Well Permit shall automatically expire if no drilling has commenced. A permit extension for a maximum time period of six (6) months may be granted by the City Manager without reapplication after the City Manager receives a written request from the Operator.

Z.

Takings determination.

1.

Any aggrieved applicant that believes that an action taken pursuant to this Section by the City Council or any officer or employee of the City constitutes a taking under the Texas or United States Constitution or under other state law, may file an application with the City Council requesting a takings determination.

2.

The applicant seeking a takings determination from the Council shall file its appeal with the office of the City Secretary. The City Secretary shall then forward the appeal to the City Council for consideration. An appeal fee in the amount of two hundred fifty (\$250.00) dollars shall accompany each filing.

3.

The appeal shall state the reasons that the applicant believes would support a finding that the City's actions constitute a taking under the Texas or United States Constitution or pursuant to other State law and shall include evidence substantiating the purported diminution in value of the applicant's real property.

4.

If the Council finds by a majority vote in favor of the applicant it may: (1) grant the relief requested, or (2) direct the City Manager to rescind action taken by City Staff that formed the basis of the takings determination appeal. If the Council denies the appeal, or after a favorable determination the City Council fails to take action as specified above, the applicant may appeal the decision or inaction of the City Council to the county or district court of the county in which the affected real property is located within thirty (30) days of the date that the Council issues its final decision or in the event the Council does not act on the application, then the operator may appeal to the county or district court after the expiration of one hundred twenty (120) days from the date the application is heard by the City Council.

Notice addresses are as follows:

City of Midland
Attn: Office of the City Manager
P. O. Box 1152
Midland, Texas 79702

OPERATOR: _____
Jeffrey T Beard, Land Manager

CrownQuest Operating, LLC
500 West Texas Ave. Suite 500
Midland, Texas 79701
(432) 818-0300



APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

RECEIVED

MAY - 1 2013

CITY OF MIDLAND
PLANNING DIVISION OFFICE

I. General Information

Date 5/1/13	Operator Name (must match W-1) CrownQuest Operating, LLC	Operator Address 500 West Texas Ave., Suite 500 Midland, Texas 79701
Representative Name Jeffrey T. Beard	Representative Address (within Midland City Limits) 500 West Texas Ave., Suite 500 Midland, Texas 79701	Rep. Tele. 432-818-0300 Rep. Fax 432-687-4804
Fee: \$4,000.00 Rec'd Yes ☒ No ☐	NOTE: All attachments need to bound and put in a binder before submitting.	Pages 1-4
Permit Compliance Contact (Choose 1): Option A: Jeffrey T. Beard 24/7 Answering Services - No. 1 (Tele.): 432-212-9308 No. 2 (Tele.): 432-818-0300 Option B: David Kuhnert, 500 West Texas Ave., Suite 500 Midland, Texas 79701 Phone: 432-269-6404 Company Compliance Representative (Name, Address, Local Telephone) (ATTACH STATEMENT AS EXHIBIT A):		
Emergency Contact Representative (Name, Address, 24-Hour Tele. No.): David Kuhnert, 500 West Texas Ave., Suite 500 Midland, Texas 79701 Phone: 432-269-6404		
Other Permitted Wells in City (ATTACH EXHIBIT B [see § J(26)]). None		
II. Mineral Ownership		
Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease):		
1.		
2. See attached Title Opinion		
3.		
ATTACHED AS EXHIBIT C is (a Title Opinion by Albert Sherman a licensed Texas Attorney/Title Commitment by Abstract Company/a Take-off from , a Certified Petroleum Landman/an opinion letter from , a licensed Texas Attorney) indicating that [Operator] has a legal right to develop the mineral estate that is the subject of this Application. [See § J(5)].		
III. Surface Ownership & Use		
General Description of Current Surface Use (within 860 feet of proposed surface location): Pasture Land		
ATTACHED AS EXHIBIT D is (a Title Opinion by Albert Sherman a licensed Texas Attorney/a Take-off from , a Certified Petroleum Landman/Current Tax Roll from Midland Central Appraisal District), which lists the name(s) and address(es) of all surface owners within 860 feet of the surface well location. [See § J(7)].		

ATTACHED AS EXHIBIT E is a (map/p lat/satellite/aerial photo) depicting all Residences, commercial structures, public buildings, all publicly dedicated Streets and alleys, Rights of Way, and permanent accessory structures surrounding the proposed Drill Site. The (map/p lat/satellite/aerial photo) includes two circles, as required by the Ordinance—one depicting a 500 foot radius and one depicting an 860 foot radius from the proposed well's surface location. [See § J(10)].

ATTACHED AS EXHIBIT F is a copy of the notification letter(s) sent to 100 percent of the surface owners, Certified Mail, Return Receipt Requested. [See § J(36)].

IV. Well & Operations Information

Proposed Well Name: COM Nail #2

Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary)[See § J(11) and § L(4)]:

See Attached Exhibit V

Legal Description of Proposed Well Site:

660°FNL, 2,173FEL of Section 36, Block 39, T1N T&P RR Co. Survey, Martin County, Texas

ATTACHED AS EXHIBIT G is the Location Site Plan [See § J(9)].

ATTACHED AS EXHIBIT H is the Map with the proposed transportation route(s) and road(s) for equipment, chemicals, or refuse products used or produced in the proposed oil and gas operations. [See § J(12)].

ATTACHED AS EXHIBIT I is a copy of the approved Texas Railroad Commission permit to drill (Form W-1), together with all attachments (also file copy of W-1 with City Secretary before commencement of drilling operations). [See § J(16) and (20)].

ATTACHED AS EXHIBIT J is a copy of the required TCEQ report as to depth of usable quality ground water. [See § J(17)].

ATTACHED AS EXHIBIT K (if applicable) is the list of alternative locations developed in consultation with the Oil & Gas Advisory Committee. [See § J(27)].

ATTACHED AS EXHIBIT L is the Fencing and Irrigation Plan. [See § J(30)].

ATTACHED AS EXHIBIT M is the Road Repair Agreement and Letter of Credit/Certificate of Deposit/Surety Bond in the amount of at least \$25,000. Option (if applicable): Applicant would further state that no City-owned streets or alleys will be used by the Operator in connection with its oil and gas operations and as a result, requests a waiver from the Council of this requirement. Option B (if applicable): Because Applicant has three Road Repair Agreements in effect that have been approved by the Council, Applicant requests that the Council consolidate all agreements into one and is filing the necessary \$75,000 letter of credit/certificate of deposit/surety bond in conjunction with this request. [See § J(31)].

ATTACHED AS EXHIBIT N is the Concept Plan depicting the proposed Operations Site (which includes tanks, roads, power lines, and pipeline routes). [See § J(32)].

Description of Public Utilities required during (1) drilling and (2) operations:

- (1) **Drilling:** None
- (2) **Operations:** Sharyland Utilities

Description of water source to be used during Drilling:

Water to be hauled by truck to location

Description of all electric lines to production facilities (reference exhibits as necessary) [See § L(10)]:

Overhead electric lines

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]:

See attached Exhibit O

V. Additional Required Exhibits

ATTACHED AS EXHIBIT P is the *Letter of Credit/Certificate of Deposit* in accordance with Subsection (K)(2). [See § J(18)].

ATTACHED AS EXHIBIT Q are Tax certificates from Midland Central Appraisal District to be submitted indicating that all taxes on personal and real property, including minerals, owned by Applicant are current. [See § J(29)].

ATTACHED AS EXHIBIT R is the required Insurance Certificate. [See § J(19) and § K(3)].

ATTACHED AS EXHIBIT S (if applicable) is the Drainage Plan approved by the City Engineer relating to Applicant's proposed operations. [See § J(21)].

ATTACHED AS EXHIBIT T is Applicant's Emergency Action Response Plan. [See § J(22)].

ATTACHED AS EXHIBIT U is Applicant's Hazardous Materials Management Plan, a copy of which has been submitted and is on file with the Midland Fire Department. [See § J(23)].

CrownQuest Operating, LLC
[NAME OF COMPANY]

By Jeffrey T. Beard
Its Land Manager

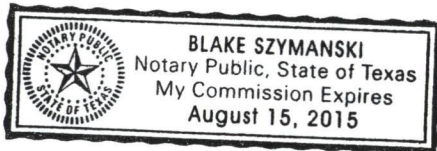
County of Midland)

State of Texas)

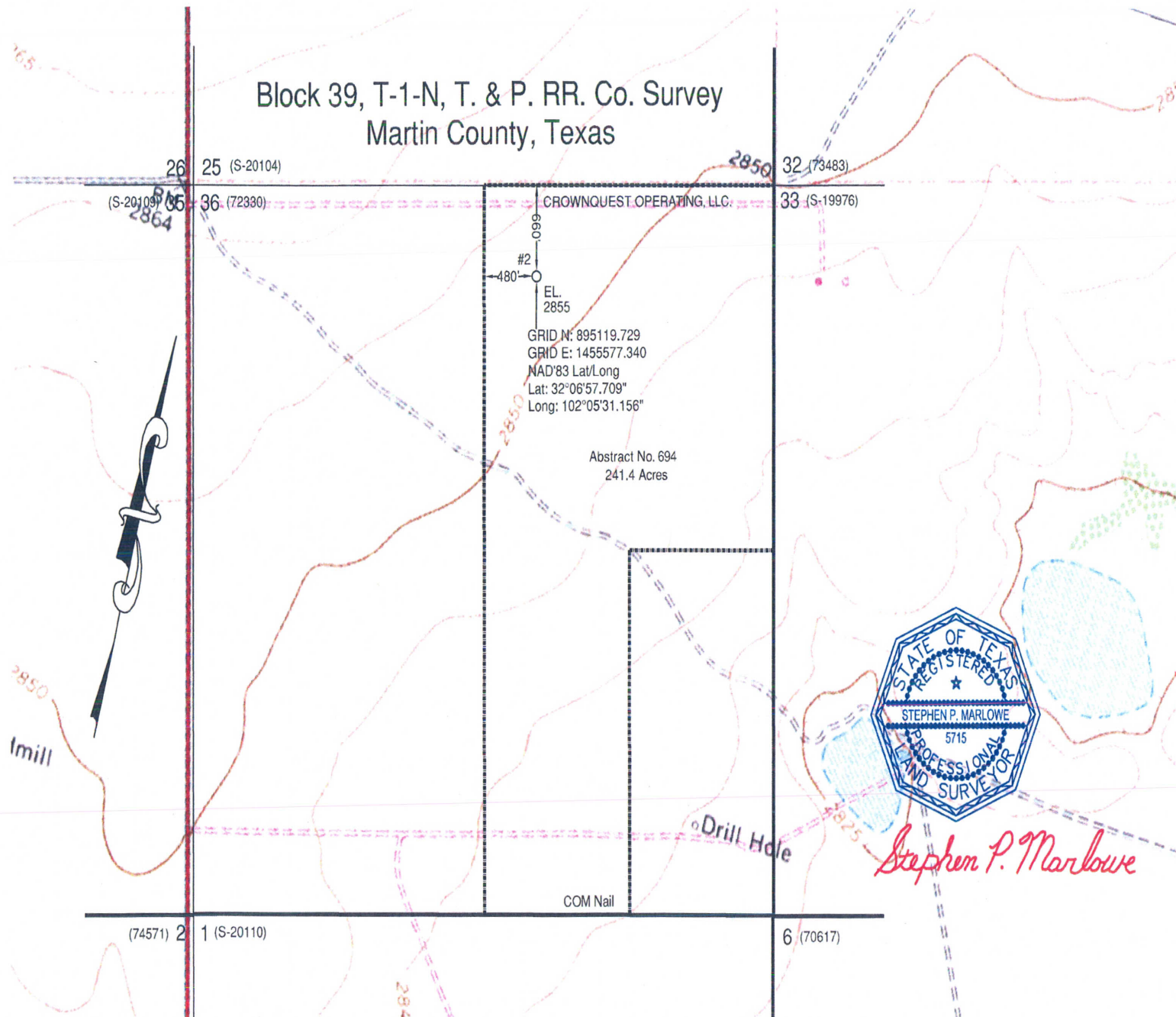
Jeffrey T. Beard, personally appeared before me, and being first duly sworn declared he/she signed the application in the capacity designated, if any, and further states that he/she has read the above application and attached exhibits and the statements therein are true and correct to the best of their knowledge.

[Signature]
Notary Public, State of Texas

[SEAL]



Block 39, T-1-N, T. & P. RR. Co. Survey Martin County, Texas



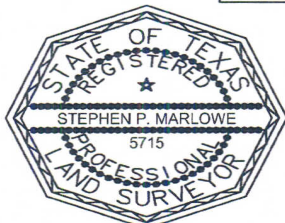
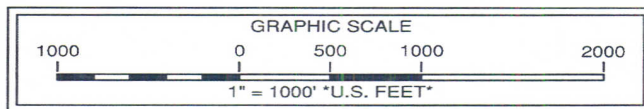


LEGEND:

- x — - Fence
- ● — - Overhead Power Line
- \ — - Pipeline (As described)
- - - - - Road (As described)
- E — - Buried Electric Line
- +++++ - Railroad Tracks
- - - - - Well Lease Line
- - Well (As described)

COM Nail #2
Lat: 32°06'57.71"N
Long: 102°05'31.16"W

Note: Lat/Longs shown herein are NAD'83 Datum.



Stephen P. Marlowe
REGISTERED PROFESSIONAL LAND SURVEYOR NO. 5715
P.O. Box 51622, Midland, Texas, 79710 (432) 570-6256 Fax (432) 682-3262

August 3, 2012
120803B11

CONCEPT PLAN

CROWNQUEST OPERATING, LLC.
CONCEPT PLAN
COM Nail #2
660 FNL & 2173' FEL
Section 36, Block 39, T-1-N
T. & P. RR. Co. Survey
Martin County, Texas

Scale: 1" = 1000'



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: August 13, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Ron Jenkins, Oil & Gas Compliance Coordinator

SUBJECT: Consider a resolution approving the issuance of a permit to CrownQuest Operating, LLC (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (COM Nail #3) located 467 feet from the north line and 467 feet from the east line located in Section 36, Block 39, T-1-N, T&P RR Co. Survey, City of Midland and County of Martin, Texas. (Generally located on the east side of the State Hwy 349, approximately 3 miles north of Arapahoe Road. – District 1)

Purpose:

To consider a resolution approving the issuance of a permit to CrownQuest Operating, LLC (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (COM Nail #3) located 467 feet from the north line and 467 feet from the east line located in Section 36, Block 39, T-1-N, T&P RR Co. Survey, City of Midland and County of Martin, Texas. This is an opportunity for the Council to receive public comment. The required 30-day public comment has passed and the Council may consider this request. No letters of objection received.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to process this application.

Discussion:

The Oil and Gas Advisory Committee has reviewed this well site in detail and recommends approval of the application with a title opinion including addresses, notation of the 860 ft. circle, a map clarification, language change for variance request concerning fencing and road repair agreement, include emergency phone numbers and make a correction to the MSDS. CrownQuest Operating, LLC has addressed the recommendations and updated

the application. The Oil and Gas Advisory Committee recommends approval of landscaping/irrigation variance, variance for having the required slats in fencing, waiver of road repair and having a right-of-way agreement prior to receiving permit.

Attachments: Application; Location map; Exhibit - Drill site map, Exhibit – Flow Line Location.

RESOLUTION NO. _____

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO CROWNQUEST OPERATING, LLC (“OPERATOR”) TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 467 FEET FROM THE NORTH LINE AND 467 FEET FROM THE EAST LINE, SECTION 36, BLOCK 39, T-1-N, T&P RR CO. SURVEY, CITY OF MIDLAND AND MARTIN COUNTY, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF THE STATE HIGHWAY 349, APPROXIMATELY 3 MILES NORTH OF ARAPAHOE ROAD); AND WAIVING THE REQUIREMENT OF A ROAD REPAIR AGREEMENT

WHEREAS, on December 8, 2009, the City Council of the City of Midland duly approved Ordinance No. 8769 which amended Title VI, “Police Regulations,” Chapter 1, “General Offenses,” of the City Code of Midland, Texas, so as to establish Section 23, “Oil and Gas Well Permits issued on or after January 1, 2010,” which governs the granting or rejecting of Oil and Gas Well Permits; and

WHEREAS, the purpose of said section is to establish reasonable and uniform limitations, safeguards, and regulations for present and future operations related to the exploring, drilling, developing, producing, transporting and storing of oil or gas or other substances produced in association with oil and gas within the City of Midland to protect the health, safety, and general welfare of the public and the orderly development of the City of Midland; abate or prevent potential public nuisances; minimize the potential adverse impact to surface and mineral owners, protect the quality of the environment and encourage the orderly production of available mineral resources; and

WHEREAS, Section 6-1-23(C) of the City Code of Midland, Texas, makes it an offense to knowingly drill or participate in the drilling of any well or to re-enter any well within the corporate limits of the City of Midland without a permit having first been issued by the authority of the City Council; and

WHEREAS, Operator has submitted an application to the City of Midland to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, notice of the public hearing on this matter was provided in accordance with Section 6-1-23(H)(1) and a public hearing was held on July 9, 2013; and

WHEREAS, subsequent to said public hearing, and in accordance with Section 6-1-23(H)(1), the City Council allowed the public and Operator thirty (30) days to submit written input to the City Manager regarding Operator's application to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, the City Council has considered those issues set forth in Section 6-1-23(I) in determining whether to grant or deny a permit to Operator to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, the City Council finds it to be in the public interest to approve the issuance of a permit to Operator to drill an oil and gas well on the property described in Section Two hereof;

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

SECTION ONE. That the above recitals are hereby adopted and approved by the City Council of the City of Midland.

SECTION TWO. That the Mayor is hereby authorized and directed to execute a permit, on behalf of the City of Midland, that will allow Operator to drill an oil and gas well within the City limits located 467 feet from the north line and 467 feet from the east line, Section 36, Block 39, T-1-N, T&P RR Co. Survey, City of Midland and Martin County, Texas. Said permit is attached hereto as Exhibit "A" and incorporated herein for all legal purposes.

SECTION THREE. That the requirement of a Road Repair Agreement between Operator and the City of Midland is hereby waived in regard to said permit.

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

the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on August 13, 2013, considered the application of CrownQuest Operating, LLC, dated May 1, 2013, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with the Midland City Code, Ordinance 8769, to drill an oil and gas well, in the application of CrownQuest Operating, LLC dated May 1, 2013, and filed with the Oil & Gas Compliance Officer and incorporated herein for all legal purposes.

The location of CrownQuest Operating, LLC, COM Nail #3 oil and gas well shall be 467 feet from the north line and 467 feet from the east line, Section 36, Block 39, T-1-N, T&P RR Co. Survey, City of Midland and County of Martin, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in that application of Midland Energy, Inc., which is incorporated herein. Further, all operations done under this permit shall be done and accomplished in strict accordance with the Midland City Code, Ordinance 8769, which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit. Also, all operations done under this permit shall be done and accomplished in strict accordance and compliance with the General Conditions, which are attached hereto marked as Exhibit "A" and incorporated into and made a part of this permit for all purposes. All operations done and required under this permit shall be done and accomplished in strict accordance and compliance with the Specific Conditions which are attached hereto, marked as Exhibit "B", and incorporated into and made a part of this permit for all purposes.

This permit shall be effective from August 13, 2013, through August 13, 2014, and so long thereafter as oil or gas is produced or until such time as the permittee has permanently abandoned the operations of the well or facility for which this permit is issued.

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

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts the permittee from its responsibilities or obligations as to third parties. The issuance of this permit only means that the permittee has, at this time, complied with Ordinance No. 8769 and that the Midland City Council, as a regulatory body, will allow the permittee to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize the recipient to act with impunity as to third parties, nor does it insulate the permittee from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize the permit holder from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a "negative pronouncement" that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. The permittee has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield the permittee from third party tort liability stemming from the consequences of the permitted activity.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, utility and drainage rights-of-way.

A variance granted for having the required beige colored slats woven through the fencing until the surface is developed into airport.

A variance granted for landscaping and irrigation to be installed when the surface is developed into airport.

A waiver granted for road repair agreement due to no city streets used by operator to access well or tank battery.

This permit shall constitute a written contract for purposes of insurance requirements.

In addition to the requirements of the Midland City Code, Ordinance 8769, and the requirements of this permit, including the General and Specific Conditions incorporated herein, CrownQuest Operating, LLC, shall develop, maintain and operate the well described herein in accordance with the conditions, limitations and safeguards contained in CrownQuest Operating, LLC, application for said well. CrownQuest Operating, LLC, application for said well is incorporated herein by reference for all legal purposes.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS _____ day of August, 2013.

CITY OF MIDLAND, TEXAS

BY: _____

W. Wesley Perry, Mayor

UNDERSTOOD AND AGREE THIS _____ day of August, 2013.

CrownQuest Operating, LLC

By: _____

Jeffrey T Beard, Land Manager

OIL AND GAS PERMIT: ORDINANCE 8769 GENERAL CONDITIONS- EXHIBIT "A"

(K)

General Conditions of all Oil and Gas Well Permits.

1.

General Obligations of Operator.

The Operator shall be required to:

a.

Comply with the terms and conditions of this Section, the Midland City Code, the rules and regulations of the Railroad Commission, and any other state or federal agency that enforces land use, mineral use, or environmental protection regulations.

b.

Promptly clear Drill and Operation sites of litter, trash, refuse and other substances used, allowed, or occurring in the operations, and after abandonment or completion, grade, level, and restore such property to the same surface conditions as nearly as practicable as existed before operations.

c.

Indemnify and hold harmless the City of Midland, the City's officers, agents and employees, from any and all claims, losses, damages, causes of action, suits, and liability of any kind, including all expenses of litigation, court costs, and attorney's fees, for injury to or death of any Person, or for damage to any property arising out of or in connection with the work done by Operator under an Oil and Gas well permit: where such injuries, death or damages are caused by Operator's sole negligence or the joint negligence of the Operator and any other Person or entity.

d.

Promptly pay all fines, penalties and other assessments imposed due to breach of any of the conditions herein. If the Operator does not agree that a breach has occurred, the Operator may file a written objection with the City Manager within ten (10) days of being notified of the alleged breach. The City Manager shall review the objections and give the Operator the opportunity to be heard and present facts that the Operator deems relevant.

e.

Promptly restore to its former condition any public property damaged by the oil and gas operation.

f.

Except as permitted by Subsection U, hereof, Operator shall not, either directly or indirectly, assign all or any part of an Oil and Gas Well Permit.

g.

If required by the Permit, Operator shall execute a "Road Repair Agreement" between itself and the City of Midland and submit all necessary information and insurance and guarantees to the City prior to the issuance of any Oil and Gas Well Permit under this Section.

2.

Irrevocable Letter of Credit, Certificate of Deposit, or Surety Bond.

Prior to the issuance of an Oil and Gas well permit, the Operator shall provide the City Attorney with a guarantee in the form of an irrevocable letter of credit, certificate of deposit, or surety bond in the name of the City. The Applicant shall be entitled to receive the interest earned if the certificate of deposit reaches maturity. The letter of credit, certificate of deposit, or surety bond must satisfy the following:

a.

The letter of credit, certificate of deposit or surety bond shall be issued by a reliable bank or insurance carrier authorized to do business in the State of Texas;

b.

The letter of credit, certificate of deposit or surety bond shall be effective starting on or before the effective date of the Oil and Gas Well Permit;

c.

The letter of credit, certificate of deposit or surety bond shall be in the amount of twenty-five thousand dollars (\$25,000.00);

d.

The letter of credit, certificate of deposit or surety bond shall remain in full force and effect for a period of three years; and

e.

The letter of credit, certificate of deposit or surety bond shall authorize the City of Midland to draw upon such credit in the event the City Manager, or his designee, determines said credit is needed to remedy any violation of this Section.

If the well is still producing or if the well has not been abandoned or plugged, the Operator must renew the letter of credit, certificate of deposit or surety bond on or before one hundred twenty (120) days prior to the expiration of the letter of credit, certificate of deposit or surety bond.

The City of Midland may draw upon the letter of credit, certificate of deposit or surety bond to recover costs of repairs, modifications, or construction to remedy any violations by the Operator under this Section. The City may make partial or full draws of the letter of credit, certificate of deposit or surety bond. The City may draw upon the letter of credit, certificate of deposit or surety bond in the event the City has not received a new letter of credit, certificate of deposit or surety bond within the one hundred twenty (120) day renewal time period required above.

The Operator shall maintain the principal amount of \$25,000.00 in the form of a letter of credit, certificate of deposit or surety bond at all times throughout the term of the permit. In the event such letter of credit, certificate of deposit or surety bond is not restored to \$25,000.00 within ten (10) days after the date of the reduction of the letter of credit, certificate of deposit or surety bond, the City may draw and receive the remaining balance of the letter of credit, certificate of deposit or surety bond, and the Oil and Gas Well Permit shall be suspended on such date and the Operator's right to operate under Oil and Gas Well Permit shall immediately cease until the Operator files the required letter of credit, or certificate of deposit or surety bond.

If an operator has three (3) or more Oil and Gas Well Permits in effect which have been approved by the City Council, the Operator may petition the Council to consolidate the letter of credits, certificate of deposits or surety bonds into one letter of credit, certificate of deposit or surety bond that would cover all Oil and Gas Wells in the City limits. The consolidated letter of credit, certificate of deposit or surety bond shall be in an amount determined by the City Council as sufficient to cover the costs of repairs, modifications, construction or to remedy violations by the Operator but in no event shall the amount be less than \$75,000.00.

3.

Insurance.

In addition to the letter of credit, certificate of deposit or surety bond required above, the Operator shall carry a policy or policies of insurance issued by an admitted insurer or eligible surplus lines insurer authorized to do business in the State of Texas. In the event such insurance policy or policies are cancelled, any Oil and Gas Well Permit issued under this Section shall be suspended on such date of cancellation and the Operator's right to operate under such Oil and Gas Well Permit shall immediately cease until the Operator files additional insurance as required herein.

- a. General requirements applicable to all policies.
 - i. The City, the City's officials, employees, agents and officers shall be endorsed as an "Additional Insured" on all policies, except under Operator's Workers Compensation Policy.
 - ii. All policies shall be written on an occurrence basis, except for Environmental Pollution Liability (Seepage and Pollution coverage) and Excess and Umbrella Liability, which may be on a claims-made basis.
 - iii. All policies shall be written by an admitted insurer or eligible surplus lines insurer authorized to do business in the State of Texas.
 - iv. Deductibles shall be listed on the Certificate of Insurance and shall be on a "per occurrence" basis unless otherwise stipulated herein.
 - v. Certificates of Insurance shall be delivered to the City of Midland, P.O. Box 1152, Midland, Texas 79702, Attn: City Attorney's Office, evidencing all the required coverages, including endorsements, prior to the issuance of an Oil and Gas Well Permit under this Section.
 - vi. All policies shall be endorsed with a waiver of subrogation providing rights of recovery in favor of the City.
 - vii. Any failure on the part of the City to request required insurance documentation shall not constitute a waiver of the insurance requirements specified herein.
 - viii. Each policy shall be endorsed to provide the City a minimum thirty (30) day notice of cancellation, non-renewal, and/or material change in policy terms or coverage. A ten (10) day notice shall be acceptable in the event of non-payment of premium.
 - ix. During the term of any Oil and Gas Well Permit issued hereunder, the Operator shall report, in writing, within thirty (30) days of the occurrence, to the City Manager, any known

loss occurrence which could give rise to a liability claim or lawsuit or which could result in a property loss.

x.

Upon request, certified copies of all insurance policies shall be furnished to the City.

xi.

Operator shall have the right to maintain a qualified, self-insurance plan and/or maintain prudent levels of self-insured retentions for insurance coverage required in this section; however, Operator shall remain financially obligated for all self-insured retention amounts and deductibles. To the extent of the liabilities assumed by the Operator, Operator's insurance shall be primary coverage as to any liabilities of the City.

b.

Standard Commercial General Liability Policy.

This coverage must include premises, operations, blowout or explosion, products, completed operations, sudden and accidental pollution, blanket contractual liability, underground resources damage, broad form property damage, independent contractors protective liability, accidental death and personal injury. This coverage shall be a minimum Combined Single Limit of \$1,000,000.00 per occurrence for Bodily Injury, Accidental Death, and Property Injury.

c.

Excess or Umbrella Liability.

\$1,000,000	Excess, if the Operator has a stand-alone Environmental Pollution Liability (EPL) policy.
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\$10,000,000	Excess, if the Operator does not have a stand-alone EPL policy. Coverage must include an endorsement for sudden or accidental pollution. If Seepage and Pollution coverage is written on a "claims made" basis, the Operator must maintain continuous coverage and purchase Extended Coverage Period when necessary.
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d.

Environmental Pollution Liability Coverage.

Operator shall purchase and maintain in force for the duration of any Oil and Gas Well Permit issued hereunder, insurance for environmental pollution liability applicable to bodily injury, property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense or settlement of claims; all in connection with any loss arising from the insured site.

Coverage shall be maintained in an amount of at least \$1,000,000 per loss, with an annual aggregate of at least \$10,000,000.

Coverage shall apply to sudden and accidental pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids or gases, refuse material or other irritants, contaminants or pollutants.

e.

Workers Compensation and Employers Liability Insurance.

i.

Workers Compensation benefits shall be Texas Statutory Limits.

ii.

Employers Liability shall be a minimum of \$1,000,000.00 per accident.

iii.

Such coverage shall include a waiver of subrogation in favor of the City of Midland and provide coverage in accordance with applicable State and Federal laws.

f.

Automobile Liability Insurance.

i.

Combined single limit of \$1,000,000.00 per occurrence for bodily injury and property damage.

ii.

Coverage must include all owned, hired and not-owned automobiles.

g.

Certificates of Insurance.

i.

The company must be licensed or authorized to do business in the State of Texas.

ii.

The insurance set forth by the insurance company must be underwritten on forms that have been approved by the Texas State Board of Insurance or ISO or an equivalent policy form acceptable to the City, with the exception of environmental pollution liability and control of well coverage.

iii.

Set forth all endorsements and insurance coverage according to requirements and instructions contained herein.

iv.

Shall specifically set forth the notice of cancellation, termination, or change in coverage provisions to the City. All policies shall be endorsed to read "THIS POLICY WILL NOT BE CANCELLED OR NON-RENEWED WITHOUT THIRTY (30) DAYS ADVANCE WRITTEN NOTICE TO THE OWNER AND THE CITY, EXCEPT WHEN THIS POLICY IS BEING CANCELLED FOR NONPAYMENT OF PREMIUM, IN WHICH CASE, TEN (10) DAYS ADVANCE WRITTEN NOTICE IS REQUIRED".

v.

Original endorsements affecting coverage required by this section shall be furnished with the certificates of insurance.

vi.

At the request of an Operator, the Council may grant a variance to insurance requirements if the Council determines that the insurance procured by the Operator is sufficient to protect the City. A variance of this type may be required because of a change in underwriting policies of admitted insurance carriers.

Indemnification.

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

Notice.

The notices provided in this permit may be served in person or by registered or certified mail. Operator shall within ten (10) days notify the City Manager in writing of any change in such agent or mailing address unless operations in the City are discontinued and abandonment is complete.

Notice addresses are as follows:

City of Midland
Attn: Office of the City Manager
P. O. Box 1152
Midland, Texas 79702

OPERATOR: _____
Jeffrey T Beard, Land Manager

CrownQuest Operating, LLC
500 West Texas Ave. Suite 500
Midland, Texas 79701
(432) 818-0300

OIL AND GAS WELL PERMIT: ORDINANCE 8769 SPECIFIC CONDITIONS-EXHIBIT "B"

(L)

Specific conditions of all Oil and Gas Well Permits; On-Site Requirements.

1.

Abandoned wells. All wells shall be abandoned in accordance with the rules of the Railroad Commission and pursuant to Subsection (O) of this Section.

2.

Automated audible alarm system. After completion, the appropriate system for flowing gas and/or flowing oil wells must be maintained to provide warnings for a substantial drop in pressure, or the release of any oil or gas, or a fire. Said audible alarm system must be approved by the Fire Marshal prior to installation of production equipment at the flowing gas and/or flowing oil well site.

3.

Blowout prevention. In all cases, ram-type and annular Blowout Preventers shall be used on all wells being drilled. In cases where Re-working is being performed on a Well, ram-type or annular Blowout Preventers shall be used. Protection shall be provided to prevent blowout during Drilling operations as required by and in conformance with the requirements of the Railroad Commission and the recommendations of the American Petroleum Institute. In addition to the Blowout Preventers stated above, all drilling must be equipped with flow lines and valves commensurate with the working pressures involved as required by the Railroad Commission each Blowout Preventer shall be a double-ram design with blinds and pipe. After surface casing has been set and cemented to surface, each Blowout Preventer shall be tested and witnessed by Operator's personnel and the results of such test shall be documented in the Operator's well file. Testing expenses shall be the responsibility of the Operator. The Operator shall provide a complete report of the well blowout prevention test to the City Manager within fifteen (15) days of the test.

4.

Casing. The surface portions of the Well shall be cased with cement circulated to the surface. All surface and intermediate casing must comply with all applicable rules of the Railroad Commission and the Texas Commission on Environmental Quality.

5.

Compliance. Operator shall comply at all times with all applicable federal, state and City requirements.

6.

Discharge. No person shall place, deposit, discharge, or cause or permit to be placed, deposited or discharged, any oil, naphtha, petroleum, asphalt, tar, hydrocarbon substances or any refuse including water or brine from any oil and gas operation or the contents of any container used in connection with any oil and gas operation in, into, or upon any Right-of-way, alleys, streets, lots, storm

drain, ditch or sewer, sanitary drain without permits from the appropriate City departments, or any body of water or onto any private property in the City.

7.

Drilling notice. The operator shall provide at least a forty eight (48)-hour notice to the City Manager prior to mobilizing the Drilling Equipment. In addition to notification to the City Manager, the operator shall provide a notice to the owners of at least forty eight (48) hours or more prior to mobilizing the drilling equipment through a publication in the Midland Reporter Telegram and a posting in the City Secretary's Office.

8.

Drill stem testing. No drill stem testing shall be allowed.

9.

Dust, vibration, odors. All drilling and production operations shall be conducted in such a manner as to minimize, so far as practicable, dust, vibration, or noxious odors, and shall be in accordance with the best accepted practices incident to drilling for the production of oil, gas and other hydrocarbon substances in urban areas. All equipment used shall be so constructed and operated so that, vibrations, dust, odor or other harmful or annoying substances or effect will be minimized by the operations carried on at any Drill Site or Operation Site or from anything incident thereto, to the injury or annoyance of persons living in the vicinity; nor shall the site or structures thereon be permitted to become dilapidated, unsightly or unsafe. Proven technological improvements in industry standards of drilling and production in this area shall be adopted as they become available if capable of reducing factors of dust, vibration and odor.

10.

Electric lines. All electric lines going under City roadways must be bored and encased pursuant to city standards. All electric lines to production facilities may be overhead service unless the surrounding neighborhood is developed with underground electric service. If the surrounding neighborhood is developed with underground electric service, then all electric lines to production facilities shall be buried underground.

11.

Electric motors. Only electric prime movers or motors shall be permitted for the purpose of pumping wells. No electric power shall be generated on location. All electrical installations and equipment shall conform to the City ordinances and the appropriate national codes.

12.

Emergency response plan. Prior to the commencement of any oil or gas production activities, Operator shall submit to the City Manager an emergency response plan establishing written procedures to minimize any hazard resulting from drilling, completion or producing of oil and gas wells. Said plan shall use existing guidelines established by the Railroad Commission, Texas Commission on Environmental Quality, Department of Transportation and/or the Environmental Protection Agency and City Fire Code. A copy of the Emergency Response Plan shall be kept at the Operator's office.

13.

Equipment painted. All production equipment on the site shall be painted beige and maintained at all times, including pumping units, tanks, buildings and structures. The City shall regularly inspect all painted structures and inform Operator when repainting is necessary. Operator shall repaint within sixty (60) days written notice from City. When requiring re-painting of such facilities, the City Manager shall consider the deterioration of the quality of the material of which such facility or structure is constructed, the degree of rust, and its appearance. Upon request of the Operator, a color other than beige may be approved by the City Council.

14.

Explosives. Use of an explosive perforating gun during completion operations and during plugging operations and down-hole operations that require such explosives shall be allowed.

15.

Fire notice. In the event of a fire or discovery of a fire, smoke, or unauthorized release of flammable or hazardous materials on any property, the Operator shall immediately report such condition to the Fire Department in accordance with the City of Midland Fire Code. The reporting limits for hazardous materials release shall conform to the requirements of the Railroad Commission and not exceed any state or federal permitting limit.

16.

Fire prevention; sources of ignition. Firefighting apparatus and supplies as approved by the Fire Marshal and required by any applicable federal, state, or local law shall be provided by the Operator, at the Operator's cost, and shall be maintained on the drilling site at all times during drilling and/or reworking operations. The Operator shall be responsible for the maintenance and upkeep of such equipment.

17.

Fracing operations. No fracing or formation fracture stimulation operations may take place before 7:00 a.m. or after 7:00 p.m.

18.

Fresh water wells. The measurements required by this Subsection shall be in a direct line from the closest Oil and Gas well to the fresh water well.

a.

Upon request of an owner of a fresh water well within 860 feet of an Oil and Gas well, who has been duly notified, Operator shall provide the City Manager with a "pre-drilling" and "post-drilling" water analysis from any such existing fresh water well(s).

b.

Operator shall conduct and fund annual testing for water wells that have been tested pursuant to Subsection (L)18.a. above. This testing program shall continue for the production life of The Well plus three years for a producing well, or for a period of one (1) year for a dry hole.

19.

Compressors. No onsite compressor used to "lift gas" shall be used. No compressor of any type shall be used. In the event Operator determines the use of such compressor is necessary, a detailed plan shall be submitted by Operator to the City Council for consideration. An on-site compressor plan shall include the following information:

- a. The physical size of the compressor;
- b. The power source of the compressor;
- c. The horsepower of the compressor;
- d. The noise of the compressor; and
- e. The manufacturer of the compressor.

No compressor of any type shall be used unless a plan is approved by the City Council.

20.

Gas emission or burning restricted. Operator shall not allow, cause or permit gases to be vented into the atmosphere or to be burned by open flame except as provided by law or as permitted by the Railroad Commission. If the venting of gases into the atmosphere or the burning of gases by open flame is authorized as provided by law or as permitted by the Railroad Commission, then such vent or open flame shall not be located closer than three hundred thirty (330) feet from any building not used in operations on the drilling site and such vent or open flame shall be screened in an effort to minimize detrimental effects to adjacent owners. Operator shall provide notice to the Fire Marshall prior to any open flaring of gas. Gas may not be flared unless for a limited time when completing, or recompleting a well, and only if flaring will not constitute a fire hazard to other owners. If flaring gas, it shall not be burned at a rate greater than 3,000 mcf/d. No gas may be flared between the hours of 7:00 p.m. and 7:00 a.m., except in an emergency.

21.

Gas processing onsite. Except for a conventional gas separator or line heater, no refinery, processing, treating, dehydrating or absorption plant of any kind shall be constructed, established or maintained on the premises without prior written consent of the City Manager.

22.

Grass, weeds, trash. All Drill sites and Operation sites shall be kept clear of high grass, weeds, and combustible trash within a radius of one hundred (100) feet around any Tanks, production facilities, or producing wells.

23.

Hazardous plan. Hazardous Materials Management Plan (HMMP) and all Material Safety Data Sheets (MSDS) for all hazardous materials that will be located, or stored, on the Operations Site shall be submitted to the City Manager.

24.

Lights. Except under emergency circumstances, operator shall not Operate any lights located at the Drill Site. To the extent practicable, and taking into account safety considerations, emergency site lighting shall be directed downward and internally so as to avoid glare on public roads and adjacent dwellings and buildings within three hundred (300) feet. This paragraph does not apply during initial Drilling Operations.

25.

Monitoring for H₂S gas. If required by the Railroad Commission, equipment for the monitoring of H₂S gas shall be used during Drilling. The Operator will comply with all requirements found in Statewide Rule 36 of the Railroad Commission, as amended. Within sixty (60) days after completion, and annually thereafter, Operator shall submit to the City Manager results of testing to determine the concentration of H₂S produced from the Well. If the results of the H₂S testing proves to be one hundred (100) PPM H₂S or greater, the Operator is responsible for determining the one hundred (100) PPM H₂S radius of exposure for each Well and production facility. Wells and facilities where the concentration of H₂S is equal to or greater than one hundred (100) PPM will be considered "Sour." Safety systems described herein must be approved by the Fire Marshall.

a.

The following safety alarms and equipment are required at the well site of all wells that are capable of producing at a sustained rate of at least one hundred twenty-five (125) barrels of oil per day and/or three hundred (300) MCF of gas per day and for "sour" wells whose one hundred (100) PPM H₂S radius of exposure is greater than fifteen (15) feet:

i.

H₂S monitors located along the fencing, as set forth in Subsection M (for "sour" wells only).

ii.

Automated audible alarms to provide warnings for a substantial drop in pressure or for the presence of H₂S in concentrations greater than one hundred (100) PPM.

iii.

Automated valve to shut-in production from the well if a substantial drop in pressure or if the presence of H₂S in concentrations greater than one hundred (100) PPM is detected.

b.

The following safety alarms and equipment are required at "Sour" Tank battery facilities:

i.

H₂S monitors located along the fencing, as set forth in Subsection M.

ii.

Automated audible alarm to provide warnings for the presence of H₂S in concentrations greater one hundred (100) PPM.

iii.

An electrical device capable of shutting down power to all "Sour" wells producing into the battery in the event H₂S in concentrations great than 100 PPM is detected.

26.

Muffling exhaust. Exhaust from any internal combustion engine or compressor, stationary or mounted on wheels, used in connection with the Drilling of any well or for use on any production equipment shall not be discharged into the open air unless it is equipped with an exhaust muffler, or mufflers or an exhaust muffler box constructed of noncombustible materials sufficient to suppress noise and disruptive vibrations and prevent the escape of obnoxious gases, fumes or ignited carbon or soot.

27.

Pits. The following applies for pits used for Drilling and completion operations:

a.

No pit shall be placed in a floodplain without obtaining a floodplain development permit from the City Department of Development Services.

b.

No fresh water pit may be placed in any City recognized drainage way, FEMA floodplain or floodway. Construction of the fresh water pit must comply with all City, state and federal regulations.

c.

The use of earthen pits shall be allowed so long as the construction, use, dewatering and closure of such pits meets or exceeds the requirements of the applicable Railroad Commission rules and Texas Commission on Environmental Quality rules. In addition to compliance with applicable Railroad Commission rules, and Texas Commission on Environmental Quality rules, such earthen reserve pits shall also meet the following requirements;

(i)

the maximum size of a reserve pit shall be no greater than two hundred (200) feet by two hundred (200) feet;

(ii)

The pits shall be lined with a plastic liner having a minimum thickness of eight (8) mil reinforced polyethylene;

(iii)

Reserve pits used in Drilling operations shall be fenced on all open sides during such operations and shall be enclosed on all sides once Drilling operations have ceased;

(iv)

Reserve pits shall be closed within one hundred (180) days of the cessation of drilling operations;

(v)

Drill cuttings may be disposed of on the Drill Site using a deep burial method provided that the burial pit containing the cuttings is located entirely within one hundred thirty five (135) feet of the surface location of the Well, provided that all free water has been removed prior to burying the cuttings, and an impermeable liner is placed above the cuttings prior to covering the cuttings and liner with top soil, and provided that the burial pit is constructed in such a manner that the cuttings will be covered with a minimum of thirty six (36) inches of clean, compactable soil. A survey and description of the location of any closed pit used in connection with the Drill Site shall be recorded in the property records of the county in which the real property is located.

28.

Salt water wells. No commercial salt-water disposal wells that receive water by truck shall be located within the City of Midland. In the event the operator determines that the use of a non-commercial salt-water well is necessary, a detailed plan shall be submitted by the operator to the City Council for consideration. No salt water disposal well of any type shall be used unless a plan is approved by the City Council.

29.

Signs.

a.

A sign shall be immediately and prominently displayed at the gate on the temporary and permanent site fencing erected pursuant to Subsection (M) of this Section. Such sign shall be durable material, maintained in good condition and, unless otherwise required by the Railroad Commission, shall have a surface area of not less than two square feet not more than four square feet and shall be lettered with the following:

i.

Well name and number;

ii.

Name of operator;

iii.

The emergency 911 number; and

iv.

A 24-hour phone number that will provide an emergency phone number of Operator's Representatives as stated in Subsection F.

b.

Permanent weatherproof signs reading "DANGER NO SMOKING OR OPEN FLAME ALLOWED IN THIS AREA" shall be posted immediately upon completion of the well site fencing at the entrance of the well site and tank battery or in any other location approved or designated by the Fire Chief of the City. Sign lettering for this sign shall be two (2) inches or greater in height and shall be red on a white background or white on a red background. Each sign shall include the emergency notification numbers of the Fire Department and the Operator, well and lease designations required by the Texas Railroad Commission.

c.

Provide a National Fire Prevention Association (NFPA) 704 diamond hazard identification signs are required at the entrance to the Operation Site adjacent to the Operator's sign if chemicals are present. A label must be located on each chemical Tank indicating exact chemicals that may be contained in such Tank. Text shall be minimum two inches or greater in height, contrasting with the background color.

30.

Storage of equipment. Storage of equipment and materials shall be minimized and limited to the immediate operational needs of the well. Lumber, pipes, empty drums, trucks, trailers, automobiles, junk tubing, casing and rods shall not be left on the operation site except when drilling or reworking operations are being conducted on the site.

No vehicle or item of machinery shall be parked or stored on any Street, Right-of-Way or in any driveway, alley or upon any Operation Site which constitutes a fire hazard or an obstruction to or interference with fighting or controlling fires except that equipment which is necessary for Drilling or production operations on the site. The Fire Department shall be the entity that determines whether any equipment on the site shall constitute a fire hazard.

31.

Tank Battery Facilities. At the tank battery for either oil and/or gas Wells a sensor for fire detection should be appropriately placed near heater treaters, separators, and oil storage tanks that would allow an automated valve placed at the header to be closed in the event of a detected fire. All storage tanks shall be equipped with a secondary containment system. The secondary containment system shall be a minimum of three (3) feet in height and one and one-half (1½) times the contents of the total tank volume. Drip pots shall be provided at the pump out connection to contain the liquids from the storage tanks. No storage tank shall be over sixteen 16 feet in height. All storage tanks shall be built on an adequate foundation with a twelve 12-mil liner being placed

beneath each tank, extending a minimum of three (3) feet beyond the edge of each tank.

Operator must use portable steel storage tanks or fiberglass tanks for storing all fluids from the well. Tanks must meet the American Petroleum Institute standards. All tanks must have a vent line, lightning arrester and pressure relief valve. All tanks must be enclosed by a fence as required by Section (M) herein. No tank shall exceed sixteen (16) feet in height. No tank battery shall be constructed within five hundred (500) feet of any Occupied Residence, Occupied Commercial Structure or Occupied Public Building, unless a variance is granted by the City Council.

Drilling mud, cuttings, liquid hydrocarbons and all other field refuse derived or resulting from or connected with the drilling, re-working or deepening of any well shall be discharged into a steel pit or an approved earthen pit. All disposals must be in accordance with the rules of the Railroad Commission and with a plan submitted to and approved by the City Manager. Water stored in on-site tanks shall be removed as necessary.

All refuse shall be disposed of in such a manner as to comply with the applicable air and water pollution control regulations of the state, the conditions of this permit, and any applicable ordinance of the City.

Temporary flowback tanks shall be removed within ninety (90) days after completion date of the well at the pad site unless permission is obtained from the City Manager to extend the time period for no more than thirty (30) days. Completion date is that date which is stated as the "completion or recompletion date" shown on the Form W-2 or G-I filed with the Railroad Commission.

All tanks shall be set back pursuant to the standards of the Railroad Commission and the National Fire Protection Association, but in all cases, shall be at one hundred (135) feet from any street or alley right-of-way, three hundred thirty (330) feet from any public athletic field, and five hundred (500) feet from an Occupied Residence, Occupied Commercial Structure or Occupied Public Building, church, public or private school, hospital, nursing home, college or university or daycare center unless a variance is granted by the Midland City Council. Operator shall institute operational practices involving the daily monitoring of tank integrity and fluid levels within each tank. The use of a remote monitoring system is acceptable.

No meters, storage tanks, separation facilities, or other aboveground facilities, other than the well head and flow lines, shall be placed in a floodway identified by FEMA on the most current FIRM or the 100-year floodplain without a floodplain development permit obtained from the Department of Development services.

All fluids and tank bottoms will be disposed of in accordance with Railroad Commission regulations.

32.

Valves. Each flowing high volume well must have an automated shut-off valve to shut-in the well's production at the Operation Site for either a fire or

abnormal change in pressure. The fire department shall have access to the Operation Site and the shut-off valve in an emergency.

33.

Work hours for site development. No construction activities involving the excavation of, demolition of, alteration to, or repair work on any access road or pad site shall occur before 7:00 a.m. or after 7:00 p.m.

34.

Wellhead status after fracing. The wellhead between the time of Drilling/completion and tank battery construction, shall be:

a.

Surrounded with a six (6) foot tall temporary chain link fence having a gate and lock until permanent fencing is installed;

b.

The gate shall be locked at all times, except when the Operator is involved in active operations;

c.

The cellar shall be filled or closed; and

d.

The Bradenhead shall be piped to the surface and open to the atmosphere or have an observable and adequate pressure gauge with operable test valve.

35.

Inspections. In accordance within applicable law, the City Manager, or his designee, at his sole cost, risk and expense shall have a right of entry to the Drill Site/Operation Site and may, at his discretion, visit the Drill Site/Operation Site to make sure operator is in compliance with the requirements of this Section.

36.

Violation. In the event a violation of this ordinance is determined by the City's official (or officials), the City may act in any or all of the following ways:

a.

The City, through its designated official (or officials), may issue a notice of violation to the Operator, its agent, agents, employees or independent contractors (whether on site or not), or to any Person participating in the Drilling of the Well. Such notice may include a citation to appear before the Midland Municipal Court.

b.

If the City Manager, or his designee, finds the Operator to be in violation of any requirement of the applicable Oil and Gas well permit, then the City reserves the right after giving ten (10) business days written notice to the Operator regarding such violation, to draw upon the letter of credit, certificate of deposit or surety bond as outlined in Subsection (K) of this Section, in order to remedy such violation. In the event that a violation is not capable of being remedied within such ten (10) business day period, then Operator must have commenced efforts

to remedy such violation within said ten (10) business day period and thereafter continue with such efforts to remedy said violation with due diligence until completed, and as long as the Operator continues with efforts to remedy a violation with due diligence, the City shall not draw against the letter of credit, certificate of deposit or surety bond. In the event the City makes a claim on the letter of credit, certificate of deposit or surety bond pursuant to the terms hereof, reinstatement of the full amount of the letter of credit, certificate of deposit or surety bond shall be a condition to the cure of the violation leading to such claim. Alternatively, if the City Manager finds the Operator to be in violation of any requirement of the applicable Oil and Gas Well Permit, the City Manager shall give written notice to the Operator that unless all violations are corrected within ten (10) business days of the Operator's receipt of notice of the violation, the City Manager shall recommend to the City Council that the Oil and Gas Well Permit be cancelled by the City Council. In the event that a violation is not capable of being remedied within such ten (10) business-day period, then Operator must have commenced efforts to remedy said violation within said ten (10) business-day period and thereafter continue with such efforts to remedy said violation with due diligence until completed, and as long as the Operator continues with efforts to remedy a violation with due diligence, as determined by the City, the City shall not draw against the letter of credit, certificate of deposit or surety bond. If the City Council determines to consider the cancelling of the permit, it shall give the Operator written notice of the date and time of the hearing and shall give the Operator the opportunity to be heard and present facts the Operator deems relevant. The cancelling of a permit requires the majority vote of the City Council.

c.

Prosecution of violations of this Section shall be given priority and expedited upon the Municipal Court docket. Provided, however, that this subsection does not grant or guarantee Persons cited a right to expedited consideration of their citation before the Midland Municipal Court.

d.

In the event that there exists an imminent threat to public health and safety, a certified peace officer, in conjunction with the Railroad Commission, may order the temporary cessation of operations. An Operator may appeal the order to an appropriate Court in Midland County, Texas and request an expedited hearing. With respect to the contestation of an order issued pursuant to this subsection, an Operator retains all of its legal remedies.

M.

Fencing and landscaping.

1.

Fences. Variance Granted August 13 not requiring the slats woven into chain link fence until the surface is developed into airport.

A fencing plan shall be submitted, said plan containing a description of the building materials, dimensions, and locations of the proposed fence/walls and gates. The plan shall take into consideration the surrounding area and neighborhood.

At a minimum, tank battery facilities, wellheads and any production equipment associated with Oil and Gas wells shall be enclosed by a chain link fence at least seven (7) feet in height with beige-colored slats woven through the chain link, topped with three (3) strands of barbed wire angled outward or concertina wire, and shall be equipped with a locking gate. Gates shall be provided with a combination catch and locking attachment for a padlock, and shall be kept locked except when being used for access to the operation site. Operator must provide the City Fire Chief with a "Knox Padlock" or "Knox Box with a key" to access the Operation Site to be used only in case of an emergency.

The City Council may require additional or a different type of fencing to the extent necessary to conform with architectural standards and building materials existing on lots and/or lands immediately adjacent to the well and within five (500) feet of the Well at the time the Oil and Gas Well Permit is issued.

Additionally, if at any time within twenty-four (24) months following the issuance of an Oil and Gas Well Permit, a structure intended for permanent occupancy is constructed within five hundred (500) feet of the Well, the City Council may require the operator to undertake a one-time revision of the fencing plan to account for architectural standards and building materials associated with such structure to the extent that the revised fencing plan is consistent with, but not better than, the architectural standards and building materials associated with such structure.

Fences shall not be required on drill sites during drilling, completion or re-working operations as long as 24-hour on-site supervision is provided.

2.

Landscaping. Variance granted August 13, 2013.

Landscaping and irrigation is to be installed when the surface is developed into airport.

(N)

Cleanup and Maintenance.

1.

Cleanup after well servicing. After the well has been completed or plugged and abandoned, the Operator shall clean the drill site or operation site, complete restoration activities and repair all damage to public property caused by such operations within one hundred eighty (180) days.

2.

Clean-up after spills, leaks and malfunctions. After any Railroad Commission reportable spill, leak or malfunction, the Operator shall remove or cause to be removed to the satisfaction of the City Fire Chief and the City Manager all refuse materials from any public or private property affected by such spill, leak or malfunction. Clean-up operations must begin immediately. The Operator shall comply with all requirements found in Statewide Rule 91 of the Railroad Commission, as amended. If Statewide Rule 91 requires reporting of the spill, the operator shall comply with the notification and reporting requirements found in Statewide Rule 20 of the Railroad Commission, as amended. Upon request the Operator shall furnish the City Manager with all information filed with the Railroad Commission. If the Operator fails to begin site clean-up immediately the City Manager may then employ any cleanup expert or experts or other contractors or suppliers of special services, or may incur any other expenses for labor and material which the City Manager deems necessary to clean-up such spill, leak or malfunction. The City shall then be able to collect from operator the costs involved in the site clean-up. The City may collect from the posted letter of credit, certificate of deposit or surety bond or any other legal means.

3.

Free from debris. The public street entrance and property on which a well site is located shall at all times be kept free of mud, debris, pools of water or other liquids, contaminated soil, weeds, brush, trash or other refuse material within a radius of one hundred (100) feet around any production facilities, tanks and producing wells.

4.

Painting. All production equipment shall be painted beige and maintained at all times, including pumping units, tanks, secondary containment and buildings or structures. When requiring painting of such facilities, the City Manager shall consider the deterioration of the quality of the material of which such facility or structure is constructed, the degree of rust, and its appearance.

5.

Blowouts. In the event of the loss of control of any well, Operator shall immediately take all reasonable steps to regain control regardless of any other provision of this permit and shall provide the City Manager with the same

information as required to be filed with the Railroad Commission under Statewide Rule 20 as soon as practicable.

6.

Cleanup after Drilling/Completion. After the well has been drilled and completed, the Operator shall clean the Drill site, complete restoration activities and repair all damage to public property caused by such operations within ninety (90) days as specified previously in Subsection (L)27.

O.

Drilled and Abandoned Wells.

1.

Surface Requirements for Plugged and Abandoned Well. Whenever abandonment occurs pursuant to the requirements of the Railroad Commission, the Operator so abandoning shall be responsible for the restoration of the Operation site to its original condition as nearly as practicable, in conformity with the requirements of this permit underground pipelines associated with operations shall be purged of all fluids and may be abandoned in place.

2.

Surface Requirements for Drilled and Abandoned Well. Abandonment shall be approved by the City Manager after restoration of the Drill Site has been accomplished in conformity with the following requirements at the discretion of the City Manager:

a.

The Derrick and all appurtenant equipment thereto shall be removed from Drill site;

b.

All tanks, towers, and other surface installations shall be removed from the Drill site;

c.

All concrete foundations, above ground piping, wood, guy anchors and other foreign materials regardless of depth, except surface casing, shall be removed from the site, unless otherwise directed by the Railroad Commission;

d.

All holes and depressions shall be filled with clean, compactable soil;

e.

All, refuse and trash shall be removed from the Drill Site; and

f.

During abandonment, Operator shall comply with all applicable subsections in this section; and

g.

The drill site shall be restored, as close as practicable, to its original condition.

h.

Unless modified by the approved plan, deep burying of pits within the drill site perimeter is permitted. A survey and description of the location of any closed pit used in connection with the drill site shall be recorded in the property records of the county in which the real property is located. In any event the Operator shall comply with Subsection (L), Paragraph 27.

3.

Abandoned well requirement. The Operator shall furnish the following to the City Manager:

a.

A copy of the W-3A "Notice of Intention to Plug & Abandon" and W-3 "Plugging Record" forms on the same date these forms are submitted to the Railroad Commission.

b.

Prior 48-hour notice of intention to abandon under the provisions of this section and stating the date such work will be commenced. Abandonment may then be commenced on or subsequent to the date so stated.

c.

All wells shall be abandoned in accordance with the rules of the Railroad Commission; however, all well casings and cellars shall be cut and removed to a depth of at least three feet below the surface. A permanent abandonment marker, with the well identity and location permanently inscribed, shall be welded to the casing.

4.

Abandonment requirements prior to new construction. All abandoned or deserted wells or drill sites shall meet the most current abandonment requirements of the Railroad Commission prior to the issuance of any building permit for development of the property. No structure shall be built over an abandoned well.

P.

Certificate of Request for Inspection and Extension of Permit.

On or before ninety (90) days prior to each annual anniversary date of Operator's Oil and Gas Well Permit, Operator shall submit to the City Manager a Certificate of Request for Inspection of Permit. The Certificate of Request for Inspection of Permit must state the location and name of the well and the date the permit was granted by the City Council. The Certificate of Request for Inspection of Permit must be signed by the Operator before a notary public stating that the well is in compliance with the permit and all applicable Ordinances. The Certificate of Request for Inspection of Permit must

be accompanied by an application and inspection fee of \$300.00. The City Manager shall grant a one-year inspection approval on the oil/gas drilling permit if the Operator is in compliance with the permit and all applicable ordinances as they apply to the inspected well. Prior to authorizing the inspection approval, the City Manager, or his designee, shall inspect the oil and gas well site that is subject to the oil/gas drilling permit. The City Manager shall issue his decision in writing, within thirty (30) days of receiving the Certificate for Request for Inspection of Permit, either granting or denying the inspection of the oil/gas drilling permit.

The Operator may appeal the City Manager's denial of an oil/gas drilling permit inspection by submitting, in writing, an appeal to the City Council within thirty (30) days of the City Manager's written denial of the oil and gas well permit inspection. If an appeal is received by the City Council, a hearing shall be set before a meeting of the City Council to consider the denial of the oil/gas drilling permit inspection. The City Council shall hear and consider the recommendation of the City Manager, or his designee, before deciding whether or not to uphold the City Manager's decision. The Operator shall be allowed to speak and present any relevant evidence for consideration by the City Council prior to a vote of the council. A majority vote of the City Council shall be required to uphold the denial of the Oil and Gas Well Permit inspection by the City Manager. An inspection that is approved shall be valid for one (1) year from the inspection date.

(Q)

Measurement.

The measurement of all distances set forth herein shall be calculated from the proposed surface location of the well and tank batteries in a straight line, without regard to intervening structures or objects, to the closest exterior point of the object.

(R)

Effect of denial of oil and gas well permit.

If an application for an Oil and Gas Well Permit is denied by the City Council, nothing herein contained shall prevent a new permit application from being submitted to the City Council for the same proposed Oil and Gas Well or a different location for a well. A new application may also be filed on any of the mineral estate owned or leased by the applicant. Once all of the Operator's administrative and legislative remedies have been exhausted herein, the Operator may appeal or challenge the denial of an application in an appropriate Court in Midland County Texas under applicable state or federal law.

(S)

Amendment to Oil and Gas Well Permit.

1.

Amendment required. Within one hundred eighty (180) days after an Operator has been granted an Oil and Gas Well Permit, an Operator may submit an application to the City to amend an existing Oil and Gas Well Permit to commence Drilling from a new Drill site that is not shown on (or incorporated by reference as part of) the existing Oil and Gas Well Permit.

2.

Application Requirement for Amendment to Permit. An application for an amended Oil and Gas Well Permit shall meet all the requirements of this Section, shall be in writing, shall be on forms provided by the City, shall be signed by the Operator, and shall include the following:

a.

An amendment fee of \$1,000.00.

b.

A description of the proposed amendments.

c.

Any changes to the information previously submitted with the application for the existing oil/gas drilling permit (if such information has not previously been provided to the City).

d.

Such additional information as is reasonably required by the City to demonstrate compliance with the original oil/gas drilling permit.

e.

Such additional information as is reasonably required by the City to prevent imminent destruction of property or injury to persons.

3.

Review of Application for Amendment to Permit. All applications for an amended oil/gas drilling permit shall be considered in accordance with the factors listed in Subsection (I) herein. The City Council may elect to consider the application for an amended oil/gas drilling permit without the requirement of a public hearing.

4.

Standard of review.

a.

No Material Change from Existing Permit. If the activities proposed by the amendment are not materially different from the activities covered by the existing Oil and Gas Well Permit, and are otherwise in conformance with the requirements of this section, other applicable City Ordinances, the Oil/Gas Drilling Permit then the City Council shall approve the Amended Application.

b.

Material Change from Existing Permit. If the activities proposed by the amendment are materially different from the activities covered by the existing Oil/Gas Well Permit, are not in conformance with the requirements of this Section, other applicable City Ordinances, the Oil/Gas Well Permit, or if, in the judgment of the City Council, the activities proposed by the amendment might create a risk of imminent destruction of property or injury to persons or property or that were not otherwise taken into consideration by the existing Oil/Gas Well

Permit, the City Council may require the amendment to be processed as a new Oil and Gas Well Permit Application.

T.

Independent Contractor. Operator understands and agrees that Operator, its employees, servants, agents, and representatives, shall at no time represent themselves to be employees, servants, agents, and/or representatives of the City. The City shall not have any control over the means or methods by which Operator shall perform its obligations hereunder. Operator shall furnish all equipment and materials necessary to perform hereunder and shall at all times be acting as an independent contractor. No action by either party should be construed to create a partnership, joint venture, or other dual enterprise between the parties.

U.

Assignability; Transfer Permit.

1.

The Operator shall not, either directly or indirectly, assign, sell, or transfer any part of the Oil and Gas Well Permit, or any interest, right, duty, obligation or privilege under the permit, except in accordance with this Subsection.

2.

An Oil and Gas Well Permit may be transferred upon written request by the Operator with the consent of the City Council:

a.

If the transferee agrees in writing to be bound by the terms and conditions of the current Oil and Gas Well Permit and road repair agreement;

b.

If all information previously provided to the City as part of the current Oil and Gas Well Permit is updated to reflect any changes; and

c.

If the transferee provides the insurance and security required by this section.

3.

In determining whether to approve the transfer permit, the City Council may consider the financial standing of the transferee and its record of compliance with respect to existing permits. Should the transfer permit be denied, the transferee may file an application for a new Oil and Gas Well Permit.

4.

The insurance and security provided by the transferor shall be released if the transfer permit is approved; provided, however, that the transfer shall not relieve the transferor from any liability to the City arising out of any activities conducted prior to the transfer, except to the extent that the transferee expressly agrees in writing to assume such liabilities as part of the transfer.

5.

Applications for the transfer of Oil and Gas Well Permits shall be filed with the City's planning department. A non-refundable administration fee shall be charged for each application in the amount of five hundred (\$500.00).

V.

Time Limit Requirements. The failure of the City Council to review and approve an Oil and Gas Well Permit within a specified time limit shall not cause the application for the Oil and Gas Well Permit to be deemed approved. If the City Council denies a request for a permit, the applicant may file a request with the City Council to re-consider the application. The applicant may present any new evidence to the council and may present any extenuating circumstances or other matters deemed relevant by the applicant. The decision of the City Council regarding the issuance of a permit is not final until the request for re-consideration is voted upon by the City Council.

W.

Indemnification. The oil and gas well permit may contain the following language:

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

X.

Incident Reports or Written Complaints. The Operator shall provide a copy of any "incident reports" or written complaints submitted to the Railroad Commission or any other state or federal agency within thirty (30) days after Operator has notice of the existence of such reports or complaints.

Y.

Expiration of permit. Drilling must commence on the Well covered by the Oil and Gas Well permit twelve (12) months of approval by the City Council, after which the Oil and Gas Well Permit shall automatically expire if no drilling has commenced. A permit extension for a maximum time period of six (6) months may be granted by the City Manager without reapplication after the City Manager receives a written request from the Operator.

Z.

Takings determination.

1.

Any aggrieved applicant that believes that an action taken pursuant to this Section by the City Council or any officer or employee of the City constitutes a taking under the Texas or United States Constitution or under other state law, may file an application with the City Council requesting a takings determination.

2.

The applicant seeking a takings determination from the Council shall file its appeal with the office of the City Secretary. The City Secretary shall then forward the appeal to the City Council for consideration. An appeal fee in the amount of two hundred fifty (\$250.00) dollars shall accompany each filing.

3.

The appeal shall state the reasons that the applicant believes would support a finding that the City's actions constitute a taking under the Texas or United States Constitution or pursuant to other State law and shall include evidence substantiating the purported diminution in value of the applicant's real property.

4.

If the Council finds by a majority vote in favor of the applicant it may: (1) grant the relief requested, or (2) direct the City Manager to rescind action taken by City Staff that formed the basis of the takings determination appeal. If the Council denies the appeal, or after a favorable determination the City Council fails to take action as specified above, the applicant may appeal the decision or inaction of the City Council to the county or district court of the county in which the affected real property is located within thirty (30) days of the date that the Council issues its final decision or in the event the Council does not act on the application, then the operator may appeal to the county or district court after the expiration of one hundred twenty (120) days from the date the application is heard by the City Council.

Notice addresses are as follows:

City of Midland
Attn: Office of the City Manager
P. O. Box 1152
Midland, Texas 79702

OPERATOR: _____
Jeffrey T Beard, Land Manager

CrownQuest Operating, LLC
500 West Texas Ave. Suite 500
Midland, Texas 79701
(432) 818-0300



APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)



I. General Information

Date 5/1/13	Operator Name (must match W-1) CrownQuest Operating, LLC	Operator Address 500 West Texas Ave., Suite 500 Midland, Texas 79701
Representative Name Jeffrey T. Beard	Representative Address (within Midland City Limits) 500 West Texas Ave., Suite 500 Midland, Texas 79701	Rep. Tele. 432-818-0300 Rep. Fax 432-687-4804
Fee: \$4,000.00 Rec'd Yes ☒ No ☐	NOTE: All attachments need to bound and put in a binder before submitting.	Pages 1-4
Permit Compliance Contact (Choose 1): Option A: Jeffrey T. Beard 24/7 Answering Services - No. 1 (Tele.): 432-212-9308 No. 2 (Tele.): 432-818-0300		
Option B: David Kuhnert, 500 West Texas Ave., Suite 500 Midland, Texas 79701 Phone: 432-269-6404 Company Compliance Representative (Name, Address, Local Telephone) (ATTACH STATEMENT AS EXHIBIT A):		
Emergency Contact Representative (Name, Address, 24-Hour Tele. No.): David Kuhnert, 500 West Texas Ave., Suite 500 Midland, Texas 79701 Phone: 432-269-6404		
Other Permitted Wells in City (ATTACH EXHIBIT B [see § J(26)]). None		

II. Mineral Ownership

Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease):

- 1.
2. See attached Title Opinion
- 3.

ATTACHED AS EXHIBIT C is (a Title Opinion by Albert Sherman, a licensed Texas Attorney/Title Commitment by Abstract Company/a Take-off from _____, a Certified Petroleum Landman/an opinion letter from _____, a licensed Texas Attorney) indicating that [Operator] has a legal right to develop the mineral estate that is the subject of this Application. [See § J(5)].

III. Surface Ownership & Use

General Description of Current Surface Use (within 860 feet of proposed surface location):

Pasture Land

ATTACHED AS EXHIBIT D is (a Title Opinion by Albert Sherman, a licensed Texas Attorney/a Take-off from _____, a Certified Petroleum Landman/Current Tax Roll from Midland Central Appraisal District), which lists the name(s) and address(es) of all surface owners within 860 feet of the surface well location. [See § J(7)].

ATTACHED AS EXHIBIT E is a (map/p lat/satellite/aerial photo) depicting all Residences, commercial structures, public buildings, all publicly dedicated Streets and alleys, Rights of Way, and permanent accessory structures surrounding the proposed Drill Site. The (map/p lat/satellite/aerial photo) includes two circles, as required by the Ordinance—one depicting a 500 foot radius and one depicting an 860 foot radius from the proposed well's surface location. [See § J(10)].

ATTACHED AS EXHIBIT F is a copy of the notification letter(s) sent to 100 percent of the surface owners, Certified Mail, Return Receipt Requested. [See § J(36)].

IV. Well & Operations Information

Proposed Well Name: COM Nail #3

Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary)[See § J(11) and § L(4)]:

See Attached Exhibit V

Legal Description of Proposed Well Site:

467'FNL, 467'FEL of Section 36, Block 39, T1N T&P RR Co. Survey, Martin County, Texas

ATTACHED AS EXHIBIT G is the Location Site Plan [See § J(9)].

ATTACHED AS EXHIBIT H is the Map with the proposed transportation route(s) and road(s) for equipment, chemicals, or refuse products used or produced in the proposed oil and gas operations. [See § J(12)].

ATTACHED AS EXHIBIT I is a copy of the approved Texas Railroad Commission permit to drill (Form W-1), together with all attachments (also file copy of W-1 with City Secretary before commencement of drilling operations). [See § J(16) and (20)].

ATTACHED AS EXHIBIT J is a copy of the required TCEQ report as to depth of usable quality ground water. [See § J(17)].

ATTACHED AS EXHIBIT K (if applicable) is the list of alternative locations developed in consultation with the Oil & Gas Advisory Committee. [See § J(27)].

ATTACHED AS EXHIBIT L is the Fencing and Irrigation Plan. [See § J(30)].

ATTACHED AS EXHIBIT M is the Road Repair Agreement and Letter of Credit/Certificate of Deposit/Surety Bond in the amount of at least \$25,000. Option (if applicable): Applicant would further state that no City-owned streets or alleys will be used by the Operator in connection with its oil and gas operations and as a result, requests a waiver from the Council of this requirement. Option B (if applicable): Because Applicant has three Road Repair Agreements in effect that have been approved by the Council, Applicant requests that the Council consolidate all agreements into one and is filing the necessary \$75,000 letter of credit/certificate of deposit/surety bond in conjunction with this request. [See § J(31)].

ATTACHED AS EXHIBIT N is the Concept Plan depicting the proposed Operations Site (which includes tanks, roads, power lines, and pipeline routes). [See § J(32)].

Description of Public Utilities required during (1) drilling and (2) operations:

- (1) **Drilling:** None
- (2) **Operations:** Sharyland Utilities

Description of water source to be used during Drilling:

Water to be hauled by truck to location

Description of all electric lines to production facilities (reference exhibits as necessary) [See § L(10)]:

Overhead electric lines

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]:

See attached Exhibit O

V. Additional Required Exhibits

ATTACHED AS EXHIBIT P is the *Letter of Credit/Certificate of Deposit* in accordance with Subsection (K)(2). [See § J(18)].

ATTACHED AS EXHIBIT Q are Tax certificates from Midland Central Appraisal District to be submitted indicating that all taxes on personal and real property, including minerals, owned by Applicant are current. [See § J(29)].

ATTACHED AS EXHIBIT R is the required Insurance Certificate. [See § J(19) and § K(3)].

ATTACHED AS EXHIBIT S (if applicable) is the Drainage Plan approved by the City Engineer relating to Applicant's proposed operations. [See § J(21)].

ATTACHED AS EXHIBIT T is Applicant's Emergency Action Response Plan. [See § J(22)].

ATTACHED AS EXHIBIT U is Applicant's Hazardous Materials Management Plan, a copy of which has been submitted and is on file with the Midland Fire Department. [See § J(23)].

CrownQuest Operating, LLC

[NAME OF COMPANY]

By Jeffrey T. Beard

Its Land Manager

State of Texas

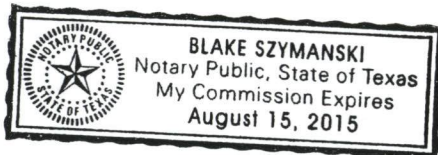
County of Midland

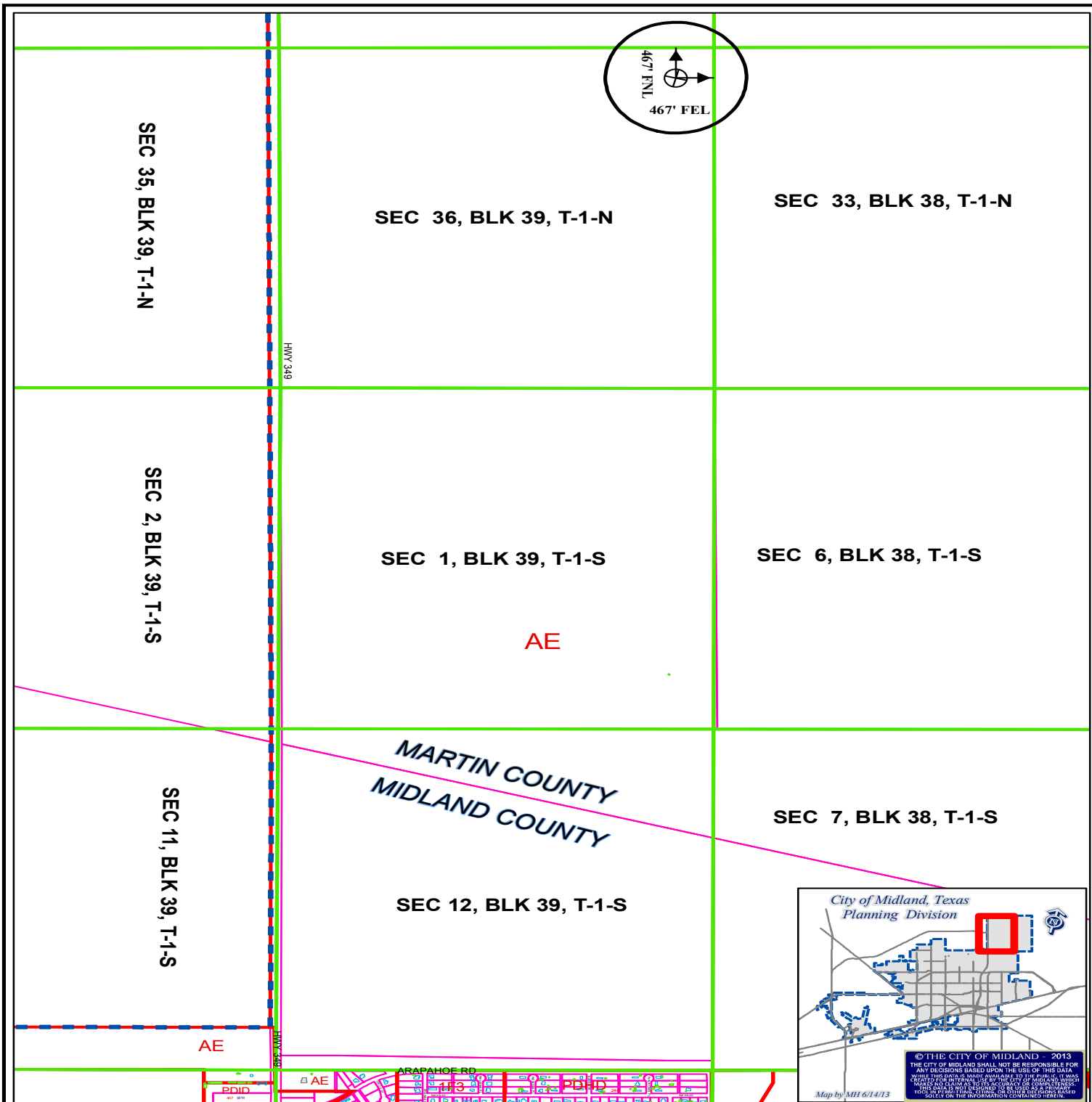
Jeffrey T. Beard

, personally appeared before me, and being first duly sworn declared he/she signed the application in the capacity designated, if any, and further states that he/she has read the above application and attached exhibits and the statements therein are true and correct to the best of their knowledge.

[Signature]
Notary Public, State of Texas

[S E A L]





LOCATION AND ZONING MAP

O - 13 - 010

Scale: 1" = 1,700'

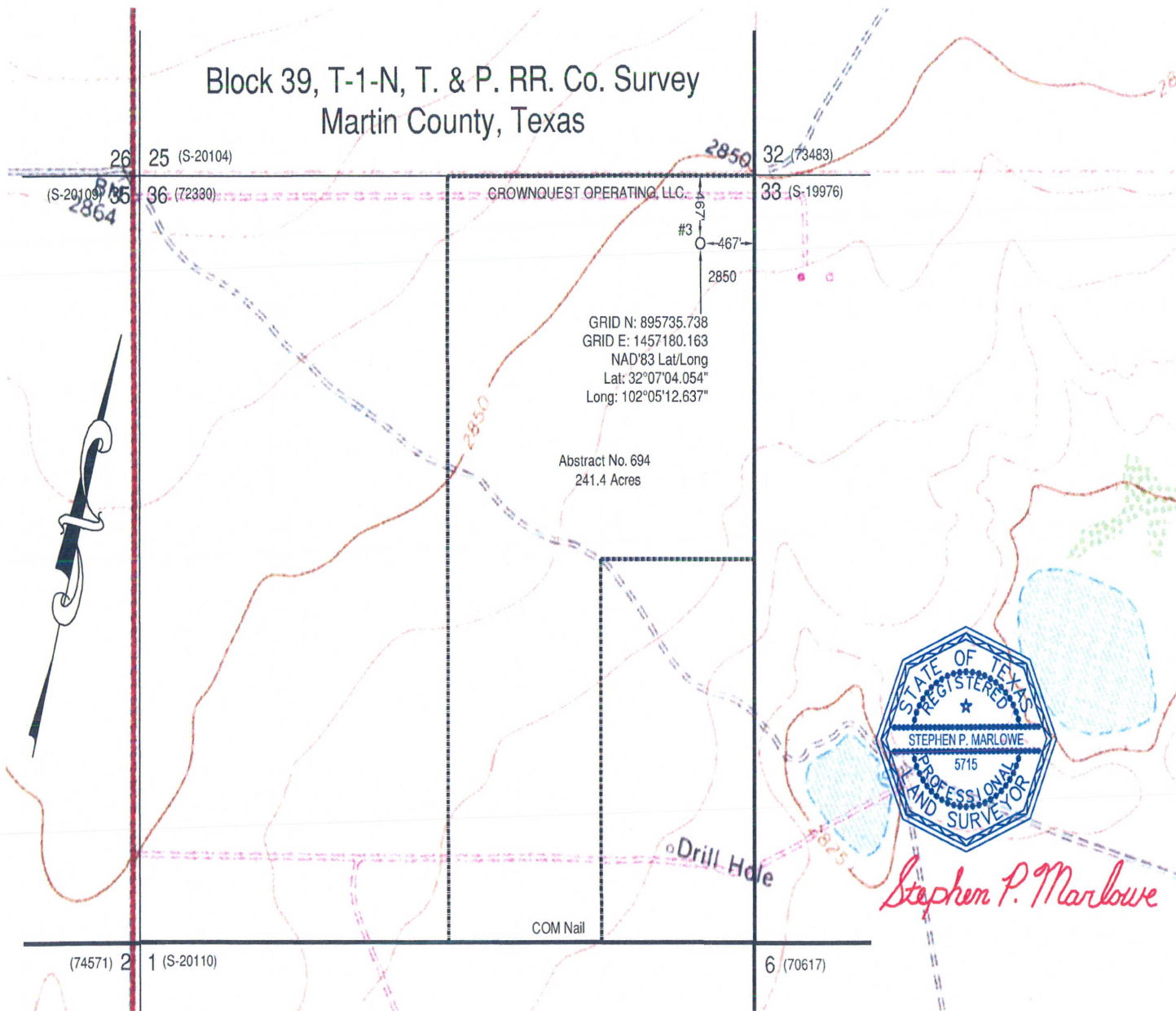
Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 467' FNL and 467' FEL, Section 36, Block 39, T-1-N, T & P RR Co. Survey, Martin County, Texas.

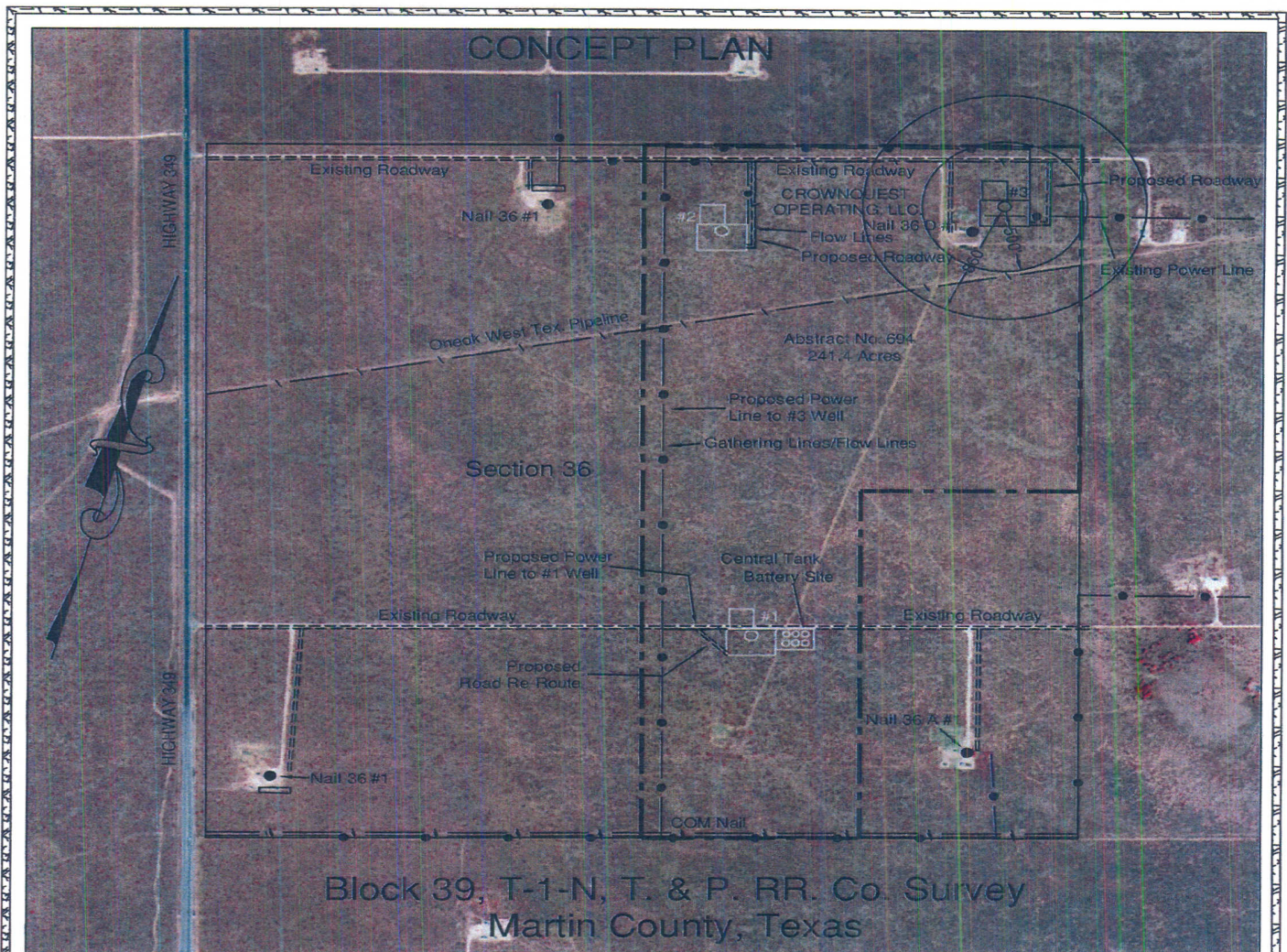
COM Nail #3

LEGEND

	CITY PARCELS		PUBLIC BLDGS		CITY LIMITS
	COUNTY PARCELS		PRIVATE BLDGS		860 FT. BUFFER
	ZONING		ACCESSORY BLDGS		SURVEY SEC.
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, JP1, IP2, IP3	INDUSTRIAL PARK		
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY		
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY		

Block 39, T-1-N, T. & P. RR. Co. Survey Martin County, Texas



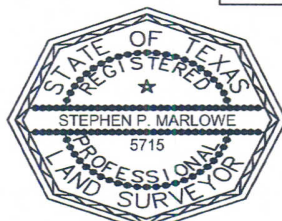
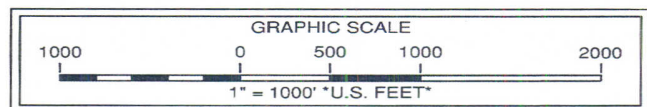


LEGEND:

- x — — — — — Fence
- • — — — — — Overhead Power Line
- \ — — — — — Pipeline (As described)
- — — — — Road (As described)
- E — — — — — Buried Electric Line
- +++++ Railroad Tracks
- — — — — Well Lease Line
- — Well (As described)

COM Nail #3
Lat: 32°07'04.05"
Long: 102°05'12.64"

Note: Lat/Longs shown herein are NAD'83 Datum.



August 3, 2012

120803B12

P.O. Box 51622, Midland, Texas, 79710 (432) 570-6256 Fax (432) 682-3262

CONCEPT PLAN

CROWNQUEST OPERATING, LLC.
CONCEPT PLAN
COM Nail #3
467' FNL & 467' FEL
Section 36, Block 39, T-1-N
T. & P. RR. Co. Survey
Martin County, Texas

Scale: 1" = 1000'



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: August 13, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Ron Jenkins, Oil & Gas Compliance Coordinator

SUBJECT: Consider a resolution approving the issuance of a permit to Callon Petroleum Operating Company (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (Pecan Acres 23 #8) located 660 feet from the north line and 660 feet from the west line located in Section 23, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. (Generally located on the south side of the west extension of Mockingbird lane, approximately $\frac{3}{4}$ mile west of Golden Gate drive. – District 1)

Purpose:

To consider a resolution approving the issuance of a permit to Callon Petroleum Operating Company (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (Pecan Acres 23 #8) located 660 feet from the north line and 660 feet from the west line located in Section 23, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. This is an opportunity for the Council to receive public comment. The required 30-day public comment has passed and the Council may consider this request. No letters of objection received.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to process this application.

Discussion:

The Oil and Gas Advisory Committee has reviewed this well site in detail and recommends approval of the application. Callon Operating is requesting a landscaping/irrigation variance. The Oil and Gas Advisory Committee recommends a two year landscaping/irrigation variance. Road repair can be consolidated with existing agreement.

Attachments: Application; Location map; Exhibit - Drill site map, Exhibit – Flow Line Location.

RESOLUTION NO. _____

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO CALLON PETROLEUM OPERATING COMPANY (“OPERATOR”) TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 660 FEET FROM THE NORTH LINE AND 660 FEET FROM THE WEST LINE, SECTION 23, BLOCK 40, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTH SIDE OF THE WEST EXTENSION OF MOCKINGBIRD LANE, APPROXIMATELY 3/4 OF A MILE WEST OF GOLDEN GATE DRIVE); AND PROVIDING THAT SAID PERMIT DOES NOT REQUIRE A NEW ROAD REPAIR AGREEMENT BUT SHALL BE CONSOLIDATED UNDER AN EXISTING ROAD REPAIR AGREEMENT

WHEREAS, on December 8, 2009, the City Council of the City of Midland duly approved Ordinance No. 8769 which amended Title VI, “Police Regulations,” Chapter 1, “General Offenses,” of the City Code of Midland, Texas, so as to establish Section 23, “Oil and Gas Well Permits issued on or after January 1, 2010,” which governs the granting or rejecting of Oil and Gas Well Permits; and

WHEREAS, the purpose of said section is to establish reasonable and uniform limitations, safeguards, and regulations for present and future operations related to the exploring, drilling, developing, producing, transporting and storing of oil or gas or other substances produced in association with oil and gas within the City of Midland to protect the health, safety, and general welfare of the public and the orderly development of the City of Midland; abate or prevent potential public nuisances; minimize the potential adverse impact to surface and mineral owners, protect the quality of the environment and encourage the orderly production of available mineral resources; and

WHEREAS, Section 6-1-23(C) of the City Code of Midland, Texas, makes it an offense to knowingly drill or participate in the drilling of any well or to re-enter any well within the corporate limits of the City of Midland without a permit having first been issued by the authority of the City Council; and

WHEREAS, Operator has submitted an application to the City of Midland to drill an

oil and gas well on the property described in Section Two hereof; and

WHEREAS, notice of the public hearing on this matter was provided in accordance with Section 6-1-23(H)(1) and a public hearing was held on July 9, 2013; and

WHEREAS, subsequent to said public hearing, and in accordance with Section 6-1-23(H)(1), the City Council allowed the public and Operator thirty (30) days to submit written input to the City Manager regarding Operator's application to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, the City Council has considered those issues set forth in Section 6-1-23(I) in determining whether to grant or deny a permit to Operator to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, the City Council finds it to be in the public interest to approve the issuance of a permit to Operator to drill an oil and gas well on the property described in Section Two hereof;

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

SECTION ONE. That the above recitals are hereby adopted and approved by the City Council of the City of Midland.

SECTION TWO. That the Mayor is hereby authorized and directed to execute a permit, on behalf of the City of Midland, that will allow Operator to drill an oil and gas well within the City limits located 660 feet from the north line and 660 feet from the west line, Section 23, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. Said permit is attached hereto as Exhibit "A" and incorporated herein for all legal purposes.

SECTION THREE. That said permit does not require a new road repair agreement but shall be consolidated under the existing road repair agreement between Operator and the City of Midland for Operator's wells located on the property described in Section Two hereof.

On motion of Council member _____, seconded by Council member

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on August 13, 2013, considered the application of Callon Petroleum Operating Company, dated March 29, 2013, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with the Midland City Code, Ordinance 8769, to drill an oil and gas well, in the application of Callon Petroleum Operating Company, dated March 29, 2013, and filed with the Oil & Gas Compliance Officer and incorporated herein for all legal purposes.

The location of Callon Petroleum Operating Company, Pecan Acres 23 #8 oil and gas well shall be 660 feet from the north line and 660 feet from the west line, Section 23, Blk 40, T-1-S, T&P RR Co. Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in that application of Callon Petroleum Operating Company, which is incorporated herein. Further, all operations done under this permit shall be done and accomplished in strict accordance with the Midland City Code, Ordinance 8769, which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit. Also, all operations done under this permit shall be done and accomplished in strict accordance and compliance with the General Conditions, which are attached hereto marked as Exhibit "A" and incorporated into and made a part of this permit for all purposes. All operations done and required under this permit shall be done and accomplished in strict accordance and compliance with the Specific Conditions which are attached hereto, marked as Exhibit "B", and incorporated into and made a part of this permit for all purposes.

This permit shall be effective from August 13, 2013, through August 13, 2014, and so long thereafter as oil or gas is produced or until such time as the permittee has permanently abandoned the operations of the well or facility for which this permit is issued.

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

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts the permittee from its responsibilities or obligations as to third parties. The issuance of this permit only means that the permittee has, at this time, complied with Ordinance No. 8769 and that the Midland City Council, as a regulatory body, will allow the permittee to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize the recipient to act with impunity as to third parties, nor does it insulate the permittee from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize the permit holder from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a "negative pronouncement" that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. The permittee has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield the permittee from third party tort liability stemming from the consequences of the permitted activity.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, utility and drainage rights-of-way.

This permit shall constitute a written contract for purposes of insurance requirements.

Landscaping is not required at this time but will be required within two years from August 13, 2013. Operator shall notify the City Manager within 180 days (February 13, 2015) in writing if the landscaping is not to be completed prior to expiration of the two year period. If landscaping is not completed prior to the two year period this permit shall automatically terminate without any action of the City Council required.

In addition to the requirements of the Midland City Code, Ordinance 8769, and the requirements of this permit, including the General and Specific Conditions incorporated herein, Callon Petroleum Operating Company shall develop, maintain and operate the well described herein in accordance with the conditions, limitations and safeguards contained in Callon Petroleum Operating Company application for said well. Callon Petroleum Operating Company application for said well is incorporated herein by reference for all legal purposes.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS ____ day of August, 2013.

CITY OF MIDLAND, TEXAS

BY: _____

W. Wesley Perry, Mayor

UNDERSTOOD AND AGREE THIS ____ day of August, 2013.

Callon Petroleum Operating Company

By: _____

Jimmy Baggett, Operations Manager

OIL AND GAS PERMIT: ORDINANCE 8769 GENERAL CONDITIONS- EXHIBIT "A"

(K)

General Conditions of all Oil and Gas Well Permits.

1.

General Obligations of Operator.

The Operator shall be required to:

a.

Comply with the terms and conditions of this Section, the Midland City Code, the rules and regulations of the Railroad Commission, and any other state or federal agency that enforces land use, mineral use, or environmental protection regulations.

b.

Promptly clear Drill and Operation sites of litter, trash, refuse and other substances used, allowed, or occurring in the operations, and after abandonment or completion, grade, level, and restore such property to the same surface conditions as nearly as practicable as existed before operations.

c.

Indemnify and hold harmless the City of Midland, the City's officers, agents and employees, from any and all claims, losses, damages, causes of action, suits, and liability of any kind, including all expenses of litigation, court costs, and attorney's fees, for injury to or death of any Person, or for damage to any property arising out of or in connection with the work done by Operator under an Oil and Gas well permit: where such injuries, death or damages are caused by Operator's sole negligence or the joint negligence of the Operator and any other Person or entity.

d.

Promptly pay all fines, penalties and other assessments imposed due to breach of any of the conditions herein. If the Operator does not agree that a breach has occurred, the Operator may file a written objection with the City Manager within ten (10) days of being notified of the alleged breach. The City Manager shall review the objections and give the Operator the opportunity to be heard and present facts that the Operator deems relevant.

e.

Promptly restore to its former condition any public property damaged by the oil and gas operation.

f.

Except as permitted by Subsection U, hereof, Operator shall not, either directly or indirectly, assign all or any part of an Oil and Gas Well Permit.

g.

If required by the Permit, Operator shall execute a "Road Repair Agreement" between itself and the City of Midland and submit all necessary information and insurance and guarantees to the City prior to the issuance of any Oil and Gas Well Permit under this Section.

2.

Irrevocable Letter of Credit, Certificate of Deposit, or Surety Bond.

Prior to the issuance of an Oil and Gas well permit, the Operator shall provide the City Attorney with a guarantee in the form of an irrevocable letter of credit, certificate of deposit, or surety bond in the name of the City. The Applicant shall be entitled to receive the interest earned if the certificate of deposit reaches maturity. The letter of credit, certificate of deposit, or surety bond must satisfy the following:

a.

The letter of credit, certificate of deposit or surety bond shall be issued by a reliable bank or insurance carrier authorized to do business in the State of Texas;

b.

The letter of credit, certificate of deposit or surety bond shall be effective starting on or before the effective date of the Oil and Gas Well Permit;

c.

The letter of credit, certificate of deposit or surety bond shall be in the amount of twenty-five thousand dollars (\$25,000.00);

d.

The letter of credit, certificate of deposit or surety bond shall remain in full force and effect for a period of three years; and

e.

The letter of credit, certificate of deposit or surety bond shall authorize the City of Midland to draw upon such credit in the event the City Manager, or his designee, determines said credit is needed to remedy any violation of this Section.

If the well is still producing or if the well has not been abandoned or plugged, the Operator must renew the letter of credit, certificate of deposit or surety bond on or before one hundred twenty (120) days prior to the expiration of the letter of credit, certificate of deposit or surety bond.

The City of Midland may draw upon the letter of credit, certificate of deposit or surety bond to recover costs of repairs, modifications, or construction to remedy any violations by the Operator under this Section. The City may make partial or full draws of the letter of credit, certificate of deposit or surety bond. The City may draw upon the letter of credit, certificate of deposit or surety bond in the event the City has not received a new letter of credit, certificate of deposit or surety bond within the one hundred twenty (120) day renewal time period required above.

The Operator shall maintain the principal amount of \$25,000.00 in the form of a letter of credit, certificate of deposit or surety bond at all times throughout the term of the permit. In the event such letter of credit, certificate of deposit or surety bond is not restored to \$25,000.00 within ten (10) days after the date of the reduction of the letter of credit, certificate of deposit or surety bond, the City may draw and receive the remaining balance of the letter of credit, certificate of deposit or surety bond, and the Oil and Gas Well Permit shall be suspended on such date and the Operator's right to operate under Oil and Gas Well Permit shall immediately cease until the Operator files the required letter of credit, or certificate of deposit or surety bond.

If an operator has three (3) or more Oil and Gas Well Permits in effect which have been approved by the City Council, the Operator may petition the Council to consolidate the letter of credits, certificate of deposits or surety bonds into one letter of credit, certificate of deposit or surety bond that would cover all Oil and Gas Wells in the City limits. The consolidated letter of credit, certificate of deposit or surety bond shall be in an amount determined by the City Council as sufficient to cover the costs of repairs, modifications, construction or to remedy violations by the Operator but in no event shall the amount be less than \$75,000.00.

3.

Insurance.

In addition to the letter of credit, certificate of deposit or surety bond required above, the Operator shall carry a policy or policies of insurance issued by an admitted insurer or eligible surplus lines insurer authorized to do business in the State of Texas. In the event such insurance policy or policies are cancelled, any Oil and Gas Well Permit issued under this Section shall be suspended on such date of cancellation and the Operator's right to operate under such Oil and Gas Well Permit shall immediately cease until the Operator files additional insurance as required herein.

- a. General requirements applicable to all policies.
- i. The City, the City's officials, employees, agents and officers shall be endorsed as an "Additional Insured" on all policies, except under Operator's Workers Compensation Policy.
 - ii. All policies shall be written on an occurrence basis, except for Environmental Pollution Liability (Seepage and Pollution coverage) and Excess and Umbrella Liability, which may be on a claims-made basis.
 - iii. All policies shall be written by an admitted insurer or eligible surplus lines insurer authorized to do business in the State of Texas.
 - iv. Deductibles shall be listed on the Certificate of Insurance and shall be on a "per occurrence" basis unless otherwise stipulated herein.
 - v. Certificates of Insurance shall be delivered to the City of Midland, P.O. Box 1152, Midland, Texas 79702, Attn: City Attorney's Office, evidencing all the required coverages, including endorsements, prior to the issuance of an Oil and Gas Well Permit under this Section.
 - vi. All policies shall be endorsed with a waiver of subrogation providing rights of recovery in favor of the City.
 - vii. Any failure on the part of the City to request required insurance documentation shall not constitute a waiver of the insurance requirements specified herein.
 - viii. Each policy shall be endorsed to provide the City a minimum thirty (30) day notice of cancellation, non-renewal, and/or material change in policy terms or coverage. A ten (10) day notice shall be acceptable in the event of non-payment of premium.
 - ix. During the term of any Oil and Gas Well Permit issued hereunder, the Operator shall report, in writing, within thirty (30) days of the occurrence, to the City Manager, any known

loss occurrence which could give rise to a liability claim or lawsuit or which could result in a property loss.

x.

Upon request, certified copies of all insurance policies shall be furnished to the City.

xi.

Operator shall have the right to maintain a qualified, self-insurance plan and/or maintain prudent levels of self-insured retentions for insurance coverage required in this section; however, Operator shall remain financially obligated for all self-insured retention amounts and deductibles. To the extent of the liabilities assumed by the Operator, Operator's insurance shall be primary coverage as to any liabilities of the City.

b.

Standard Commercial General Liability Policy.

This coverage must include premises, operations, blowout or explosion, products, completed operations, sudden and accidental pollution, blanket contractual liability, underground resources damage, broad form property damage, independent contractors protective liability, accidental death and personal injury. This coverage shall be a minimum Combined Single Limit of \$1,000,000.00 per occurrence for Bodily Injury, Accidental Death, and Property Injury.

c.

Excess or Umbrella Liability.

\$1,000,000	Excess, if the Operator has a stand-alone Environmental Pollution Liability (EPL) policy.
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\$10,000,000	Excess, if the Operator does not have a stand-alone EPL policy. Coverage must include an endorsement for sudden or accidental pollution. If Seepage and Pollution coverage is written on a "claims made" basis, the Operator must maintain continuous coverage and purchase Extended Coverage Period when necessary.
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d.

Environmental Pollution Liability Coverage.

Operator shall purchase and maintain in force for the duration of any Oil and Gas Well Permit issued hereunder, insurance for environmental pollution liability applicable to bodily injury, property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense or settlement of claims; all in connection with any loss arising from the insured site.

Coverage shall be maintained in an amount of at least \$1,000,000 per loss, with an annual aggregate of at least \$10,000,000.

Coverage shall apply to sudden and accidental pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids or gases, refuse material or other irritants, contaminants or pollutants.

e.

Workers Compensation and Employers Liability Insurance.

i.

Workers Compensation benefits shall be Texas Statutory Limits.

ii.

Employers Liability shall be a minimum of \$1,000,000.00 per accident.

iii.

Such coverage shall include a waiver of subrogation in favor of the City of Midland and provide coverage in accordance with applicable State and Federal laws.

f.

Automobile Liability Insurance.

i.

Combined single limit of \$1,000,000.00 per occurrence for bodily injury and property damage.

ii.

Coverage must include all owned, hired and not-owned automobiles.

g.

Certificates of Insurance.

i.

The company must be licensed or authorized to do business in the State of Texas.

ii.

The insurance set forth by the insurance company must be underwritten on forms that have been approved by the Texas State Board of Insurance or ISO or an equivalent policy form acceptable to the City, with the exception of environmental pollution liability and control of well coverage.

iii.

Set forth all endorsements and insurance coverage according to requirements and instructions contained herein.

iv.

Shall specifically set forth the notice of cancellation, termination, or change in coverage provisions to the City. All policies shall be endorsed to read "THIS POLICY WILL NOT BE CANCELLED OR NON-RENEWED WITHOUT THIRTY (30) DAYS ADVANCE WRITTEN NOTICE TO THE OWNER AND THE CITY, EXCEPT WHEN THIS POLICY IS BEING CANCELLED FOR NONPAYMENT OF PREMIUM, IN WHICH CASE, TEN (10) DAYS ADVANCE WRITTEN NOTICE IS REQUIRED".

v.

Original endorsements affecting coverage required by this section shall be furnished with the certificates of insurance.

vi.

At the request of an Operator, the Council may grant a variance to insurance requirements if the Council determines that the insurance procured by the Operator is sufficient to protect the City. A variance of this type may be required because of a change in underwriting policies of admitted insurance carriers.

Indemnification.

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

Notice.

The notices provided in this permit may be served in person or by registered or certified mail. Operator shall within ten (10) days notify the City Manager in writing of any change in such agent or mailing address unless operations in the City are discontinued and abandonment is complete.

Notice addresses are as follows:

City of Midland
Attn: Office of the City Manager
P. O. Box 1152
Midland, Texas 79702

OPERATOR: _____
Jimmy Baggett, Operations Manager

Callon Petroleum Operating Company
4305 N. Garfield, Suite 235
Midland, Texas 79705
(432)686-2764

OIL AND GAS WELL PERMIT: ORDINANCE 8769 SPECIFIC CONDITIONS-EXHIBIT "B"

(L)

Specific conditions of all Oil and Gas Well Permits; On-Site Requirements.

1.

Abandoned wells. All wells shall be abandoned in accordance with the rules of the Railroad Commission and pursuant to Subsection (O) of this Section.

2.

Automated audible alarm system. After completion, the appropriate system for flowing gas and/or flowing oil wells must be maintained to provide warnings for a substantial drop in pressure, or the release of any oil or gas, or a fire. Said audible alarm system must be approved by the Fire Marshal prior to installation of production equipment at the flowing gas and/or flowing oil well site.

3.

Blowout prevention. In all cases, ram-type and annular Blowout Preventers shall be used on all wells being drilled. In cases where Re-working is being performed on a Well, ram-type or annular Blowout Preventers shall be used. Protection shall be provided to prevent blowout during Drilling operations as required by and in conformance with the requirements of the Railroad Commission and the recommendations of the American Petroleum Institute. In addition to the Blowout Preventers stated above, all drilling must be equipped with flow lines and valves commensurate with the working pressures involved as required by the Railroad Commission each Blowout Preventer shall be a double-ram design with blinds and pipe. After surface casing has been set and cemented to surface, each Blowout Preventer shall be tested and witnessed by Operator's personnel and the results of such test shall be documented in the Operator's well file. Testing expenses shall be the responsibility of the Operator. The Operator shall provide a complete report of the well blowout prevention test to the City Manager within fifteen (15) days of the test.

4.

Casing. The surface portions of the Well shall be cased with cement circulated to the surface. All surface and intermediate casing must comply with all applicable rules of the Railroad Commission and the Texas Commission on Environmental Quality.

5.

Compliance. Operator shall comply at all times with all applicable federal, state and City requirements.

6.

Discharge. No person shall place, deposit, discharge, or cause or permit to be placed, deposited or discharged, any oil, naphtha, petroleum, asphalt, tar, hydrocarbon substances or any refuse including water or brine from any oil and gas operation or the contents of any container used in connection with any oil and gas operation in, into, or upon any Right-of-way, alleys, streets, lots, storm

drain, ditch or sewer, sanitary drain without permits from the appropriate City departments, or any body of water or onto any private property in the City.

7.

Drilling notice. The operator shall provide at least a forty eight (48)-hour notice to the City Manager prior to mobilizing the Drilling Equipment. In addition to notification to the City Manager, the operator shall provide a notice to the owners of at least forty eight (48) hours or more prior to mobilizing the drilling equipment through a publication in the Midland Reporter Telegram and a posting in the City Secretary's Office.

8.

Drill stem testing. No drill stem testing shall be allowed.

9.

Dust, vibration, odors. All drilling and production operations shall be conducted in such a manner as to minimize, so far as practicable, dust, vibration, or noxious odors, and shall be in accordance with the best accepted practices incident to drilling for the production of oil, gas and other hydrocarbon substances in urban areas. All equipment used shall be so constructed and operated so that, vibrations, dust, odor or other harmful or annoying substances or effect will be minimized by the operations carried on at any Drill Site or Operation Site or from anything incident thereto, to the injury or annoyance of persons living in the vicinity; nor shall the site or structures thereon be permitted to become dilapidated, unsightly or unsafe. Proven technological improvements in industry standards of drilling and production in this area shall be adopted as they become available if capable of reducing factors of dust, vibration and odor.

10.

Electric lines. All electric lines going under City roadways must be bored and encased pursuant to city standards. All electric lines to production facilities may be overhead service unless the surrounding neighborhood is developed with underground electric service. If the surrounding neighborhood is developed with underground electric service, then all electric lines to production facilities shall be buried underground.

11.

Electric motors. Only electric prime movers or motors shall be permitted for the purpose of pumping wells. No electric power shall be generated on location. All electrical installations and equipment shall conform to the City ordinances and the appropriate national codes.

12.

Emergency response plan. Prior to the commencement of any oil or gas production activities, Operator shall submit to the City Manager an emergency response plan establishing written procedures to minimize any hazard resulting from drilling, completion or producing of oil and gas wells. Said plan shall use existing guidelines established by the Railroad Commission, Texas Commission on Environmental Quality, Department of Transportation and/or the Environmental Protection Agency and City Fire Code. A copy of the Emergency Response Plan shall be kept at the Operator's office.

13.

Equipment painted. All production equipment on the site shall be painted beige and maintained at all times, including pumping units, tanks, buildings and structures. The City shall regularly inspect all painted structures and inform Operator when repainting is necessary. Operator shall repaint within sixty (60) days written notice from City. When requiring re-painting of such facilities, the City Manager shall consider the deterioration of the quality of the material of which such facility or structure is constructed, the degree of rust, and its appearance. Upon request of the Operator, a color other than beige may be approved by the City Council.

14.

Explosives. Use of an explosive perforating gun during completion operations and during plugging operations and down-hole operations that require such explosives shall be allowed.

15.

Fire notice. In the event of a fire or discovery of a fire, smoke, or unauthorized release of flammable or hazardous materials on any property, the Operator shall immediately report such condition to the Fire Department in accordance with the City of Midland Fire Code. The reporting limits for hazardous materials release shall conform to the requirements of the Railroad Commission and not exceed any state or federal permitting limit.

16.

Fire prevention; sources of ignition. Firefighting apparatus and supplies as approved by the Fire Marshal and required by any applicable federal, state, or local law shall be provided by the Operator, at the Operator's cost, and shall be maintained on the drilling site at all times during drilling and/or reworking operations. The Operator shall be responsible for the maintenance and upkeep of such equipment.

17.

Fracing operations. No fracing or formation fracture stimulation operations may take place before 7:00 a.m. or after 7:00 p.m.

18.

Fresh water wells. The measurements required by this Subsection shall be in a direct line from the closest Oil and Gas well to the fresh water well.

a.

Upon request of an owner of a fresh water well within 860 feet of an Oil and Gas well, who has been duly notified, Operator shall provide the City Manager with a "pre-drilling" and "post-drilling" water analysis from any such existing fresh water well(s).

b.

Operator shall conduct and fund annual testing for water wells that have been tested pursuant to Subsection (L)18.a. above. This testing program shall continue for the production life of The Well plus three years for a producing well, or for a period of one (1) year for a dry hole.

19.

Compressors. No onsite compressor used to "lift gas" shall be used. No compressor of any type shall be used. In the event Operator determines the use of such compressor is necessary, a detailed plan shall be submitted by Operator to the City Council for consideration. An on-site compressor plan shall include the following information:

- a. The physical size of the compressor;
- b. The power source of the compressor;
- c. The horsepower of the compressor;
- d. The noise of the compressor; and
- e. The manufacturer of the compressor.

No compressor of any type shall be used unless a plan is approved by the City Council.

20.

Gas emission or burning restricted. Operator shall not allow, cause or permit gases to be vented into the atmosphere or to be burned by open flame except as provided by law or as permitted by the Railroad Commission. If the venting of gases into the atmosphere or the burning of gases by open flame is authorized as provided by law or as permitted by the Railroad Commission, then such vent or open flame shall not be located closer than three hundred thirty (330) feet from any building not used in operations on the drilling site and such vent or open flame shall be screened in an effort to minimize detrimental effects to adjacent owners. Operator shall provide notice to the Fire Marshall prior to any open flaring of gas. Gas may not be flared unless for a limited time when completing, or recompleting a well, and only if flaring will not constitute a fire hazard to other owners. If flaring gas, it shall not be burned at a rate greater than 3,000 mcf/d. No gas may be flared between the hours of 7:00 p.m. and 7:00 a.m., except in an emergency.

21.

Gas processing onsite. Except for a conventional gas separator or line heater, no refinery, processing, treating, dehydrating or absorption plant of any kind shall be constructed, established or maintained on the premises without prior written consent of the City Manager.

22.

Grass, weeds, trash. All Drill sites and Operation sites shall be kept clear of high grass, weeds, and combustible trash within a radius of one hundred (100) feet around any Tanks, production facilities, or producing wells.

23.

Hazardous plan. Hazardous Materials Management Plan (HMMP) and all Material Safety Data Sheets (MSDS) for all hazardous materials that will be located, or stored, on the Operations Site shall be submitted to the City Manager.

24.

Lights. Except under emergency circumstances, operator shall not Operate any lights located at the Drill Site. To the extent practicable, and taking into account safety considerations, emergency site lighting shall be directed downward and internally so as to avoid glare on public roads and adjacent dwellings and buildings within three hundred (300) feet. This paragraph does not apply during initial Drilling Operations.

25.

Monitoring for H₂S gas. If required by the Railroad Commission, equipment for the monitoring of H₂S gas shall be used during Drilling. The Operator will comply with all requirements found in Statewide Rule 36 of the Railroad Commission, as amended. Within sixty (60) days after completion, and annually thereafter, Operator shall submit to the City Manager results of testing to determine the concentration of H₂S produced from the Well. If the results of the H₂S testing proves to be one hundred (100) PPM H₂S or greater, the Operator is responsible for determining the one hundred (100) PPM H₂S radius of exposure for each Well and production facility. Wells and facilities where the concentration of H₂S is equal to or greater than one hundred (100) PPM will be considered "Sour." Safety systems described herein must be approved by the Fire Marshall.

a.

The following safety alarms and equipment are required at the well site of all wells that are capable of producing at a sustained rate of at least one hundred twenty-five (125) barrels of oil per day and/or three hundred (300) MCF of gas per day and for "sour" wells whose one hundred (100) PPM H₂S radius of exposure is greater than fifteen (15) feet:

i.

H₂S monitors located along the fencing, as set forth in Subsection M (for "sour" wells only).

ii.

Automated audible alarms to provide warnings for a substantial drop in pressure or for the presence of H₂S in concentrations greater than one hundred (100) PPM.

iii.

Automated valve to shut-in production from the well if a substantial drop in pressure or if the presence of H₂S in concentrations greater than one hundred (100) PPM is detected.

b.

The following safety alarms and equipment are required at "Sour" Tank battery facilities:

i.

H₂S monitors located along the fencing, as set forth in Subsection M.

ii.

Automated audible alarm to provide warnings for the presence of H₂S in concentrations greater one hundred (100) PPM.

iii.

An electrical device capable of shutting down power to all "Sour" wells producing into the battery in the event H₂S in concentrations great than 100 PPM is detected.

26.

Muffling exhaust. Exhaust from any internal combustion engine or compressor, stationary or mounted on wheels, used in connection with the Drilling of any well or for use on any production equipment shall not be discharged into the open air unless it is equipped with an exhaust muffler, or mufflers or an exhaust muffler box constructed of noncombustible materials sufficient to suppress noise and disruptive vibrations and prevent the escape of obnoxious gases, fumes or ignited carbon or soot.

27.

Pits. The following applies for pits used for Drilling and completion operations:

a.

No pit shall be placed in a floodplain without obtaining a floodplain development permit from the City Department of Development Services.

b.

No fresh water pit may be placed in any City recognized drainage way, FEMA floodplain or floodway. Construction of the fresh water pit must comply with all City, state and federal regulations.

c.

The use of earthen pits shall be allowed so long as the construction, use, dewatering and closure of such pits meets or exceeds the requirements of the applicable Railroad Commission rules and Texas Commission on Environmental Quality rules. In addition to compliance with applicable Railroad Commission rules, and Texas Commission on Environmental Quality rules, such earthen reserve pits shall also meet the following requirements;

(i)

the maximum size of a reserve pit shall be no greater than two hundred (200) feet by two hundred (200) feet;

(ii)

The pits shall be lined with a plastic liner having a minimum thickness of eight (8) mil reinforced polyethylene;

(iii)

Reserve pits used in Drilling operations shall be fenced on all open sides during such operations and shall be enclosed on all sides once Drilling operations have ceased;

(iv)

Reserve pits shall be closed within one hundred (180) days of the cessation of drilling operations;

(v)

Drill cuttings may be disposed of on the Drill Site using a deep burial method provided that the burial pit containing the cuttings is located entirely within one hundred thirty five (135) feet of the surface location of the Well, provided that all free water has been removed prior to burying the cuttings, and an impermeable liner is placed above the cuttings prior to covering the cuttings and liner with top soil, and provided that the burial pit is constructed in such a manner that the cuttings will be covered with a minimum of thirty six (36) inches of clean, compactable soil. A survey and description of the location of any closed pit used in connection with the Drill Site shall be recorded in the property records of the county in which the real property is located.

28.

Salt water wells. No commercial salt-water disposal wells that receive water by truck shall be located within the City of Midland. In the event the operator determines that the use of a non-commercial salt-water well is necessary, a detailed plan shall be submitted by the operator to the City Council for consideration. No salt water disposal well of any type shall be used unless a plan is approved by the City Council.

29.

Signs.

a.

A sign shall be immediately and prominently displayed at the gate on the temporary and permanent site fencing erected pursuant to Subsection (M) of this Section. Such sign shall be durable material, maintained in good condition and, unless otherwise required by the Railroad Commission, shall have a surface area of not less than two square feet not more than four square feet and shall be lettered with the following:

i.

Well name and number;

ii.

Name of operator;

iii.

The emergency 911 number; and

iv.

A 24-hour phone number that will provide an emergency phone number of Operator's Representatives as stated in Subsection F.

b.

Permanent weatherproof signs reading "DANGER NO SMOKING OR OPEN FLAME ALLOWED IN THIS AREA" shall be posted immediately upon completion of the well site fencing at the entrance of the well site and tank battery or in any other location approved or designated by the Fire Chief of the City. Sign lettering for this sign shall be two (2) inches or greater in height and shall be red on a white background or white on a red background. Each sign shall include the emergency notification numbers of the Fire Department and the Operator, well and lease designations required by the Texas Railroad Commission.

c.

Provide a National Fire Prevention Association (NFPA) 704 diamond hazard identification signs are required at the entrance to the Operation Site adjacent to the Operator's sign if chemicals are present. A label must be located on each chemical Tank indicating exact chemicals that may be contained in such Tank. Text shall be minimum two inches or greater in height, contrasting with the background color.

30.

Storage of equipment. Storage of equipment and materials shall be minimized and limited to the immediate operational needs of the well. Lumber, pipes, empty drums, trucks, trailers, automobiles, junk tubing, casing and rods shall not be left on the operation site except when drilling or reworking operations are being conducted on the site.

No vehicle or item of machinery shall be parked or stored on any Street, Right-of-Way or in any driveway, alley or upon any Operation Site which constitutes a fire hazard or an obstruction to or interference with fighting or controlling fires except that equipment which is necessary for Drilling or production operations on the site. The Fire Department shall be the entity that determines whether any equipment on the site shall constitute a fire hazard.

31.

Tank Battery Facilities. At the tank battery for either oil and/or gas Wells a sensor for fire detection should be appropriately placed near heater treaters, separators, and oil storage tanks that would allow an automated valve placed at the header to be closed in the event of a detected fire. All storage tanks shall be equipped with a secondary containment system. The secondary containment system shall be a minimum of three (3) feet in height and one and one-half (1½) times the contents of the total tank volume. Drip pots shall be provided at the pump out connection to contain the liquids from the storage tanks. No storage tank shall be over sixteen 16 feet in height. All storage tanks shall be built on an adequate foundation with a twelve 12-mil liner being placed

beneath each tank, extending a minimum of three (3) feet beyond the edge of each tank.

Operator must use portable steel storage tanks or fiberglass tanks for storing all fluids from the well. Tanks must meet the American Petroleum Institute standards. All tanks must have a vent line, lightning arrester and pressure relief valve. All tanks must be enclosed by a fence as required by Section (M) herein. No tank shall exceed sixteen (16) feet in height. No tank battery shall be constructed within five hundred (500) feet of any Occupied Residence, Occupied Commercial Structure or Occupied Public Building, unless a variance is granted by the City Council.

Drilling mud, cuttings, liquid hydrocarbons and all other field refuse derived or resulting from or connected with the drilling, re-working or deepening of any well shall be discharged into a steel pit or an approved earthen pit. All disposals must be in accordance with the rules of the Railroad Commission and with a plan submitted to and approved by the City Manager. Water stored in on-site tanks shall be removed as necessary.

All refuse shall be disposed of in such a manner as to comply with the applicable air and water pollution control regulations of the state, the conditions of this permit, and any applicable ordinance of the City.

Temporary flowback tanks shall be removed within ninety (90) days after completion date of the well at the pad site unless permission is obtained from the City Manager to extend the time period for no more than thirty (30) days. Completion date is that date which is stated as the "completion or recompletion date" shown on the Form W-2 or G-I filed with the Railroad Commission.

All tanks shall be set back pursuant to the standards of the Railroad Commission and the National Fire Protection Association, but in all cases, shall be at one hundred (135) feet from any street or alley right-of-way, three hundred thirty (330) feet from any public athletic field, and five hundred (500) feet from an Occupied Residence, Occupied Commercial Structure or Occupied Public Building, church, public or private school, hospital, nursing home, college or university or daycare center unless a variance is granted by the Midland City Council. Operator shall institute operational practices involving the daily monitoring of tank integrity and fluid levels within each tank. The use of a remote monitoring system is acceptable.

No meters, storage tanks, separation facilities, or other aboveground facilities, other than the well head and flow lines, shall be placed in a floodway identified by FEMA on the most current FIRM or the 100-year floodplain without a floodplain development permit obtained from the Department of Development services.

All fluids and tank bottoms will be disposed of in accordance with Railroad Commission regulations.

32.

Valves. Each flowing high volume well must have an automated shut-off valve to shut-in the well's production at the Operation Site for either a fire or

abnormal change in pressure. The fire department shall have access to the Operation Site and the shut-off valve in an emergency.

33.

Work hours for site development. No construction activities involving the excavation of, demolition of, alteration to, or repair work on any access road or pad site shall occur before 7:00 a.m. or after 7:00 p.m.

34.

Wellhead status after fracing. The wellhead between the time of Drilling/completion and tank battery construction, shall be:

a.

Surrounded with a six (6) foot tall temporary chain link fence having a gate and lock until permanent fencing is installed;

b.

The gate shall be locked at all times, except when the Operator is involved in active operations;

c.

The cellar shall be filled or closed; and

d.

The Bradenhead shall be piped to the surface and open to the atmosphere or have an observable and adequate pressure gauge with operable test valve.

35.

Inspections. In accordance within applicable law, the City Manager, or his designee, at his sole cost, risk and expense shall have a right of entry to the Drill Site/Operation Site and may, at his discretion, visit the Drill Site/Operation Site to make sure operator is in compliance with the requirements of this Section.

36.

Violation. In the event a violation of this ordinance is determined by the City's official (or officials), the City may act in any or all of the following ways:

a.

The City, through its designated official (or officials), may issue a notice of violation to the Operator, its agent, agents, employees or independent contractors (whether on site or not), or to any Person participating in the Drilling of the Well. Such notice may include a citation to appear before the Midland Municipal Court.

b.

If the City Manager, or his designee, finds the Operator to be in violation of any requirement of the applicable Oil and Gas well permit, then the City reserves the right after giving ten (10) business days written notice to the Operator regarding such violation, to draw upon the letter of credit, certificate of deposit or surety bond as outlined in Subsection (K) of this Section, in order to remedy such violation. In the event that a violation is not capable of being remedied within such ten (10) business day period, then Operator must have commenced efforts

to remedy such violation within said ten (10) business day period and thereafter continue with such efforts to remedy said violation with due diligence until completed, and as long as the Operator continues with efforts to remedy a violation with due diligence, the City shall not draw against the letter of credit, certificate of deposit or surety bond. In the event the City makes a claim on the letter of credit, certificate of deposit or surety bond pursuant to the terms hereof, reinstatement of the full amount of the letter of credit, certificate of deposit or surety bond shall be a condition to the cure of the violation leading to such claim. Alternatively, if the City Manager finds the Operator to be in violation of any requirement of the applicable Oil and Gas Well Permit, the City Manager shall give written notice to the Operator that unless all violations are corrected within ten (10) business days of the Operator's receipt of notice of the violation, the City Manager shall recommend to the City Council that the Oil and Gas Well Permit be cancelled by the City Council. In the event that a violation is not capable of being remedied within such ten (10) business-day period, then Operator must have commenced efforts to remedy said violation within said ten (10) business-day period and thereafter continue with such efforts to remedy said violation with due diligence until completed, and as long as the Operator continues with efforts to remedy a violation with due diligence, as determined by the City, the City shall not draw against the letter of credit, certificate of deposit or surety bond. If the City Council determines to consider the cancelling of the permit, it shall give the Operator written notice of the date and time of the hearing and shall give the Operator the opportunity to be heard and present facts the Operator deems relevant. The cancelling of a permit requires the majority vote of the City Council.

c.

Prosecution of violations of this Section shall be given priority and expedited upon the Municipal Court docket. Provided, however, that this subsection does not grant or guarantee Persons cited a right to expedited consideration of their citation before the Midland Municipal Court.

d.

In the event that there exists an imminent threat to public health and safety, a certified peace officer, in conjunction with the Railroad Commission, may order the temporary cessation of operations. An Operator may appeal the order to an appropriate Court in Midland County, Texas and request an expedited hearing. With respect to the contestation of an order issued pursuant to this subsection, an Operator retains all of its legal remedies.

M.

Fencing and landscaping.

1.

Fences.

A fencing plan shall be submitted, said plan containing a description of the building materials, dimensions, and locations of the proposed fence/walls and gates. The plan shall take into consideration the surrounding area and neighborhood.

At a minimum, tank battery facilities, wellheads and any production equipment associated with Oil and Gas wells shall be enclosed by a chain link fence at least seven (7) feet in height with beige-colored slats woven through the chain link, topped with three (3) strands of barbed wire angled outward or concertina wire, and shall be equipped with a locking gate. Gates shall be provided with a combination catch and locking attachment for a padlock, and shall be kept locked except when being used for access to the operation site. Operator must provide the City Fire Chief with a "Knox Padlock" or "Knox Box with a key" to access the Operation Site to be used only in case of an emergency.

The City Council may require additional or a different type of fencing to the extent necessary to conform with architectural standards and building materials existing on lots and/or lands immediately adjacent to the well and within five (500) feet of the Well at the time the Oil and Gas Well Permit is issued.

Additionally, if at any time within twenty-four (24) months following the issuance of an Oil and Gas Well Permit, a structure intended for permanent occupancy is constructed within five hundred (500) feet of the Well, the City Council may require the operator to undertake a one-time revision of the fencing plan to account for architectural standards and building materials associated with such structure to the extent that the revised fencing plan is consistent with, but not better than, the architectural standards and building materials associated with such structure.

Fences shall not be required on drill sites during drilling, completion or re-working operations as long as 24-hour on-site supervision is provided.

2.

Landscaping.

Landscaping is not required at this time but will be required within two years from August 13, 2013. Operator shall notify the City Manager within 180 days (February 13, 2015) in writing if the landscaping is not to be completed prior to expiration of the two year period. If landscaping is not completed prior to the two year period this permit shall automatically terminate without any action of the City Council required.

(N)

Cleanup and Maintenance.

1.

Cleanup after well servicing. After the well has been completed or plugged and abandoned, the Operator shall clean the drill site or operation site, complete restoration activities and repair all damage to public property caused by such operations within one hundred eighty (180) days.

2.

Clean-up after spills, leaks and malfunctions. After any Railroad Commission reportable spill, leak or malfunction, the Operator shall remove or cause to be removed to the satisfaction of the City Fire Chief and the City Manager all refuse materials from any public or private property affected by such spill, leak or malfunction. Clean-up operations must begin immediately. The Operator shall comply with all requirements found in Statewide Rule 91 of the Railroad Commission, as amended. If Statewide Rule 91 requires reporting of the spill, the operator shall comply with the notification and reporting requirements found in Statewide Rule 20 of the Railroad Commission, as amended. Upon request the Operator shall furnish the City Manager with all information filed with the Railroad Commission. If the Operator fails to begin site clean-up immediately the City Manager may then employ any cleanup expert or experts or other contractors or suppliers of special services, or may incur any other expenses for labor and material which the City Manager deems necessary to clean-up such spill, leak or malfunction. The City shall then be able to collect from operator the costs involved in the site clean-up. The City may collect from the posted letter of credit, certificate of deposit or surety bond or any other legal means.

3.

Free from debris. The public street entrance and property on which a well site is located shall at all times be kept free of mud, debris, pools of water or other liquids, contaminated soil, weeds, brush, trash or other refuse material within a radius of one hundred (100) feet around any production facilities, tanks and producing wells.

4.

Painting. All production equipment shall be painted beige and maintained at all times, including pumping units, tanks, secondary containment and buildings or structures. When requiring painting of such facilities, the City Manager shall consider the deterioration of the quality of the material of which such facility or structure is constructed, the degree of rust, and its appearance.

5.

Blowouts. In the event of the loss of control of any well, Operator shall immediately take all reasonable steps to regain control regardless of any other provision of this permit and shall provide the City Manager with the same

information as required to be filed with the Railroad Commission under Statewide Rule 20 as soon as practicable.

6.

Cleanup after Drilling/Completion. After the well has been drilled and completed, the Operator shall clean the Drill site, complete restoration activities and repair all damage to public property caused by such operations within ninety (90) days as specified previously in Subsection (L)27.

O.

Drilled and Abandoned Wells.

1.

Surface Requirements for Plugged and Abandoned Well. Whenever abandonment occurs pursuant to the requirements of the Railroad Commission, the Operator so abandoning shall be responsible for the restoration of the Operation site to its original condition as nearly as practicable, in conformity with the requirements of this permit underground pipelines associated with operations shall be purged of all fluids and may be abandoned in place.

2.

Surface Requirements for Drilled and Abandoned Well. Abandonment shall be approved by the City Manager after restoration of the Drill Site has been accomplished in conformity with the following requirements at the discretion of the City Manager:

a.

The Derrick and all appurtenant equipment thereto shall be removed from Drill site;

b.

All tanks, towers, and other surface installations shall be removed from the Drill site;

c.

All concrete foundations, above ground piping, wood, guy anchors and other foreign materials regardless of depth, except surface casing, shall be removed from the site, unless otherwise directed by the Railroad Commission;

d.

All holes and depressions shall be filled with clean, compactable soil;

e.

All, refuse and trash shall be removed from the Drill Site; and

f.

During abandonment, Operator shall comply with all applicable subsections in this section; and

g.

The drill site shall be restored, as close as practicable, to its original condition.

h.

Unless modified by the approved plan, deep burying of pits within the drill site perimeter is permitted. A survey and description of the location of any closed pit used in connection with the drill site shall be recorded in the property records of the county in which the real property is located. In any event the Operator shall comply with Subsection (L), Paragraph 27.

3.

Abandoned well requirement. The Operator shall furnish the following to the City Manager:

a.

A copy of the W-3A "Notice of Intention to Plug & Abandon" and W-3 "Plugging Record" forms on the same date these forms are submitted to the Railroad Commission.

b.

Prior 48-hour notice of intention to abandon under the provisions of this section and stating the date such work will be commenced. Abandonment may then be commenced on or subsequent to the date so stated.

c.

All wells shall be abandoned in accordance with the rules of the Railroad Commission; however, all well casings and cellars shall be cut and removed to a depth of at least three feet below the surface. A permanent abandonment marker, with the well identity and location permanently inscribed, shall be welded to the casing.

4.

Abandonment requirements prior to new construction. All abandoned or deserted wells or drill sites shall meet the most current abandonment requirements of the Railroad Commission prior to the issuance of any building permit for development of the property. No structure shall be built over an abandoned well.

P.

Certificate of Request for Inspection and Extension of Permit.

On or before ninety (90) days prior to each annual anniversary date of Operator's Oil and Gas Well Permit, Operator shall submit to the City Manager a Certificate of Request for Inspection of Permit. The Certificate of Request for Inspection of Permit must state the location and name of the well and the date the permit was granted by the City Council. The Certificate of Request for Inspection of Permit must be signed by the Operator before a notary public stating that the well is in compliance with the permit and all applicable Ordinances. The Certificate of Request for Inspection of Permit must

be accompanied by an application and inspection fee of \$300.00. The City Manager shall grant a one-year inspection approval on the oil/gas drilling permit if the Operator is in compliance with the permit and all applicable ordinances as they apply to the inspected well. Prior to authorizing the inspection approval, the City Manager, or his designee, shall inspect the oil and gas well site that is subject to the oil/gas drilling permit. The City Manager shall issue his decision in writing, within thirty (30) days of receiving the Certificate for Request for Inspection of Permit, either granting or denying the inspection of the oil/gas drilling permit.

The Operator may appeal the City Manager's denial of an oil/gas drilling permit inspection by submitting, in writing, an appeal to the City Council within thirty (30) days of the City Manager's written denial of the oil and gas well permit inspection. If an appeal is received by the City Council, a hearing shall be set before a meeting of the City Council to consider the denial of the oil/gas drilling permit inspection. The City Council shall hear and consider the recommendation of the City Manager, or his designee, before deciding whether or not to uphold the City Manager's decision. The Operator shall be allowed to speak and present any relevant evidence for consideration by the City Council prior to a vote of the council. A majority vote of the City Council shall be required to uphold the denial of the Oil and Gas Well Permit inspection by the City Manager. An inspection that is approved shall be valid for one (1) year from the inspection date.

(Q)

Measurement.

The measurement of all distances set forth herein shall be calculated from the proposed surface location of the well and tank batteries in a straight line, without regard to intervening structures or objects, to the closest exterior point of the object.

(R)

Effect of denial of oil and gas well permit.

If an application for an Oil and Gas Well Permit is denied by the City Council, nothing herein contained shall prevent a new permit application from being submitted to the City Council for the same proposed Oil and Gas Well or a different location for a well. A new application may also be filed on any of the mineral estate owned or leased by the applicant. Once all of the Operator's administrative and legislative remedies have been exhausted herein, the Operator may appeal or challenge the denial of an application in an appropriate Court in Midland County Texas under applicable state or federal law.

(S)

Amendment to Oil and Gas Well Permit.

1.

Amendment required. Within one hundred eighty (180) days after an Operator has been granted an Oil and Gas Well Permit, an Operator may submit an application to the City to amend an existing Oil and Gas Well Permit to commence Drilling from a new Drill site that is not shown on (or incorporated by reference as part of) the existing Oil and Gas Well Permit.

2.

Application Requirement for Amendment to Permit. An application for an amended Oil and Gas Well Permit shall meet all the requirements of this Section, shall be in writing, shall be on forms provided by the City, shall be signed by the Operator, and shall include the following:

a.

An amendment fee of \$1,000.00.

b.

A description of the proposed amendments.

c.

Any changes to the information previously submitted with the application for the existing oil/gas drilling permit (if such information has not previously been provided to the City).

d.

Such additional information as is reasonably required by the City to demonstrate compliance with the original oil/gas drilling permit.

e.

Such additional information as is reasonably required by the City to prevent imminent destruction of property or injury to persons.

3.

Review of Application for Amendment to Permit. All applications for an amended oil/gas drilling permit shall be considered in accordance with the factors listed in Subsection (I) herein. The City Council may elect to consider the application for an amended oil/gas drilling permit without the requirement of a public hearing.

4.

Standard of review.

a.

No Material Change from Existing Permit. If the activities proposed by the amendment are not materially different from the activities covered by the existing Oil and Gas Well Permit, and are otherwise in conformance with the requirements of this section, other applicable City Ordinances, the Oil/Gas Drilling Permit then the City Council shall approve the Amended Application.

b.

Material Change from Existing Permit. If the activities proposed by the amendment are materially different from the activities covered by the existing Oil/Gas Well Permit, are not in conformance with the requirements of this Section, other applicable City Ordinances, the Oil/Gas Well Permit, or if, in the judgment of the City Council, the activities proposed by the amendment might create a risk of imminent destruction of property or injury to persons or property or that were not otherwise taken into consideration by the existing Oil/Gas Well

Permit, the City Council may require the amendment to be processed as a new Oil and Gas Well Permit Application.

T.

Independent Contractor. Operator understands and agrees that Operator, its employees, servants, agents, and representatives, shall at no time represent themselves to be employees, servants, agents, and/or representatives of the City. The City shall not have any control over the means or methods by which Operator shall perform its obligations hereunder. Operator shall furnish all equipment and materials necessary to perform hereunder and shall at all times be acting as an independent contractor. No action by either party should be construed to create a partnership, joint venture, or other dual enterprise between the parties.

U.

Assignability; Transfer Permit.

1.

The Operator shall not, either directly or indirectly, assign, sell, or transfer any part of the Oil and Gas Well Permit, or any interest, right, duty, obligation or privilege under the permit, except in accordance with this Subsection.

2.

An Oil and Gas Well Permit may be transferred upon written request by the Operator with the consent of the City Council:

a.

If the transferee agrees in writing to be bound by the terms and conditions of the current Oil and Gas Well Permit and road repair agreement;

b.

If all information previously provided to the City as part of the current Oil and Gas Well Permit is updated to reflect any changes; and

c.

If the transferee provides the insurance and security required by this section.

3.

In determining whether to approve the transfer permit, the City Council may consider the financial standing of the transferee and its record of compliance with respect to existing permits. Should the transfer permit be denied, the transferee may file an application for a new Oil and Gas Well Permit.

4.

The insurance and security provided by the transferor shall be released if the transfer permit is approved; provided, however, that the transfer shall not relieve the transferor from any liability to the City arising out of any activities conducted prior to the transfer, except to the extent that the transferee expressly agrees in writing to assume such liabilities as part of the transfer.

5.

Applications for the transfer of Oil and Gas Well Permits shall be filed with the City's planning department. A non-refundable administration fee shall be charged for each application in the amount of five hundred (\$500.00).

V.

Time Limit Requirements. The failure of the City Council to review and approve an Oil and Gas Well Permit within a specified time limit shall not cause the application for the Oil and Gas Well Permit to be deemed approved. If the City Council denies a request for a permit, the applicant may file a request with the City Council to re-consider the application. The applicant may present any new evidence to the council and may present any extenuating circumstances or other matters deemed relevant by the applicant. The decision of the City Council regarding the issuance of a permit is not final until the request for re-consideration is voted upon by the City Council.

W.

Indemnification. The oil and gas well permit may contain the following language:

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

X.

Incident Reports or Written Complaints. The Operator shall provide a copy of any "incident reports" or written complaints submitted to the Railroad Commission or any other state or federal agency within thirty (30) days after Operator has notice of the existence of such reports or complaints.

Y.

Expiration of permit. Drilling must commence on the Well covered by the Oil and Gas Well permit twelve (12) months of approval by the City Council, after which the Oil and Gas Well Permit shall automatically expire if no drilling has commenced. A permit extension for a maximum time period of six (6) months may be granted by the City Manager without reapplication after the City Manager receives a written request from the Operator.

Z.

Takings determination.

1.

Any aggrieved applicant that believes that an action taken pursuant to this Section by the City Council or any officer or employee of the City constitutes a taking under the Texas or United States Constitution or under other state law, may file an application with the City Council requesting a takings determination.

2.

The applicant seeking a takings determination from the Council shall file its appeal with the office of the City Secretary. The City Secretary shall then forward the appeal to the City Council for consideration. An appeal fee in the amount of two hundred fifty (\$250.00) dollars shall accompany each filing.

3.

The appeal shall state the reasons that the applicant believes would support a finding that the City's actions constitute a taking under the Texas or United States Constitution or pursuant to other State law and shall include evidence substantiating the purported diminution in value of the applicant's real property.

4.

If the Council finds by a majority vote in favor of the applicant it may: (1) grant the relief requested, or (2) direct the City Manager to rescind action taken by City Staff that formed the basis of the takings determination appeal. If the Council denies the appeal, or after a favorable determination the City Council fails to take action as specified above, the applicant may appeal the decision or inaction of the City Council to the county or district court of the county in which the affected real property is located within thirty (30) days of the date that the Council issues its final decision or in the event the Council does not act on the application, then the operator may appeal to the county or district court after the expiration of one hundred twenty (120) days from the date the application is heard by the City Council.

Notice addresses are as follows:

City of Midland
Attn: Office of the City Manager
P. O. Box 1152
Midland, Texas 79702

OPERATOR: _____
Jimmy Baggett, Operations Manager

Callon Petroleum Operating Company
4305 N. Garfield, Suite 235
Midland, Texas 79705
(432) 686-2764



APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

RECEIVED

MAY - 1 2013

I. General Information		
Date 3/29/13	Operator Name (must match W-1) Callon Petroleum Operating Company	Operator Address CITY OF MIDLAND P.O. Box 1287 Natchez, MS 39121
Representative Name Jimmy Baggett	Representative Address (within Midland City Limits) 4305 N. Garfield, Suite 235 Midland, TX 79705	Rep. Tele. (432) 686-1828 Rep. Fax (432) 686-2764
Fee: \$4,000.00 Rec'd Yes ☒ No ☐		
Permit Compliance Contact (Choose 1): Option A: 24/7 Answering Services - No. 1 (tele): _____ No. 2 (Tele.): _____ Option B: Jimmy Baggett 4305 N. Garfield, Suite 235 Midland, TX 79705 Company Compliance Representative (Name, Address, Local Telephone) (ATTACH STATEMENT AS EXHIBIT A): _____ Emergency Contact Representative (Name, Address, 24-Hour Tele. No.): Jimmy Baggett (432) 202-7210 4305 N. Garfield, Suite 235 Midland, TX 79705 Other Permitted Wells in City (ATTACH EXHIBIT B [see § J(26)]). Eleven: See Exhibit B		
II. Mineral Ownership		
Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease): See Attached List		
1. _____		
2. _____		
3. _____		
ATTACHED AS EXHIBIT C is (a Title Opinion by Mike Canon , a licensed Texas Attorney/Title Commitment by Abstract Company/a Take-off from _____, a Certified Petroleum Landman/an opinion letter from _____, a licensed Texas Attorney) indicating that Operator has a legal right to develop the mineral estate that is the subject of this Application. [See § J(5)]. Attached		
III. Surface Ownership & Use		
General Description of Current Surface Use (within 860 feet of proposed surface location): Future Development (zoned FD): No building allowed except those for customary agricultural uses. Temporary designation for newly annexed land.		
ATTACHED AS EXHIBIT D is (a Title Opinion by _____, A licensed Texas Attorney/a Take-off from _____, a Certified Petroleum Landman/Current Tax Roll from Midland Central Appraisal District), which lists the name(s) and address(es) of all surface owners within 860 feet of the surface well location. [See § J(7)]. Attached		
ATTACHED AS EXHIBIT E is a (map/p lat/satellite/aerial photo) depicting all Residences, commercial structures, public buildings, all publicly dedicated Streets and alleys, Rights of Way, and permanent accessory structures surrounding the proposed Drill Site. The (map/p lat/satellite/aerial photo) includes two circles, as required by the Ordinance - one depicting a 500 foot radius and one depicting an 860 foot radius from the proposed well's surface location. [See § J(10)]. Attached		
ATTACHED AS EXHIBIT F is a copy of the notification letter(s) sent to 100 percent of the surface owners, Certified Mail, Return Receipt Requested. [See § J(36)]. Attached		
IV. Well & Operations Information		

Proposed Well Name: Pecan Acres 23 #8
Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary) [See § J(11) and § L(4)]: Attached
Legal Description of Proposed Well Site: 660' FNL, 660' FWL of Section 23, Block 40, T1S, T&P RR Co. Survey, Midland County, Texas (Abstract 252)
ATTACHED AS EXHIBIT G is the Location Site Plan [See § J(9)]. Attached ATTACHED AS EXHIBIT H is the Map with the proposed transportation route(s) and road(s) for equipment, chemicals, or refuse products used or produced in the proposed oil and gas operations. [See § J(12)]. Attached ATTACHED AS EXHIBIT I is a copy of the approved Texas Railroad Commission permit to drill (Form W-1), together with all attachments (also file copy of W-1 with City Secretary before commencement of drilling operations). [See § J(16) and (20)]. Attached ATTACHED AS EXHIBIT J is a copy of the required TCEQ report as to depth of usable quality ground water. [See § J(17)] Attached ATTACHED AS EXHIBIT K (if applicable) is the list of alternative locations developed in consultation with the Oil & Gas Advisory Committee. [See § J(27)]. Attached ATTACHED AS EXHIBIT L is the Fencing and Irrigation Plan. [See § J(30)]. Attached variance request ATTACHED AS EXHIBIT M is the Road Repair Agreement and Letter of Credit/Certificate of Deposit/Surety Bond in the amount of at least \$25,000. Option (if applicable): Applicant would further state that no City-owned streets or alleys will be used by the Operator in connection with its oil and gas operations and as a result, requests a waiver from the Council of this requirement. Option B (if applicable): Beause Applicant has three Road Repair Agreements in effect that have been approved by the Council, Applicant requests that the Council consolidate all agreements into one and is filing the necessary \$75,000 letter of ATTACHED AS EXHIBIT N is the Concept Plan depicting the proposed Operations Site (which includes tanks, roads, power lines, and pipeline routes). [See § J(32)]. Attached
Description of Public Utilities required during (1) drilling and (2) operations:
(1) Drilling: No public utilities will be needed during drilling operations. (2) Operations: See Exhibit N and N-3
Deescription of water source to be used during Drilling: Water will be pulled from water wells existing on adjacent property and hauled if necessary.
Description of all electric lines to production facilities (reference exhibits as necessary) [See § L(10)]: See Exhibits G & N attached.
Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]: See Exhibit O - Pits will be deep buried in accordance with City of Midland requirements.
V. Additional Required Exhibits
ATTACHED AS EXHIBIT P is the Letter of Credit/Certificate of Deposit in accordance with Subsection (K)(2). [See § J(18)]. Attached ATTACHED AS EXHIBIT Q are Tax certificates from Midland Central Appraisal District to be submitted indicating that all taxes on personal and real property, including minerals, owned by Applicant are current. [See § J(29)]. Attached ATTACHED AS EXHIBIT R is the required Insurance Certificate. [See § J(19) and § K(3)]. Attached ATTACHED AS EXHIBIT S (if applicable) is the Drainage Plan approved by the City Engineer relating to Applicant's proposed operations. [See § J(21)]. Attached ATTACHED AS EXHIBIT T is Applicant's Emergency Action Response Plan. [See § J(22)]. See Exhibit T and Attachment T-1 ATTACHED AS EXHIBIT U is Applicant's Hazardous Materials Management Plan, a copy of which has been submitted and is on file with the Midland Fire Department. [See § J(23)]. Attached

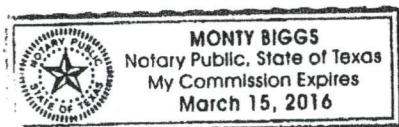
Callon Petroleum Operating Company

By: Jimmy Baggett
Jimmy Baggett
Operations Manager

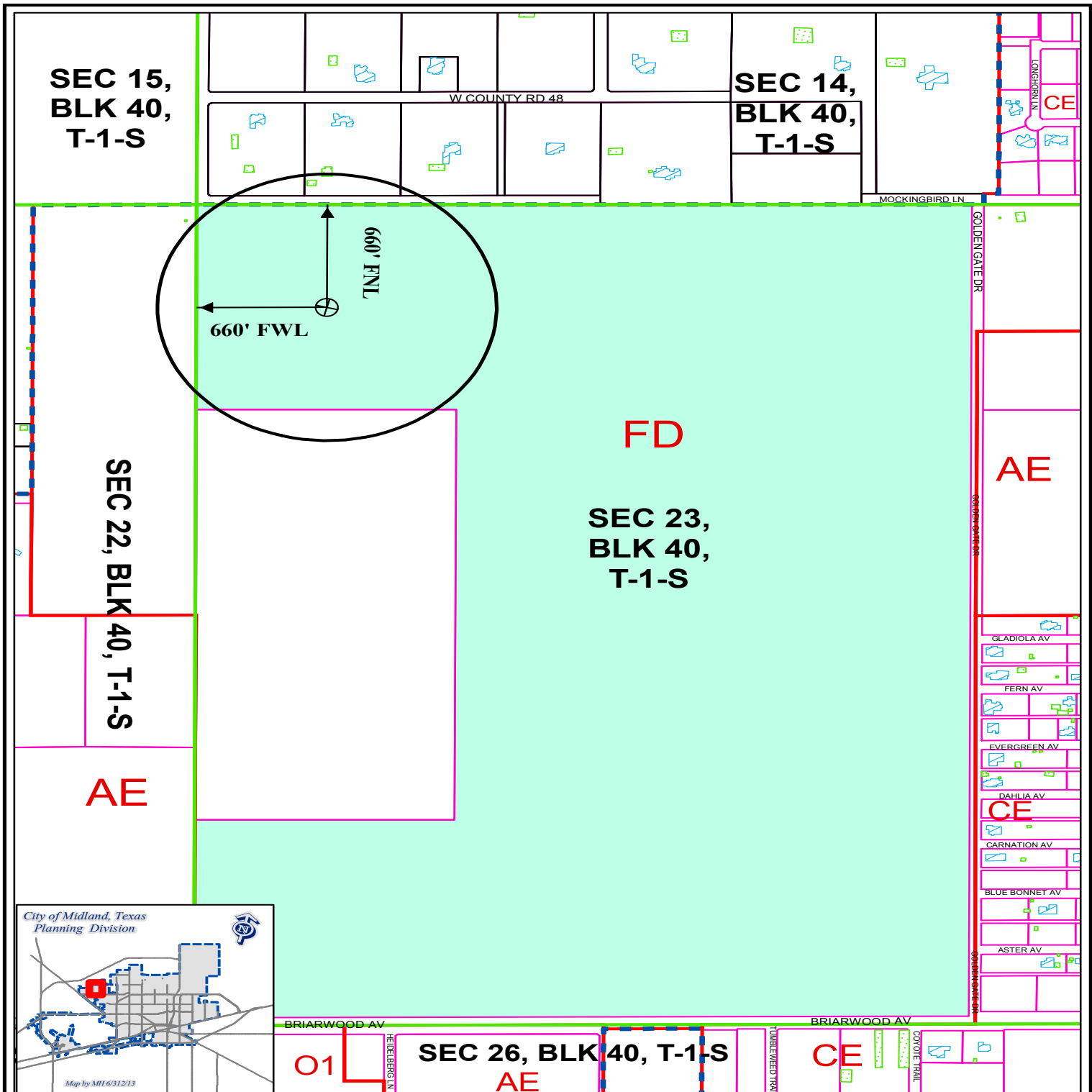
STATE OF TEXAS

COUNTY OF MIDLAND

This instrument was acknowledged before me on the 18th day of April, 2013 by Jimmy Baggett, Operations Manager for Callon Petroleum Operating Company, who personally appeared before me, and states that he has read the above application and attached exhibits and the statements therein are true and correct to the best of his knowledge.



[Signature]
Notary Public – State of Texas



LOCATION AND ZONING MAP

O - 13 - 011

Scale: 1" = 700'

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 660' FNL and 660' FWL, Section 23, Block 40, T-1-S, T & P RR Co. Survey, Midland County, Texas.

Pecan Acres 23 #8

© THE CITY OF MIDLAND 2013. THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA. WHILE THIS DATA IS MADE AVAILABLE TO THE PUBLIC, IT WAS CREATED FOR INTERNAL USE BY THE CITY OF MIDLAND AND WHILE IMAGES NO CLAIM AS TO ITS ACCURACY OR COMPLETENESS. THIS DATA IS NOT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING, CITING, OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.

LEGEND

	CITY PARCELS		PUBLIC BLDGS		CITY LIMITS
	COUNTY PARCELS		PRIVATE BLDGS		860 FT. BUFFER
	ZONING		ACCESSORY BLDGS		SURVEY SEC.

ZONING DISTRICTS:

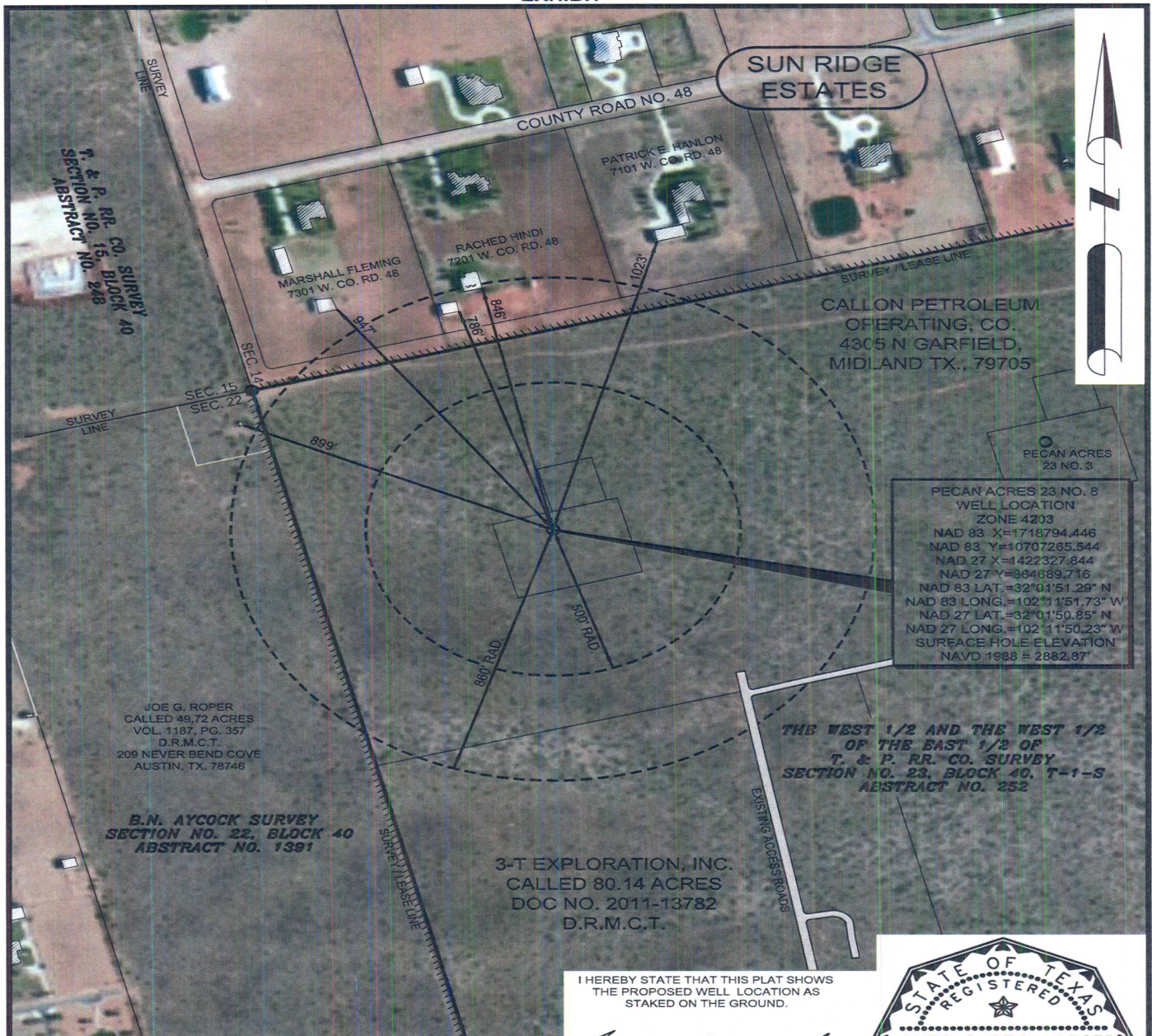
FD
PD
AE
1F1, 1F2, 1F3
MH
TH
2F
MF1, MF2

FUTURE DEVELOPMENT
PLANNED DISTRICT
AGRICULTURE ESTATE
ONE-FAMILY DWELLING
MOBILE HOME DWELLING
TOWNHOUSE DWELLING
TWO-FAMILY DWELLING
MULTIPLE FAMILY DWELLING

BP
P
01, 02
NS
LR1, LR2, LR3
C1, C2, C3
IP, JP1, IP2, IP3
LI
HI

BUSINESS PARK
PARKING
OFFICE
NEIGHBORHOOD SERVICE
LOCAL RETAIL
COMMERCIAL
INDUSTRIAL PARK
LIGHT INDUSTRY
HEAVY INDUSTRY

EXHIBIT



SCALE: 1" = 400'

NOTES:

- 1.) BEARINGS & COORDINATES SHOWN HEREON ARE REFERENCED TO THE TEXAS STATE PLANE COORDINATE SYSTEM, NAD 83 DATUM (TEXAS CENTRAL ZONE 4203) DERIVED FROM GPS OBSERVATIONS AND ARE BASED ON NGS MONUMENT MDD A (GRID COORDINATES X=1750074.49, Y=10709180.31)
- 2.) LATITUDE & LONGITUDE ARE NAD 83 & 27 GEOGRAPHIC.
- 3.) THIS IS A RESIDENCE STRUCTURE TIE PLAT AND DOES NOT REPRESENT A TRUE BOUNDARY SURVEY. THIS SURVEY IS BASED ON OWNERSHIP AND EASEMENT INFORMATION PROVIDED BY CALLON PETROLEUM OPERATING COMPANY. SURVEYOR DID NOT ABSTRACT SUBJECT TRACT AND THERE MAY BE EASEMENTS OR OTHER ENCUMBRANCES THAT AFFECT THE SUBJECT TRACT THAT ARE NOT SHOWN HEREON.

REV.	DATE	BY:	DESCRIPTION	CHK

PROJECT NO. 1109036

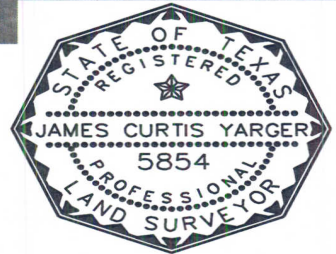


**TRANSGLOBAL
SERVICES LLC**

8205 Camp Bowie West, Suite 204
Fort Worth, Texas 76116
(817) 386-0362 ~ Fax (682) 224-3377

I HEREBY STATE THAT THIS PLAT SHOWS
THE PROPOSED WELL LOCATION AS
STAKED ON THE GROUND.

James Curtis Yarger
JAMES CURTIS YARGER
REGISTERED PROFESSIONAL LAND SURVEYOR
STATE OF TEXAS #5854

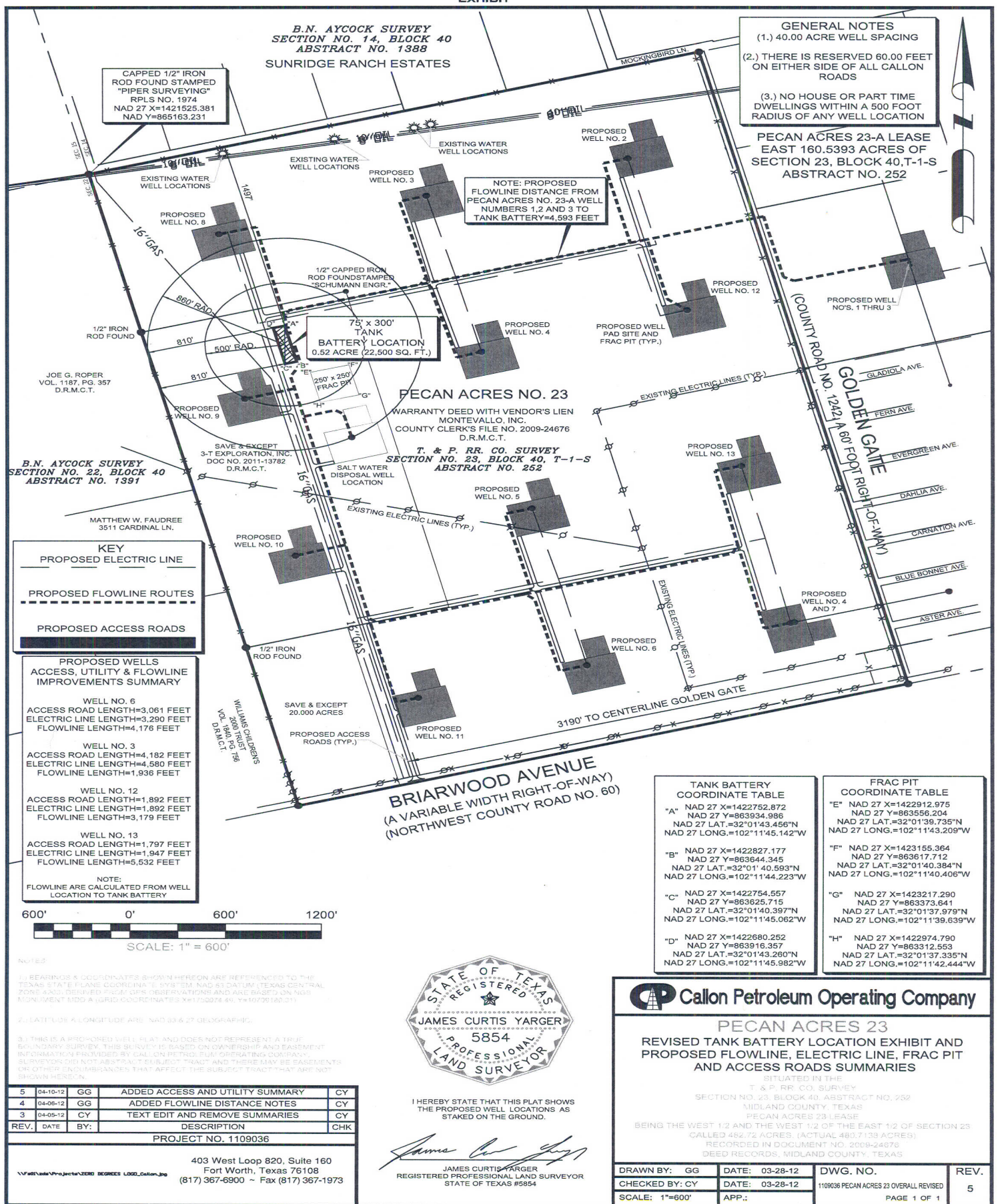


Callon Petroleum Operating Company

**PECAN ACRES 23 NO. 8
RESIDENCE STRUCTURE TIES PLAT**

SITUATED IN THE
T. & P. RR. CO. SURVEY
SECTION NO. 23, BLOCK 40, ABSTRACT NO. 252
MIDLAND COUNTY, TEXAS
BEING THE WEST 1/2 AND THE WEST 1/2 OF THE EAST 1/2 OF
T. & P. RR. CO. SURVEY
SECTION NO. 23, BLOCK 40, T-1-S, ABSTRACT NO. 252
CALLED 482.72 ACRES IN DOCUMENT NO. 2009-24676
DEED RECORDS, MIDLAND COUNTY, TEXAS
SAID WELL LOCATION BEING
N 69°12' W, 7.0 MILE FROM THE CITY OF MIDLAND
MIDLAND COUNTY, TEXAS

DRAWN BY: GG	DATE: 03-12-13	DWG. NO.	REV.
CHECKED BY: CY	DATE: 03-12-13	1109036 PECAN ACRES 23 NO 8 RESIDENCE STRUCTURE PLAT	0
SCALE: 1"=400'	APP.:	PAGE 1 OF 1	





City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: August 13, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Ron Jenkins, Oil & Gas Compliance Coordinator

SUBJECT: Consider a resolution approving the issuance of a permit to Callon Petroleum Operating Company (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (Pecan Acres 22A #3) located 660 feet from the north line and 587 feet from the east line located in Section 22, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. (Generally located on the south side of the west extension of Mockingbird lane, approximately 1 mile north of Briarwood Avenue. – District 1)

Purpose:

To consider a resolution approving the issuance of a permit to Callon Petroleum Operating Company (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (Pecan Acres 22A #3) located 660 feet from the north line and 587 feet from the east line located in Section 22, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. This is an opportunity for the Council to receive public comment. The required 30-day public comment has passed and the Council may consider this request. One letter of objection received.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to process this application.

Discussion:

The Oil and Gas Advisory Committee has reviewed this well site in detail and recommends approval of the application noting that a surface agreement is not in place at the time of review. Callon Operating is requesting a landscaping/irrigation variance. The Oil and Gas Advisory Committee recommends denial of landscaping /irrigation variance due to proximity to a residence. Road repair can be consolidated with existing agreement.

Attachments: Application; Location map; Exhibit - Drill site map, Exhibit – Flow Line Location.

RESOLUTION NO. _____

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO CALLON PETROLEUM OPERATING COMPANY (“OPERATOR”) TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 660 FEET FROM THE NORTH LINE AND 587 FEET FROM THE EAST LINE, SECTION 22, BLOCK 40, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTH SIDE OF THE WEST EXTENSION OF MOCKINGBIRD LANE, APPROXIMATELY 1 MILE NORTH OF BRIARWOOD AVENUE); AND PROVIDING THAT SAID PERMIT DOES NOT REQUIRE A NEW ROAD REPAIR AGREEMENT BUT SHALL BE CONSOLIDATED UNDER AN EXISTING ROAD REPAIR AGREEMENT

WHEREAS, on December 8, 2009, the City Council of the City of Midland duly approved Ordinance No. 8769 which amended Title VI, “Police Regulations,” Chapter 1, “General Offenses,” of the City Code of Midland, Texas, so as to establish Section 23, “Oil and Gas Well Permits issued on or after January 1, 2010,” which governs the granting or rejecting of Oil and Gas Well Permits; and

WHEREAS, the purpose of said section is to establish reasonable and uniform limitations, safeguards, and regulations for present and future operations related to the exploring, drilling, developing, producing, transporting and storing of oil or gas or other substances produced in association with oil and gas within the City of Midland to protect the health, safety, and general welfare of the public and the orderly development of the City of Midland; abate or prevent potential public nuisances; minimize the potential adverse impact to surface and mineral owners, protect the quality of the environment and encourage the orderly production of available mineral resources; and

WHEREAS, Section 6-1-23(C) of the City Code of Midland, Texas, makes it an offense to knowingly drill or participate in the drilling of any well or to re-enter any well within the corporate limits of the City of Midland without a permit having first been issued by the authority of the City Council; and

WHEREAS, Operator has submitted an application to the City of Midland to drill an

oil and gas well on the property described in Section Two hereof; and

WHEREAS, notice of the public hearing on this matter was provided in accordance with Section 6-1-23(H)(1) and a public hearing was held on July 9, 2013; and

WHEREAS, subsequent to said public hearing, and in accordance with Section 6-1-23(H)(1), the City Council allowed the public and Operator thirty (30) days to submit written input to the City Manager regarding Operator's application to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, the City Council has considered those issues set forth in Section 6-1-23(I) in determining whether to grant or deny a permit to Operator to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, the City Council finds it to be in the public interest to approve the issuance of a permit to Operator to drill an oil and gas well on the property described in Section Two hereof;

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

SECTION ONE. That the above recitals are hereby adopted and approved by the City Council of the City of Midland.

SECTION TWO. That the Mayor is hereby authorized and directed to execute a permit, on behalf of the City of Midland, that will allow Operator to drill an oil and gas well within the City limits located 660 feet from the north line and 587 feet from the east line, Section 22, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. Said permit is attached hereto as Exhibit "A" and incorporated herein for all legal purposes.

SECTION THREE. That said permit does not require a new road repair agreement but shall be consolidated under the existing road repair agreement between Operator and the City of Midland for Operator's wells located on the property described in Section Two hereof.

On motion of Council member _____, seconded by Council member

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on August 13, 2013, considered the application of Callon Petroleum Operating Company, dated March 29, 2013, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with the Midland City Code, Ordinance 8769, to drill an oil and gas well, in the application of Callon Petroleum Operating Company, dated March 29, 2013, and filed with the Oil & Gas Compliance Officer and incorporated herein for all legal purposes.

The location of Callon Petroleum Operating Company, Pecan Acres 22A #3 oil and gas well shall be 660 feet from the north line and 587 feet from the east line, Section 22, Blk 40, T-1-S, T&P RR Co. Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in that application of Callon Petroleum Operating Company, which is incorporated herein. Further, all operations done under this permit shall be done and accomplished in strict accordance with the Midland City Code, Ordinance 8769, which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit. Also, all operations done under this permit shall be done and accomplished in strict accordance and compliance with the General Conditions, which are attached hereto marked as Exhibit "A" and incorporated into and made a part of this permit for all purposes. All operations done and required under this permit shall be done and accomplished in strict accordance and compliance with the Specific Conditions which are attached hereto, marked as Exhibit "B", and incorporated into and made a part of this permit for all purposes.

This permit shall be effective from August 13, 2013, through August 13, 2014, and so long thereafter as oil or gas is produced or until such time as the permittee has permanently abandoned the operations of the well or facility for which this permit is issued.

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

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts the permittee from its responsibilities or obligations as to third parties. The issuance of this permit only means that the permittee has, at this time, complied with Ordinance No. 8769 and that the Midland City Council, as a regulatory body, will allow the permittee to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize the recipient to act with impunity as to third parties, nor does it insulate the permittee from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize the permit holder from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a "negative pronouncement" that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. The permittee has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield the permittee from third party tort liability stemming from the consequences of the permitted activity.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, utility and drainage rights-of-way.

This permit shall constitute a written contract for purposes of insurance requirements.

In addition to the requirements of the Midland City Code, Ordinance 8769, and the requirements of this permit, including the General and Specific Conditions incorporated herein, Callon Petroleum Operating Company shall develop, maintain and operate the well described herein in accordance with the conditions, limitations and safeguards contained in Callon Petroleum Operating Company application for said well. Callon Petroleum Operating Company application for said well is incorporated herein by reference for all legal purposes.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS _____ day of August, 2013.

CITY OF MIDLAND, TEXAS

BY: _____

W. Wesley Perry, Mayor

UNDERSTOOD AND AGREE THIS _____ day of August, 2013.

Callon Petroleum Operating Company

By: _____

Jimmy Baggett, Operations Manager

OIL AND GAS PERMIT: ORDINANCE 8769 GENERAL CONDITIONS- EXHIBIT "A"

(K)

General Conditions of all Oil and Gas Well Permits.

1.

General Obligations of Operator.

The Operator shall be required to:

a.

Comply with the terms and conditions of this Section, the Midland City Code, the rules and regulations of the Railroad Commission, and any other state or federal agency that enforces land use, mineral use, or environmental protection regulations.

b.

Promptly clear Drill and Operation sites of litter, trash, refuse and other substances used, allowed, or occurring in the operations, and after abandonment or completion, grade, level, and restore such property to the same surface conditions as nearly as practicable as existed before operations.

c.

Indemnify and hold harmless the City of Midland, the City's officers, agents and employees, from any and all claims, losses, damages, causes of action, suits, and liability of any kind, including all expenses of litigation, court costs, and attorney's fees, for injury to or death of any Person, or for damage to any property arising out of or in connection with the work done by Operator under an Oil and Gas well permit: where such injuries, death or damages are caused by Operator's sole negligence or the joint negligence of the Operator and any other Person or entity.

d.

Promptly pay all fines, penalties and other assessments imposed due to breach of any of the conditions herein. If the Operator does not agree that a breach has occurred, the Operator may file a written objection with the City Manager within ten (10) days of being notified of the alleged breach. The City Manager shall review the objections and give the Operator the opportunity to be heard and present facts that the Operator deems relevant.

e.

Promptly restore to its former condition any public property damaged by the oil and gas operation.

f.

Except as permitted by Subsection U, hereof, Operator shall not, either directly or indirectly, assign all or any part of an Oil and Gas Well Permit.

g.

If required by the Permit, Operator shall execute a "Road Repair Agreement" between itself and the City of Midland and submit all necessary information and insurance and guarantees to the City prior to the issuance of any Oil and Gas Well Permit under this Section.

2.

Irrevocable Letter of Credit, Certificate of Deposit, or Surety Bond.

Prior to the issuance of an Oil and Gas well permit, the Operator shall provide the City Attorney with a guarantee in the form of an irrevocable letter of credit, certificate of deposit, or surety bond in the name of the City. The Applicant shall be entitled to receive the interest earned if the certificate of deposit reaches maturity. The letter of credit, certificate of deposit, or surety bond must satisfy the following:

a.

The letter of credit, certificate of deposit or surety bond shall be issued by a reliable bank or insurance carrier authorized to do business in the State of Texas;

b.

The letter of credit, certificate of deposit or surety bond shall be effective starting on or before the effective date of the Oil and Gas Well Permit;

c.

The letter of credit, certificate of deposit or surety bond shall be in the amount of twenty-five thousand dollars (\$25,000.00);

d.

The letter of credit, certificate of deposit or surety bond shall remain in full force and effect for a period of three years; and

e.

The letter of credit, certificate of deposit or surety bond shall authorize the City of Midland to draw upon such credit in the event the City Manager, or his designee, determines said credit is needed to remedy any violation of this Section.

If the well is still producing or if the well has not been abandoned or plugged, the Operator must renew the letter of credit, certificate of deposit or surety bond on or before one hundred twenty (120) days prior to the expiration of the letter of credit, certificate of deposit or surety bond.

The City of Midland may draw upon the letter of credit, certificate of deposit or surety bond to recover costs of repairs, modifications, or construction to remedy any violations by the Operator under this Section. The City may make partial or full draws of the letter of credit, certificate of deposit or surety bond. The City may draw upon the letter of credit, certificate of deposit or surety bond in the event the City has not received a new letter of credit, certificate of deposit or surety bond within the one hundred twenty (120) day renewal time period required above.

The Operator shall maintain the principal amount of \$25,000.00 in the form of a letter of credit, certificate of deposit or surety bond at all times throughout the term of the permit. In the event such letter of credit, certificate of deposit or surety bond is not restored to \$25,000.00 within ten (10) days after the date of the reduction of the letter of credit, certificate of deposit or surety bond, the City may draw and receive the remaining balance of the letter of credit, certificate of deposit or surety bond, and the Oil and Gas Well Permit shall be suspended on such date and the Operator's right to operate under Oil and Gas Well Permit shall immediately cease until the Operator files the required letter of credit, or certificate of deposit or surety bond.

If an operator has three (3) or more Oil and Gas Well Permits in effect which have been approved by the City Council, the Operator may petition the Council to consolidate the letter of credits, certificate of deposits or surety bonds into one letter of credit, certificate of deposit or surety bond that would cover all Oil and Gas Wells in the City limits. The consolidated letter of credit, certificate of deposit or surety bond shall be in an amount determined by the City Council as sufficient to cover the costs of repairs, modifications, construction or to remedy violations by the Operator but in no event shall the amount be less than \$75,000.00.

3.

Insurance.

In addition to the letter of credit, certificate of deposit or surety bond required above, the Operator shall carry a policy or policies of insurance issued by an admitted insurer or eligible surplus lines insurer authorized to do business in the State of Texas. In the event such insurance policy or policies are cancelled, any Oil and Gas Well Permit issued under this Section shall be suspended on such date of cancellation and the Operator's right to operate under such Oil and Gas Well Permit shall immediately cease until the Operator files additional insurance as required herein.

- a. General requirements applicable to all policies.
- i. The City, the City's officials, employees, agents and officers shall be endorsed as an "Additional Insured" on all policies, except under Operator's Workers Compensation Policy.
 - ii. All policies shall be written on an occurrence basis, except for Environmental Pollution Liability (Seepage and Pollution coverage) and Excess and Umbrella Liability, which may be on a claims-made basis.
 - iii. All policies shall be written by an admitted insurer or eligible surplus lines insurer authorized to do business in the State of Texas.
 - iv. Deductibles shall be listed on the Certificate of Insurance and shall be on a "per occurrence" basis unless otherwise stipulated herein.
 - v. Certificates of Insurance shall be delivered to the City of Midland, P.O. Box 1152, Midland, Texas 79702, Attn: City Attorney's Office, evidencing all the required coverages, including endorsements, prior to the issuance of an Oil and Gas Well Permit under this Section.
 - vi. All policies shall be endorsed with a waiver of subrogation providing rights of recovery in favor of the City.
 - vii. Any failure on the part of the City to request required insurance documentation shall not constitute a waiver of the insurance requirements specified herein.
 - viii. Each policy shall be endorsed to provide the City a minimum thirty (30) day notice of cancellation, non-renewal, and/or material change in policy terms or coverage. A ten (10) day notice shall be acceptable in the event of non-payment of premium.
 - ix. During the term of any Oil and Gas Well Permit issued hereunder, the Operator shall report, in writing, within thirty (30) days of the occurrence, to the City Manager, any known

loss occurrence which could give rise to a liability claim or lawsuit or which could result in a property loss.

x.

Upon request, certified copies of all insurance policies shall be furnished to the City.

xi.

Operator shall have the right to maintain a qualified, self-insurance plan and/or maintain prudent levels of self-insured retentions for insurance coverage required in this section; however, Operator shall remain financially obligated for all self-insured retention amounts and deductibles. To the extent of the liabilities assumed by the Operator, Operator's insurance shall be primary coverage as to any liabilities of the City.

b.

Standard Commercial General Liability Policy.

This coverage must include premises, operations, blowout or explosion, products, completed operations, sudden and accidental pollution, blanket contractual liability, underground resources damage, broad form property damage, independent contractors protective liability, accidental death and personal injury. This coverage shall be a minimum Combined Single Limit of \$1,000,000.00 per occurrence for Bodily Injury, Accidental Death, and Property Injury.

c.

Excess or Umbrella Liability.

\$1,000,000	Excess, if the Operator has a stand-alone Environmental Pollution Liability (EPL) policy.
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\$10,000,000	Excess, if the Operator does not have a stand-alone EPL policy. Coverage must include an endorsement for sudden or accidental pollution. If Seepage and Pollution coverage is written on a "claims made" basis, the Operator must maintain continuous coverage and purchase Extended Coverage Period when necessary.
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d.

Environmental Pollution Liability Coverage.

Operator shall purchase and maintain in force for the duration of any Oil and Gas Well Permit issued hereunder, insurance for environmental pollution liability applicable to bodily injury, property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense or settlement of claims; all in connection with any loss arising from the insured site.

Coverage shall be maintained in an amount of at least \$1,000,000 per loss, with an annual aggregate of at least \$10,000,000.

Coverage shall apply to sudden and accidental pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids or gases, refuse material or other irritants, contaminants or pollutants.

e.

Workers Compensation and Employers Liability Insurance.

i.

Workers Compensation benefits shall be Texas Statutory Limits.

ii.

Employers Liability shall be a minimum of \$1,000,000.00 per accident.

iii.

Such coverage shall include a waiver of subrogation in favor of the City of Midland and provide coverage in accordance with applicable State and Federal laws.

f.

Automobile Liability Insurance.

i.

Combined single limit of \$1,000,000.00 per occurrence for bodily injury and property damage.

ii.

Coverage must include all owned, hired and not-owned automobiles.

g.

Certificates of Insurance.

i.

The company must be licensed or authorized to do business in the State of Texas.

ii.

The insurance set forth by the insurance company must be underwritten on forms that have been approved by the Texas State Board of Insurance or ISO or an equivalent policy form acceptable to the City, with the exception of environmental pollution liability and control of well coverage.

iii.

Set forth all endorsements and insurance coverage according to requirements and instructions contained herein.

iv.

Shall specifically set forth the notice of cancellation, termination, or change in coverage provisions to the City. All policies shall be endorsed to read "THIS POLICY WILL NOT BE CANCELLED OR NON-RENEWED WITHOUT THIRTY (30) DAYS ADVANCE WRITTEN NOTICE TO THE OWNER AND THE CITY, EXCEPT WHEN THIS POLICY IS BEING CANCELLED FOR NONPAYMENT OF PREMIUM, IN WHICH CASE, TEN (10) DAYS ADVANCE WRITTEN NOTICE IS REQUIRED".

v.

Original endorsements affecting coverage required by this section shall be furnished with the certificates of insurance.

vi.

At the request of an Operator, the Council may grant a variance to insurance requirements if the Council determines that the insurance procured by the Operator is sufficient to protect the City. A variance of this type may be required because of a change in underwriting policies of admitted insurance carriers.

Indemnification.

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

Notice.

The notices provided in this permit may be served in person or by registered or certified mail. Operator shall within ten (10) days notify the City Manager in writing of any change in such agent or mailing address unless operations in the City are discontinued and abandonment is complete.

Notice addresses are as follows:

City of Midland
Attn: Office of the City Manager
P. O. Box 1152
Midland, Texas 79702

OPERATOR: _____
Jimmy Baggett, Operations Manager

Callon Petroleum Operating Company
4305 N. Garfield, Suite 235
Midland, Texas 79705
(432)686-2764

OIL AND GAS WELL PERMIT: ORDINANCE 8769 SPECIFIC CONDITIONS-EXHIBIT "B"

(L)

Specific conditions of all Oil and Gas Well Permits; On-Site Requirements.

1.

Abandoned wells. All wells shall be abandoned in accordance with the rules of the Railroad Commission and pursuant to Subsection (O) of this Section.

2.

Automated audible alarm system. After completion, the appropriate system for flowing gas and/or flowing oil wells must be maintained to provide warnings for a substantial drop in pressure, or the release of any oil or gas, or a fire. Said audible alarm system must be approved by the Fire Marshal prior to installation of production equipment at the flowing gas and/or flowing oil well site.

3.

Blowout prevention. In all cases, ram-type and annular Blowout Preventers shall be used on all wells being drilled. In cases where Re-working is being performed on a Well, ram-type or annular Blowout Preventers shall be used. Protection shall be provided to prevent blowout during Drilling operations as required by and in conformance with the requirements of the Railroad Commission and the recommendations of the American Petroleum Institute. In addition to the Blowout Preventers stated above, all drilling must be equipped with flow lines and valves commensurate with the working pressures involved as required by the Railroad Commission each Blowout Preventer shall be a double-ram design with blinds and pipe. After surface casing has been set and cemented to surface, each Blowout Preventer shall be tested and witnessed by Operator's personnel and the results of such test shall be documented in the Operator's well file. Testing expenses shall be the responsibility of the Operator. The Operator shall provide a complete report of the well blowout prevention test to the City Manager within fifteen (15) days of the test.

4.

Casing. The surface portions of the Well shall be cased with cement circulated to the surface. All surface and intermediate casing must comply with all applicable rules of the Railroad Commission and the Texas Commission on Environmental Quality.

5.

Compliance. Operator shall comply at all times with all applicable federal, state and City requirements.

6.

Discharge. No person shall place, deposit, discharge, or cause or permit to be placed, deposited or discharged, any oil, naphtha, petroleum, asphalt, tar, hydrocarbon substances or any refuse including water or brine from any oil and gas operation or the contents of any container used in connection with any oil and gas operation in, into, or upon any Right-of-way, alleys, streets, lots, storm

drain, ditch or sewer, sanitary drain without permits from the appropriate City departments, or any body of water or onto any private property in the City.

7.

Drilling notice. The operator shall provide at least a forty eight (48)-hour notice to the City Manager prior to mobilizing the Drilling Equipment. In addition to notification to the City Manager, the operator shall provide a notice to the owners of at least forty eight (48) hours or more prior to mobilizing the drilling equipment through a publication in the Midland Reporter Telegram and a posting in the City Secretary's Office.

8.

Drill stem testing. No drill stem testing shall be allowed.

9.

Dust, vibration, odors. All drilling and production operations shall be conducted in such a manner as to minimize, so far as practicable, dust, vibration, or noxious odors, and shall be in accordance with the best accepted practices incident to drilling for the production of oil, gas and other hydrocarbon substances in urban areas. All equipment used shall be so constructed and operated so that, vibrations, dust, odor or other harmful or annoying substances or effect will be minimized by the operations carried on at any Drill Site or Operation Site or from anything incident thereto, to the injury or annoyance of persons living in the vicinity; nor shall the site or structures thereon be permitted to become dilapidated, unsightly or unsafe. Proven technological improvements in industry standards of drilling and production in this area shall be adopted as they become available if capable of reducing factors of dust, vibration and odor.

10.

Electric lines. All electric lines going under City roadways must be bored and encased pursuant to city standards. All electric lines to production facilities may be overhead service unless the surrounding neighborhood is developed with underground electric service. If the surrounding neighborhood is developed with underground electric service, then all electric lines to production facilities shall be buried underground.

11.

Electric motors. Only electric prime movers or motors shall be permitted for the purpose of pumping wells. No electric power shall be generated on location. All electrical installations and equipment shall conform to the City ordinances and the appropriate national codes.

12.

Emergency response plan. Prior to the commencement of any oil or gas production activities, Operator shall submit to the City Manager an emergency response plan establishing written procedures to minimize any hazard resulting from drilling, completion or producing of oil and gas wells. Said plan shall use existing guidelines established by the Railroad Commission, Texas Commission on Environmental Quality, Department of Transportation and/or the Environmental Protection Agency and City Fire Code. A copy of the Emergency Response Plan shall be kept at the Operator's office.

13.

Equipment painted. All production equipment on the site shall be painted beige and maintained at all times, including pumping units, tanks, buildings and structures. The City shall regularly inspect all painted structures and inform Operator when repainting is necessary. Operator shall repaint within sixty (60) days written notice from City. When requiring re-painting of such facilities, the City Manager shall consider the deterioration of the quality of the material of which such facility or structure is constructed, the degree of rust, and its appearance. Upon request of the Operator, a color other than beige may be approved by the City Council.

14.

Explosives. Use of an explosive perforating gun during completion operations and during plugging operations and down-hole operations that require such explosives shall be allowed.

15.

Fire notice. In the event of a fire or discovery of a fire, smoke, or unauthorized release of flammable or hazardous materials on any property, the Operator shall immediately report such condition to the Fire Department in accordance with the City of Midland Fire Code. The reporting limits for hazardous materials release shall conform to the requirements of the Railroad Commission and not exceed any state or federal permitting limit.

16.

Fire prevention; sources of ignition. Firefighting apparatus and supplies as approved by the Fire Marshal and required by any applicable federal, state, or local law shall be provided by the Operator, at the Operator's cost, and shall be maintained on the drilling site at all times during drilling and/or reworking operations. The Operator shall be responsible for the maintenance and upkeep of such equipment.

17.

Fracing operations. No fracing or formation fracture stimulation operations may take place before 7:00 a.m. or after 7:00 p.m.

18.

Fresh water wells. The measurements required by this Subsection shall be in a direct line from the closest Oil and Gas well to the fresh water well.

a.

Upon request of an owner of a fresh water well within 860 feet of an Oil and Gas well, who has been duly notified, Operator shall provide the City Manager with a "pre-drilling" and "post-drilling" water analysis from any such existing fresh water well(s).

b.

Operator shall conduct and fund annual testing for water wells that have been tested pursuant to Subsection (L)18.a. above. This testing program shall continue for the production life of The Well plus three years for a producing well, or for a period of one (1) year for a dry hole.

19.

Compressors. No onsite compressor used to "lift gas" shall be used. No compressor of any type shall be used. In the event Operator determines the use of such compressor is necessary, a detailed plan shall be submitted by Operator to the City Council for consideration. An on-site compressor plan shall include the following information:

- a. The physical size of the compressor;
- b. The power source of the compressor;
- c. The horsepower of the compressor;
- d. The noise of the compressor; and
- e. The manufacturer of the compressor.

No compressor of any type shall be used unless a plan is approved by the City Council.

20.

Gas emission or burning restricted. Operator shall not allow, cause or permit gases to be vented into the atmosphere or to be burned by open flame except as provided by law or as permitted by the Railroad Commission. If the venting of gases into the atmosphere or the burning of gases by open flame is authorized as provided by law or as permitted by the Railroad Commission, then such vent or open flame shall not be located closer than three hundred thirty (330) feet from any building not used in operations on the drilling site and such vent or open flame shall be screened in an effort to minimize detrimental effects to adjacent owners. Operator shall provide notice to the Fire Marshall prior to any open flaring of gas. Gas may not be flared unless for a limited time when completing, or recompleting a well, and only if flaring will not constitute a fire hazard to other owners. If flaring gas, it shall not be burned at a rate greater than 3,000 mcf/d. No gas may be flared between the hours of 7:00 p.m. and 7:00 a.m., except in an emergency.

21.

Gas processing onsite. Except for a conventional gas separator or line heater, no refinery, processing, treating, dehydrating or absorption plant of any kind shall be constructed, established or maintained on the premises without prior written consent of the City Manager.

22.

Grass, weeds, trash. All Drill sites and Operation sites shall be kept clear of high grass, weeds, and combustible trash within a radius of one hundred (100) feet around any Tanks, production facilities, or producing wells.

23.

Hazardous plan. Hazardous Materials Management Plan (HMMP) and all Material Safety Data Sheets (MSDS) for all hazardous materials that will be located, or stored, on the Operations Site shall be submitted to the City Manager.

24.

Lights. Except under emergency circumstances, operator shall not Operate any lights located at the Drill Site. To the extent practicable, and taking into account safety considerations, emergency site lighting shall be directed downward and internally so as to avoid glare on public roads and adjacent dwellings and buildings within three hundred (300) feet. This paragraph does not apply during initial Drilling Operations.

25.

Monitoring for H₂S gas. If required by the Railroad Commission, equipment for the monitoring of H₂S gas shall be used during Drilling. The Operator will comply with all requirements found in Statewide Rule 36 of the Railroad Commission, as amended. Within sixty (60) days after completion, and annually thereafter, Operator shall submit to the City Manager results of testing to determine the concentration of H₂S produced from the Well. If the results of the H₂S testing proves to be one hundred (100) PPM H₂S or greater, the Operator is responsible for determining the one hundred (100) PPM H₂S radius of exposure for each Well and production facility. Wells and facilities where the concentration of H₂S is equal to or greater than one hundred (100) PPM will be considered "Sour." Safety systems described herein must be approved by the Fire Marshall.

a.

The following safety alarms and equipment are required at the well site of all wells that are capable of producing at a sustained rate of at least one hundred twenty-five (125) barrels of oil per day and/or three hundred (300) MCF of gas per day and for "sour" wells whose one hundred (100) PPM H₂S radius of exposure is greater than fifteen (15) feet:

i.

H₂S monitors located along the fencing, as set forth in Subsection M (for "sour" wells only).

ii.

Automated audible alarms to provide warnings for a substantial drop in pressure or for the presence of H₂S in concentrations greater than one hundred (100) PPM.

iii.

Automated valve to shut-in production from the well if a substantial drop in pressure or if the presence of H₂S in concentrations greater than one hundred (100) PPM is detected.

b.

The following safety alarms and equipment are required at "Sour" Tank battery facilities:

i.

H₂S monitors located along the fencing, as set forth in Subsection M.

ii.

Automated audible alarm to provide warnings for the presence of H₂S in concentrations greater one hundred (100) PPM.

iii.

An electrical device capable of shutting down power to all "Sour" wells producing into the battery in the event H₂S in concentrations great than 100 PPM is detected.

26.

Muffling exhaust. Exhaust from any internal combustion engine or compressor, stationary or mounted on wheels, used in connection with the Drilling of any well or for use on any production equipment shall not be discharged into the open air unless it is equipped with an exhaust muffler, or mufflers or an exhaust muffler box constructed of noncombustible materials sufficient to suppress noise and disruptive vibrations and prevent the escape of obnoxious gases, fumes or ignited carbon or soot.

27.

Pits. The following applies for pits used for Drilling and completion operations:

a.

No pit shall be placed in a floodplain without obtaining a floodplain development permit from the City Department of Development Services.

b.

No fresh water pit may be placed in any City recognized drainage way, FEMA floodplain or floodway. Construction of the fresh water pit must comply with all City, state and federal regulations.

c.

The use of earthen pits shall be allowed so long as the construction, use, dewatering and closure of such pits meets or exceeds the requirements of the applicable Railroad Commission rules and Texas Commission on Environmental Quality rules. In addition to compliance with applicable Railroad Commission rules, and Texas Commission on Environmental Quality rules, such earthen reserve pits shall also meet the following requirements;

(i)

the maximum size of a reserve pit shall be no greater than two hundred (200) feet by two hundred (200) feet;

(ii)

The pits shall be lined with a plastic liner having a minimum thickness of eight (8) mil reinforced polyethylene;

(iii)

Reserve pits used in Drilling operations shall be fenced on all open sides during such operations and shall be enclosed on all sides once Drilling operations have ceased;

(iv)

Reserve pits shall be closed within one hundred (180) days of the cessation of drilling operations;

(v)

Drill cuttings may be disposed of on the Drill Site using a deep burial method provided that the burial pit containing the cuttings is located entirely within one hundred thirty five (135) feet of the surface location of the Well, provided that all free water has been removed prior to burying the cuttings, and an impermeable liner is placed above the cuttings prior to covering the cuttings and liner with top soil, and provided that the burial pit is constructed in such a manner that the cuttings will be covered with a minimum of thirty six (36) inches of clean, compactable soil. A survey and description of the location of any closed pit used in connection with the Drill Site shall be recorded in the property records of the county in which the real property is located.

28.

Salt water wells. No commercial salt-water disposal wells that receive water by truck shall be located within the City of Midland. In the event the operator determines that the use of a non-commercial salt-water well is necessary, a detailed plan shall be submitted by the operator to the City Council for consideration. No salt water disposal well of any type shall be used unless a plan is approved by the City Council.

29.

Signs.

a.

A sign shall be immediately and prominently displayed at the gate on the temporary and permanent site fencing erected pursuant to Subsection (M) of this Section. Such sign shall be durable material, maintained in good condition and, unless otherwise required by the Railroad Commission, shall have a surface area of not less than two square feet not more than four square feet and shall be lettered with the following:

i.

Well name and number;

ii.

Name of operator;

iii.

The emergency 911 number; and

iv.

A 24-hour phone number that will provide an emergency phone number of Operator's Representatives as stated in Subsection F.

b.

Permanent weatherproof signs reading "DANGER NO SMOKING OR OPEN FLAME ALLOWED IN THIS AREA" shall be posted immediately upon completion of the well site fencing at the entrance of the well site and tank battery or in any other location approved or designated by the Fire Chief of the City. Sign lettering for this sign shall be two (2) inches or greater in height and shall be red on a white background or white on a red background. Each sign shall include the emergency notification numbers of the Fire Department and the Operator, well and lease designations required by the Texas Railroad Commission.

c.

Provide a National Fire Prevention Association (NFPA) 704 diamond hazard identification signs are required at the entrance to the Operation Site adjacent to the Operator's sign if chemicals are present. A label must be located on each chemical Tank indicating exact chemicals that may be contained in such Tank. Text shall be minimum two inches or greater in height, contrasting with the background color.

30.

Storage of equipment. Storage of equipment and materials shall be minimized and limited to the immediate operational needs of the well. Lumber, pipes, empty drums, trucks, trailers, automobiles, junk tubing, casing and rods shall not be left on the operation site except when drilling or reworking operations are being conducted on the site.

No vehicle or item of machinery shall be parked or stored on any Street, Right-of-Way or in any driveway, alley or upon any Operation Site which constitutes a fire hazard or an obstruction to or interference with fighting or controlling fires except that equipment which is necessary for Drilling or production operations on the site. The Fire Department shall be the entity that determines whether any equipment on the site shall constitute a fire hazard.

31.

Tank Battery Facilities. At the tank battery for either oil and/or gas Wells a sensor for fire detection should be appropriately placed near heater treaters, separators, and oil storage tanks that would allow an automated valve placed at the header to be closed in the event of a detected fire. All storage tanks shall be equipped with a secondary containment system. The secondary containment system shall be a minimum of three (3) feet in height and one and one-half (1½) times the contents of the total tank volume. Drip pots shall be provided at the pump out connection to contain the liquids from the storage tanks. No storage tank shall be over sixteen 16 feet in height. All storage tanks shall be built on an adequate foundation with a twelve 12-mil liner being placed

beneath each tank, extending a minimum of three (3) feet beyond the edge of each tank.

Operator must use portable steel storage tanks or fiberglass tanks for storing all fluids from the well. Tanks must meet the American Petroleum Institute standards. All tanks must have a vent line, lightning arrester and pressure relief valve. All tanks must be enclosed by a fence as required by Section (M) herein. No tank shall exceed sixteen (16) feet in height. No tank battery shall be constructed within five hundred (500) feet of any Occupied Residence, Occupied Commercial Structure or Occupied Public Building, unless a variance is granted by the City Council.

Drilling mud, cuttings, liquid hydrocarbons and all other field refuse derived or resulting from or connected with the drilling, re-working or deepening of any well shall be discharged into a steel pit or an approved earthen pit. All disposals must be in accordance with the rules of the Railroad Commission and with a plan submitted to and approved by the City Manager. Water stored in on-site tanks shall be removed as necessary.

All refuse shall be disposed of in such a manner as to comply with the applicable air and water pollution control regulations of the state, the conditions of this permit, and any applicable ordinance of the City.

Temporary flowback tanks shall be removed within ninety (90) days after completion date of the well at the pad site unless permission is obtained from the City Manager to extend the time period for no more than thirty (30) days. Completion date is that date which is stated as the "completion or recompletion date" shown on the Form W-2 or G-I filed with the Railroad Commission.

All tanks shall be set back pursuant to the standards of the Railroad Commission and the National Fire Protection Association, but in all cases, shall be at one hundred (135) feet from any street or alley right-of-way, three hundred thirty (330) feet from any public athletic field, and five hundred (500) feet from an Occupied Residence, Occupied Commercial Structure or Occupied Public Building, church, public or private school, hospital, nursing home, college or university or daycare center unless a variance is granted by the Midland City Council. Operator shall institute operational practices involving the daily monitoring of tank integrity and fluid levels within each tank. The use of a remote monitoring system is acceptable.

No meters, storage tanks, separation facilities, or other aboveground facilities, other than the well head and flow lines, shall be placed in a floodway identified by FEMA on the most current FIRM or the 100-year floodplain without a floodplain development permit obtained from the Department of Development services.

All fluids and tank bottoms will be disposed of in accordance with Railroad Commission regulations.

32.

Valves. Each flowing high volume well must have an automated shut-off valve to shut-in the well's production at the Operation Site for either a fire or

abnormal change in pressure. The fire department shall have access to the Operation Site and the shut-off valve in an emergency.

33.

Work hours for site development. No construction activities involving the excavation of, demolition of, alteration to, or repair work on any access road or pad site shall occur before 7:00 a.m. or after 7:00 p.m.

34.

Wellhead status after fracing. The wellhead between the time of Drilling/completion and tank battery construction, shall be:

a.

Surrounded with a six (6) foot tall temporary chain link fence having a gate and lock until permanent fencing is installed;

b.

The gate shall be locked at all times, except when the Operator is involved in active operations;

c.

The cellar shall be filled or closed; and

d.

The Bradenhead shall be piped to the surface and open to the atmosphere or have an observable and adequate pressure gauge with operable test valve.

35.

Inspections. In accordance within applicable law, the City Manager, or his designee, at his sole cost, risk and expense shall have a right of entry to the Drill Site/Operation Site and may, at his discretion, visit the Drill Site/Operation Site to make sure operator is in compliance with the requirements of this Section.

36.

Violation. In the event a violation of this ordinance is determined by the City's official (or officials), the City may act in any or all of the following ways:

a.

The City, through its designated official (or officials), may issue a notice of violation to the Operator, its agent, agents, employees or independent contractors (whether on site or not), or to any Person participating in the Drilling of the Well. Such notice may include a citation to appear before the Midland Municipal Court.

b.

If the City Manager, or his designee, finds the Operator to be in violation of any requirement of the applicable Oil and Gas well permit, then the City reserves the right after giving ten (10) business days written notice to the Operator regarding such violation, to draw upon the letter of credit, certificate of deposit or surety bond as outlined in Subsection (K) of this Section, in order to remedy such violation. In the event that a violation is not capable of being remedied within such ten (10) business day period, then Operator must have commenced efforts

to remedy such violation within said ten (10) business day period and thereafter continue with such efforts to remedy said violation with due diligence until completed, and as long as the Operator continues with efforts to remedy a violation with due diligence, the City shall not draw against the letter of credit, certificate of deposit or surety bond. In the event the City makes a claim on the letter of credit, certificate of deposit or surety bond pursuant to the terms hereof, reinstatement of the full amount of the letter of credit, certificate of deposit or surety bond shall be a condition to the cure of the violation leading to such claim. Alternatively, if the City Manager finds the Operator to be in violation of any requirement of the applicable Oil and Gas Well Permit, the City Manager shall give written notice to the Operator that unless all violations are corrected within ten (10) business days of the Operator's receipt of notice of the violation, the City Manager shall recommend to the City Council that the Oil and Gas Well Permit be cancelled by the City Council. In the event that a violation is not capable of being remedied within such ten (10) business-day period, then Operator must have commenced efforts to remedy said violation within said ten (10) business-day period and thereafter continue with such efforts to remedy said violation with due diligence until completed, and as long as the Operator continues with efforts to remedy a violation with due diligence, as determined by the City, the City shall not draw against the letter of credit, certificate of deposit or surety bond. If the City Council determines to consider the cancelling of the permit, it shall give the Operator written notice of the date and time of the hearing and shall give the Operator the opportunity to be heard and present facts the Operator deems relevant. The cancelling of a permit requires the majority vote of the City Council.

c.

Prosecution of violations of this Section shall be given priority and expedited upon the Municipal Court docket. Provided, however, that this subsection does not grant or guarantee Persons cited a right to expedited consideration of their citation before the Midland Municipal Court.

d.

In the event that there exists an imminent threat to public health and safety, a certified peace officer, in conjunction with the Railroad Commission, may order the temporary cessation of operations. An Operator may appeal the order to an appropriate Court in Midland County, Texas and request an expedited hearing. With respect to the contestation of an order issued pursuant to this subsection, an Operator retains all of its legal remedies.

M.

Fencing and landscaping.

1.

Fences.

A fencing plan shall be submitted, said plan containing a description of the building materials, dimensions, and locations of the proposed fence/walls and gates. The plan shall take into consideration the surrounding area and neighborhood.

At a minimum, tank battery facilities, wellheads and any production equipment associated with Oil and Gas wells shall be enclosed by a chain link fence at least seven (7) feet in height with beige-colored slats woven through the chain link, topped with three (3) strands of barbed wire angled outward or concertina wire, and shall be equipped with a locking gate. Gates shall be provided with a combination catch and locking attachment for a padlock, and shall be kept locked except when being used for access to the operation site. Operator must provide the City Fire Chief with a "Knox Padlock" or "Knox Box with a key" to access the Operation Site to be used only in case of an emergency.

The City Council may require additional or a different type of fencing to the extent necessary to conform with architectural standards and building materials existing on lots and/or lands immediately adjacent to the well and within five (500) feet of the Well at the time the Oil and Gas Well Permit is issued.

Additionally, if at any time within twenty-four (24) months following the issuance of an Oil and Gas Well Permit, a structure intended for permanent occupancy is constructed within five hundred (500) feet of the Well, the City Council may require the operator to undertake a one-time revision of the fencing plan to account for architectural standards and building materials associated with such structure to the extent that the revised fencing plan is consistent with, but not better than, the architectural standards and building materials associated with such structure.

Fences shall not be required on drill sites during drilling, completion or re-working operations as long as 24-hour on-site supervision is provided.

2.

Landscaping.

a.

The City will require tree preservation and/or planting measures.

i.

A minimum number of eight trees shall be required to be planted within 25 feet from the outside perimeter of the wall or walls required herein.

ii.

At least 75 percent of the trees shall be evergreen.

iii.

The minimum size of each tree planted will be at least four inches in diameter measured one foot above ground level.

iv.

All trees that die within three years of the date of project completion will be replaced by another replacement tree. The replacement tree carries the same three-year replacement requirement. A replacement of any tree that dies within three years of planting will be replaced by the Operator or agent and a new three-year guarantee will begin at the time of replacement.

b.

The following list of trees is considered desirable. Planting of trees for this list is acceptable. Other trees will be considered by the City Manager. The approval of additional species will be judged on adaptability, long-term health and growing characteristic of the tree type.

Scientific Name	Common Name
Pinus elarica	Afghan Pine, Mondell Pine
Pinus Sylvestris	Russian Pine
Ulmas Crassifolia	Cedar Elm

c.

Operator may submit a plan in lieu of subparagraphs (M)2.a and b above. The Operator must describe the type, number, and location of trees to be planted under this Section. The City Council may consider any proposal prepared in accordance with this subparagraph. Any alternative plan shall not be effective unless approved by the City Council.

d.

Operator shall submit an irrigation plan detailing the measures to be taken to adequately irrigate all landscaping, including indicating the proposed water source for irrigation, and the proposed efforts to replace dead or dying screening vegetation. Upon request by the Operator, the City may provide access to fresh water to be used for such irrigation if water is readily available and in conformance with City policies and procedures.

e.

In such instances, where City water is not available, a variance may be requested. Additionally, when City water becomes available, the provisions of this subsection shall be required.

(N)

Cleanup and Maintenance.

1.

Cleanup after well servicing. After the well has been completed or plugged and abandoned, the Operator shall clean the drill site or operation site, complete restoration activities and repair all damage to public property caused by such operations within one hundred eighty (180) days.

2.

Clean-up after spills, leaks and malfunctions. After any Railroad Commission reportable spill, leak or malfunction, the Operator shall remove or cause to be removed to the satisfaction of the City Fire Chief and the City Manager all refuse materials from any public or private property affected by such spill, leak or malfunction. Clean-up operations must begin immediately. The Operator shall comply with all requirements found in Statewide Rule 91 of the Railroad Commission, as amended. If Statewide Rule 91 requires reporting of the spill, the operator shall comply with the notification and reporting requirements found in Statewide Rule 20 of the Railroad Commission, as amended. Upon request the Operator shall furnish the City Manager with all information filed with the Railroad Commission. If the Operator fails to begin site clean-up immediately the City Manager may then employ any cleanup expert or experts or other contractors or suppliers of special services, or may incur any other expenses for labor and material which the City Manager deems necessary to clean-up such spill, leak or malfunction. The City shall then be able to collect from operator the costs involved in the site clean-up. The City may collect from the posted letter of credit, certificate of deposit or surety bond or any other legal means.

3.

Free from debris. The public street entrance and property on which a well site is located shall at all times be kept free of mud, debris, pools of water or other liquids, contaminated soil, weeds, brush, trash or other refuse material within a radius of one hundred (100) feet around any production facilities, tanks and producing wells.

4.

Painting. All production equipment shall be painted beige and maintained at all times, including pumping units, tanks, secondary containment and buildings or structures. When requiring painting of such facilities, the City Manager shall consider the deterioration of the quality of the material of which such facility or structure is constructed, the degree of rust, and its appearance.

5.

Blowouts. In the event of the loss of control of any well, Operator shall immediately take all reasonable steps to regain control regardless of any other provision of this permit and shall provide the City Manager with the same information as required to be filed with the Railroad Commission under Statewide Rule 20 as soon as practicable.

6.

Cleanup after Drilling/Completion. After the well has been drilled and completed, the Operator shall clean the Drill site, complete restoration activities and repair all damage to public property caused by such operations within ninety (90) days as specified previously in Subsection (L)27.

O.

Drilled and Abandoned Wells.

1.

Surface Requirements for Plugged and Abandoned Well. Whenever abandonment occurs pursuant to the requirements of the Railroad Commission, the Operator so abandoning shall be responsible for the restoration of the Operation site to its original condition as nearly as practicable, in conformity with the requirements of this permit underground pipelines associated with operations shall be purged of all fluids and may be abandoned in place.

2.

Surface Requirements for Drilled and Abandoned Well. Abandonment shall be approved by the City Manager after restoration of the Drill Site has been accomplished in conformity with the following requirements at the discretion of the City Manager:

a.

The Derrick and all appurtenant equipment thereto shall be removed from Drill site;

b.

All tanks, towers, and other surface installations shall be removed from the Drill site;

c.

All concrete foundations, above ground piping, wood, guy anchors and other foreign materials regardless of depth, except surface casing, shall be removed from the site, unless otherwise directed by the Railroad Commission;

d.

All holes and depressions shall be filled with clean, compactable soil;

e.

All, refuse and trash shall be removed from the Drill Site; and

f.

During abandonment, Operator shall comply with all applicable subsections in this section; and

g.

The drill site shall be restored, as close as practicable, to its original condition.

h.

Unless modified by the approved plan, deep burying of pits within the drill site perimeter is permitted. A survey and description of the location of any closed pit used in connection with the drill site shall be recorded in the property records of the county in which the real property is located. In any event the Operator shall comply with Subsection (L), Paragraph 27.

3.

Abandoned well requirement. The Operator shall furnish the following to the City Manager:

a.

A copy of the W-3A "Notice of Intention to Plug & Abandon" and W-3 "Plugging Record" forms on the same date these forms are submitted to the Railroad Commission.

b.

Prior 48-hour notice of intention to abandon under the provisions of this section and stating the date such work will be commenced. Abandonment may then be commenced on or subsequent to the date so stated.

c.

All wells shall be abandoned in accordance with the rules of the Railroad Commission; however, all well casings and cellars shall be cut and removed to a depth of at least three feet below the surface. A permanent abandonment marker, with the well identity and location permanently inscribed, shall be welded to the casing.

4.

Abandonment requirements prior to new construction. All abandoned or deserted wells or drill sites shall meet the most current abandonment requirements of the Railroad Commission prior to the issuance of any building permit for development of the property. No structure shall be built over an abandoned well.

P.

Certificate of Request for Inspection and Extension of Permit.

On or before ninety (90) days prior to each annual anniversary date of Operator's Oil and Gas Well Permit, Operator shall submit to the City Manager a Certificate of Request for Inspection of Permit. The Certificate of Request for Inspection of Permit must state the location and name of the well and the date the permit was granted by the City Council. The Certificate of Request for Inspection of Permit must be signed by the Operator before a notary public stating that the well is in compliance with the permit and all applicable Ordinances. The Certificate of Request for Inspection of Permit must be accompanied by an application and inspection fee of \$300.00. The City Manager shall grant a one-year inspection approval on the oil/gas drilling permit if the Operator is in compliance with the permit and all applicable ordinances as they apply to the

inspected well. Prior to authorizing the inspection approval, the City Manager, or his designee, shall inspect the oil and gas well site that is subject to the oil/gas drilling permit. The City Manager shall issue his decision in writing, within thirty (30) days of receiving the Certificate for Request for Inspection of Permit, either granting or denying the inspection of the oil/gas drilling permit.

The Operator may appeal the City Manager's denial of an oil/gas drilling permit inspection by submitting, in writing, an appeal to the City Council within thirty (30) days of the City Manager's written denial of the oil and gas well permit inspection. If an appeal is received by the City Council, a hearing shall be set before a meeting of the City Council to consider the denial of the oil/gas drilling permit inspection. The City Council shall hear and consider the recommendation of the City Manager, or his designee, before deciding whether or not to uphold the City Manager's decision. The Operator shall be allowed to speak and present any relevant evidence for consideration by the City Council prior to a vote of the council. A majority vote of the City Council shall be required to uphold the denial of the Oil and Gas Well Permit inspection by the City Manager. An inspection that is approved shall be valid for one (1) year from the inspection date.

(Q)

Measurement.

The measurement of all distances set forth herein shall be calculated from the proposed surface location of the well and tank batteries in a straight line, without regard to intervening structures or objects, to the closest exterior point of the object.

(R)

Effect of denial of oil and gas well permit.

If an application for an Oil and Gas Well Permit is denied by the City Council, nothing herein contained shall prevent a new permit application from being submitted to the City Council for the same proposed Oil and Gas Well or a different location for a well. A new application may also be filed on any of the mineral estate owned or leased by the applicant. Once all of the Operator's administrative and legislative remedies have been exhausted herein, the Operator may appeal or challenge the denial of an application in an appropriate Court in Midland County Texas under applicable state or federal law.

(S)

Amendment to Oil and Gas Well Permit.

1.

Amendment required. Within one hundred eighty (180) days after an Operator has been granted an Oil and Gas Well Permit, an Operator may submit an application to the City to amend an existing Oil and Gas Well Permit to commence Drilling from a new Drill site that is not shown on (or incorporated by reference as part of) the existing Oil and Gas Well Permit.

2.

Application Requirement for Amendment to Permit. An application for an amended Oil and Gas Well Permit shall meet all the requirements of this

Section, shall be in writing, shall be on forms provided by the City, shall be signed by the Operator, and shall include the following:

- a. An amendment fee of \$1,000.00.
- b. A description of the proposed amendments.
- c. Any changes to the information previously submitted with the application for the existing oil/gas drilling permit (if such information has not previously been provided to the City).
- d. Such additional information as is reasonably required by the City to demonstrate compliance with the original oil/gas drilling permit.
- e. Such additional information as is reasonably required by the City to prevent imminent destruction of property or injury to persons.

3.

Review of Application for Amendment to Permit. All applications for an amended oil/gas drilling permit shall be considered in accordance with the factors listed in Subsection (I) herein. The City Council may elect to consider the application for an amended oil/gas drilling permit without the requirement of a public hearing.

4.

Standard of review.

- a. **No Material Change from Existing Permit.** If the activities proposed by the amendment are not materially different from the activities covered by the existing Oil and Gas Well Permit, and are otherwise in conformance with the requirements of this section, other applicable City Ordinances, the Oil/Gas Drilling Permit then the City Council shall approve the Amended Application.
- b. **Material Change from Existing Permit.** If the activities proposed by the amendment are materially different from the activities covered by the existing Oil/Gas Well Permit, are not in conformance with the requirements of this Section, other applicable City Ordinances, the Oil/Gas Well Permit, or if, in the judgment of the City Council, the activities proposed by the amendment might create a risk of imminent destruction of property or injury to persons or property or that were not otherwise taken into consideration by the existing Oil/Gas Well Permit, the City Council may require the amendment to be processed as a new Oil and Gas Well Permit Application.

T.

Independent Contractor. Operator understands and agrees that Operator, its employees, servants, agents, and representatives, shall at no time represent themselves to be employees, servants, agents, and/or representatives of the City. The City shall not have any control over the means or methods by which Operator shall perform its obligations hereunder. Operator shall furnish all equipment and materials necessary to perform hereunder and shall at all times be acting as an independent contractor. No action by either party should be construed to create a partnership, joint venture, or other dual enterprise between the parties.

U.

Assignability; Transfer Permit.

1.

The Operator shall not, either directly or indirectly, assign, sell, or transfer any part of the Oil and Gas Well Permit, or any interest, right, duty, obligation or privilege under the permit, except in accordance with this Subsection.

2.

An Oil and Gas Well Permit may be transferred upon written request by the Operator with the consent of the City Council:

a.

If the transferee agrees in writing to be bound by the terms and conditions of the current Oil and Gas Well Permit and road repair agreement;

b.

If all information previously provided to the City as part of the current Oil and Gas Well Permit is updated to reflect any changes; and

c.

If the transferee provides the insurance and security required by this section.

3.

In determining whether to approve the transfer permit, the City Council may consider the financial standing of the transferee and its record of compliance with respect to existing permits. Should the transfer permit be denied, the transferee may file an application for a new Oil and Gas Well Permit.

4.

The insurance and security provided by the transferor shall be released if the transfer permit is approved; provided, however, that the transfer shall not relieve the transferor from any liability to the City arising out of any activities conducted prior to the transfer, except to the extent that the transferee expressly agrees in writing to assume such liabilities as part of the transfer.

5.

Applications for the transfer of Oil and Gas Well Permits shall be filed with the City's planning department. A non-refundable administration fee shall be charged for each application in the amount of five hundred (\$500.00).

V.

Time Limit Requirements. The failure of the City Council to review and approve an Oil and Gas Well Permit within a specified time limit shall not cause the application for the Oil and Gas Well Permit to be deemed approved. If the City Council denies a request for a permit, the applicant may file a request with the City Council to re-consider the application. The applicant may present any new evidence to the council and may present any extenuating circumstances or other matters deemed relevant by the applicant. The decision of the City Council regarding the issuance of a permit is not final until the request for re-consideration is voted upon by the City Council.

W.

Indemnification. The oil and gas well permit may contain the following language:

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

X.

Incident Reports or Written Complaints. The Operator shall provide a copy of any "incident reports" or written complaints submitted to the Railroad Commission or any other state or federal agency within thirty (30) days after Operator has notice of the existence of such reports or complaints.

Y.

Expiration of permit. Drilling must commence on the Well covered by the Oil and Gas Well permit twelve (12) months of approval by the City Council, after which the Oil and Gas Well Permit shall automatically expire if no drilling has commenced. A permit extension for a maximum time period of six (6) months may be granted by the City Manager without reapplication after the City Manager receives a written request from the Operator.

Z.

Takings determination.

1.

Any aggrieved applicant that believes that an action taken pursuant to this Section by the City Council or any officer or employee of the City constitutes a taking under the Texas or United States Constitution or under other state law, may file an application with the City Council requesting a takings determination.

2.

The applicant seeking a takings determination from the Council shall file its appeal with the office of the City Secretary. The City Secretary shall then

forward the appeal to the City Council for consideration. An appeal fee in the amount of two hundred fifty (\$250.00) dollars shall accompany each filing.

3.

The appeal shall state the reasons that the applicant believes would support a finding that the City's actions constitute a taking under the Texas or United States Constitution or pursuant to other State law and shall include evidence substantiating the purported diminution in value of the applicant's real property.

4.

If the Council finds by a majority vote in favor of the applicant it may: (1) grant the relief requested, or (2) direct the City Manager to rescind action taken by City Staff that formed the basis of the takings determination appeal. If the Council denies the appeal, or after a favorable determination the City Council fails to take action as specified above, the applicant may appeal the decision or inaction of the City Council to the county or district court of the county in which the affected real property is located within thirty (30) days of the date that the Council issues its final decision or in the event the Council does not act on the application, then the operator may appeal to the county or district court after the expiration of one hundred twenty (120) days from the date the application is heard by the City Council.

Notice addresses are as follows:

City of Midland
Attn: Office of the City Manager
P. O. Box 1152
Midland, Texas 79702

OPERATOR: _____
Jimmy Baggett, Operations Manager

Callon Petroleum Operating Company
4305 N. Garfield, Suite 235
Midland, Texas 79705
(432) 686-2764



APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

013-012
RECEIVED

MAY - 1 2013

CITY OF MIDLAND
PLANNING DIVISION OFFICE

I. General Information

Date 3/29/13	Operator Name (must match W-1) Callon Petroleum Operating Company	Operator Address P.O. Box 1287 Natchez, MS 39121
Representative Name Jimmy Baggett	Representative Address (within Midland City Limits) 4305 N. Garfield, Suite 235 Midland, TX 79705	Rep. Tele. (432) 686-1828 Rep. Fax (432) 686-2764
Fee: \$4,000.00 Rec'd Yes ☒ No ☐		

Permit Compliance Contact (Choose 1):

Option A:

24/7 Answering Services - No. 1 (tele):

No. 2 (Tele.):

Option B: **Jimmy Baggett 4305 N. Garfield, Suite 235 Midland, TX 79705**

Company Compliance Representative (Name, Address, Local Telephone) (ATTACH STATEMENT AS EXHIBIT A):

Emergency Contact Representative (Name, Address, 24-Hour Tele. No.):

Jimmy Baggett (432) 202-7210

4305 N. Garfield, Suite 235 Midland, TX 79705

Other Permitted Wells in City (ATTACH EXHIBIT B [see § J(26)]). **Eleven: See Exhibit B**

II. Mineral Ownership

Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease): **See Attached List**

1.

2.

3.

ATTACHED AS EXHIBIT C is (a Title Opinion by **Monty D. Biggs, a licensed Texas Attorney/Title Commitment by Abstract**

Company/a Take-off from, a Certified Petroleum Landman/an opinion letter from

, a licensed Texas Attorney) indicating that |Operator| has a legal right to develop the mineral estate that is the subject of this Application. [See § J(5)]. **Attached**

III. Surface Ownership & Use

General Description of Current Surface Use (within 860 feet of proposed surface location):

Future Development (zoned FD): No building allowed except those for customary agricultural uses.

Temporary designation for newly annexed land.

ATTACHED AS EXHIBIT D is (a Title Opinion by **, A licensed Texas Attorney/a Take-off from**

, a Certified Petroleum Landman/Current Tax Roll from Midland Central Appraisal District), which lists

the name(s) and address(es) of all surface owners within 860 feet of the surface well location. [See § J(7)]. **Attached**

ATTACHED AS EXHIBIT E is a (map/p lat/satellite/aerial photo) depicting all Residences, commercial structures, public buildings, all publicly dedicated Streets and alleys, Rights of Way, and permanent accessory structures surrounding the proposed Drill Site. The (map/p lat/satellite/aerial photo) includes two circles, as required by the Ordinance - one depicting a 500 foot radius and one depicting an 860 foot radius from the proposed well's surface location. [See § J(10)]. **Attached**

ATTACHED AS EXHIBIT F is a copy of the notification letter(s) sent to 100 percent of the surface owners, Certified Mail, Return Receipt Requested. [See § J(36)]. **Attached**

IV. Well & Operations Information

Proposed Well Name: **Pecan Acres 22A #3**

Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary) [See § J(11) and § L(4)]:

Attached

Legal Description of Proposed Well Site: **660' FNL, 587' FEL of Section 22, Block 40, T1S, T&P RR Co. Survey, Midland County, Texas**

ATTACHED AS EXHIBIT G is the Location Site Plan [See § J(9)]. **Attached**

ATTACHED AS EXHIBIT H is the Map with the proposed transportation route(s) and road(s) for equipment, chemicals, or refuse products used or produced in the proposed oil and gas operations. [See § J(12)]. **Attached**

ATTACHED AS EXHIBIT I is a copy of the approved Texas Railroad Commission permit to drill (Form W-1), together with all attachments (also file copy of W-1 with City Secretary before commencement of drilling operations). [See § J(16) and (20)]. **Attached**

ATTACHED AS EXHIBIT J is a copy of the required TCEQ report as to depth of usable quality ground water. [See § J(17)] **Attached**

ATTACHED AS EXHIBIT K (if applicable) is the list of alternative locations developed in consultation with the Oil & Gas Advisory Committee. [See § J(27)]. **Attached**

ATTACHED AS EXHIBIT L is the Fencing and Irrigation Plan. [See § J(30)]. **Attached variance request**

ATTACHED AS EXHIBIT M is the Road Repair Agreement and Letter of Credit/Certificate of Deposit/Surety Bond in the amount of at least \$25,000. Option (if applicable): Applicant would further state that no City-owned streets or alleys will be used by the Operator in connection with its oil and gas operations and as a result, requests a waiver from the Council of this requirement. Option B (if applicable): Beause Applicant has three Road Repair Agreements in effect that have been approved by the Council, Applicant requests that the Council consolidate all agreements into one and is filing the necessary \$75,000 letter of credit/certificate of deposit/surety bond in conjuncton with this request. [See § J(31)]. **Attached**

ATTACHED AS EXHIBIT N is the Concept Plan depicting the proposed Operations Site (which includes tanks, roads, power lines, and pipeline routes). [See § J(32)]. **Attached**

Description of Public Utilities required during (1) drilling and (2) operations:

(1) Drilling: **No public utilities will be needed during drilling operations.**

(2) Operations: **See Exhibit N and N-3**

Deescription of water source to be used during Drilling: **Water will be pulled from water wells existing on adjacent property and hauled if necessary.**

Description of all electric lines to production facilities (reference exhibits as necessary) [See § L(10)]: **See Exhibits G & N attached.**

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]: **See Exhibit O - Pits will be deep buried in accordance with City of Midland requirements.**

V. Additional Required Exhibits

ATTACHED AS EXHIBIT P is the Letter of Credit/Certificate of Deposit in accordance with Subsection (K)(2). [See § J(18)]. **Attached**

ATTACHED AS EXHIBIT Q are Tax certificates from Midland Central Appraisal District to be submitted indicating that all taxes on personal and real property, including minerals, owned by Applicant are current. [See § J(29)]. **Attached**

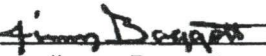
ATTACHED AS EXHIBIT R is the required Insurance Certificate. [See § J(19) and § K(3)]. **Attached**

ATTACHED AS EXHIBIT S (if applicable) is the Drainage Plan approved by the City Engineer relating to Applicant's proposed operations. [See § J(21)]. **Attached**

ATTACHED AS EXHIBIT T is Applicant's Emergency Action Response Plan. [See § J(22)]. **See Exhibit T and Attachment T-1**

ATTACHED AS EXHIBIT U is Applicant's Hazardous Materials Management Plan, a copy of which has been submitted and is on file with the Midland Fire Department. [See § J(23)]. **Attached**

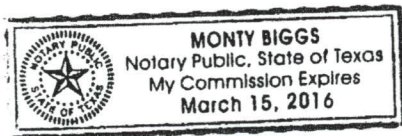
Callon Petroleum Operating Company

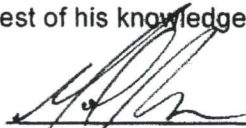
By: 
Jimmy Baggett
Operations Manager

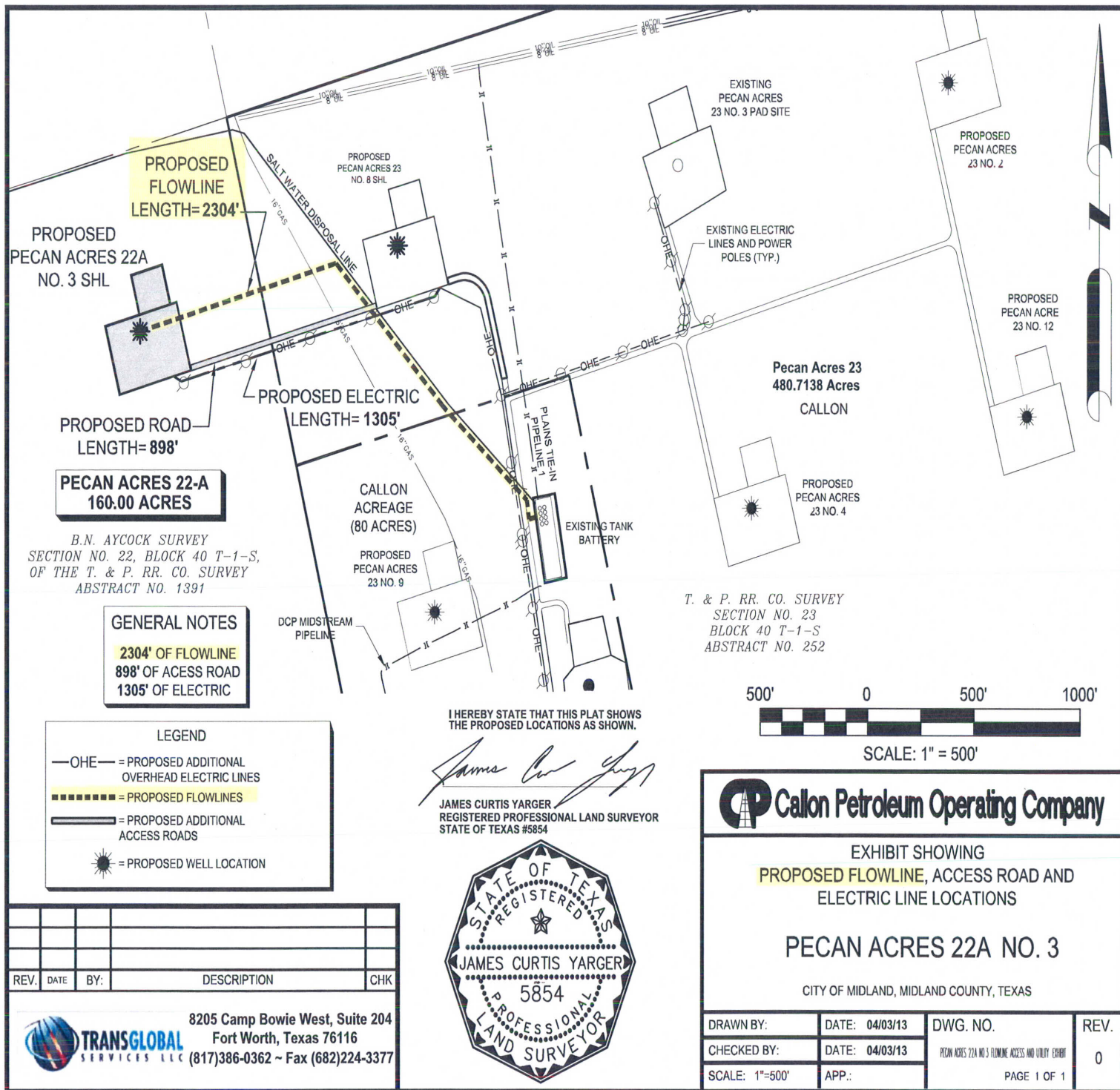
STATE OF TEXAS

COUNTY OF MIDLAND

This instrument was acknowledged before me on the 18th day of April, 2013 by Jimmy Baggett, Operations Manager for Callon Petroleum Operating Company, who personally appeared before me, and states that he has read the above application and attached exhibits and the statements therein are true and correct to the best of his knowledge.



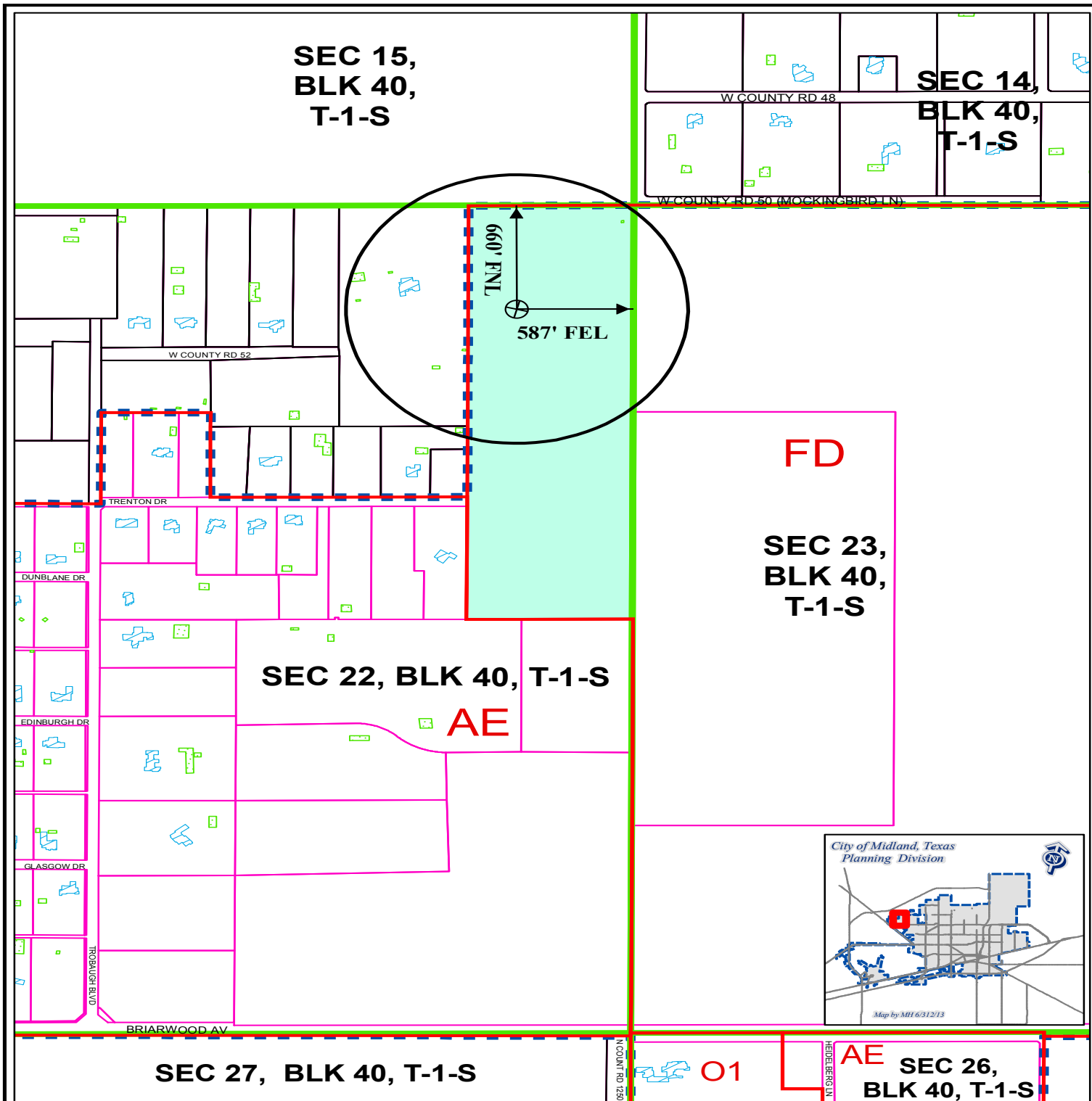

Notary Public – State of Texas



FLOW LINE LOCATION

PECAN ACRES 22A #3

0-13-012



LOCATION AND ZONING MAP

O - 13 - 012

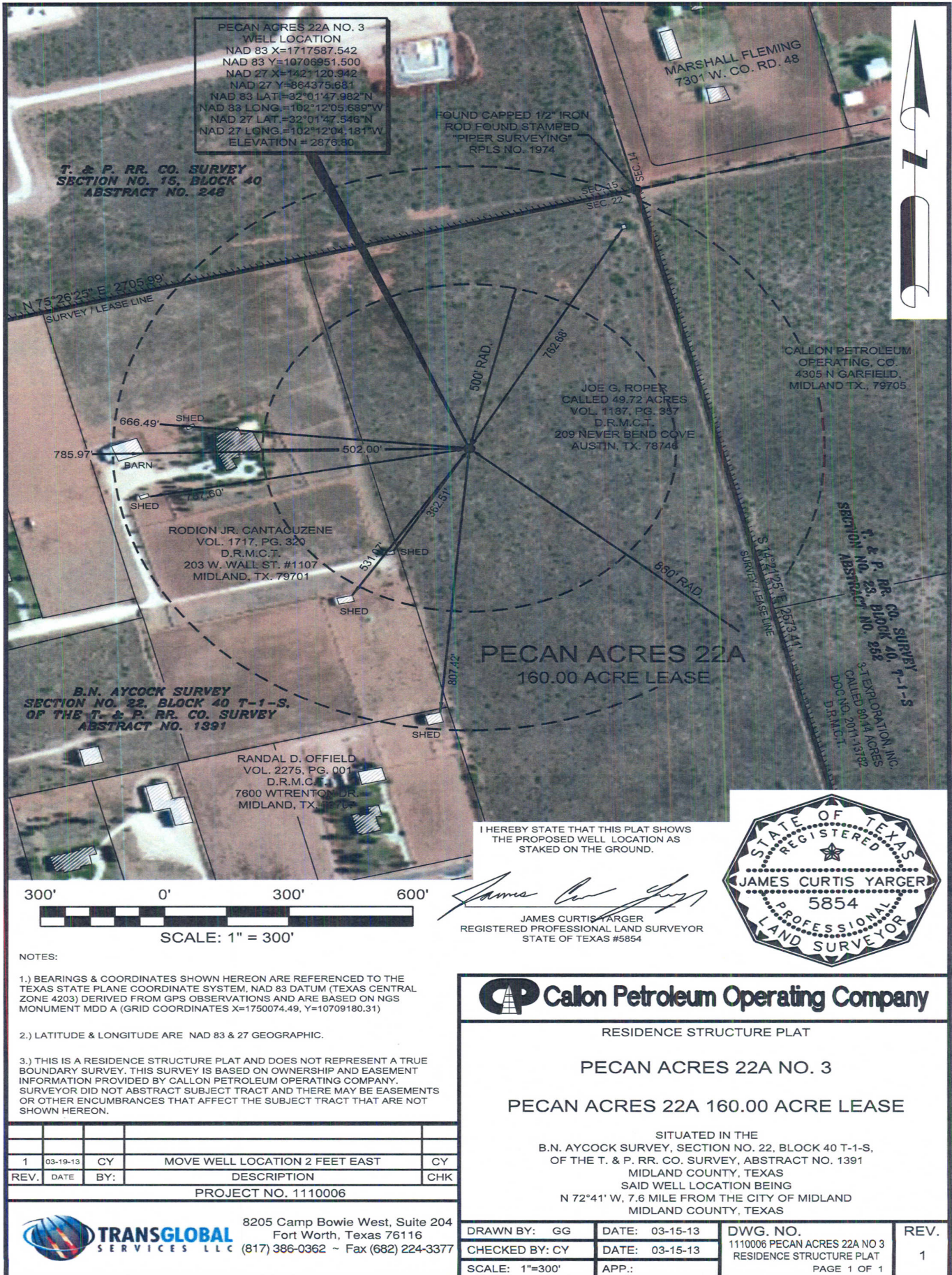
Scale: 1" = 700'

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 660' FNL and 587' FEL, Section 22, Block 40, T-1-S, T & P RR Co. Survey, Midland County, Texas.

Pecan Acres 22A #3

© THE CITY OF MIDLAND 2013. THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA. WHILE THIS DATA IS MADE AVAILABLE TO THE PUBLIC, IT WAS CREATED FOR INTERNAL USE BY THE CITY OF MIDLAND AND WHICH MAKERS NO CLAIM AS TO ITS ACCURACY OR COMPLETENESS. THIS DATA IS NOT PRESENTED TO BE USED AS A PRIMARY TOOL IN PERMITTING, CITING, OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.

EXHIBIT



DRILL SITE MAP

PECAN ACRES 22A #3

O-13-012
24.42



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: August 13, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Ron Jenkins, Oil & Gas Compliance Coordinator

SUBJECT: Consider a resolution approving the issuance of a permit to Petroplex Energy, Inc. (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (Western-T 8 #4) located 2,173 feet from the south line and 2,173 feet from the west line located in Section 8, Block 39, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. (Generally located on the east side of the extension of North Midland Drive, approximately 1/2 mile north of Green Tree Boulevard. – District 1)

Purpose:

To consider a resolution approving the issuance of a permit to Petroplex Energy, Inc. (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (Western-T 8 #4) located 2,173 feet from the south line and 2,173 feet from the west line located in Section 8, Block 39, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. The required 30-day public comment has passed and the Council may consider this request. No letters of objection received.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to process this application.

Discussion:

The Oil and Gas Advisory Committee has reviewed this well site in detail and recommends approval of the application with updated surface owner approval letter. Petroplex Energy, Inc. has addressed the recommendations and updated the application. The Committee is recommending the requested landscaping and irrigation variance and waiver of the road repair agreement.

Attachments: Application; Location map; Exhibit - Drill site map, Exhibit – Flow Line Location.

RESOLUTION NO. _____

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO PETROPLEX ENERGY, INC. (“OPERATOR”) TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 2,173 FEET FROM THE SOUTH LINE AND 2,173 FEET FROM THE WEST LINE, SECTION 8, BLOCK 39, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF THE EXTENSION OF NORTH MIDLAND DRIVE, APPROXIMATELY ½ MILE NORTH OF GREEN TREE BOULEVARD); AND WAIVING THE REQUIREMENT OF A ROAD REPAIR AGREEMENT

WHEREAS, on December 8, 2009, the City Council of the City of Midland duly approved Ordinance No. 8769 which amended Title VI, “Police Regulations,” Chapter 1, “General Offenses,” of the City Code of Midland, Texas, so as to establish Section 23, “Oil and Gas Well Permits issued on or after January 1, 2010,” which governs the granting or rejecting of Oil and Gas Well Permits; and

WHEREAS, the purpose of said section is to establish reasonable and uniform limitations, safeguards, and regulations for present and future operations related to the exploring, drilling, developing, producing, transporting and storing of oil or gas or other substances produced in association with oil and gas within the City of Midland to protect the health, safety, and general welfare of the public and the orderly development of the City of Midland; abate or prevent potential public nuisances; minimize the potential adverse impact to surface and mineral owners, protect the quality of the environment and encourage the orderly production of available mineral resources; and

WHEREAS, Section 6-1-23(C) of the City Code of Midland, Texas, makes it an offense to knowingly drill or participate in the drilling of any well or to re-enter any well within the corporate limits of the City of Midland without a permit having first been issued by the authority of the City Council; and

WHEREAS, Operator has submitted an application to the City of Midland to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, notice of the public hearing on this matter was provided in accordance with Section 6-1-23(H)(1) and a public hearing was held on July 9, 2013; and

WHEREAS, subsequent to said public hearing, and in accordance with Section 6-1-23(H)(1), the City Council allowed the public and Operator thirty (30) days to submit written input to the City Manager regarding Operator's application to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, the City Council has considered those issues set forth in Section 6-1-23(I) in determining whether to grant or deny a permit to Operator to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, the City Council finds it to be in the public interest to approve the issuance of a permit to Operator to drill an oil and gas well on the property described in Section Two hereof;

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

SECTION ONE. That the above recitals are hereby adopted and approved by the City Council of the City of Midland.

SECTION TWO. That the Mayor is hereby authorized and directed to execute a permit, on behalf of the City of Midland, that will allow Operator to drill an oil and gas well within the City limits located 2,173 feet from the south line and 2,173 feet from the west line, Section 8, Block 39, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. Said permit is attached hereto as Exhibit "A" and incorporated herein for all legal purposes.

SECTION THREE. That the requirement of a Road Repair Agreement between Operator and the City of Midland is hereby waived in regard to said permit.

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

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on August 13, 2013, considered the application of Petroplex Energy, Inc., dated December 31, 2012, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with the Midland City Code, Ordinance 8769, to drill an oil and gas well, in the application of Petroplex Energy, Inc., dated December 31, 2012, and filed with the Oil & Gas Compliance Officer and incorporated herein for all legal purposes.

The location of Petroplex Energy, Inc., Western-T 8 #4 oil and gas well shall be 2,173 feet from the south line and 2,173 feet from the west line, Section 8, Block 39, T-1-S, T & P RR Co. Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in that application of Petroplex Energy, Inc., which is incorporated herein. Further, all operations done under this permit shall be done and accomplished in strict accordance with the Midland City Code, Ordinance 8769, which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit. Also, all operations done under this permit shall be done and accomplished in strict accordance and compliance with the General Conditions, which are attached hereto marked as Exhibit "A" and incorporated into and made a part of this permit for all purposes. All operations done and required under this permit shall be done and accomplished in strict accordance and compliance with the Specific Conditions which are attached hereto, marked as Exhibit "B", and incorporated into and made a part of this permit for all purposes.

This permit shall be effective from August 13, 2013, through August 13, 2014, and so long thereafter as oil or gas is produced or until such time as the permittee has permanently abandoned the operations of the well or facility for which this permit is issued.

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

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts the permittee from its responsibilities or obligations as to third parties. The issuance of this permit only means that the permittee has, at this time, complied with Ordinance No. 8769 and that the Midland City Council, as a regulatory body, will allow the permittee to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize the recipient to act with impunity as to third parties, nor does it insulate the permittee from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize the permit holder from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a "negative pronouncement" that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. The permittee has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield the permittee from third party tort liability stemming from the consequences of the permitted activity.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, utility and drainage rights-of-way.

A variance granted for landscaping and irrigation to be consistent with the surface owner housing development plan.

A waiver granted for road repair agreement due to no city streets used by operator to access well or tank battery.

This permit shall constitute a written contract for purposes of insurance requirements.

In addition to the requirements of the Midland City Code, Ordinance 8769, and the requirements of this permit, including the General and Specific Conditions incorporated herein, Petroplex Energy, Inc., shall develop, maintain and operate the well described herein in accordance with the conditions, limitations and safeguards contained in Petroplex Energy, Inc., application for said well. Petroplex Energy, Inc., application for said well is incorporated herein by reference for all legal purposes.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS _____ day of August, 2013.

CITY OF MIDLAND, TEXAS

BY: _____

W. Wesley Perry, Mayor

UNDERSTOOD AND AGREE THIS _____ day of August, 2013.

Petroplex Energy, Inc.

By: _____

Don Hale, Director of Special Projects

OIL AND GAS PERMIT: ORDINANCE 8769 GENERAL CONDITIONS- EXHIBIT "A"

(K)

General Conditions of all Oil and Gas Well Permits.

1.

General Obligations of Operator.

The Operator shall be required to:

a.

Comply with the terms and conditions of this Section, the Midland City Code, the rules and regulations of the Railroad Commission, and any other state or federal agency that enforces land use, mineral use, or environmental protection regulations.

b.

Promptly clear Drill and Operation sites of litter, trash, refuse and other substances used, allowed, or occurring in the operations, and after abandonment or completion, grade, level, and restore such property to the same surface conditions as nearly as practicable as existed before operations.

c.

Indemnify and hold harmless the City of Midland, the City's officers, agents and employees, from any and all claims, losses, damages, causes of action, suits, and liability of any kind, including all expenses of litigation, court costs, and attorney's fees, for injury to or death of any Person, or for damage to any property arising out of or in connection with the work done by Operator under an Oil and Gas well permit: where such injuries, death or damages are caused by Operator's sole negligence or the joint negligence of the Operator and any other Person or entity.

d.

Promptly pay all fines, penalties and other assessments imposed due to breach of any of the conditions herein. If the Operator does not agree that a breach has occurred, the Operator may file a written objection with the City Manager within ten (10) days of being notified of the alleged breach. The City Manager shall review the objections and give the Operator the opportunity to be heard and present facts that the Operator deems relevant.

e.

Promptly restore to its former condition any public property damaged by the oil and gas operation.

f.

Except as permitted by Subsection U, hereof, Operator shall not, either directly or indirectly, assign all or any part of an Oil and Gas Well Permit.

g.

If required by the Permit, Operator shall execute a "Road Repair Agreement" between itself and the City of Midland and submit all necessary information and insurance and guarantees to the City prior to the issuance of any Oil and Gas Well Permit under this Section.

2.

Irrevocable Letter of Credit, Certificate of Deposit, or Surety Bond.

Prior to the issuance of an Oil and Gas well permit, the Operator shall provide the City Attorney with a guarantee in the form of an irrevocable letter of credit, certificate of deposit, or surety bond in the name of the City. The Applicant shall be entitled to receive the interest earned if the certificate of deposit reaches maturity. The letter of credit, certificate of deposit, or surety bond must satisfy the following:

a.

The letter of credit, certificate of deposit or surety bond shall be issued by a reliable bank or insurance carrier authorized to do business in the State of Texas;

b.

The letter of credit, certificate of deposit or surety bond shall be effective starting on or before the effective date of the Oil and Gas Well Permit;

c.

The letter of credit, certificate of deposit or surety bond shall be in the amount of twenty-five thousand dollars (\$25,000.00);

d.

The letter of credit, certificate of deposit or surety bond shall remain in full force and effect for a period of three years; and

e.

The letter of credit, certificate of deposit or surety bond shall authorize the City of Midland to draw upon such credit in the event the City Manager, or his designee, determines said credit is needed to remedy any violation of this Section.

If the well is still producing or if the well has not been abandoned or plugged, the Operator must renew the letter of credit, certificate of deposit or surety bond on or before one hundred twenty (120) days prior to the expiration of the letter of credit, certificate of deposit or surety bond.

The City of Midland may draw upon the letter of credit, certificate of deposit or surety bond to recover costs of repairs, modifications, or construction to remedy any violations by the Operator under this Section. The City may make partial or full draws of the letter of credit, certificate of deposit or surety bond. The City may draw upon the letter of credit, certificate of deposit or surety bond in the event the City has not received a new letter of credit, certificate of deposit or surety bond within the one hundred twenty (120) day renewal time period required above.

The Operator shall maintain the principal amount of \$25,000.00 in the form of a letter of credit, certificate of deposit or surety bond at all times throughout the term of the permit. In the event such letter of credit, certificate of deposit or surety bond is not restored to \$25,000.00 within ten (10) days after the date of the reduction of the letter of credit, certificate of deposit or surety bond, the City may draw and receive the remaining balance of the letter of credit, certificate of deposit or surety bond, and the Oil and Gas Well Permit shall be suspended on such date and the Operator's right to operate under Oil and Gas Well Permit shall immediately cease until the Operator files the required letter of credit, or certificate of deposit or surety bond.

If an operator has three (3) or more Oil and Gas Well Permits in effect which have been approved by the City Council, the Operator may petition the Council to consolidate the letter of credits, certificate of deposits or surety bonds into one letter of credit, certificate of deposit or surety bond that would cover all Oil and Gas Wells in the City limits. The consolidated letter of credit, certificate of deposit or surety bond shall be in an amount determined by the City Council as sufficient to cover the costs of repairs, modifications, construction or to remedy violations by the Operator but in no event shall the amount be less than \$75,000.00.

3.

Insurance.

In addition to the letter of credit, certificate of deposit or surety bond required above, the Operator shall carry a policy or policies of insurance issued by an admitted insurer or eligible surplus lines insurer authorized to do business in the State of Texas. In the event such insurance policy or policies are cancelled, any Oil and Gas Well Permit issued under this Section shall be suspended on such date of cancellation and the Operator's right to operate under such Oil and Gas Well Permit shall immediately cease until the Operator files additional insurance as required herein.

- a. General requirements applicable to all policies.
 - i. The City, the City's officials, employees, agents and officers shall be endorsed as an "Additional Insured" on all policies, except under Operator's Workers Compensation Policy.
 - ii. All policies shall be written on an occurrence basis, except for Environmental Pollution Liability (Seepage and Pollution coverage) and Excess and Umbrella Liability, which may be on a claims-made basis.
 - iii. All policies shall be written by an admitted insurer or eligible surplus lines insurer authorized to do business in the State of Texas.
 - iv. Deductibles shall be listed on the Certificate of Insurance and shall be on a "per occurrence" basis unless otherwise stipulated herein.
 - v. Certificates of Insurance shall be delivered to the City of Midland, P.O. Box 1152, Midland, Texas 79702, Attn: City Attorney's Office, evidencing all the required coverages, including endorsements, prior to the issuance of an Oil and Gas Well Permit under this Section.
 - vi. All policies shall be endorsed with a waiver of subrogation providing rights of recovery in favor of the City.
 - vii. Any failure on the part of the City to request required insurance documentation shall not constitute a waiver of the insurance requirements specified herein.
 - viii. Each policy shall be endorsed to provide the City a minimum thirty (30) day notice of cancellation, non-renewal, and/or material change in policy terms or coverage. A ten (10) day notice shall be acceptable in the event of non-payment of premium.
 - ix. During the term of any Oil and Gas Well Permit issued hereunder, the Operator shall report, in writing, within thirty (30) days of the occurrence, to the City Manager, any known

loss occurrence which could give rise to a liability claim or lawsuit or which could result in a property loss.

x.

Upon request, certified copies of all insurance policies shall be furnished to the City.

xi.

Operator shall have the right to maintain a qualified, self-insurance plan and/or maintain prudent levels of self-insured retentions for insurance coverage required in this section; however, Operator shall remain financially obligated for all self-insured retention amounts and deductibles. To the extent of the liabilities assumed by the Operator, Operator's insurance shall be primary coverage as to any liabilities of the City.

b.

Standard Commercial General Liability Policy.

This coverage must include premises, operations, blowout or explosion, products, completed operations, sudden and accidental pollution, blanket contractual liability, underground resources damage, broad form property damage, independent contractors protective liability, accidental death and personal injury. This coverage shall be a minimum Combined Single Limit of \$1,000,000.00 per occurrence for Bodily Injury, Accidental Death, and Property Injury.

c.

Excess or Umbrella Liability.

\$1,000,000	Excess, if the Operator has a stand-alone Environmental Pollution Liability (EPL) policy.
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\$10,000,000	Excess, if the Operator does not have a stand-alone EPL policy. Coverage must include an endorsement for sudden or accidental pollution. If Seepage and Pollution coverage is written on a "claims made" basis, the Operator must maintain continuous coverage and purchase Extended Coverage Period when necessary.
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d.

Environmental Pollution Liability Coverage.

Operator shall purchase and maintain in force for the duration of any Oil and Gas Well Permit issued hereunder, insurance for environmental pollution liability applicable to bodily injury, property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense or settlement of claims; all in connection with any loss arising from the insured site.

Coverage shall be maintained in an amount of at least \$1,000,000 per loss, with an annual aggregate of at least \$10,000,000.

Coverage shall apply to sudden and accidental pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids or gases, refuse material or other irritants, contaminants or pollutants.

e.

Workers Compensation and Employers Liability Insurance.

i.

Workers Compensation benefits shall be Texas Statutory Limits.

ii.

Employers Liability shall be a minimum of \$1,000,000.00 per accident.

iii.

Such coverage shall include a waiver of subrogation in favor of the City of Midland and provide coverage in accordance with applicable State and Federal laws.

f.

Automobile Liability Insurance.

i.

Combined single limit of \$1,000,000.00 per occurrence for bodily injury and property damage.

ii.

Coverage must include all owned, hired and not-owned automobiles.

g.

Certificates of Insurance.

i.

The company must be licensed or authorized to do business in the State of Texas.

ii.

The insurance set forth by the insurance company must be underwritten on forms that have been approved by the Texas State Board of Insurance or ISO or an equivalent policy form acceptable to the City, with the exception of environmental pollution liability and control of well coverage.

iii.

Set forth all endorsements and insurance coverage according to requirements and instructions contained herein.

iv.

Shall specifically set forth the notice of cancellation, termination, or change in coverage provisions to the City. All policies shall be endorsed to read "THIS POLICY WILL NOT BE CANCELLED OR NON-RENEWED WITHOUT THIRTY (30) DAYS ADVANCE WRITTEN NOTICE TO THE OWNER AND THE CITY, EXCEPT WHEN THIS POLICY IS BEING CANCELLED FOR NONPAYMENT OF PREMIUM, IN WHICH CASE, TEN (10) DAYS ADVANCE WRITTEN NOTICE IS REQUIRED".

v.

Original endorsements affecting coverage required by this section shall be furnished with the certificates of insurance.

vi.

At the request of an Operator, the Council may grant a variance to insurance requirements if the Council determines that the insurance procured by the Operator is sufficient to protect the City. A variance of this type may be required because of a change in underwriting policies of admitted insurance carriers.

Indemnification.

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

Notice.

The notices provided in this permit may be served in person or by registered or certified mail. Operator shall within ten (10) days notify the City Manager in writing of any change in such agent or mailing address unless operations in the City are discontinued and abandonment is complete.

Notice addresses are as follows:

City of Midland
Attn: Office of the City Manager
P. O. Box 1152
Midland, Texas 79702

OPERATOR: _____
Don Hale, Director of Special Projects

Petroplex Energy, Inc.
110 N. Marienfeld
Midland, Texas 79702
(432) 687-2231

OIL AND GAS WELL PERMIT: ORDINANCE 8769 SPECIFIC CONDITIONS-EXHIBIT "B"

(L)

Specific conditions of all Oil and Gas Well Permits; On-Site Requirements.

1.

Abandoned wells. All wells shall be abandoned in accordance with the rules of the Railroad Commission and pursuant to Subsection (O) of this Section.

2.

Automated audible alarm system. After completion, the appropriate system for flowing gas and/or flowing oil wells must be maintained to provide warnings for a substantial drop in pressure, or the release of any oil or gas, or a fire. Said audible alarm system must be approved by the Fire Marshal prior to installation of production equipment at the flowing gas and/or flowing oil well site.

3.

Blowout prevention. In all cases, ram-type and annular Blowout Preventers shall be used on all wells being drilled. In cases where Re-working is being performed on a Well, ram-type or annular Blowout Preventers shall be used. Protection shall be provided to prevent blowout during Drilling operations as required by and in conformance with the requirements of the Railroad Commission and the recommendations of the American Petroleum Institute. In addition to the Blowout Preventers stated above, all drilling must be equipped with flow lines and valves commensurate with the working pressures involved as required by the Railroad Commission each Blowout Preventer shall be a double-ram design with blinds and pipe. After surface casing has been set and cemented to surface, each Blowout Preventer shall be tested and witnessed by Operator's personnel and the results of such test shall be documented in the Operator's well file. Testing expenses shall be the responsibility of the Operator. The Operator shall provide a complete report of the well blowout prevention test to the City Manager within fifteen (15) days of the test.

4.

Casing. The surface portions of the Well shall be cased with cement circulated to the surface. All surface and intermediate casing must comply with all applicable rules of the Railroad Commission and the Texas Commission on Environmental Quality.

5.

Compliance. Operator shall comply at all times with all applicable federal, state and City requirements.

6.

Discharge. No person shall place, deposit, discharge, or cause or permit to be placed, deposited or discharged, any oil, naphtha, petroleum, asphalt, tar, hydrocarbon substances or any refuse including water or brine from any oil and gas operation or the contents of any container used in connection with any oil and gas operation in, into, or upon any Right-of-way, alleys, streets, lots, storm

drain, ditch or sewer, sanitary drain without permits from the appropriate City departments, or any body of water or onto any private property in the City.

7.

Drilling notice. The operator shall provide at least a forty eight (48)-hour notice to the City Manager prior to mobilizing the Drilling Equipment. In addition to notification to the City Manager, the operator shall provide a notice to the owners of at least forty eight (48) hours or more prior to mobilizing the drilling equipment through a publication in the Midland Reporter Telegram and a posting in the City Secretary's Office.

8.

Drill stem testing. No drill stem testing shall be allowed.

9.

Dust, vibration, odors. All drilling and production operations shall be conducted in such a manner as to minimize, so far as practicable, dust, vibration, or noxious odors, and shall be in accordance with the best accepted practices incident to drilling for the production of oil, gas and other hydrocarbon substances in urban areas. All equipment used shall be so constructed and operated so that, vibrations, dust, odor or other harmful or annoying substances or effect will be minimized by the operations carried on at any Drill Site or Operation Site or from anything incident thereto, to the injury or annoyance of persons living in the vicinity; nor shall the site or structures thereon be permitted to become dilapidated, unsightly or unsafe. Proven technological improvements in industry standards of drilling and production in this area shall be adopted as they become available if capable of reducing factors of dust, vibration and odor.

10.

Electric lines. All electric lines going under City roadways must be bored and encased pursuant to city standards. All electric lines to production facilities may be overhead service unless the surrounding neighborhood is developed with underground electric service. If the surrounding neighborhood is developed with underground electric service, then all electric lines to production facilities shall be buried underground.

11.

Electric motors. Only electric prime movers or motors shall be permitted for the purpose of pumping wells. No electric power shall be generated on location. All electrical installations and equipment shall conform to the City ordinances and the appropriate national codes.

12.

Emergency response plan. Prior to the commencement of any oil or gas production activities, Operator shall submit to the City Manager an emergency response plan establishing written procedures to minimize any hazard resulting from drilling, completion or producing of oil and gas wells. Said plan shall use existing guidelines established by the Railroad Commission, Texas Commission on Environmental Quality, Department of Transportation and/or the Environmental Protection Agency and City Fire Code. A copy of the Emergency Response Plan shall be kept at the Operator's office.

13.

Equipment painted. All production equipment on the site shall be painted beige and maintained at all times, including pumping units, tanks, buildings and structures. The City shall regularly inspect all painted structures and inform Operator when repainting is necessary. Operator shall repaint within sixty (60) days written notice from City. When requiring re-painting of such facilities, the City Manager shall consider the deterioration of the quality of the material of which such facility or structure is constructed, the degree of rust, and its appearance. Upon request of the Operator, a color other than beige may be approved by the City Council.

14.

Explosives. Use of an explosive perforating gun during completion operations and during plugging operations and down-hole operations that require such explosives shall be allowed.

15.

Fire notice. In the event of a fire or discovery of a fire, smoke, or unauthorized release of flammable or hazardous materials on any property, the Operator shall immediately report such condition to the Fire Department in accordance with the City of Midland Fire Code. The reporting limits for hazardous materials release shall conform to the requirements of the Railroad Commission and not exceed any state or federal permitting limit.

16.

Fire prevention; sources of ignition. Firefighting apparatus and supplies as approved by the Fire Marshal and required by any applicable federal, state, or local law shall be provided by the Operator, at the Operator's cost, and shall be maintained on the drilling site at all times during drilling and/or reworking operations. The Operator shall be responsible for the maintenance and upkeep of such equipment.

17.

Fracing operations. No fracing or formation fracture stimulation operations may take place before 7:00 a.m. or after 7:00 p.m.

18.

Fresh water wells. The measurements required by this Subsection shall be in a direct line from the closest Oil and Gas well to the fresh water well.

a.

Upon request of an owner of a fresh water well within 860 feet of an Oil and Gas well, who has been duly notified, Operator shall provide the City Manager with a "pre-drilling" and "post-drilling" water analysis from any such existing fresh water well(s).

b.

Operator shall conduct and fund annual testing for water wells that have been tested pursuant to Subsection (L)18.a. above. This testing program shall continue for the production life of The Well plus three years for a producing well, or for a period of one (1) year for a dry hole.

19.

Compressors. No onsite compressor used to "lift gas" shall be used. No compressor of any type shall be used. In the event Operator determines the use of such compressor is necessary, a detailed plan shall be submitted by Operator to the City Council for consideration. An on-site compressor plan shall include the following information:

- a. The physical size of the compressor;
- b. The power source of the compressor;
- c. The horsepower of the compressor;
- d. The noise of the compressor; and
- e. The manufacturer of the compressor.

No compressor of any type shall be used unless a plan is approved by the City Council.

20.

Gas emission or burning restricted. Operator shall not allow, cause or permit gases to be vented into the atmosphere or to be burned by open flame except as provided by law or as permitted by the Railroad Commission. If the venting of gases into the atmosphere or the burning of gases by open flame is authorized as provided by law or as permitted by the Railroad Commission, then such vent or open flame shall not be located closer than three hundred thirty (330) feet from any building not used in operations on the drilling site and such vent or open flame shall be screened in an effort to minimize detrimental effects to adjacent owners. Operator shall provide notice to the Fire Marshall prior to any open flaring of gas. Gas may not be flared unless for a limited time when completing, or recompleting a well, and only if flaring will not constitute a fire hazard to other owners. If flaring gas, it shall not be burned at a rate greater than 3,000 mcf/d. No gas may be flared between the hours of 7:00 p.m. and 7:00 a.m., except in an emergency.

21.

Gas processing onsite. Except for a conventional gas separator or line heater, no refinery, processing, treating, dehydrating or absorption plant of any kind shall be constructed, established or maintained on the premises without prior written consent of the City Manager.

22.

Grass, weeds, trash. All Drill sites and Operation sites shall be kept clear of high grass, weeds, and combustible trash within a radius of one hundred (100) feet around any Tanks, production facilities, or producing wells.

23.

Hazardous plan. Hazardous Materials Management Plan (HMMP) and all Material Safety Data Sheets (MSDS) for all hazardous materials that will be located, or stored, on the Operations Site shall be submitted to the City Manager.

24.

Lights. Except under emergency circumstances, operator shall not Operate any lights located at the Drill Site. To the extent practicable, and taking into account safety considerations, emergency site lighting shall be directed downward and internally so as to avoid glare on public roads and adjacent dwellings and buildings within three hundred (300) feet. This paragraph does not apply during initial Drilling Operations.

25.

Monitoring for H₂S gas. If required by the Railroad Commission, equipment for the monitoring of H₂S gas shall be used during Drilling. The Operator will comply with all requirements found in Statewide Rule 36 of the Railroad Commission, as amended. Within sixty (60) days after completion, and annually thereafter, Operator shall submit to the City Manager results of testing to determine the concentration of H₂S produced from the Well. If the results of the H₂S testing proves to be one hundred (100) PPM H₂S or greater, the Operator is responsible for determining the one hundred (100) PPM H₂S radius of exposure for each Well and production facility. Wells and facilities where the concentration of H₂S is equal to or greater than one hundred (100) PPM will be considered "Sour." Safety systems described herein must be approved by the Fire Marshall.

a.

The following safety alarms and equipment are required at the well site of all wells that are capable of producing at a sustained rate of at least one hundred twenty-five (125) barrels of oil per day and/or three hundred (300) MCF of gas per day and for "sour" wells whose one hundred (100) PPM H₂S radius of exposure is greater than fifteen (15) feet:

i.

H₂S monitors located along the fencing, as set forth in Subsection M (for "sour" wells only).

ii.

Automated audible alarms to provide warnings for a substantial drop in pressure or for the presence of H₂S in concentrations greater than one hundred (100) PPM.

iii.

Automated valve to shut-in production from the well if a substantial drop in pressure or if the presence of H₂S in concentrations greater than one hundred (100) PPM is detected.

b.

The following safety alarms and equipment are required at "Sour" Tank battery facilities:

i.

H₂S monitors located along the fencing, as set forth in Subsection M.

ii.

Automated audible alarm to provide warnings for the presence of H₂S in concentrations greater one hundred (100) PPM.

iii.

An electrical device capable of shutting down power to all "Sour" wells producing into the battery in the event H₂S in concentrations great than 100 PPM is detected.

26.

Muffling exhaust. Exhaust from any internal combustion engine or compressor, stationary or mounted on wheels, used in connection with the Drilling of any well or for use on any production equipment shall not be discharged into the open air unless it is equipped with an exhaust muffler, or mufflers or an exhaust muffler box constructed of noncombustible materials sufficient to suppress noise and disruptive vibrations and prevent the escape of obnoxious gases, fumes or ignited carbon or soot.

27.

Pits. The following applies for pits used for Drilling and completion operations:

a.

No pit shall be placed in a floodplain without obtaining a floodplain development permit from the City Department of Development Services.

b.

No fresh water pit may be placed in any City recognized drainage way, FEMA floodplain or floodway. Construction of the fresh water pit must comply with all City, state and federal regulations.

c.

The use of earthen pits shall be allowed so long as the construction, use, dewatering and closure of such pits meets or exceeds the requirements of the applicable Railroad Commission rules and Texas Commission on Environmental Quality rules. In addition to compliance with applicable Railroad Commission rules, and Texas Commission on Environmental Quality rules, such earthen reserve pits shall also meet the following requirements;

(i)

the maximum size of a reserve pit shall be no greater than two hundred (200) feet by two hundred (200) feet;

(ii)

The pits shall be lined with a plastic liner having a minimum thickness of eight (8) mil reinforced polyethylene;

(iii)

Reserve pits used in Drilling operations shall be fenced on all open sides during such operations and shall be enclosed on all sides once Drilling operations have ceased;

(iv)

Reserve pits shall be closed within one hundred (180) days of the cessation of drilling operations;

(v)

Drill cuttings may be disposed of on the Drill Site using a deep burial method provided that the burial pit containing the cuttings is located entirely within one hundred thirty five (135) feet of the surface location of the Well, provided that all free water has been removed prior to burying the cuttings, and an impermeable liner is placed above the cuttings prior to covering the cuttings and liner with top soil, and provided that the burial pit is constructed in such a manner that the cuttings will be covered with a minimum of thirty six (36) inches of clean, compactable soil. A survey and description of the location of any closed pit used in connection with the Drill Site shall be recorded in the property records of the county in which the real property is located.

28.

Salt water wells. No commercial salt-water disposal wells that receive water by truck shall be located within the City of Midland. In the event the operator determines that the use of a non-commercial salt-water well is necessary, a detailed plan shall be submitted by the operator to the City Council for consideration. No salt water disposal well of any type shall be used unless a plan is approved by the City Council.

29.

Signs.

a.

A sign shall be immediately and prominently displayed at the gate on the temporary and permanent site fencing erected pursuant to Subsection (M) of this Section. Such sign shall be durable material, maintained in good condition and, unless otherwise required by the Railroad Commission, shall have a surface area of not less than two square feet not more than four square feet and shall be lettered with the following:

i.

Well name and number;

ii.

Name of operator;

iii.

The emergency 911 number; and

iv.

A 24-hour phone number that will provide an emergency phone number of Operator's Representatives as stated in Subsection F.

b.

Permanent weatherproof signs reading "DANGER NO SMOKING OR OPEN FLAME ALLOWED IN THIS AREA" shall be posted immediately upon completion of the well site fencing at the entrance of the well site and tank battery or in any other location approved or designated by the Fire Chief of the City. Sign lettering for this sign shall be two (2) inches or greater in height and shall be red on a white background or white on a red background. Each sign shall include the emergency notification numbers of the Fire Department and the Operator, well and lease designations required by the Texas Railroad Commission.

c.

Provide a National Fire Prevention Association (NFPA) 704 diamond hazard identification signs are required at the entrance to the Operation Site adjacent to the Operator's sign if chemicals are present. A label must be located on each chemical Tank indicating exact chemicals that may be contained in such Tank. Text shall be minimum two inches or greater in height, contrasting with the background color.

30.

Storage of equipment. Storage of equipment and materials shall be minimized and limited to the immediate operational needs of the well. Lumber, pipes, empty drums, trucks, trailers, automobiles, junk tubing, casing and rods shall not be left on the operation site except when drilling or reworking operations are being conducted on the site.

No vehicle or item of machinery shall be parked or stored on any Street, Right-of-Way or in any driveway, alley or upon any Operation Site which constitutes a fire hazard or an obstruction to or interference with fighting or controlling fires except that equipment which is necessary for Drilling or production operations on the site. The Fire Department shall be the entity that determines whether any equipment on the site shall constitute a fire hazard.

31.

Tank Battery Facilities. At the tank battery for either oil and/or gas Wells a sensor for fire detection should be appropriately placed near heater treaters, separators, and oil storage tanks that would allow an automated valve placed at the header to be closed in the event of a detected fire. All storage tanks shall be equipped with a secondary containment system. The secondary containment system shall be a minimum of three (3) feet in height and one and one-half (1½) times the contents of the total tank volume. Drip pots shall be provided at the pump out connection to contain the liquids from the storage tanks. No storage tank shall be over sixteen 16 feet in height. All storage tanks shall be built on an adequate foundation with a twelve 12-mil liner being placed

beneath each tank, extending a minimum of three (3) feet beyond the edge of each tank.

Operator must use portable steel storage tanks or fiberglass tanks for storing all fluids from the well. Tanks must meet the American Petroleum Institute standards. All tanks must have a vent line, lightning arrester and pressure relief valve. All tanks must be enclosed by a fence as required by Section (M) herein. No tank shall exceed sixteen (16) feet in height. No tank battery shall be constructed within five hundred (500) feet of any Occupied Residence, Occupied Commercial Structure or Occupied Public Building, unless a variance is granted by the City Council.

Drilling mud, cuttings, liquid hydrocarbons and all other field refuse derived or resulting from or connected with the drilling, re-working or deepening of any well shall be discharged into a steel pit or an approved earthen pit. All disposals must be in accordance with the rules of the Railroad Commission and with a plan submitted to and approved by the City Manager. Water stored in on-site tanks shall be removed as necessary.

All refuse shall be disposed of in such a manner as to comply with the applicable air and water pollution control regulations of the state, the conditions of this permit, and any applicable ordinance of the City.

Temporary flowback tanks shall be removed within ninety (90) days after completion date of the well at the pad site unless permission is obtained from the City Manager to extend the time period for no more than thirty (30) days. Completion date is that date which is stated as the "completion or recompletion date" shown on the Form W-2 or G-I filed with the Railroad Commission.

All tanks shall be set back pursuant to the standards of the Railroad Commission and the National Fire Protection Association, but in all cases, shall be at one hundred (135) feet from any street or alley right-of-way, three hundred thirty (330) feet from any public athletic field, and five hundred (500) feet from an Occupied Residence, Occupied Commercial Structure or Occupied Public Building, church, public or private school, hospital, nursing home, college or university or daycare center unless a variance is granted by the Midland City Council. Operator shall institute operational practices involving the daily monitoring of tank integrity and fluid levels within each tank. The use of a remote monitoring system is acceptable.

No meters, storage tanks, separation facilities, or other aboveground facilities, other than the well head and flow lines, shall be placed in a floodway identified by FEMA on the most current FIRM or the 100-year floodplain without a floodplain development permit obtained from the Department of Development services.

All fluids and tank bottoms will be disposed of in accordance with Railroad Commission regulations.

32.

Valves. Each flowing high volume well must have an automated shut-off valve to shut-in the well's production at the Operation Site for either a fire or

abnormal change in pressure. The fire department shall have access to the Operation Site and the shut-off valve in an emergency.

33.

Work hours for site development. No construction activities involving the excavation of, demolition of, alteration to, or repair work on any access road or pad site shall occur before 7:00 a.m. or after 7:00 p.m.

34.

Wellhead status after fracing. The wellhead between the time of Drilling/completion and tank battery construction, shall be:

a.

Surrounded with a six (6) foot tall temporary chain link fence having a gate and lock until permanent fencing is installed;

b.

The gate shall be locked at all times, except when the Operator is involved in active operations;

c.

The cellar shall be filled or closed; and

d.

The Bradenhead shall be piped to the surface and open to the atmosphere or have an observable and adequate pressure gauge with operable test valve.

35.

Inspections. In accordance within applicable law, the City Manager, or his designee, at his sole cost, risk and expense shall have a right of entry to the Drill Site/Operation Site and may, at his discretion, visit the Drill Site/Operation Site to make sure operator is in compliance with the requirements of this Section.

36.

Violation. In the event a violation of this ordinance is determined by the City's official (or officials), the City may act in any or all of the following ways:

a.

The City, through its designated official (or officials), may issue a notice of violation to the Operator, its agent, agents, employees or independent contractors (whether on site or not), or to any Person participating in the Drilling of the Well. Such notice may include a citation to appear before the Midland Municipal Court.

b.

If the City Manager, or his designee, finds the Operator to be in violation of any requirement of the applicable Oil and Gas well permit, then the City reserves the right after giving ten (10) business days written notice to the Operator regarding such violation, to draw upon the letter of credit, certificate of deposit or surety bond as outlined in Subsection (K) of this Section, in order to remedy such violation. In the event that a violation is not capable of being remedied within such ten (10) business day period, then Operator must have commenced efforts

to remedy such violation within said ten (10) business day period and thereafter continue with such efforts to remedy said violation with due diligence until completed, and as long as the Operator continues with efforts to remedy a violation with due diligence, the City shall not draw against the letter of credit, certificate of deposit or surety bond. In the event the City makes a claim on the letter of credit, certificate of deposit or surety bond pursuant to the terms hereof, reinstatement of the full amount of the letter of credit, certificate of deposit or surety bond shall be a condition to the cure of the violation leading to such claim. Alternatively, if the City Manager finds the Operator to be in violation of any requirement of the applicable Oil and Gas Well Permit, the City Manager shall give written notice to the Operator that unless all violations are corrected within ten (10) business days of the Operator's receipt of notice of the violation, the City Manager shall recommend to the City Council that the Oil and Gas Well Permit be cancelled by the City Council. In the event that a violation is not capable of being remedied within such ten(10)business-day period, then Operator must have commenced efforts to remedy said violation within said ten (10) business-day period and thereafter continue with such efforts to remedy said violation with due diligence until completed, and as long as the Operator continues with efforts to remedy a violation with due diligence, as determined by the City, the City shall not draw against the letter of credit, certificate of deposit or surety bond. If the City Council determines to consider the cancelling of the permit, it shall give the Operator written notice of the date and time of the hearing and shall give the Operator the opportunity to be heard and present facts the Operator deems relevant. The cancelling of a permit requires the majority vote of the City Council.

c.

Prosecution of violations of this Section shall be given priority and expedited upon the Municipal Court docket. Provided, however, that this subsection does not grant or guarantee Persons cited a right to expedited consideration of their citation before the Midland Municipal Court.

d.

In the event that there exists an imminent threat to public health and safety, a certified peace officer, in conjunction with the Railroad Commission, may order the temporary cessation of operations. An Operator may appeal the order to an appropriate Court in Midland County, Texas and request an expedited hearing. With respect to the contestation of an order issued pursuant to this subsection, an Operator retains all of its legal remedies.

M.

Fencing and landscaping.

1.

Fences.

A fencing plan shall be submitted, said plan containing a description of the building materials, dimensions, and locations of the proposed fence/walls and gates. The plan shall take into consideration the surrounding area and neighborhood.

At a minimum, tank battery facilities, wellheads and any production equipment associated with Oil and Gas wells shall be enclosed by a chain link fence at least seven (7) feet in height with beige-colored slats woven through the chain link, topped with three (3) strands of barbed wire angled outward or concertina wire, and shall be equipped with a locking gate. Gates shall be provided with a combination catch and locking attachment for a padlock, and shall be kept locked except when being used for access to the operation site. Operator must provide the City Fire Chief with a "Knox Padlock" or "Knox Box with a key" to access the Operation Site to be used only in case of an emergency.

The City Council may require additional or a different type of fencing to the extent necessary to conform with architectural standards and building materials existing on lots and/or lands immediately adjacent to the well and within five (500) feet of the Well at the time the Oil and Gas Well Permit is issued.

Additionally, if at any time within twenty-four (24) months following the issuance of an Oil and Gas Well Permit, a structure intended for permanent occupancy is constructed within five hundred (500) feet of the Well, the City Council may require the operator to undertake a one-time revision of the fencing plan to account for architectural standards and building materials associated with such structure to the extent that the revised fencing plan is consistent with, but not better than, the architectural standards and building materials associated with such structure.

Fences shall not be required on drill sites during drilling, completion or re-working operations as long as 24-hour on-site supervision is provided.

2.

Landscaping. Variance granted August 13, 2013.

Landscaping and irrigation is to be consistent with housing development of surface owner.

(N)

Cleanup and Maintenance.

1.

Cleanup after well servicing. After the well has been completed or plugged and abandoned, the Operator shall clean the drill site or operation site, complete restoration activities and repair all damage to public property caused by such operations within one hundred eighty (180) days.

2.

Clean-up after spills, leaks and malfunctions. After any Railroad Commission reportable spill, leak or malfunction, the Operator shall remove or cause to be removed to the satisfaction of the City Fire Chief and the City Manager all refuse materials from any public or private property affected by such spill, leak or malfunction. Clean-up operations must begin immediately. The Operator shall comply with all requirements found in Statewide Rule 91 of the Railroad Commission, as amended. If Statewide Rule 91 requires reporting of the spill, the operator shall comply with the notification and reporting requirements found in Statewide Rule 20 of the Railroad Commission, as amended. Upon request the Operator shall furnish the City Manager with all information filed with the Railroad Commission. If the Operator fails to begin site clean-up immediately the City Manager may then employ any cleanup expert or experts or other contractors or suppliers of special services, or may incur any other expenses for labor and material which the City Manager deems necessary to clean-up such spill, leak or malfunction. The City shall then be able to collect from operator the costs involved in the site clean-up. The City may collect from the posted letter of credit, certificate of deposit or surety bond or any other legal means.

3.

Free from debris. The public street entrance and property on which a well site is located shall at all times be kept free of mud, debris, pools of water or other liquids, contaminated soil, weeds, brush, trash or other refuse material within a radius of one hundred (100) feet around any production facilities, tanks and producing wells.

4.

Painting. All production equipment shall be painted beige and maintained at all times, including pumping units, tanks, secondary containment and buildings or structures. When requiring painting of such facilities, the City Manager shall consider the deterioration of the quality of the material of which such facility or structure is constructed, the degree of rust, and its appearance.

5.

Blowouts. In the event of the loss of control of any well, Operator shall immediately take all reasonable steps to regain control regardless of any other provision of this permit and shall provide the City Manager with the same information as required to be filed with the Railroad Commission under Statewide Rule 20 as soon as practicable.

6.

Cleanup after Drilling/Completion. After the well has been drilled and completed, the Operator shall clean the Drill site, complete restoration activities and repair all damage to public property caused by such operations within ninety (90) days as specified previously in Subsection (L)27.

O.

Drilled and Abandoned Wells.

1.

Surface Requirements for Plugged and Abandoned Well. Whenever abandonment occurs pursuant to the requirements of the Railroad Commission, the Operator so abandoning shall be responsible for the restoration of the Operation site to its original condition as nearly as practicable, in conformity with the requirements of this permit underground pipelines associated with operations shall be purged of all fluids and may be abandoned in place.

2.

Surface Requirements for Drilled and Abandoned Well. Abandonment shall be approved by the City Manager after restoration of the Drill Site has been accomplished in conformity with the following requirements at the discretion of the City Manager:

a.

The Derrick and all appurtenant equipment thereto shall be removed from Drill site;

b.

All tanks, towers, and other surface installations shall be removed from the Drill site;

c.

All concrete foundations, above ground piping, wood, guy anchors and other foreign materials regardless of depth, except surface casing, shall be removed from the site, unless otherwise directed by the Railroad Commission;

d.

All holes and depressions shall be filled with clean, compactable soil;

e.

All, refuse and trash shall be removed from the Drill Site; and

f.

During abandonment, Operator shall comply with all applicable subsections in this section; and

g.

The drill site shall be restored, as close as practicable, to its original condition.

h.

Unless modified by the approved plan, deep burying of pits within the drill site perimeter is permitted. A survey and description of the location of any closed pit used in connection with the drill site shall be recorded in the property records of the county in which the real property is located. In any event the Operator shall comply with Subsection (L), Paragraph 27.

3.

Abandoned well requirement. The Operator shall furnish the following to the City Manager:

a.

A copy of the W-3A "Notice of Intention to Plug & Abandon" and W-3 "Plugging Record" forms on the same date these forms are submitted to the Railroad Commission.

b.

Prior 48-hour notice of intention to abandon under the provisions of this section and stating the date such work will be commenced. Abandonment may then be commenced on or subsequent to the date so stated.

c.

All wells shall be abandoned in accordance with the rules of the Railroad Commission; however, all well casings and cellars shall be cut and removed to a depth of at least three feet below the surface. A permanent abandonment marker, with the well identity and location permanently inscribed, shall be welded to the casing.

4.

Abandonment requirements prior to new construction. All abandoned or deserted wells or drill sites shall meet the most current abandonment requirements of the Railroad Commission prior to the issuance of any building permit for development of the property. No structure shall be built over an abandoned well.

P.

Certificate of Request for Inspection and Extension of Permit.

On or before ninety (90) days prior to each annual anniversary date of Operator's Oil and Gas Well Permit, Operator shall submit to the City Manager a Certificate of Request for Inspection of Permit. The Certificate of Request for Inspection of Permit must state the location and name of the well and the date the permit was granted by the City Council. The Certificate of Request for Inspection of Permit must be signed by the Operator before a notary public stating that the well is in compliance with the permit and all applicable Ordinances. The Certificate of Request for Inspection of Permit must be accompanied by an application and inspection fee of \$300.00. The City Manager shall grant a one-year inspection approval on the oil/gas drilling permit if the Operator

is in compliance with the permit and all applicable ordinances as they apply to the inspected well. Prior to authorizing the inspection approval, the City Manager, or his designee, shall inspect the oil and gas well site that is subject to the oil/gas drilling permit. The City Manager shall issue his decision in writing, within thirty (30) days of receiving the Certificate for Request for Inspection of Permit, either granting or denying the inspection of the oil/gas drilling permit.

The Operator may appeal the City Manager's denial of an oil/gas drilling permit inspection by submitting, in writing, an appeal to the City Council within thirty (30) days of the City Manager's written denial of the oil and gas well permit inspection. If an appeal is received by the City Council, a hearing shall be set before a meeting of the City Council to consider the denial of the oil/gas drilling permit inspection. The City Council shall hear and consider the recommendation of the City Manager, or his designee, before deciding whether or not to uphold the City Manager's decision. The Operator shall be allowed to speak and present any relevant evidence for consideration by the City Council prior to a vote of the council. A majority vote of the City Council shall be required to uphold the denial of the Oil and Gas Well Permit inspection by the City Manager. An inspection that is approved shall be valid for one (1) year from the inspection date.

(Q)

Measurement.

The measurement of all distances set forth herein shall be calculated from the proposed surface location of the well and tank batteries in a straight line, without regard to intervening structures or objects, to the closest exterior point of the object.

(R)

Effect of denial of oil and gas well permit.

If an application for an Oil and Gas Well Permit is denied by the City Council, nothing herein contained shall prevent a new permit application from being submitted to the City Council for the same proposed Oil and Gas Well or a different location for a well. A new application may also be filed on any of the mineral estate owned or leased by the applicant. Once all of the Operator's administrative and legislative remedies have been exhausted herein, the Operator may appeal or challenge the denial of an application in an appropriate Court in Midland County Texas under applicable state or federal law.

(S)

Amendment to Oil and Gas Well Permit.

1.

Amendment required. Within one hundred eighty (180) days after an Operator has been granted an Oil and Gas Well Permit, an Operator may submit an application to the City to amend an existing Oil and Gas Well Permit to commence Drilling from a new Drill site that is not shown on (or incorporated by reference as part of) the existing Oil and Gas Well Permit.

2.

Application Requirement for Amendment to Permit. An application for an amended Oil and Gas Well Permit shall meet all the requirements of this Section, shall be in writing, shall be on forms provided by the City, shall be signed by the Operator, and shall include the following:

- a. An amendment fee of \$1,000.00.
- b. A description of the proposed amendments.
- c. Any changes to the information previously submitted with the application for the existing oil/gas drilling permit (if such information has not previously been provided to the City).
- d. Such additional information as is reasonably required by the City to demonstrate compliance with the original oil/gas drilling permit.
- e. Such additional information as is reasonably required by the City to prevent imminent destruction of property or injury to persons.

3.

Review of Application for Amendment to Permit. All applications for an amended oil/gas drilling permit shall be considered in accordance with the factors listed in Subsection (I) herein. The City Council may elect to consider the application for an amended oil/gas drilling permit without the requirement of a public hearing.

4.

Standard of review.

- a. **No Material Change from Existing Permit.** If the activities proposed by the amendment are not materially different from the activities covered by the existing Oil and Gas Well Permit, and are otherwise in conformance with the requirements of this section, other applicable City Ordinances, the Oil/Gas Drilling Permit then the City Council shall approve the Amended Application.
- b. **Material Change from Existing Permit.** If the activities proposed by the amendment are materially different from the activities covered by the existing Oil/Gas Well Permit, are not in conformance with the requirements of this Section, other applicable City Ordinances, the Oil/Gas Well Permit, or if, in the judgment of the City Council, the activities proposed by the amendment might create a risk of imminent destruction of property or injury to persons or property or that were not otherwise taken into consideration by the existing Oil/Gas Well

Permit, the City Council may require the amendment to be processed as a new Oil and Gas Well Permit Application.

T.

Independent Contractor. Operator understands and agrees that Operator, its employees, servants, agents, and representatives, shall at no time represent themselves to be employees, servants, agents, and/or representatives of the City. The City shall not have any control over the means or methods by which Operator shall perform its obligations hereunder. Operator shall furnish all equipment and materials necessary to perform hereunder and shall at all times be acting as an independent contractor. No action by either party should be construed to create a partnership, joint venture, or other dual enterprise between the parties.

U.

Assignability; Transfer Permit.

1.

The Operator shall not, either directly or indirectly, assign, sell, or transfer any part of the Oil and Gas Well Permit, or any interest, right, duty, obligation or privilege under the permit, except in accordance with this Subsection.

2.

An Oil and Gas Well Permit may be transferred upon written request by the Operator with the consent of the City Council:

a.

If the transferee agrees in writing to be bound by the terms and conditions of the current Oil and Gas Well Permit and road repair agreement;

b.

If all information previously provided to the City as part of the current Oil and Gas Well Permit is updated to reflect any changes; and

c.

If the transferee provides the insurance and security required by this section.

3.

In determining whether to approve the transfer permit, the City Council may consider the financial standing of the transferee and its record of compliance with respect to existing permits. Should the transfer permit be denied, the transferee may file an application for a new Oil and Gas Well Permit.

4.

The insurance and security provided by the transferor shall be released if the transfer permit is approved; provided, however, that the transfer shall not relieve the transferor from any liability to the City arising out of any activities conducted prior to the transfer, except to the extent that the transferee expressly agrees in writing to assume such liabilities as part of the transfer.

5.

Applications for the transfer of Oil and Gas Well Permits shall be filed with the City's planning department. A non-refundable administration fee shall be charged for each application in the amount of five hundred (\$500.00).

V.

Time Limit Requirements. The failure of the City Council to review and approve an Oil and Gas Well Permit within a specified time limit shall not cause the application for the Oil and Gas Well Permit to be deemed approved. If the City Council denies a request for a permit, the applicant may file a request with the City Council to re-consider the application. The applicant may present any new evidence to the council and may present any extenuating circumstances or other matters deemed relevant by the applicant. The decision of the City Council regarding the issuance of a permit is not final until the request for re-consideration is voted upon by the City Council.

W.

Indemnification. The oil and gas well permit may contain the following language:

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

X.

Incident Reports or Written Complaints. The Operator shall provide a copy of any "incident reports" or written complaints submitted to the Railroad Commission or any other state or federal agency within thirty (30) days after Operator has notice of the existence of such reports or complaints.

Y.

Expiration of permit. Drilling must commence on the Well covered by the Oil and Gas Well permit twelve (12) months of approval by the City Council, after which the Oil and Gas Well Permit shall automatically expire if no drilling has commenced. A permit extension for a maximum time period of six (6) months may be granted by the City Manager without reapplication after the City Manager receives a written request from the Operator.

Z.

Takings determination.

1.

Any aggrieved applicant that believes that an action taken pursuant to this Section by the City Council or any officer or employee of the City constitutes a taking under the Texas or United States Constitution or under other state law, may file an application with the City Council requesting a takings determination.

2.

The applicant seeking a takings determination from the Council shall file its appeal with the office of the City Secretary. The City Secretary shall then forward the appeal to the City Council for consideration. An appeal fee in the amount of two hundred fifty (\$250.00) dollars shall accompany each filing.

3.

The appeal shall state the reasons that the applicant believes would support a finding that the City's actions constitute a taking under the Texas or United States Constitution or pursuant to other State law and shall include evidence substantiating the purported diminution in value of the applicant's real property.

4.

If the Council finds by a majority vote in favor of the applicant it may: (1) grant the relief requested, or (2) direct the City Manager to rescind action taken by City Staff that formed the basis of the takings determination appeal. If the Council denies the appeal, or after a favorable determination the City Council fails to take action as specified above, the applicant may appeal the decision or inaction of the City Council to the county or district court of the county in which the affected real property is located within thirty (30) days of the date that the Council issues its final decision or in the event the Council does not act on the application, then the operator may appeal to the county or district court after the expiration of one hundred twenty (120) days from the date the application is heard by the City Council.

Notice addresses are as follows:

City of Midland
Attn: Office of the City Manager
P. O. Box 1152
Midland, Texas 79702

OPERATOR: _____
Don Hale, Director of Special Projects

Petroplex Energy, Inc.
110 N. Marienfeld
Midland, Texas 79702
(432) 687-2222



APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information		
Date 12/31/12	Operator Name (must match W-1) Petroplex Energy, Inc.	Operator Address 110 N. Marienfeld Midland, TX 79702
Representative Name Don Hale	Representative Address (within Midland City Limits) 3011 Garden City Hwy	Rep. Tele. 432-687-2222 Rep. Fax 432-687-2231
Fee: \$4,000.00 Rec'd Yes ☒ No ☐	NOTE: All attachments need to bound and put in a binder before submitting.	Pages 1-4
Permit Compliance Contact (Choose 1): Option A: Don Hale 24/7 Answering Services - No. 1 (Tele.): 432-687-2222 No. 2 (Tele.): 432-687-2231 Option B: Attached as Exhibit A Company Compliance Representative (Name, Address, Local Telephone) (ATTACH STATEMENT AS EXHIBIT A): Emergency Contact Representative (Name, Address, 24-Hour Tele. No.): Jim McCright 432-853-7900 Other Permitted Wells in City (ATTACH EXHIBIT B [see § J(26)]).		
II. Mineral Ownership Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease): 1. Petroplex Energy, Inc. P.O. Box 3082, Midland, TX 79702 2. The Jeffrey Family Trust 14812 W. Ravenswood Drive Sun City West, AZ 85375 3. ATTACHED AS EXHIBIT C is (a Title Opinion by John Collins, a licensed Texas Attorney/Title Commitment by Abstract Company/a Take-off from , a Certified Petroleum Landman/an opinion letter from , a licensed Texas Attorney) indicating that [Operator] has a legal right to develop the mineral estate that is the subject of this Application. [See § J(5)].		
III. Surface Ownership & Use General Description of Current Surface Use (within 860 feet of proposed surface location): Ranch/Farm ATTACHED AS EXHIBIT D is (a Title Opinion by John Collins, a licensed Texas Attorney/a Take-off from , a Certified Petroleum Landman/Current Tax Roll from Midland Central Appraisal District), which lists the name(s) and address(es) of all surface owners within 860 feet of the surface well location. [See § J(7)].		

RECEIVED

APR 16 2013

CITY OF MIDLAND
PLANNING DIVISION OFFICE

ATTACHED AS EXHIBIT E is a (map/p lat/satellite/aerial photo) depicting all Residences, commercial structures, public buildings, all publicly dedicated Streets and alleys, Rights of Way, and permanent accessory structures surrounding the proposed Drill Site. The (map/p lat/satellite/aerial photo) includes two circles, as required by the Ordinance—one depicting a 500 foot radius and one depicting an 860 foot radius from the proposed well's surface location. [See § J(10)].

ATTACHED AS EXHIBIT F is a copy of the notification letter(s) sent to 100 percent of the surface owners, Certified Mail, Return Receipt Requested. [See § J(36)].

IV. Well & Operations Information

Proposed Well Name: Western-T 8 #4

Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary)[See § J(11) and § L(4)]:

See Attached Exhibit V

Legal Description of Proposed Well Site:

2173' FSL & 2173' FWL, Sec. 8, Blk. 39, T-1-S, T&P RR Survey

ATTACHED AS EXHIBIT G is the Location Site Plan [See § J(9)].

ATTACHED AS EXHIBIT H is the Map with the proposed transportation route(s) and road(s) for equipment, chemicals, or refuse products used or produced in the proposed oil and gas operations. [See § J(12)].

ATTACHED AS EXHIBIT I is a copy of the approved Texas Railroad Commission permit to drill (Form W-1), together with all attachments (also file copy of W-1 with City Secretary before commencement of drilling operations). [See § J(16) and (20)].

ATTACHED AS EXHIBIT J is a copy of the required TCEQ report as to depth of usable quality ground water. [See § J(17)].

ATTACHED AS EXHIBIT K (if applicable) is the list of alternative locations developed in consultation with the Oil & Gas Advisory Committee. [See § J(27)].

ATTACHED AS EXHIBIT L is the Fencing and Irrigation Plan. [See § J(30)].

ATTACHED AS EXHIBIT M is the Road Repair Agreement and Letter of Credit/Certificate of Deposit/Surety Bond in the amount of at least \$25,000. Option (if applicable): Applicant would further state that no City-owned streets or alleys will be used by the Operator in connection with its oil and gas operations and as a result, requests a waiver from the Council of this requirement. Option B (if applicable): Because Applicant has three Road Repair Agreements in effect that have been approved by the Council, Applicant requests that the Council consolidate all agreements into one and is filing the necessary \$75,000 letter of credit/certificate of deposit/surety bond in conjunction with this request. [See § J(31)].

(No City Streets Will Be Used)

ATTACHED AS EXHIBIT N is the Concept Plan depicting the proposed Operations Site (which includes tanks, roads, power lines, and pipeline routes). [See § J(32)].

Description of Public Utilities required during (1) drilling and (2) operations:

(1) Drilling: None

(2) Operations: Sharyland

Description of water source to be used during Drilling: Western-T water wells located in S/2 of Sec. 8, Blk. 39, T-1-S, T&P RR Survey

Description of all electric lines to production facilities (reference exhibits as necessary) [See § L(10)]:

Overhead electric lines

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]:

See Exhibit O

V. Additional Required Exhibits

ATTACHED AS EXHIBIT P is the *Letter of Credit/Certificate of Deposit* in accordance with Subsection (K)(2). [See § J(18)].

ATTACHED AS EXHIBIT Q are Tax certificates from Midland Central Appraisal District to be submitted indicating that all taxes on personal and real property, including minerals, owned by Applicant are current. [See § J(29)].

ATTACHED AS EXHIBIT R is the required Insurance Certificate. [See § J(19) and § K(3)].

ATTACHED AS EXHIBIT S (if applicable) is the Drainage Plan approved by the City Engineer relating to Applicant's proposed operations. [See § J(21)].

ATTACHED AS EXHIBIT T is Applicant's Emergency Action Response Plan. [See § J(22)].

ATTACHED AS EXHIBIT U is Applicant's Hazardous Materials Management Plan, a copy of which has been submitted and is on file with the Midland Fire Department. [See § J(23)].

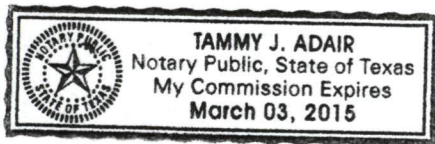
Petroplex Energy, Inc.
[NAME OF COMPANY]

By Don Hale
Its Director of Special Projects

State of Texas)

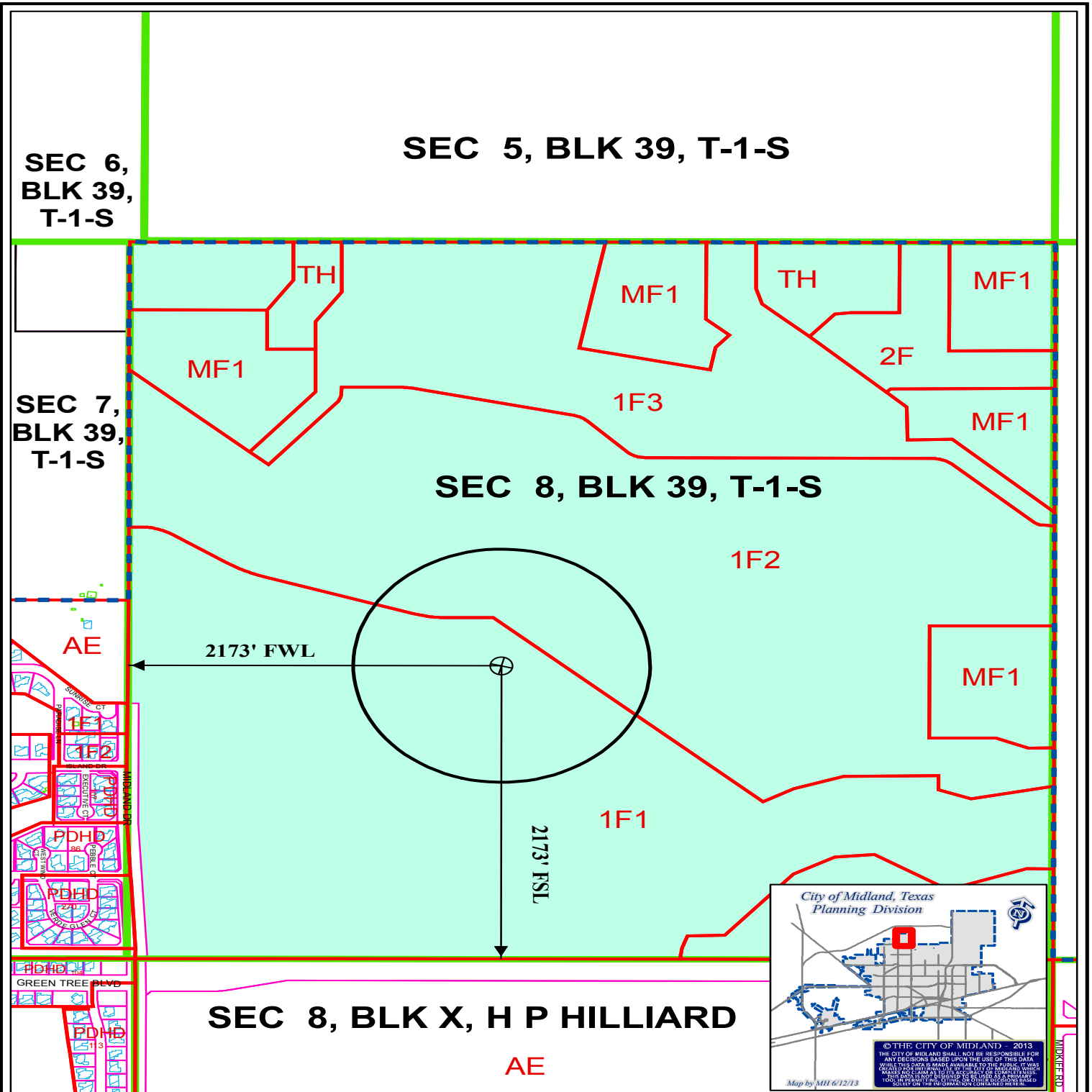
County of Midland)

, personally appeared before me, and being first duly sworn declared he/she signed the application in the capacity designated, if any, and further states that he/she has read the above application and attached exhibits and the statements therein are true and correct to the best of their knowledge.



[SEAL]

Tammy J. Adair
Notary Public, State of Texas



LOCATION AND ZONING MAP

O - 13 - 006

Scale: 1" = 800'

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 2173' FSL and 2173' FWL, Section 8, Block 39, T-1-S, T & P RR Co. Survey, Midland County, Texas.

Western-T 8 #4

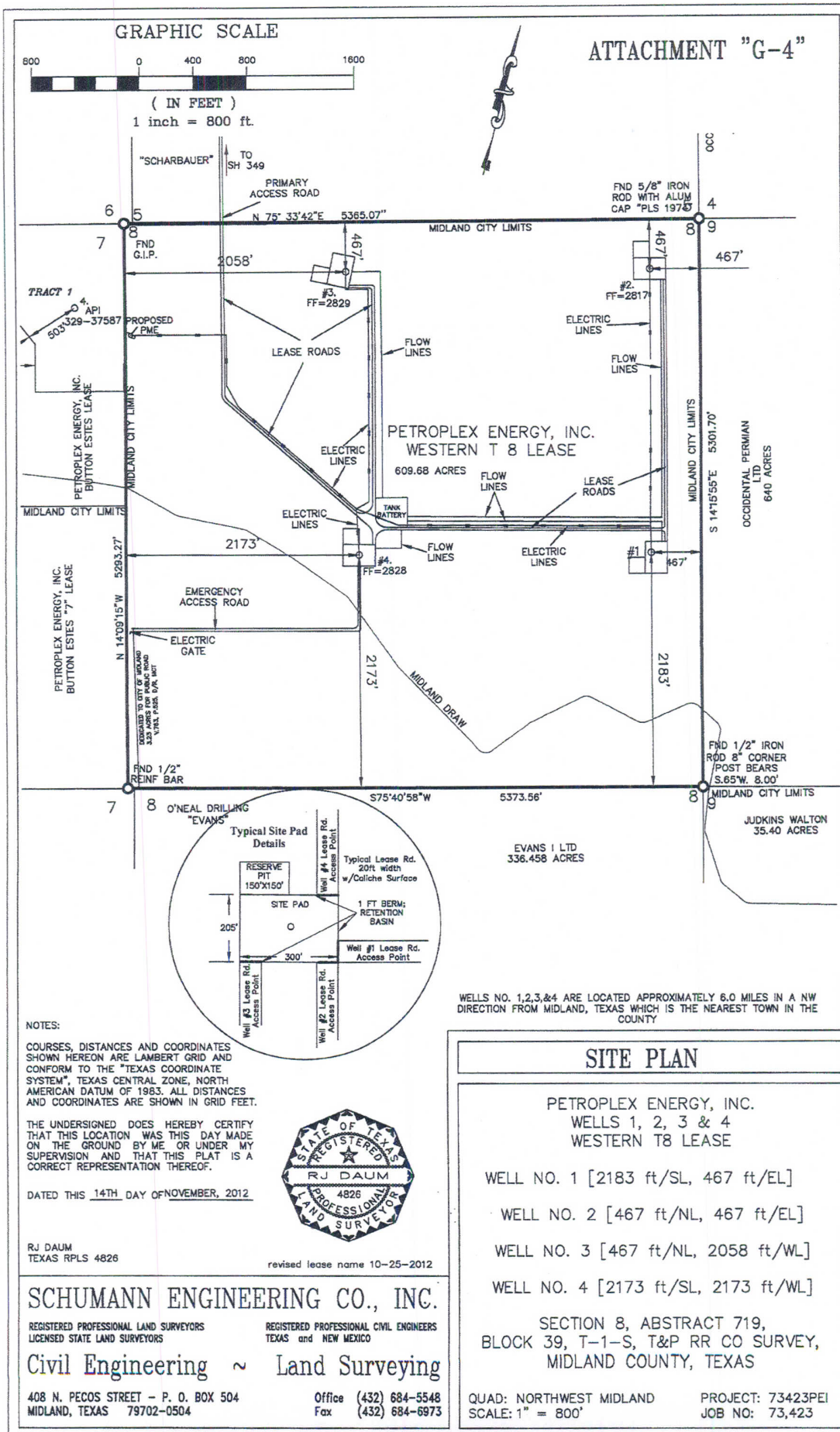
LEGEND

	CITY PARCELS		PUBLIC BLDGS		CITY LIMITS
	COUNTY PARCELS		PRIVATE BLDGS		860 FT. BUFFER
	ZONING		ACCESSORY BLDGS		SURVEY SEC.

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	O1, O2	OFFICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	NS	NEIGHBORHOOD SERVICE
MH	MOBILE HOME DWELLING	LR1, LR2, LR3	LOCAL RETAIL
TH	TOWNHOUSE DWELLING	C1, C2, C3	COMMERCIAL
2F	TWO-FAMILY DWELLING	IP, JP1, IP2, IP3	INDUSTRIAL PARK
MF1, MF2	MULTIPLE FAMILY DWELLING	LI	LIGHT INDUSTRY
		HI	HEAVY INDUSTRY







City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 8/13/2013

TO: City Council / City Manager

FROM: Steve Thorpe, Building Official

SUBJECT: Resolution to grant a variance to Ordinance 8769 (January 1, 2010 Oil and Gas Well Drilling Ordinance) to allow building permits for residences, to be issued in the future, where the proposed residence, either in whole or part is no closer than 155.0 feet of an existing oil and gas well.

Purpose:

Resolution to grant a variance to Ordinance 8769 (January 1, 2010 Oil and Gas Well Drilling Ordinance) to allow building permits for residences, to be issued in the future, where the proposed building, either in whole or part is no closer than 155.0 feet of an existing oil and gas well (Barron #1). The land is known as Greathouse 7 addition, Block 7-Lots 37, 38, 39, 40, 41, 42; Block 18- Lots 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 19, 20, 21, 22, 23, 24, 25, 36; Block 20- Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10; Block 21- Lots 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 21, 22, 23, 24, 25. Greathouse 7 addition is located in Section 6, Block X, H.P. Hilliard Survey, Midland County, Texas.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

None

Discussion:

Ordinance 8769 states from the application filing date of the oil and gas well permit, any building permit for construction of a building within 500 feet of the well, requires a distance variance.

Upon granting of the variance a building permit for a building meeting the allowed distance may be issued. The ordinance states, "In no event shall a building permit be issued by the City of Midland for any private residence or commercial building to be constructed, either in whole or in part, within three hundred (300) feet of a previously permitted but undrilled Oil and Gas Well or one hundred thirty-five (135) feet of an existing oil and gas well or within one hundred fifty (150) feet of a previously permitted tank battery."

Previously variances have been granted for other properties within the city limits to allow permits to be issued for residences and commercial buildings as close as 135 feet of an existing oil and gas well. Therefore staff recommends approval of this variance.

Attachments: Signed Letter; Survey

RESOLUTION NO. _____

RESOLUTION GRANTING A VARIANCE FOR LOTS 37-42, BLOCK 7, LOTS 4-13, 19-25 AND 36, BLOCK 18, LOTS 1-10, BLOCK 20, AND LOTS 1-7, 9-12 AND 21-25, BLOCK 21, GREATHOUSE ADDITION, SECTION 7, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF HOLIDAY HILL ROAD, SOUTH OF MOCKINGBIRD LANE), BY PERMITTING CONSTRUCTION OF RESIDENCES WHERE NO PORTION OF ANY STRUCTURE IS CLOSER THAN 155.0 FEET OF AN OIL AND GAS WELL; AND AUTHORIZING ISSUANCE OF BUILDING PERMITS

WHEREAS, pursuant to Section 6-1-23(H)(2)(c) of the City Code of Midland, Texas, the owner of the property described in Section One hereof has applied for a variance in order to receive building permits for the construction of residences where no portion of any structure is closer than 155.0 feet of an oil and gas well; and

WHEREAS, the City Council finds and determines that granting a variance for such purpose will not present a health or safety risk to the applicant or subsequent occupants of the structures;

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

SECTION ONE. That a variance is hereby granted for Lots 37-42, Block 7, Lots 4-13, 19-25 and 36, Block 18, Lots 1-10, Block 20, and Lots 1-7, 9-12 and 21-25, Block 21, Greathouse Addition, Section 7, City and County of Midland, Texas, by permitting construction of a residence where no portion of the structure is closer than 155.0 feet of an oil and gas well.

SECTION TWO. That the Building Official is hereby authorized and directed to issue building permits to the applicant and to other appropriate parties, entities, individuals, successors or assigns for such purpose with the following notation: "This building permit is issued for a structure to be constructed on a lot or tract located within five hundred feet of a previously permitted Oil and Gas Well but no portion of the structure shall be closer than 155.0 feet of a previously permitted Oil and Gas Well."

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



JULY 22, 2013

Steve Thorpe
City of Midland
300 N. Loraine Street
Midland, TX 79701

Re: Greathouse Addition, Section 7 – Well Variance for Barron #1, #2, #3, and Tank Battery

Dear Mr. Thorpe:

I, Vicente Carrasco, being a representative of Los Conchos Ventures, LLC, the owner of Greathouse Addition, Section 7 (being 155.99 Acres Located in Section 6, Block X H.P. Survey City and County of Midland Texas) am writing to request a variance be granted from Ordinance #8769 of the "Midland Texas Code of Ordinances" regarding "Oil and gas well permits issued on or after January 1, 2010" with an effective date of January 1, 2010.

The Barron #1 and #3 wells by Vector Oil and Gas, LP were permitted on May 22, 2012 by the Midland City Council. The tank battery was included in the application for these well permits. Barron #2 was approved later on May 14, 2013. The attached exhibits A through D show the location of these three wells and tank battery in relation to the proposed single family home lots in the subdivision. In order to develop these lots, residences will need to be built within the 500 foot radius from these items.

The distances from Barron #1, #2, and #3 and their supporting tank battery to the affected lots (and distance to the closest) are shown on the attached table, Exhibit E. The shortest distances to #1, #2 and the tank battery are 155.0 feet, while the closest lot to Barron #3 is 330.1 feet. A preliminary plat was submitted to the City Council and was approved in January of 2012 with these locations. This approved preliminary plat should serve as the original variance request for this area. Additionally, a note will be placed on the face of the final plat referencing this setback variance once it is approved.

Paragraph H.c of Ordinance #8769 states that: "An owner of private residences or commercial structures may request a variance from the City Council in order to receive a building permit for the construction of a residence or building within 500 feet of any previously permitted oil and gas well." I request that the city grant a variance from the stated section of the City of Midland Code of Ordinances to obtain a building permit for the requested lots. I also ask you to place this item on the agenda of the Midland City Council, at the next possible date, in order to consider this request.

Sincerely,

LOS CONCHOS VENTURES, LLC

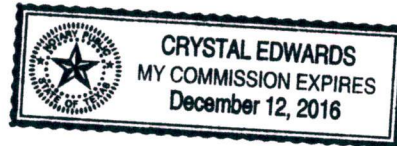
By Vicente Carrasco
Vicente Carrasco
Manager

THE STATE OF TEXAS
COUNTY OF MIDLAND

Before me, Crystal Edwards, on this day personally appeared Vicente Carrasco, 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.

Given under my hand and seal of office this the 22 day of July, 2013.

Crystal Edwards
Notary Public in and for the State of Texas



CC: Rene Franks, P.E. (Parkhill, Smith & Cooper, Inc.)

VC/jas
Enclosures(5)

VECTOR OIL & GAS LP

July 23, 2013

Steve Thorpe
City of Midland
300 N. Loraine Street
Midland, Texas 79701

Re: Greathouse Addition – Well Variance
Barron #1, #2, #3 & Tank Battery, Section 6, Block X
H.P. Hilliard Survey, Midland County, Texas

Dear Mr. Thorpe:

This letter is to advise you and the Midland City Council members that Vector Oil & Gas LP is aware of the request by Los Conchos Ventures LLC for a variance in well setback from the city oil and gas ordinance. Vector is in support of Los Conchos' request for a reduction from 500' to 155' in setback from the Barron #1, Barron #2, Barron #3 and tank battery for construction of residential homes in their Greathouse 7 development.

This variance is consistent with plans previously presented to the City by both our companies for development of the surface and mineral interests.

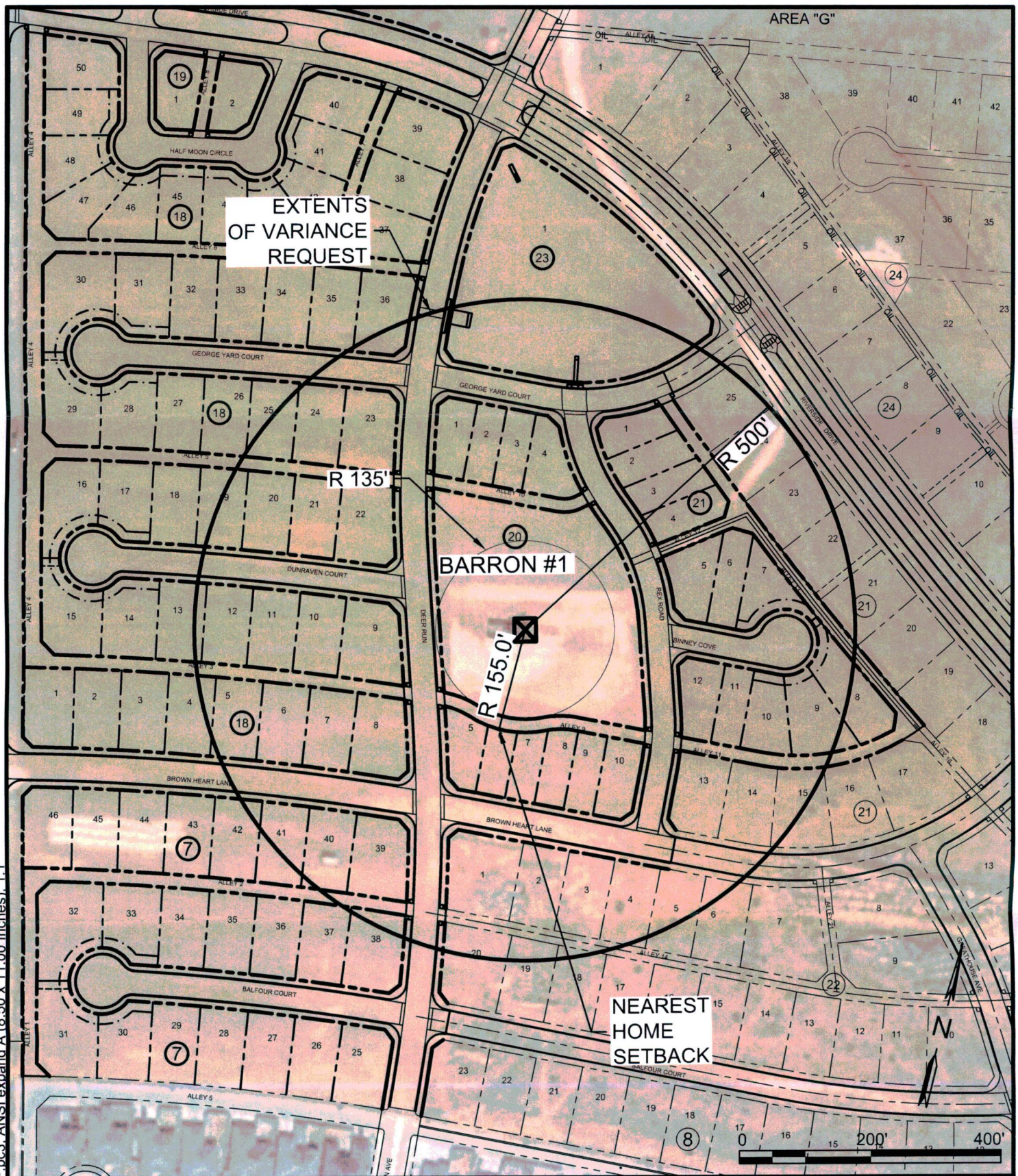
Very truly,

A handwritten signature in blue ink that reads "Michael W. Wallace". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Michael W. Wallace
Manager

Vector Oil & Gas LP
3141 Hood Street, Suite 701 Dallas, Texas 75219 214 252-2700 fax 214 252-2750
508 West Wall Street, Suite 1200 Midland, Texas 79701 432 686-4316 fax 432 686-0302

\\Data1\Projects\2011\9707.11\CADD\01_CIVIL\Exhibits\Ex-09_WellVariance_9707.dwg, EX-A, 7/17/2013 1:51:24 PM, JSquires, DWG To PDF.pc3, ANSI expand A (8.50 x 11.00 Inches), 1:1



LOS CONCHOS VENTURES, LLC.
GREATHOUSE ADDITION SECTION 7
VECTOR OIL & GAS WELL PROXIMITY VARIANCE
BARRON #1



PARKHILL SMITH & COOPER

Issue: 1
Project No: 01.9707.11

Date: 7/17/2013
Sheet: EX-A
26.8

VARIANCE FOR EXISTING WELL



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 8/13/2013

TO: City Council / City Manager

FROM: Steve Thorpe, Building Official

SUBJECT: Resolution to grant a variance to Ordinance 8769 (January 1, 2010 Oil and Gas Well Drilling Ordinance) to allow building permits for residences, to be issued in the future, where the proposed residence, either in whole or part is no closer than 330.1 feet of an existing oil and gas well.

Purpose:

Resolution to grant a variance to Ordinance 8769 (January 1, 2010 Oil and Gas Well Drilling Ordinance) to allow building permits for residences, to be issued in the future, where the proposed building, either in whole or part is no closer than 330.1 feet of an existing oil and gas well (Barron #3). The land is known as Greathouse 7 addition, Block 18-Lots 38, 39, 40, 41; Block 19- Lot 2; Block 24- lots 1, 2. Greathouse 7 addition is located in Section 6, Block X, H.P. Hilliard Survey, Midland County, Texas.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

none

Discussion:

Ordinance 8769 states from the application filing date of the oil and gas well permit, any building permit for construction of a building within 500 feet of the well, requires a distance variance.

Upon granting of the variance a building permit for a building meeting the allowed distance may be issued. The ordinance states, "In no event shall a building permit be issued by the City of Midland for any private residence or commercial building to be constructed, either in whole or in part, within three hundred (300) feet of a previously permitted but undrilled Oil and Gas Well or one hundred thirty-five (135) feet of an existing oil and gas well or within one hundred fifty (150) feet of a previously permitted tank battery."

Previously variances have been granted for other properties within the city limits to allow permits to be issued for residences and commercial buildings as close as 135 feet of an existing oil and gas well. Therefore staff recommends approval of this variance.

Attachments: Signed Letter; Survey

RESOLUTION NO. _____

RESOLUTION GRANTING A VARIANCE FOR LOTS 38-41, BLOCK 18, LOT 2, BLOCK 19, AND LOTS 1 AND 2, BLOCK 24, GREATHOUSE ADDITION, SECTION 7, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF HOLIDAY HILL ROAD, SOUTH OF MOCKINGBIRD LANE), BY PERMITTING CONSTRUCTION OF RESIDENCES WHERE NO PORTION OF ANY STRUCTURE IS CLOSER THAN 330.1 FEET OF AN OIL AND GAS WELL; AND AUTHORIZING ISSUANCE OF BUILDING PERMITS

WHEREAS, pursuant to Section 6-1-23(H)(2)(c) of the City Code of Midland, Texas, the owner of the property described in Section One hereof has applied for a variance in order to receive building permits for the construction of residences where no portion of any structure is closer than 330.1 feet of an oil and gas well; and

WHEREAS, the City Council finds and determines that granting a variance for such purpose will not present a health or safety risk to the applicant or subsequent occupants of the structures;

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

SECTION ONE. That a variance is hereby granted for Lots 38-41, Block 18, Lot 2, Block 19, and Lots 1 and 2, Block 24, Greathouse Addition, Section 7, City and County of Midland, Texas, by permitting construction of a residence where no portion of the structure is closer than 330.1 feet of an oil and gas well.

SECTION TWO. That the Building Official is hereby authorized and directed to issue building permits to the applicant and to other appropriate parties, entities, individuals, successors or assigns for such purpose with the following notation: "This building permit is issued for a structure to be constructed on a lot or tract located within five hundred feet of a previously permitted Oil and Gas Well but no portion of the structure shall be closer than 330.1 feet of a previously permitted Oil and Gas Well."

On motion of Council member _____, seconded by Council member

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

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



JULY 22, 2013

Steve Thorpe
City of Midland
300 N. Loraine Street
Midland, TX 79701

Re: Greathouse Addition, Section 7 – Well Variance for Barron #1, #2, #3, and Tank Battery

Dear Mr. Thorpe:

I, Vicente Carrasco, being a representative of Los Conchos Ventures, LLC, the owner of Greathouse Addition, Section 7 (being 155.99 Acres Located in Section 6, Block X H.P. Survey City and County of Midland Texas) am writing to request a variance be granted from Ordinance #8769 of the "Midland Texas Code of Ordinances" regarding "Oil and gas well permits issued on or after January 1, 2010" with an effective date of January 1, 2010.

The Barron #1 and #3 wells by Vector Oil and Gas, LP were permitted on May 22, 2012 by the Midland City Council. The tank battery was included in the application for these well permits. Barron #2 was approved later on May 14, 2013. The attached exhibits A through D show the location of these three wells and tank battery in relation to the proposed single family home lots in the subdivision. In order to develop these lots, residences will need to be built within the 500 foot radius from these items.

The distances from Barron #1, #2, and #3 and their supporting tank battery to the affected lots (and distance to the closest) are shown on the attached table, Exhibit E. The shortest distances to #1, #2 and the tank battery are 155.0 feet, while the closest lot to Barron #3 is 330.1 feet. A preliminary plat was submitted to the City Council and was approved in January of 2012 with these locations. This approved preliminary plat should serve as the original variance request for this area. Additionally, a note will be placed on the face of the final plat referencing this setback variance once it is approved.

Paragraph H.c of Ordinance #8769 states that: "An owner of private residences or commercial structures may request a variance from the City Council in order to receive a building permit for the construction of a residence or building within 500 feet of any previously permitted oil and gas well." I request that the city grant a variance from the stated section of the City of Midland Code of Ordinances to obtain a building permit for the requested lots. I also ask you to place this item on the agenda of the Midland City Council, at the next possible date, in order to consider this request.

Sincerely,

LOS CONCHOS VENTURES, LLC

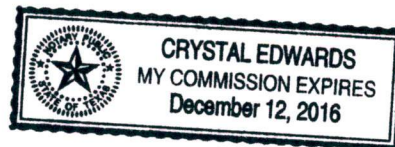
By Vicente Carrasco
Vicente Carrasco
Manager

THE STATE OF TEXAS
COUNTY OF MIDLAND

Before me, Crystal Edwards, on this day personally appeared Vicente Carrasco, 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.

Given under my hand and seal of office this the 22 day of July, 2013.

Crystal Edwards
Notary Public in and for the State of Texas



CC: Rene Franks, P.E. (Parkhill, Smith & Cooper, Inc.)

VC/jas
Enclosures(5)

VECTOR OIL & GAS LP

July 23, 2013

Steve Thorpe
City of Midland
300 N. Loraine Street
Midland, Texas 79701

Re: Greathouse Addition – Well Variance
Barron #1, #2, #3 & Tank Battery, Section 6, Block X
H.P. Hilliard Survey, Midland County, Texas

Dear Mr. Thorpe:

This letter is to advise you and the Midland City Council members that Vector Oil & Gas LP is aware of the request by Los Conchos Ventures LLC for a variance in well setback from the city oil and gas ordinance. Vector is in support of Los Conchos' request for a reduction from 500' to 155' in setback from the Barron #1, Barron #2, Barron #3 and tank battery for construction of residential homes in their Greathouse 7 development.

This variance is consistent with plans previously presented to the City by both our companies for development of the surface and mineral interests.

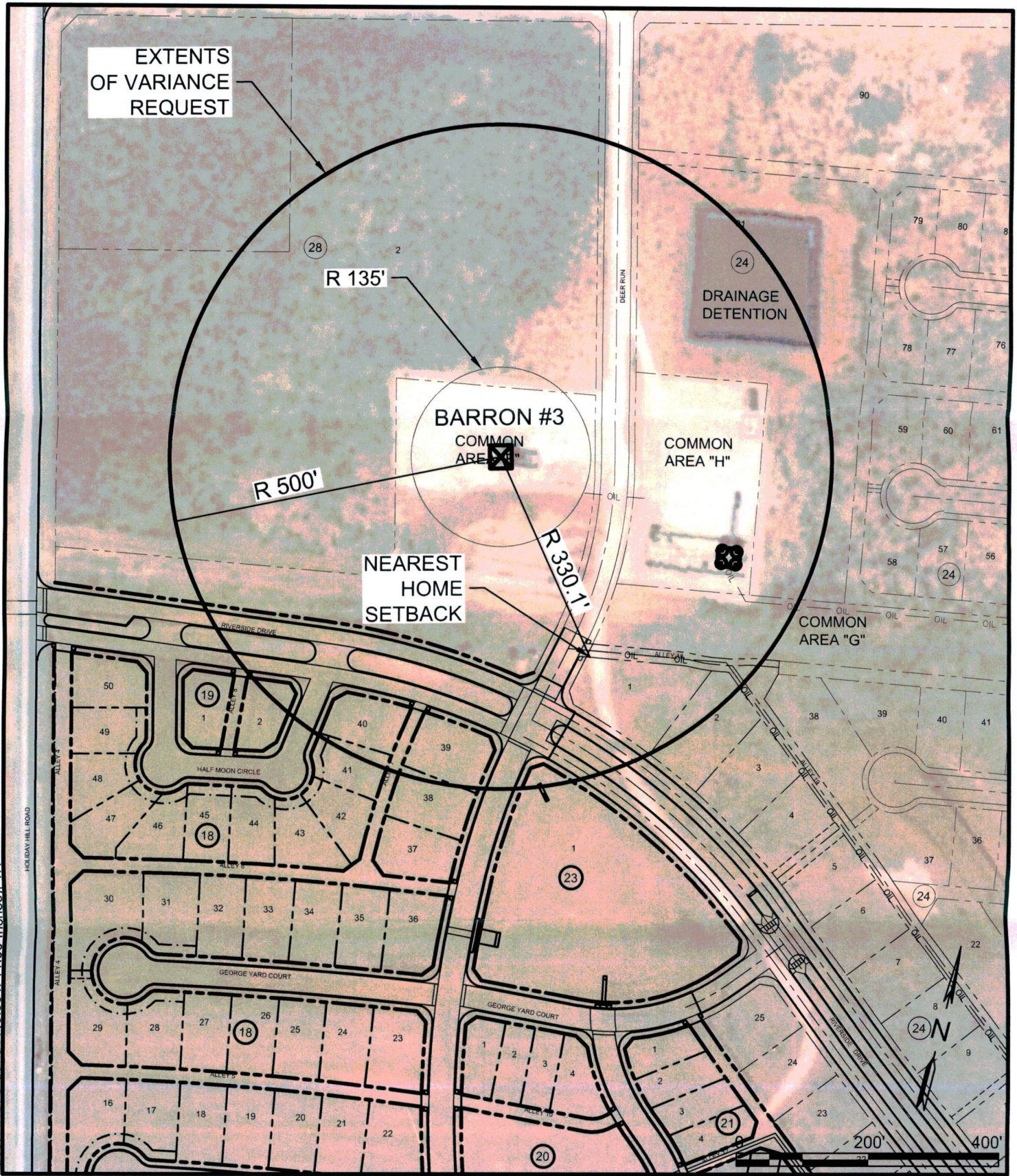
Very truly,

A handwritten signature in blue ink that reads "Michael W. Wallace". The signature is fluid and cursive, with a long horizontal line extending from the end of the name.

Michael W. Wallace
Manager

Vector Oil & Gas LP
3141 Hood Street, Suite 701 Dallas, Texas 75219 214 252-2700 fax 214 252-2750
508 West Wall Street, Suite 1200 Midland, Texas 79701 432 686-4316 fax 432 686-0302

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LOS CONCHOS VENTURES, LLC.
GREATHOUSE ADDITION SECTION 7
VECTOR OIL & GAS WELL PROXIMITY VARIANCE
BARRON #3



PARKHILL SMITH & COOPER

Issue: 1
Project No: 01.9707.11

Date: 7/17/2013
Sheet: FV 27.8

VARIANCE FOR EXISTING WELL



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 8/13/2013

TO: City Council / City Manager

FROM: Steve Thorpe, Building Official

SUBJECT: Resolution to grant a variance to Ordinance 8769 (January 1, 2010 Oil and Gas Well Drilling Ordinance) to allow building permits for residences, to be issued in the future, where the proposed residence, either in whole or part is no closer than 155.0 feet of an existing oil and gas well.

Purpose:

Resolution to grant a variance to Ordinance 8769 (January 1, 2010 Oil and Gas Well Drilling Ordinance) to allow building permits for residences, to be issued in the future, where the proposed building, either in whole or part is no closer than 155.0 feet of an existing oil and gas well (Barron #2). The land is known as Greathouse 7 addition, Block 13-Lots 7, 8, 9, 10, 11, 12, 15; Block 14-Lots 6, 7, 9, 13, 14 , 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39; Block 24- Lots 12, 13, 14, 15, 16, 17, 18, 19, 20, 21; Block 26- Lots 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16. Greathouse 7 addition is located in Section 6, Block X, H.P. Hilliard Survey, Midland County, Texas.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

None

Discussion:

Ordinance 8769 states from the application filing date of the oil and gas well permit, any building permit for construction of a building within 500 feet of the well, requires a distance variance.

Upon granting of the variance a building permit for a building meeting the allowed distance may be issued. The ordinance states, "In no event shall a building permit be issued by the City of Midland for any private residence or commercial building to be constructed, either in whole or in part, within three hundred (300) feet of a previously permitted but undrilled Oil and Gas Well or one hundred thirty-five (135) feet of an existing oil and gas well or within one hundred fifty (150) feet of a previously permitted tank battery."

Previously variances have been granted for other properties within the city limits to allow permits to be issued for residences and commercial buildings as close as 135 feet of an existing oil and gas well. Therefore staff recommends approval of this variance.

Attachments: Signed Letter; Survey

RESOLUTION NO. _____

RESOLUTION GRANTING A VARIANCE FOR LOTS 7-12 AND 15, BLOCK 13, LOTS 6, 7, 9 AND 13-39, BLOCK 14, LOTS 12-21, BLOCK 24, AND LOTS 3-16, BLOCK 26, GREATHOUSE ADDITION, SECTION 7, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF HOLIDAY HILL ROAD, SOUTH OF MOCKINGBIRD LANE), BY PERMITTING CONSTRUCTION OF RESIDENCES WHERE NO PORTION OF ANY STRUCTURE IS CLOSER THAN 155.0 FEET OF AN OIL AND GAS WELL; AND AUTHORIZING ISSUANCE OF BUILDING PERMITS

WHEREAS, pursuant to Section 6-1-23(H)(2)(c) of the City Code of Midland, Texas, the owner of the property described in Section One hereof has applied for a variance in order to receive building permits for the construction of residences where no portion of any structure is closer than 155.0 feet of an oil and gas well; and

WHEREAS, the City Council finds and determines that granting a variance for such purpose will not present a health or safety risk to the applicant or subsequent occupants of the structures;

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

SECTION ONE. That a variance is hereby granted for Lots 7-12 and 15, Block 13, Lots 6, 7, 9 and 13-39, Block 14, Lots 12-21, Block 24, and Lots 3-16, Block 26, Greathouse Addition, Section 7, City and County of Midland, Texas, by permitting construction of a residence where no portion of the structure is closer than 155.0 feet of an oil and gas well.

SECTION TWO. That the Building Official is hereby authorized and directed to issue building permits to the applicant and to other appropriate parties, entities, individuals, successors or assigns for such purpose with the following notation: "This building permit is issued for a structure to be constructed on a lot or tract located within five hundred feet of a previously permitted Oil and Gas Well but no portion of the structure shall be closer than 155.0 feet of a previously permitted Oil and Gas Well."

On motion of Council member _____, seconded by Council member

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

VECTOR OIL & GAS LP

July 23, 2013

Steve Thorpe
City of Midland
300 N. Loraine Street
Midland, Texas 79701

Re: Greathouse Addition – Well Variance
Barron #1, #2, #3 & Tank Battery, Section 6, Block X
H.P. Hilliard Survey, Midland County, Texas

Dear Mr. Thorpe:

This letter is to advise you and the Midland City Council members that Vector Oil & Gas LP is aware of the request by Los Conchos Ventures LLC for a variance in well setback from the city oil and gas ordinance. Vector is in support of Los Conchos' request for a reduction from 500' to 155' in setback from the Barron #1, Barron #2, Barron #3 and tank battery for construction of residential homes in their Greathouse 7 development.

This variance is consistent with plans previously presented to the City by both our companies for development of the surface and mineral interests.

Very truly,

A handwritten signature in blue ink that reads "Michael W. Wallace". The signature is fluid and cursive, with a long horizontal line extending from the end of the name.

Michael W. Wallace
Manager

Vector Oil & Gas LP
3141 Hood Street, Suite 701 Dallas, Texas 75219 214 252-2700 fax 214 252-2750
508 West Wall Street, Suite 1200 Midland, Texas 79701 432 686-4316 fax 432 686-0302



JULY 22, 2013

Steve Thorpe
City of Midland
300 N. Loraine Street
Midland, TX 79701

Re: Greathouse Addition, Section 7 – Well Variance for Barron #1, #2, #3, and Tank Battery

Dear Mr. Thorpe:

I, Vicente Carrasco, being a representative of Los Conchos Ventures, LLC, the owner of Greathouse Addition, Section 7 (being 155.99 Acres Located in Section 6, Block X H.P. Survey City and County of Midland Texas) am writing to request a variance be granted from Ordinance #8769 of the "Midland Texas Code of Ordinances" regarding "Oil and gas well permits issued on or after January 1, 2010" with an effective date of January 1, 2010.

The Barron #1 and #3 wells by Vector Oil and Gas, LP were permitted on May 22, 2012 by the Midland City Council. The tank battery was included in the application for these well permits. Barron #2 was approved later on May 14, 2013. The attached exhibits A through D show the location of these three wells and tank battery in relation to the proposed single family home lots in the subdivision. In order to develop these lots, residences will need to be built within the 500 foot radius from these items.

The distances from Barron #1, #2, and #3 and their supporting tank battery to the affected lots (and distance to the closest) are shown on the attached table, Exhibit E. The shortest distances to #1, #2 and the tank battery are 155.0 feet, while the closest lot to Barron #3 is 330.1 feet. A preliminary plat was submitted to the City Council and was approved in January of 2012 with these locations. This approved preliminary plat should serve as the original variance request for this area. Additionally, a note will be placed on the face of the final plat referencing this setback variance once it is approved.

Paragraph H.c of Ordinance #8769 states that: "An owner of private residences or commercial structures may request a variance from the City Council in order to receive a building permit for the construction of a residence or building within 500 feet of any previously permitted oil and gas well." I request that the city grant a variance from the stated section of the City of Midland Code of Ordinances to obtain a building permit for the requested lots. I also ask you to place this item on the agenda of the Midland City Council, at the next possible date, in order to consider this request.

Sincerely,

LOS CONCHOS VENTURES, LLC

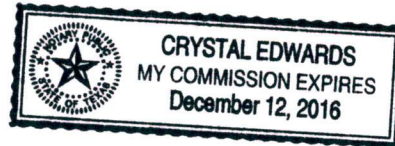
By *Vicente Carrasco*
Vicente Carrasco
Manager

THE STATE OF TEXAS
COUNTY OF MIDLAND

Before me, *Crystal Edwards*, on this day personally appeared Vicente Carrasco, 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.

Given under my hand and seal of office this the 22 day of July, 2013.

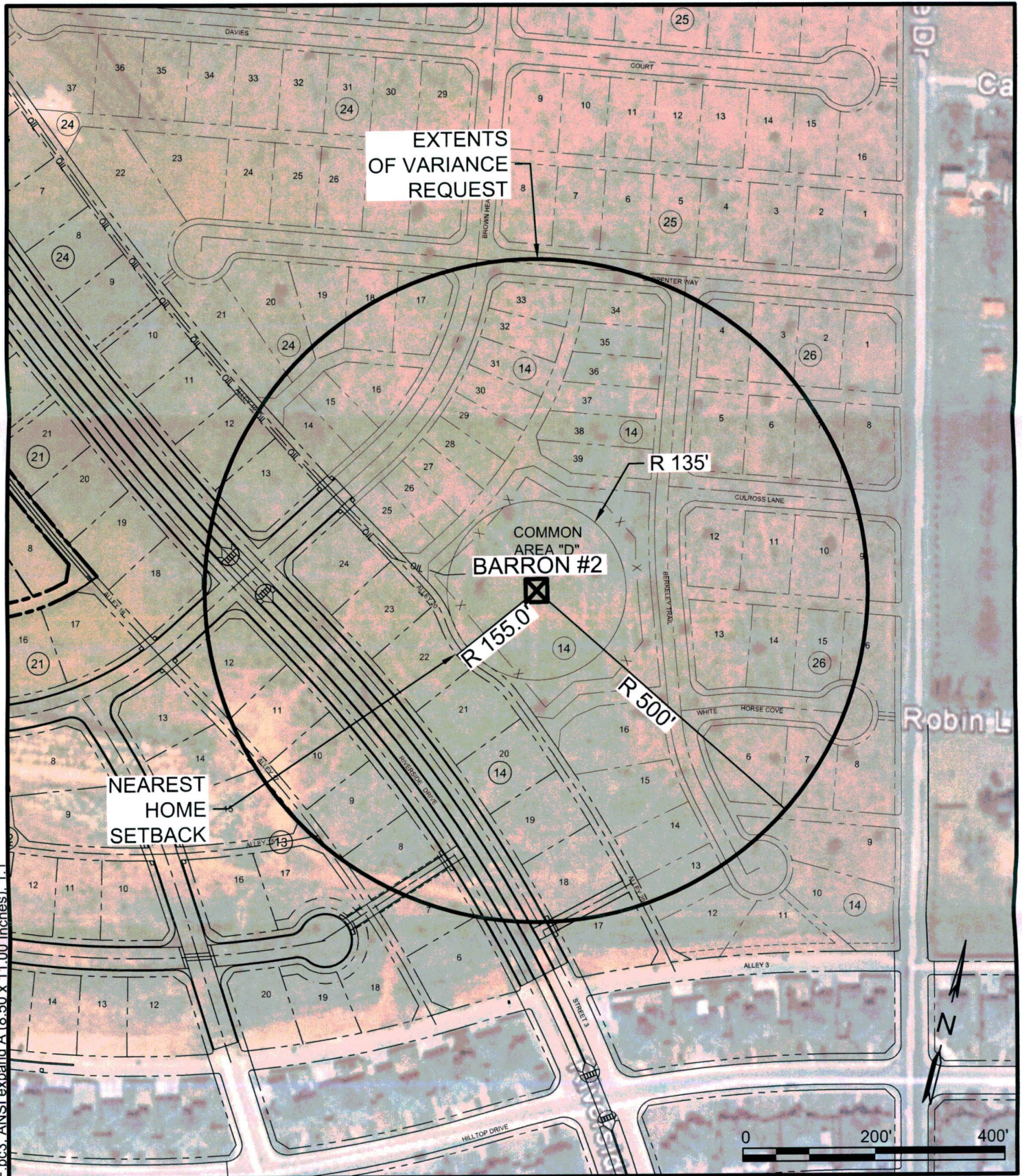
Crystal Edwards
Notary Public in and for the State of Texas



CC: Rene Franks, P.E. (Parkhill, Smith & Cooper, Inc.)

VC/jas
Enclosures(5)

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LOS CONCHOS VENTURES, LLC.
GREATHOUSE ADDITION SECTION 7
VECTOR OIL & GAS WELL PROXIMITY VARIANCE
BARRON #2



PARKHILL SMITH & COOPER

Issue: 1
Project No: 01.9707.11

VARIANCE FOR EXISTING WELL

Date: 7/17/2013
Sheet: FX-R
28.8



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 8/13/2013

TO: City Council / City Manager

FROM: Steve Thorpe, Building Official

SUBJECT: Resolution to grant a variance to Ordinance 8769 (January 1, 2010 Oil and Gas Well Drilling Ordinance) to allow building permits for residences, to be issued in the future, where the proposed residence, either in whole or part is no closer than 155.0 feet of an existing oil and gas well tank battery.

Purpose:

Resolution to grant a variance to Ordinance 8769 (January 1, 2010 Oil and Gas Well Drilling Ordinance) to allow building permits for residences, to be issued in the future, where the proposed building, either in whole or part is no closer than 155.0 feet of an existing oil and gas well tank battery (Barron #1-4 tank battery). The land is known as Greathouse 7 addition, Block 18- Lots 38, 39; Block 24- Lots 1, 2, 3, 4, 5, 36, 37, 38, 39, 40, 41, 42. Greathouse 7 addition is located in Section 6, Block X, H.P. Hilliard Survey, Midland County, Texas.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

None

Discussion:

Ordinance 8769 states from the application filing date of the oil and gas well permit, any building permit for construction of a building within 500 feet of the well, requires a distance variance.

Upon granting of the variance a building permit for a building meeting the allowed distance may be issued. The ordinance states, "In no event shall a building permit be issued by the City of Midland for any private residence or commercial building to be constructed, either in whole or in part, within three hundred (300) feet of a previously permitted but undrilled Oil and Gas Well or one hundred thirty-five (135) feet of an existing oil and gas well or within one hundred fifty (150) feet of a previously permitted tank battery."

Previously variances have been granted for other properties within the city limits to allow permits to be issued for residences and commercial buildings as close as 135 feet of an existing oil and gas well. Therefore staff recommends approval of this variance.

Attachments: Signed Letter; Survey

RESOLUTION NO. _____

RESOLUTION GRANTING A VARIANCE FOR LOTS 38 AND 39, BLOCK 18, AND LOTS 1-5 AND 36-42, BLOCK 24, GREATHOUSE ADDITION, SECTION 7, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF HOLIDAY HILL ROAD, SOUTH OF MOCKINGBIRD LANE), BY PERMITTING CONSTRUCTION OF RESIDENCES WHERE NO PORTION OF ANY STRUCTURE IS CLOSER THAN 155.0 FEET OF A TANK BATTERY; AND AUTHORIZING ISSUANCE OF BUILDING PERMITS

WHEREAS, pursuant to Section 6-1-23(H)(2)(c) of the City Code of Midland, Texas, the owner of the property described in Section One hereof has applied for a variance in order to receive building permits for the construction of residences where no portion of any structure is closer than 155.0 feet of a tank battery; and

WHEREAS, the City Council finds and determines that granting a variance for such purpose will not present a health or safety risk to the applicant or subsequent occupants of the structures;

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

SECTION ONE. That a variance is hereby granted for Lots 38 and 39, Block 18, and Lots 1-5 and 36-42, Block 24, Greathouse Addition, Section 7, City and County of Midland, Texas, by permitting construction of a residence where no portion of the structure is closer than 155.0 feet of a tank battery.

SECTION TWO. That the Building Official is hereby authorized and directed to issue building permits to the applicant and to other appropriate parties, entities, individuals, successors or assigns for such purpose with the following notation: "This building permit is issued for a structure to be constructed on a lot or tract located within five hundred feet of a previously permitted Oil and Gas Well but no portion of the structure shall be closer than 155.0 feet of a previously permitted Oil and Gas Well."

On motion of Council member _____, seconded by Council member

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



JULY 22, 2013

Steve Thorpe
City of Midland
300 N. Loraine Street
Midland, TX 79701

Re: Greathouse Addition, Section 7 – Well Variance for Barron #1, #2, #3, and Tank Battery

Dear Mr. Thorpe:

I, Vicente Carrasco, being a representative of Los Conchos Ventures, LLC, the owner of Greathouse Addition, Section 7 (being 155.99 Acres Located in Section 6, Block X H.P. Survey City and County of Midland Texas) am writing to request a variance be granted from Ordinance #8769 of the "Midland Texas Code of Ordinances" regarding "Oil and gas well permits issued on or after January 1, 2010" with an effective date of January 1, 2010.

The Barron #1 and #3 wells by Vector Oil and Gas, LP were permitted on May 22, 2012 by the Midland City Council. The tank battery was included in the application for these well permits. Barron #2 was approved later on May 14, 2013. The attached exhibits A through D show the location of these three wells and tank battery in relation to the proposed single family home lots in the subdivision. In order to develop these lots, residences will need to be built within the 500 foot radius from these items.

The distances from Barron #1, #2, and #3 and their supporting tank battery to the affected lots (and distance to the closest) are shown on the attached table, Exhibit E. The shortest distances to #1, #2 and the tank battery are 155.0 feet, while the closest lot to Barron #3 is 330.1 feet. A preliminary plat was submitted to the City Council and was approved in January of 2012 with these locations. This approved preliminary plat should serve as the original variance request for this area. Additionally, a note will be placed on the face of the final plat referencing this setback variance once it is approved.

Paragraph H.c of Ordinance #8769 states that: "An owner of private residences or commercial structures may request a variance from the City Council in order to receive a building permit for the construction of a residence or building within 500 feet of any previously permitted oil and gas well." I request that the city grant a variance from the stated section of the City of Midland Code of Ordinances to obtain a building permit for the requested lots. I also ask you to place this item on the agenda of the Midland City Council, at the next possible date, in order to consider this request.

Sincerely,

LOS CONCHOS VENTURES, LLC

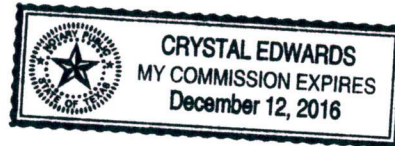
By Vicente Carrasco
Vicente Carrasco
Manager

THE STATE OF TEXAS
COUNTY OF MIDLAND

Before me, Crystal Edwards, on this day personally appeared Vicente Carrasco, 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.

Given under my hand and seal of office this the 22 day of July, 2013.

Crystal Edwards
Notary Public in and for the State of Texas



CC: Rene Franks, P.E. (Parkhill, Smith & Cooper, Inc.)

VC/jas
Enclosures(5)

VECTOR OIL & GAS LP

July 23, 2013

Steve Thorpe
City of Midland
300 N. Loraine Street
Midland, Texas 79701

Re: Greathouse Addition – Well Variance
Barron #1, #2, #3 & Tank Battery, Section 6, Block X
H.P. Hilliard Survey, Midland County, Texas

Dear Mr. Thorpe:

This letter is to advise you and the Midland City Council members that Vector Oil & Gas LP is aware of the request by Los Conchos Ventures LLC for a variance in well setback from the city oil and gas ordinance. Vector is in support of Los Conchos' request for a reduction from 500' to 155' in setback from the Barron #1, Barron #2, Barron #3 and tank battery for construction of residential homes in their Greathouse 7 development.

This variance is consistent with plans previously presented to the City by both our companies for development of the surface and mineral interests.

Very truly,



Michael W. Wallace
Manager

Vector Oil & Gas LP
3141 Hood Street, Suite 701 Dallas, Texas 75219 214 252-2700 fax 214 252-2750
508 West Wall Street, Suite 1200 Midland, Texas 79701 432 686-4316 fax 432 686-0302

EXTENTS
OF VARIANCE
REQUEST

DRAINAGE
DETENTION

R 135'

COMMON
AREA "I"

COMMON
AREA "H"

TANK BATTERY

R 155.0'

R 500'

COMMON
AREA "G"

NEAREST
HOME SETBACK

LOS CONCHOS VENTURES, LLC.
GREATHOUSE ADDITION SECTION 7
VECTOR OIL & GAS WELL PROXIMITY VARIANCE
TANK BATTERY

PSC

PARKHILL SMITH & COOPER

VARIANCE FOR EXISTING WELL

Issue: 1
Project No: 01.9707.11

Date: 7/17/2013
Sheet: 29.8

\\Data1\Projects\2011\9707.11\CADD\01_CIVIL\Exhibits\Ex-09_WellVariance_9707.dwg, EX-D, 7/17/2013 1:51:31 PM, JSquyres, DWG To PDF.pc3, ANSI expand A (8.50 x 11.00 inches), 1:1



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 8/13/2013

TO: City Council / City Manager

FROM: Gary Saunders, Transportation Manager

SUBJECT: Consider a resolution authorizing the execution of a Right-of-Way License Agreement between the City of Midland and CrownQuest Operating, LLC, for the purpose of placement, operation and maintenance of three (3) three (3) inch poly surface flow lines within a portion of City owned property, Block 39, T-1-N, T.&P. RR. CO. Survey, Martin County, Texas.

Purpose:

Consider a resolution authorizing the execution of a Right-of-Way License Agreement between the City of Midland and CrownQuest Operating, LLC, for the purpose of placement, operation and maintenance of three (3) three (3) inch poly surface flow lines within a portion of City owned property, Block 39, T-1-N, T.&P. RR. CO. Survey, Martin County, Texas.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

The City of Midland shall receive a one-time payment of \$89,632.42 and \$9,888.00 annually for years two (2) through ten (10) of the Right-of-Way License Agreement.

Discussion:

The Legal Department has prepared a resolution authorizing the execution of a Right-of-Way License Agreement between the City of Midland and CrownQuest Operating, LLC, for the purpose of placement, operation and maintenance of three (3) three (3) inch poly surface flow lines within a portion of City owned property, Block 39, T-1-N, T.&P. RR. CO. Survey, Martin County, Texas.

This Agreement shall be for a term of ten (10) years and may be renewed at the end of the initial term for one (1) additional five (5) year term.

Attached are maps indicating location of the proposed pipeline.
Staff recommends approval of this resolution.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING A RIGHT-OF-WAY LICENSE WITH THE CITY OF MIDLAND, TEXAS AND CROWNQUEST OPERATING LLC; SAID RIGHT-OF-WAY LICENSE IS FOR THE PURPOSE OF DRILLING AND MAINTAINING THREE (3) OIL WELLS AND ASSOCIATED ROAD WAY, SURFACE FLOW LINES, TANK BATTERIES, TRANSMISSION LINES, AND FRAC PITS; THE THREE OIL WELLS ARE LOCATED WITHIN THE CITY OF MIDLAND, SECTION 36, BLOCK 39, T-1-N, T&P RR CO. SURVEY, MARTIN COUNTY, TEXAS; THE LICENSE TERM IS FOR TEN (10) YEARS, COMMENCING WITH THE DATE OF THIS LICENSE AND MAY RENEW AT THE END OF THE TERM FOR ONE ADDITIONAL FIVE (5) YEAR TERM UPON 90 DAYS WRITTEN REQUEST PRIOR TO EXPIRATION

WHEREAS the City Council finds it to be in the public interest to authorize a right-of-way license with CrownQuest Operating LLC, located within the City of Midland, Section 36, Block 39, T-1-N, T&P RR. Co. Survey, Martin County, Texas;

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

THAT the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a license with CrownQuest Operating LLC, said license being substantially in the form attached hereto as Exhibit "A" and incorporated herein for all purposes.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Gary Saunders, Transportation Manager

Marv Esterly, Director of Airports

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

RIGHT-OF-WAY LICENSE

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

THIS RIGHT-OF-WAY LICENSE (“AGREEMENT”), effective this 14th day of August, 2013, by and between THE CITY OF MIDLAND, TEXAS, a home rule municipal corporation, hereinafter called “Licensor”, and CROWNQUEST OPERATING, LLC, 500 West Texas Ave., Suite 500, Midland, Texas 79701, hereinafter called “Licensee”.

Licensee desires use of property owned by the Licensor in Midland County, Texas within the City of Midland, Texas, in order to cross Licensor’s right-of-way for the purpose of drilling and maintaining three oil wells and associated roadway, surface flow line, tank batteries, transmission lines and Frac pit at the locations described as COM Nail #1* shown on “Exhibit A”, COM Nail #2* shown on “Exhibit B”, and COM Nail #3* shown on “Exhibit C”, and Frac Pit* shown on “Exhibit A”.

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

W I T N E S S E T H:

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

* As per University Lands Rate and Damage Schedule

I.Term

This Agreement shall be for a term of ten (10) years (the “Initial Term”), commencing with the date of this Agreement, the “Commencement Date,” unless terminated earlier as provided hereafter. This Agreement may be renewed at the end of the Initial Term for one (1) additional term of five (5) years, upon the written request of Licensee received by Licensor on or before ninety (90) days prior to the expiration of the Initial Term then in effect, subject to the express written consent of the governing body of the Licensor. All work under this Agreement shall be suspended immediately upon termination of the Agreement becoming effective.

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

II. Financial Considerations

1. In further consideration for the rights herein granted to Licensee, Licensee shall pay to the Licensor’s Director of Airports a license fee as follows:

Year 1 \$ 89,632.42

Years 2-10 \$ 9,888.00

payable annually on or before the anniversary of the commencement date of this

Agreement except for the first year of the Agreement. The first year's license fee of 89,632.42 shall be due and payable in advance on the commencement date of this license ("License Fee"). Licensee's failure to make the License Fee payment within thirty (30) days after the License Fee is due shall constitute a late payment and Licensee shall pay the Licensors a late charge of five percent (5%).

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

3. Prior to commencement of any renewal term, the Licensors and Licensee shall negotiate in good faith to agree to an adjustment of the License Fee. If the Licensors and Licensee are unable to reach an agreement regarding an adjustment to the License Fee, then the License Fee shall be determined by Licensors in its sole discretion, provided the new License Fee shall not exceed one hundred fifty percent (150%) of the License Fee paid for the last year of the Initial Term.

4. The License Fee payments shall be made to the Licensors at the office of the Director of Airports, City of Midland, P.O. Box 60305, Midland, Texas, 79701, and the non-refundable onetime fee of \$500.00 to the Transportation Manager, City of Midland, P.O. Box 1152, Midland, Texas, 79702. The License Fee payment shall be exclusive of and in addition to all general municipal taxes of whatever nature, including but not limited to ad valorem taxes and special taxes and assessments for public improvements.

III. Use

1. Licensors does hereby grant unto Licensee, the right to enter upon certain property of the City of Midland as shown on "Exhibit A", "Exhibit B", and "Exhibit C", attached hereto and incorporated herein for all purposes, at the locations identified on "Exhibit A", "Exhibit B", and "Exhibit C".
2. Licensee shall install three (3) oil wells and associated roadway, surface flow line, tank batteries, transmission lines and frac pit at the locations shown on "Exhibit A", "Exhibit B", and "Exhibit C".
3. Licensee covenants and agrees that it will repair any of Licensors's roads that Licensee damages on Licensors's property so that such roads will comply with Licensors's Standard Specifications.
4. Licensee covenants and agrees that Licensee shall, at its own expense, repair all water lines, sewer lines, service lines and water meters owned by the Licensors that Licensee, its employees, its agents or assigns, damage so that such water lines, sewer lines and water meters shall comply with the requirements of the Licensors's Standard Specifications.
5. Licensee will install at a depth of at least thirty-six inches (36") below the surface to comply with the requirements of the Licensors's Transportation Department.
6. Before the Licensee seeks bids on any phase of the repair of public streets, alleys, water lines, sewer lines or any other public utilities, the specifications shall be approved by the Licensors's Transportation Manager.
7. Licensors expressly reserves the right to install, repair, or reconstruct streets or roads and all ancillary public uses usual and customary in connection with streets and

roads, expressly including but not limited to drainage facilities and related structures in the rights of way used and occupied by the Licensee.

Licensor reserves the right to lay and permit to be laid, sewer, gas, water, and other pipelines or cables and conduits, and to do and permit to be done, any underground or overhead installation or improvement that may be deemed necessary or proper by the governing body of the Licensor, in, across, along, over or under any public property occupied by Licensee. In permitting such work to be done, the Licensor shall not be liable to the Licensee for any damage so caused to the Licensee's system, **NOR SHALL THE LICENSOR BE LIABLE TO THE LICENSEE FOR ANY DAMAGES TO THE LICENSEE'S PIPELINE OR CASING, ARISING OUT OF THE NEGLIGENCE BY THE LICENSOR, ITS EMPLOYEES, OFFICERS OR AGENTS, OR LICENSOR'S CONTRACTORS OR SUBCONTRACTORS.** If the Licensor requires the Licensee to remove, alter, change, adapt, or conform its facilities because of changes in the width or grade of a street or in the location or manner of constructing a drainage channel, water pipe, sewer pipe, or other surface, underground or aboveground structure owned by the Licensor, the Licensee shall make the alterations or changes as soon as practicable, and in no event longer than one hundred eighty (180) days, when ordered in writing by the Licensor, without claim for reimbursement for the cost of the relocation or for damages against the Licensor. If these requirements impose a financial hardship upon the Licensee, the Licensee shall have the right to present alternative proposals for the Licensor's consideration.

8. Licensor expressly reserves the full right to grant other easements or rights of way

crossing or running parallel with the rights of way used by Licensee.

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

10. In the event that Licensee desires to reconstruct, repair, maintain, replace or remove any pipeline or casing system built hereunder, Licensee shall submit the plans and specifications that pertain to the rebuilding or repairs of Licensor's streets and roads and the rebuilding or repairs of any of Licensor's public utilities to the Licensor's Transportation Manager for his approval. In the event of emergency repairs necessary to restore service, the Licensee shall notify Licensor's Transportation Manager before making any repairs if during a Licensor work day and if not on a work day, the Licensee shall notify the Licensor's Transportation Manager on the first work day after repairs have begun.

11. The Licensor reserves the right to use the land covered by this License, the surface or subsurface or airspace above the land covered by this Agreement for any public purpose allowed by law and deemed necessary by the Licensor and to do and permit to be

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

IV. Standard General Conditions

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

Commercial General Liability (including Contractual liability):

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

Business Automobile Liability: \$1,000,000.00 combined single limit -

	Personal Injury and Property Damage
<u>Worker's Compensation:</u>	Statutory limits
<u>Umbrella Liability:</u>	\$20,000,000.00 each occurrence and aggregate
<u>Control of Well:</u>	\$1,000,000.00 liability limit wells 0-5000'
	\$3,000,000.00 liability limit wells 5001'-7500'
	\$5,000,000.00 liability limit wells deeper than 7500'
	CCC: \$1,000,000.00
	COC: \$50,000.00 – wells with TVD of \$10,000' or less
	\$100,000.00 – wells with TVD deeper than \$10,000'
	CCC: \$50,000.00

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

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

The Business Automobile Liability insurance provided by Licensee shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-owner vehicles, and employee non-ownership, and the amount of such policy shall be a minimum of \$1,000,000.00 covering any vehicle used for the execution of the work that is the subject of this Agreement. All insurance required pursuant to this Agreement,

except for Worker's Compensation Insurance, shall name the Licensor as an additional insured on a claims occurred basis. All insurance required pursuant to this Agreement, including Worker's Compensation Insurance, shall provide for a waiver of subrogation as to the Licensor.

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

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

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

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

2. INDEMNITY - THE LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND THE LICENSOR AND ALL OF LICENSOR'S OFFICERS, AGENTS, AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGES, ATTORNEY'S FEES AND EXPENSES OF ANY CHARACTER

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

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

THE LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND THE LICENSOR, AND ALL OF LICENSOR'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES AND EXPENSE OF ANY CHARACTER WHATSOEVER, INCLUDING

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

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

of consent is in the sole discretion of Licensor.

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

5. **WAIVER OF ATTORNEY’S FEES** - BY EXECUTING THIS

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

LICENSEE AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING KNOWN RIGHT. LICENSEE ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THE AGREEMENT. THE LICENSEE FURTHER ACKNOWLEDGES AND AGREES

THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN THE LICENSOR AND THE LICENSEE. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF SOVEREIGN IMMUNITY.

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

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

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

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

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

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

10. **Notice** - Any notice or communication required in the administration of this Agreement shall be sent by certified mail, return receipt requested, to the Licensor as follows: Director of Airports, City of Midland, P.O. Box 60305, Midland, Texas, 79701, and the Transportation Manager, City of Midland, P. O. Box 1152, Midland, Texas, 79702.

Any notice or communication required in the administration of this Agreement shall be sent by certified mail, return receipt requested, to the Licensee as follows: CrownQuest Operating, LLC, Jeffrey T. Beard, CPL, P.O. Box 53310, Midland, Texas 79710.

11. **Notice of Alleged Breach; Statutory Prerequisites** - As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, Licensee or his legal representative, shall give the City Manager, or any other reasonable official of the Licensor, notice in writing (consisting of one original and seven copies of notice attached to a copy of this Agreement) of such

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

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

12. **Consideration** - The terms of this Agreement are supported by good and valuable

consideration, the receipt and sufficiency of which is hereby acknowledged by the parties named herein.

LICENSOR:

CITY OF MIDLAND, TEXAS

Courtney Sharp, City Manager

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT AND
COMPLETENESS:

Gary Saunders, Transportation Manager

Marv Esterly, Director of Airports

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

LICENSEE:

CROWNQUEST OPERATING, LLC

Robert W. Floyd, President

THE STATE OF TEXAS

§

§

COUNTY OF _____

§

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

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

Notary Public, State of Texas

L:\Contracts\Transportation\CrownQuest.docx

HIGHWAY 349

Property Line

Section 36
Block 39, T-1-N
T. & P. RR. Co. Survey
Martin County, Texas

Property Line

CROWNQUEST
OPERATING, LLC.

11,000 feet on
lease flowlines



30.22



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 8/13/2013

TO: City Council / City Manager

FROM: Jeff Cohen, Assistant City Engineer

SUBJECT: Consider a resolution authorizing the City Manager to execute a Supplemental Agreement to an existing Basic Agreement with Union Pacific Railroad Company regarding utilities that have either been abandoned or removed from across UPRR's right-of-way. (District #4 - Trost).

Purpose:

Consider a resolution authorizing the City Manager to execute a Supplemental Agreement to an existing Basic Agreement with Union Pacific Railroad Company regarding utilities that have either been abandoned or removed from across UPRR's right-of-way.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

The utility crossings do not exist; therefore, there is no cost associated with executing the amendment to the existing Agreement.

Discussion:

In 1968, the City entered into an Agreement with Union Pacific Railroad Company, or its predecessor, to install a 16-inch water main and 12-inch sewer main across the railroad right-of-way.

City Engineering Services staff investigated these crossing and determined that they are not there. Because these crossings have been either abandoned or removed, UPRR wants to amend the agreement to delete reference to these two pipe crossings. Staff supports the execution of the Supplemental Agreement

Attached is a map of the former pipe crossings.

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE EXECUTION OF
A SUPPLEMENTAL AGREEMENT WITH UNION
PACIFIC RAILROAD COMPANY (“UNION PACIFIC”)
REGARDING CERTAIN UTILITIES THAT HAVE BEEN
ABANDONED OR REMOVED FROM UNION PACIFIC’S
RIGHT-OF-WAY**

WHEREAS, the City Council finds it to be in the public interest to authorize the execution of a supplemental agreement with Union Pacific regarding certain utilities that have been abandoned or removed from Union Pacific’s right-of-way;

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

THAT the City Manager is hereby authorized and directed to execute a supplemental agreement with Union Pacific Railroad Company regarding certain utilities that have been abandoned or removed from Union Pacific’s right-of-way. Said agreement shall be in a form substantially similar to that of Exhibit “A”, which is attached hereto and incorporated herein.

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

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Jose Ortiz, Director of Engineering Services

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

SUPPLEMENTAL AGREEMENT

THIS SUPPLEMENTAL AGREEMENT is made as of the ____ day of _____, 20____, between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, (hereinafter the "Licensor") and **CITY OF MIDLAND, TEXAS**, a municipal corporation of the State of Texas, with a mailing address at 300 N Loraine Street, Suite 510, Midland, Texas 79701, (hereinafter the "Licensee").

RECITALS:

By instrument dated August 22, 1968, the parties hereto, or their predecessors in interest (if any), entered into an agreement (herein the "Basic Agreement"), identified as Audit No. TC26023, covering four pipelines crossing the Licensor's railroad tracks at Midland, Midland County, Texas.

The parties now desire to modify the Basic Agreement by removing two pipelines from the Basic Agreement.

AGREEMENT:

NOW, THEREFORE, IT IS AGREED by and between the parties hereto as follows:

Article 1. AMENDMENT OF RECITAL SECTION OF THE BASIC AGREEMENT.

Effective as of May 2, 2012, the Recital Section of the Basic Agreement is hereby amended by the deletion of any and all references to the 12" sewer and 16" water cast iron pipes, since the use of these pipes has been abandoned or they have been removed from the Licensor's Premises.

Article 3. EFFECTIVE DATE.

This Supplemental Agreement shall be effective as of May 02, 2012.

Article 4. AGREEMENT SUPPLEMENT.

Nothing in this Supplemental Agreement shall be construed as amending or modifying the Basic Agreement unless specifically provided herein.

IN WITNESS WHEREOF, the parties have executed this Supplemental Agreement as of the day and year first written.

UNION PACIFIC RAILROAD COMPANY

CITY OF MIDLAND, TEXAS

By: _____

By: _____

STEVE SAND

Name Printed: _____

DIRECTOR-ACQUISITIONS

Title: _____



ORIGINAL STORED IN ENVELOPE
AT REAR OF BATCH

July 9, 1969

File: 99-142-350

Mr. George H. Medley
Director of Public Works
The City of Midland
P. O. Box 1152
Midland, Texas 79701

Dear Mr. Medley:

Herewith the City of Midland's original of Pipe Line License dated August 22, 1968 and effective the same date, covering its 8-inch water line and 8-inch sewer line crossing at our Mile Post 557.8, at Midland, as well as 16-inch water line and 12-inch sewer line crossing at Mile Post 558.1, Midland, Texas.

Yours very truly,

((Signed)) J. C. Love
J.W.G.

cc: Mr. J. H. Lloyd
Mr. E. T. Franzen
Mr. L. A. Bruns

CDK 7/18

Supervisor-Leases and Contracts-Room 751:(2) Herewith The Texas and Pacific Railway Company's original of Pipe Line License with the City of Midland, Texas, dated August 22, 1968 and effective the same date, covering:

8" water line crossing at Engr. Chainage Station 29452+44,
Mile Post 557.8;
8" sewer line crossing at Engr. Chainage Station 29452+54,
Mile Post 557.8;
12" sewer line crossing at Engr. Chainage Station 29467+34,
Mile Post 558.1; and
16" water line crossing at Engr. Chainage Station 29467+44,
Mile Post 558.1, Rio Grande Div., T&P Ry.

The City of Midland's check No. 13566, dated Sept. 30, 1968, for \$50.00, payable to Texas Pacific Railway Co., covering preparation fee, is attached to Treasurer's copy.

7C- 26023

MP Rd.

ORIGINAL STORED IN INVENT
AT REAR OF BATCH

FORM 20021

PIPE LINE LICENSE

File: 99-142-350

THIS INSTRUMENT, executed in duplicate,

August 22

19 68, Witnesseth:

The undersigned Carrier hereby grants, but on solely the herein expressed terms and conditions, and the undersigned Licensee (**a municipal corporation**), to be addressed at **P. O. Box 1152, Midland, Texas 79701** (show whether an individual, co-partners, or corporation and state wherein incorporated)

conveying **water and sewage** the Licensee's own **four** certain **proposed** continuous line **8** of **cast iron pipes, 8, 12 & 16 inches** in diameter, and appurtenances, including **16, 20, 26 and 26 inch steel casing pipes** herein called Pipe Line, on the Carrier's property, herein called Premises. Pipe Line will be used to convey **water at maximum operating pressure of 40 and 70 p.s.i., and sewage at 5 and 70 p.s.i.** Pipe Line shall intersect Carrier's existing right of way at Engineer Chainage Stations **29452 / 44, 29452 / 54, 29467 / 34, and 29467 / 44, in Block 39, Section 6 and Block 40, Section 1, T. & P. Ry. H. R.**

XXXXXXXXXXXXXXXXXXXX

XXX

Midland County
(county or parish)

Texas
(state)

at **Midland**
(place)

Approximate location of Pipe Line is indicated by **red**

line **8** on Exhibit A attached hereto as part hereof.

1. Licensee shall at all times keep Pipe Line in good state of repair. All work by Licensee hereunder shall be performed in a safe and workmanlike manner. Licensee shall furnish or do at Licensee's own cost and responsibility any and all things and when and as from time to time required to accomplish whatsoever the Licensee attempts or is bound to do at any time hereunder. Licensee shall adjust Pipe Line to any physical change as made at any time in any of Carrier's property; at all times keeping upper surface of Pipe Line at least **four and one-half feet below bottom of rail thereover.** Licensee shall cause Pipe Line, before being used for anything inflammable, to conform substantially to Exhibit B attached hereto as part hereof. Said things, including the time and manner of doing any work, each shall conform to the requirements of Carrier as well as of any State, Federal or Municipal authority. Carrier may acting for Licensee furnish or do, and Licensee shall pay and bear the cost of, anything which, herein required of Licensee at any time, either shall not be furnished or done within ten days following Carrier's written request therefor or shall be undertaken by Carrier at Licensee's request; and Licensee on request shall in advance deposit with Carrier the estimated cost thereof. If deposit be less than actual cost, Licensee shall pay the difference; if more, Carrier shall repay difference. Licensee when returning this license (signed) shall pay to Carrier fifty dollars for preparing it. Any other payment shall be made within twenty days following receipt of bill. Licensee shall pay cost to Carrier for all labor, including wages of foremen, plus 10% to cover supervision and accounting, plus vacation allowances, paid holidays and health and welfare benefit payments applicable to said labor, Carrier's cost price of all materials f. o. b. Carrier's rails; plus 10% to cover handling and accounting, plus freight at tariff to point of use, and excise taxes applicable to said labor and materials. Carrier may connect with and discharge sewage into Pipe Line while serving as sewer.

2. Licensee agrees to (a) indemnify and save harmless the Carrier from and against all claims, suits, damages, costs (including attorneys' fees), losses and expenses, in any manner resulting from or arising out of or in connection with the laying, maintenance, renewal, repair, use, existence or removal of Pipe Line, including the breaking of the same or any leakage therefrom, and (b) assume all risk of loss or damage to Pipe Line and the contents thereof regardless of how caused.

3. Term hereof shall begin with **August 22,** 19 **68**, and continue thereafter until concluded (1st) by expiration of **thirty** days following serving, by Licensee on Carrier, or vice versa, of written notice of intention to end term hereof or (2nd), at Carrier's election without further notice by expiration of **six** months without the Pipe Line having been installed or by Licensee failing (a-1) to cure any default or (a-2) to show statutory right to install Pipe Line within **thirty** days following Carrier's written request therefor. Any notice of Carrier shall be deemed served when posted conspicuously on Pipe Line or when deposited postage prepaid in U. S. mail addressed as aforesaid. Not later than last day of term hereof Licensee shall remove Pipe Line and restore Premises. Any of Pipe Line not so removed shall at Carrier's election without notice be deemed abandoned. Covenants herein shall inure to or bind each party's heirs, legal representatives, successors and assigns; provided: no right of Licensee shall be transferred or assigned, either voluntarily, or involuntarily, except by express agreement acceptable to Carrier. Carrier or Licensee may waive any default at any time of the other without affecting, or impairing any right arising from, any subsequent default.

WITNESSES:

THE TEXAS AND PACIFIC RAILWAY COMPANY

[Signature]
[Signature]

By *[Signature]*
General Manager
As Carrier, first party herein.

ATTEST:
By *[Signature]*
City Secretary

CITY OF MIDLAND, TEXAS

XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

By *[Signature]*
Mayor
As Licensee, second party herein.

50'

3/8"

4 1/2"

29452 x 54 L Pipe

16" Steel Casing

Min. Yield Strength 35,000 P.S.I.

8" G.I.P. Sewer Line

Max Operating Pressure 5 P.S.I.

100'

50'

10'

100'

35"

45"

29452 x 44 lb Pipe

26" Steel Casing
Min. Yield Strength
35,000 P.S.I.

8" C.I.P. Water Line
Max. Operating Pressure
40 P.S.I.

EXHIBIT A
THE TEXAS AND PACIFIC RAILWAY CO.
MEMPHIS DIVISION
SOUTH SCHEDULING
OF 1.12. SAILHART SEVEN LINES
AND 31 & 16 WATER LINES
FOR
CITY OF MIDLAND
MIDLAND, TEXAS
ST. NORTH TEX.
DATE JUNE 26, 1966
FILE NO 99-142-350

72 26023

Cross Sections Not To Scale

BLK-39

— Philip —

2.0 Pile Test 29402.22.3
29402.257

C. J. 1941

BLOCK LINE

179-53,464 ON file at
San Diego Tele. Co L-189

CS 29452154 E 8" C.R. Sayer Line
City of Midland
CS 29452144 E 8" C.R. Water Line
City of Midland

AMSTERDAM Tel. SW Bell 2-10745

29430+748 Salt. Feed

23428-33.6m One Line Xing Ten Elec Service Co Ltd
23424+53.20m Tel Xing 3 W Bell Tel Co L1398
23424+57.64m Pry Road Xing 32' 10 Bds

254.2-2632 OH. Huo, Ling S W Bell Telep Co L-1788
254.2-93 C. & Power Line, Tex. Elect. Service L-1783

29409 + 60

351 74.3 1 J. H. Tel. S W Bell Tel. Co. 1-206

54-95-1-Sub G-1-Enc 2 Nat Gas Co 1-21

Section 6 B1K.39
T.228

T. & P. RY. CO. H. R.
Midland County, Texas

31.11

ORIGINAL STORED IN ENVELOPE
AT REAR OF BATCH

THE STATE OF TEXAS

COUNTY OF MIDLAND

CITY OF MIDLAND

I, J. W. McCullough, Secretary of the City of Midland, Midland County, Texas, do hereby certify that the attached is a true and correct copy of a Resolution styled:

RESOLUTION NO. 69-147
RESOLUTION AUTHORIZING EXECUTION OF AN
AMENDED PIPE LINE LICENSE WITH THE TEXAS
AND PACIFIC RAILWAY COMPANY

which was duly passed and approved at a regular meeting of the City Council of said City on the 24th day of June, A. D., 1969, showing those present and the motions and votes made and taken in connection with said Resolution.

WITNESS my hand and seal of the City of Midland, Midland County, Texas, this the 7th day of July, A. D., 1969.


J. W. McCullough, Secretary of the
City of Midland, Midland County, Texas

SEAL:

7C- 26023

ORIGINAL STORED IN ENVELOPE
AT REAR OF BATCH

RESOLUTION NO. 69-147

RESOLUTION AUTHORIZING EXECUTION OF
AN AMENDED PIPE LINE LICENSE WITH THE
TEXAS AND PACIFIC RAILWAY COMPANY

WHEREAS, the City of Midland has completed the installation of water and sewer mains to serve a tract of land located at the intersection of U. S. Highway 80 and FM 1369, designated as Projects W-157 and S-105; and

WHEREAS, in connection with said projects, it was necessary to install water and sewer mains at two locations under the railway tracks belonging to the Texas and Pacific Railway Company; and

WHEREAS, because of physical obstructions, it was necessary to locate one set of said lines at a slightly different point under said tracks than that called for in the pipe line license authorized by Resolution No. 68-186, adopted September 10, 1968, by the City Council; and

WHEREAS, the Council now deems it to be in the public interest to execute a new pipe line license with the Texas and Pacific Railway Company for the installation of said water and sewer main crossing under their tracks at Mile Post 557.8 and 558.1;

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

SECTION ONE. THAT the pipe line license executed in duplicate on August 22, 1968, and authorized by said Resolution No. 68-186 is hereby voided and rescinded:

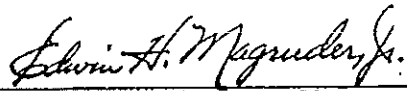
SECTION TWO. THAT the Mayor and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland a pipe line license for the above described purpose with the Texas and Pacific Railway Company, a Federal Corporation, shown in Exhibit "A", attached hereto and made a part hereof for all legal purposes.

ORIGINAL STORED IN ENVELOPE
AT REAR OF BATCH

On motion of Councilman Neill , seconded by Councilman Holt,
the above and foregoing Resolution was adopted by the City Council of the
City of Midland at a regular meeting on the 24th day of June ; A. D. ,
1969, by the following vote:

Councilmen voting "AYE": Neill, Holt, Boyd,
Baskin, and Thomas

Councilmen voting "NAY": None

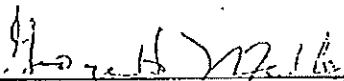

Edwin H. Magruder, Jr., Mayor

ATTEST:


J. W. McCullough, City Secretary

RECOMMENDED AND APPROVED:

J. W. Brown, City Manager

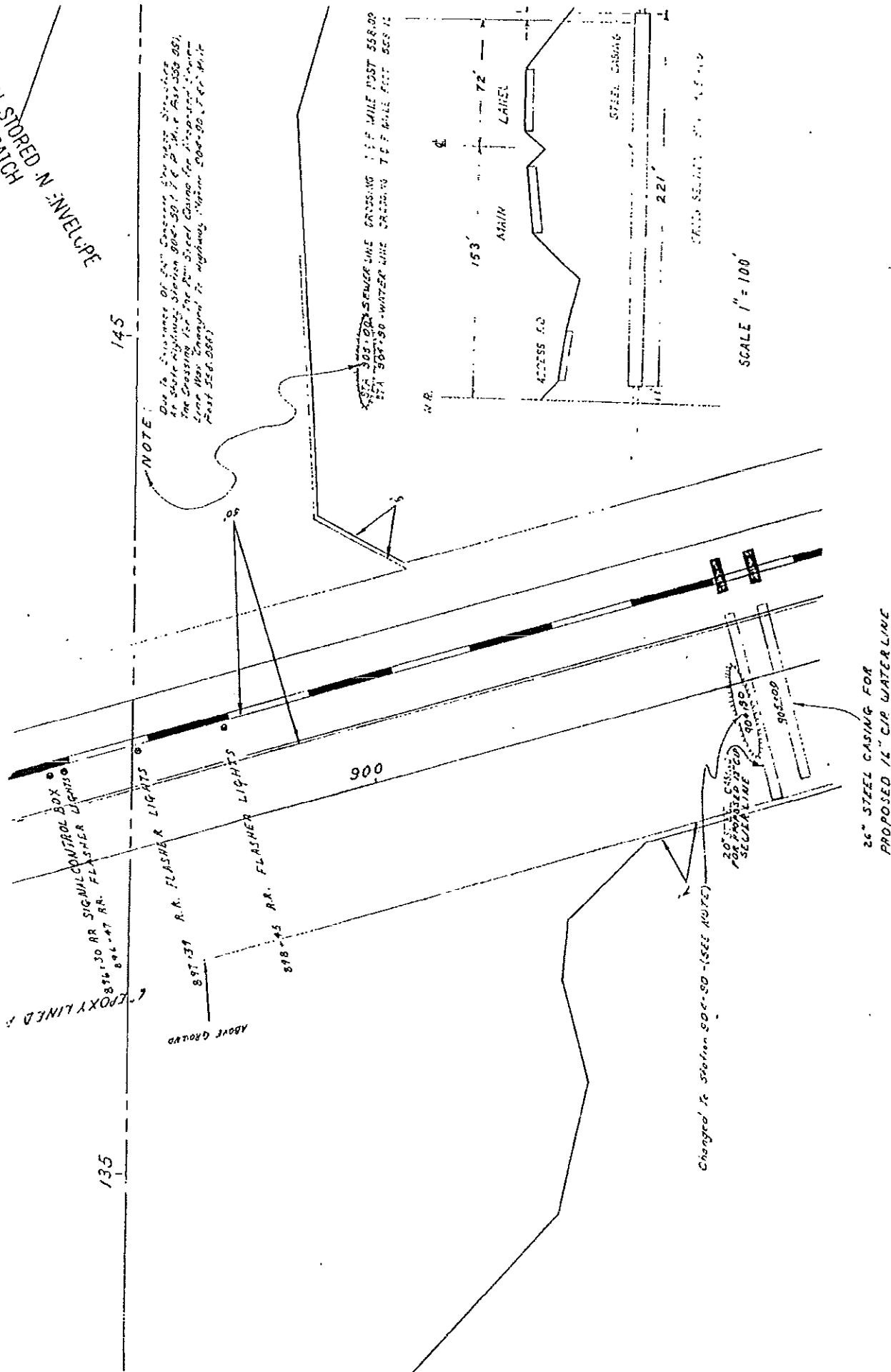

George H. Medley, Director of Public Works

APPROVED:

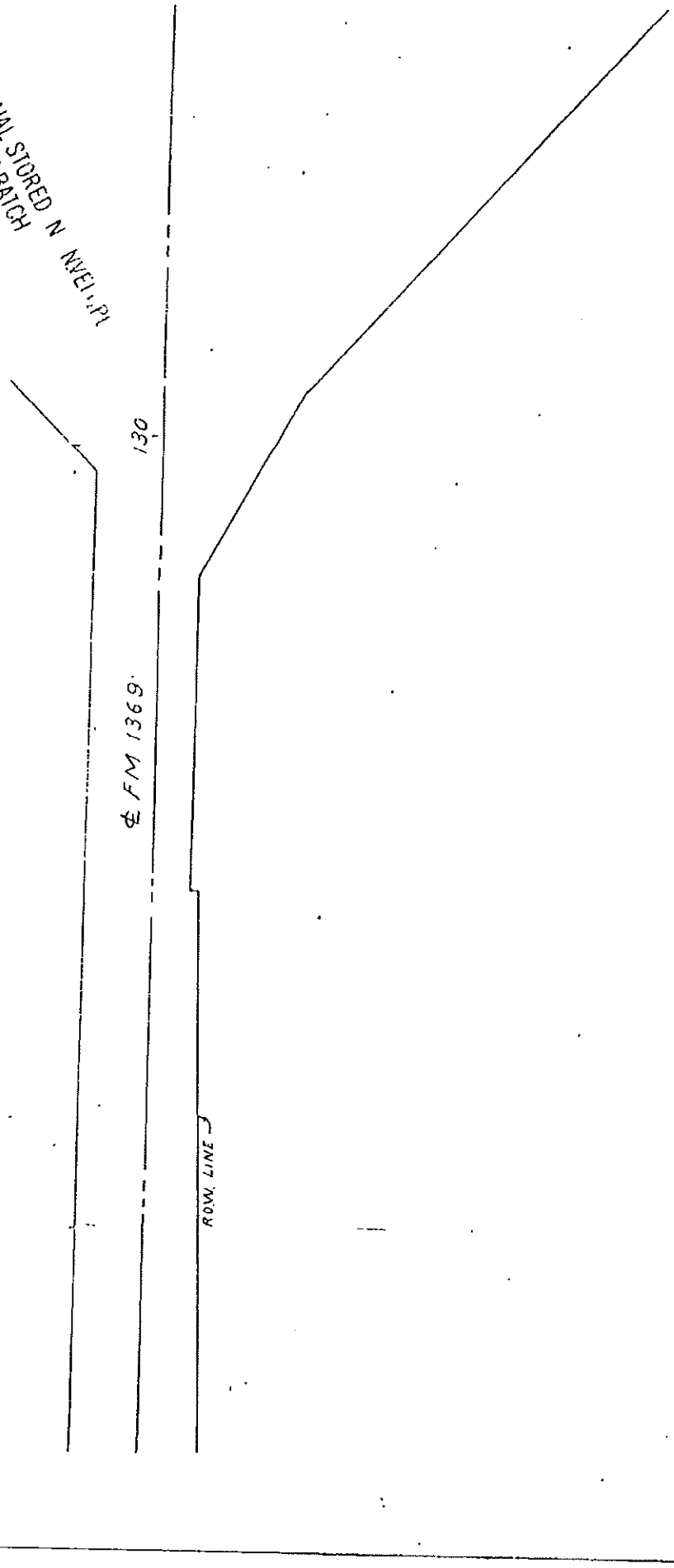

J. M. Nuessle, City Attorney



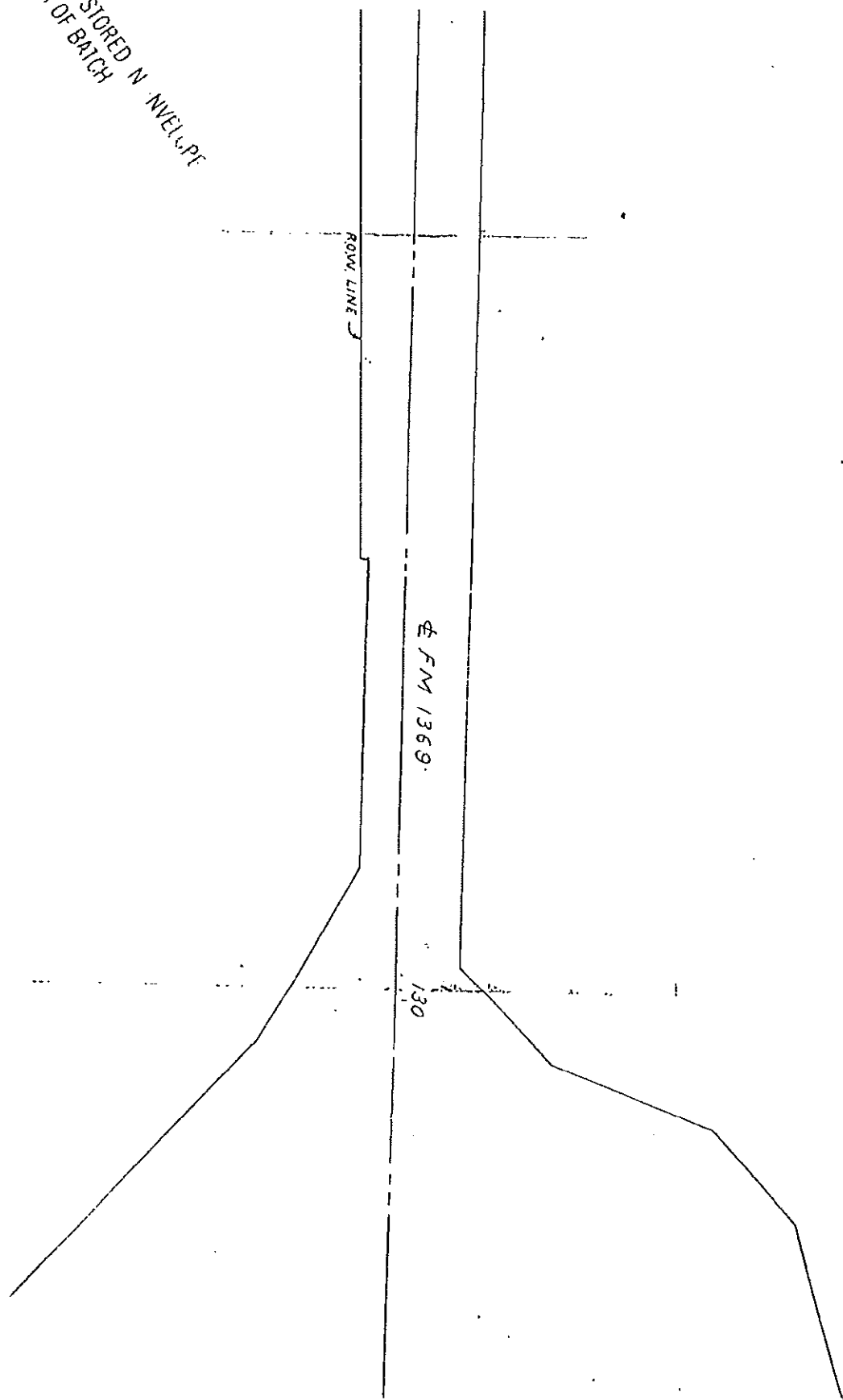
ORIGINAL STORED N ENVELOPE
AT REAR OF BATCH



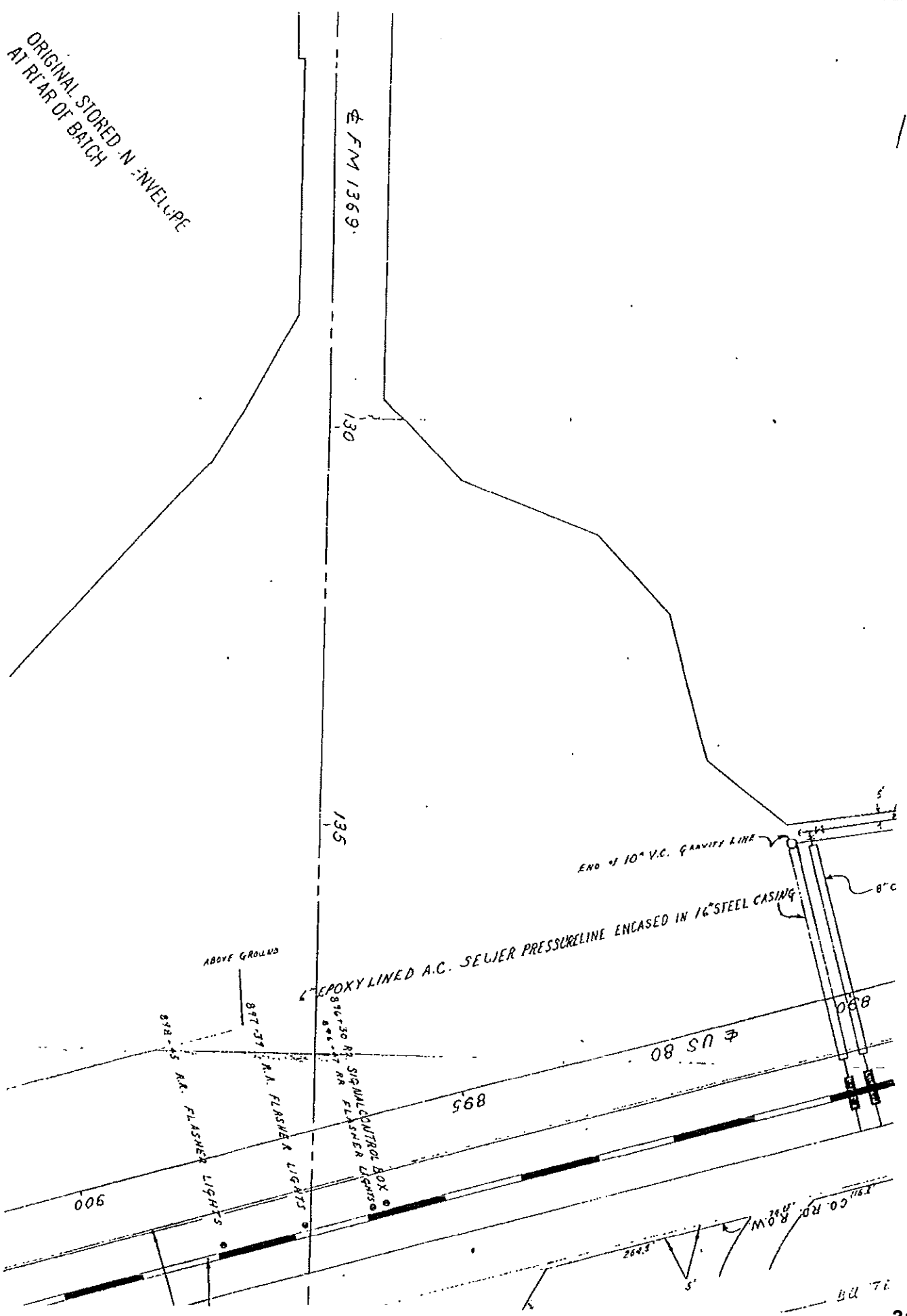
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AT REAR OF BATCH

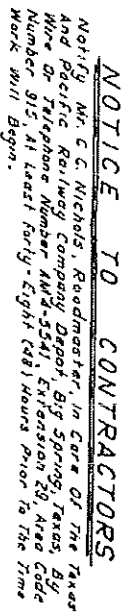


ORIGINAL STORED IN ENVELOPE
AT REAR OF BATCH



ORIGINAL STORED IN ENVELOPE
AT REAR OF BATCH



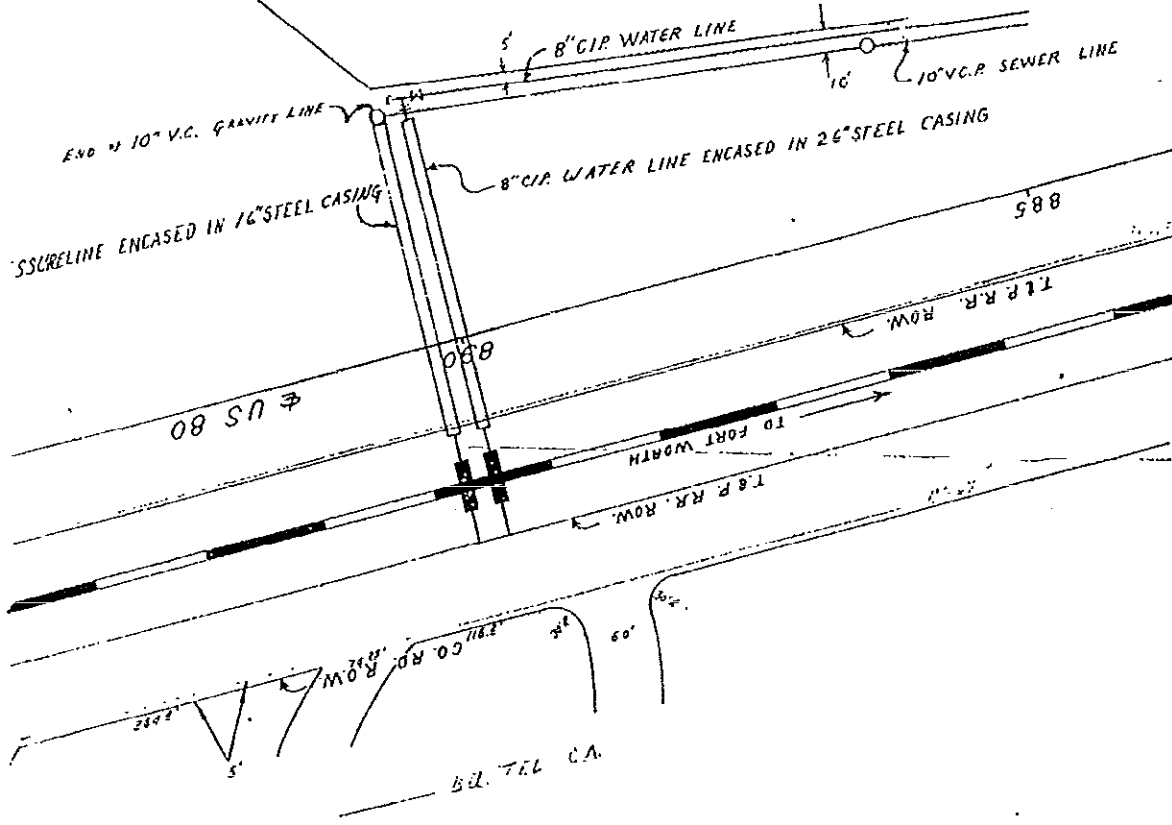


ORIGINAL STORED IN ENVELOPE
AT REAR OF BATCH



EXTEND 10" V.C.P. SEWER LINE FROM EXISTING M.A.
EXTEND 8" C.I.P. WATER LINE FROM EXISTING 12" C.I.P. AT MIDLAND DR.

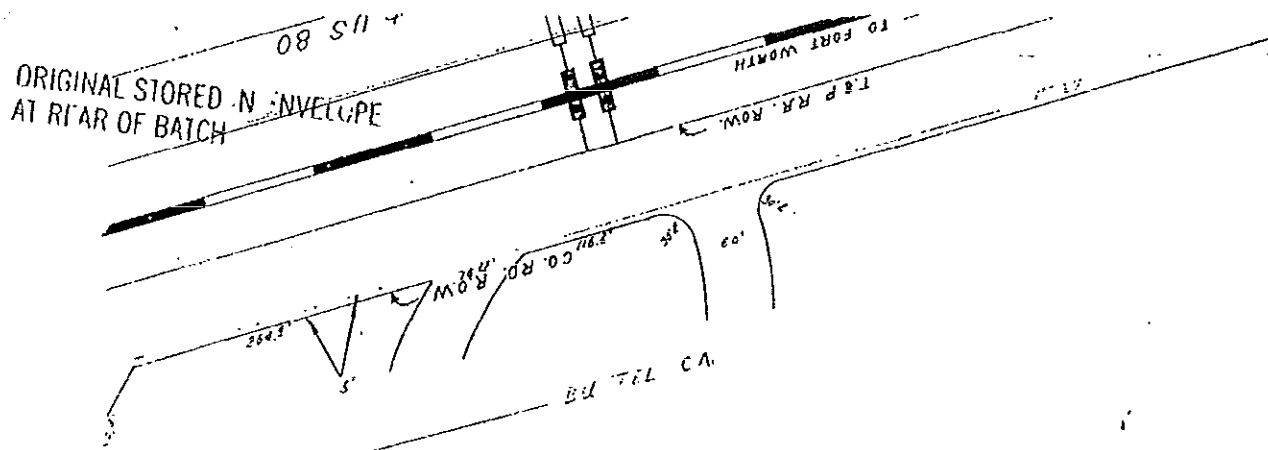
ORIGINAL STORED IN ENVELOPE
AT REAR OF BATCH



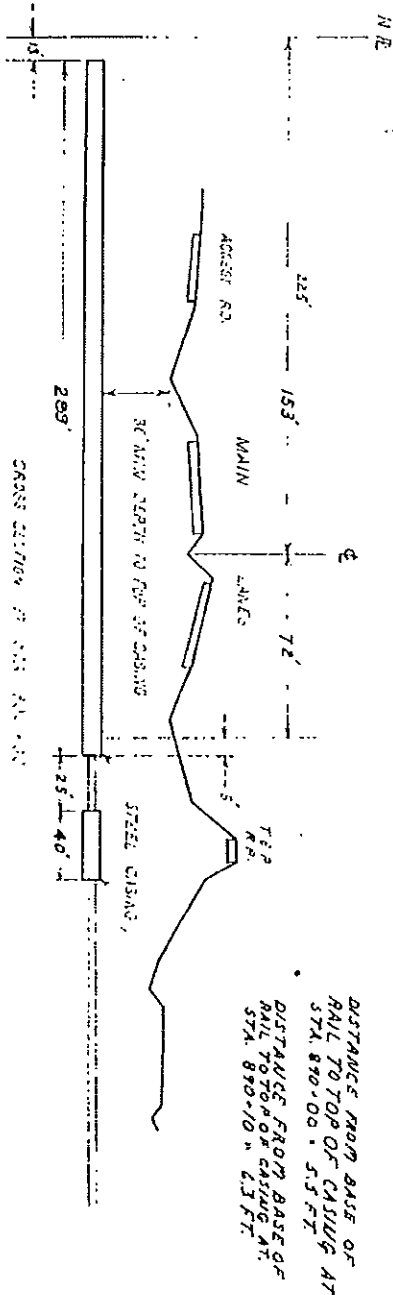
EXTEND 10" V.C.P. SEWER LINE FROM EXISTING MANHOLE @ MIDLAND DR. @ STA. 8+51.00
EXTEND 8" CIP WATER LINE FROM EXISTING 12" CIP AT MIDLAND DR. @ STA. 8+51.00

EX 14

EXHIBIT "A"



STA. 890+00 WATERLINE CROSSING T & P MILE POST 557.82
STA. 890+10 SEWER LINE CROSSING T & P MILE POST 557.82



NOTICE TO CONTRACTORS

Notify Mr. C. Nichols, Roadmaster in Care of The Texas and Pacific Railway Company Depot, Big Spring, Texas, By Wire Or Telephone Number AM4-5541, Extension 25 Area Code Number 915, At Least Forty-Eight (48) Hours Prior to the Time Work Will Begin.



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 8/13/2013

TO: City Council / City Manager

FROM: David Beard,

SUBJECT: Consider a motion on a request by Schumann Engineering Co. for the Ranchero Park – Section 7 to approve items requested for deferral and to waive the associated public improvement guarantee. The subject property is located south of I-20 along CR 1120. (Midland ETJ)

Purpose:

Consider a motion on a request by Schumann Engineering Co. for the Ranchero Park – Section 7 to approve items requested for deferral and to waive the associated public improvement guarantee. The subject property is located south of I-20 along CR 1120. (Midland ETJ)

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Wastewater Collection	\$0.00
Water Distribution	\$0.00
Paving Construction	\$0.00
Sidewalk Construction	\$0.00

Total value of deferral (recommended items) \$0.00

Cash deposit or other acceptable security \$0.00

Deferral recommendations are based on the model Deferral Process previously presented at the council briefing.

Discussion:

The Ranchero Estates (Section 7) is positioned in the City of Midland ETJ, located on the north side CR 120 (between Cotton Flat Rd and Midkiff Rd.) approximately 1 mile south of Loop 250.

Schumann Engineering is proposing to plat the property and defer the public improvements. Below is a discussion of the public infrastructure and deferral request related to the development of the property associated with this plat:

1. Water Distribution: The applicant is requesting deferral of water distribution improvements.
 - The nearest connection to the City of Midland's water distribution system is near the intersection of Rankin Hwy (SH158) and Iris Ln. approximately 1/2 mile south of I-20. (distance greater than 1 mile).
 - The likelihood of infrastructure construction based on the distance from the existing distribution facilities results in a 100% reduction in cash deposit or other acceptable security.
2. Wastewater Collection: The applicant is requesting a deferral of wastewater collection improvements.
 - The nearest connection to the City of Midland's wastewater collection system is the intersection trunk wastewater main along the south frontage of I-20. (distance greater than 1 mile).
 - The likelihood of infrastructure construction based on the distance from the existing distribution facilities results in a 100% reduction in cash deposit or other acceptable security.
3. Paving: Access to the site is provided along CR 120 (between Cotton Flat Rd. and Midkiff Rd.)
 - The nearest connection to the City of Midland's pavement system is at Midkiff Rd. and I-20 (distance greater than 1 mile).
 - The likelihood of infrastructure construction based on the distance from the existing pavement system results in a 100% reduction in cash deposit or other acceptable security.
4. Drainage: A Drainage Study for this site has not been submitted.
 - A Drainage Study will be required prior to final platting.
5. Sidewalk: The applicant is requesting deferral of sidewalks.
 - Sidewalk construction is typically accomplished during the building permit phase (builder constructs the sidewalk). Currently, there are no sidewalks along CR 1150 or in the interior of the subdivision. If sidewalks are required in the future, they will be addressed when a building permit application is submitted.

Staff supports this deferral request. Attached is a location map, along with a deferral justification, and cost estimate from Schumann Engineering.



City Council Agenda

Approved for Agenda:
CSharp
City Manager's Office

MEETING DATE: 8/13/2013

TO: City Council / City Manager

FROM: Price Robinson, Police Chief

SUBJECT: Consider a resolution to appropriate donated funds resulting from the proceeds of the 2013 Bad Boy Blast to the Midland Police Department

Purpose:

Consider a resolution to appropriate donated funds resulting from the proceeds of the 2013 Bad Boy Blast to the Midland Police Department

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Cash donation to the Midland Police Department in the amount of \$44,400

That the sum of \$44,400 is hereby appropriated from the General Fund (001) Unappropriated Fund Balance (5650) to the BBB 13 Equipment, Technology & Training Project (9052).

Discussion:

The Midland Police Department has received a cash donation of \$44,400 as the result of the Bad Boy Blast fund raising project which was sponsored by ConocoPhillips. The funds will be used to purchase equipment, technology & fund training essential to the delivery of law enforcement services.

RESOLUTION NO. _____

RESOLUTION ACCEPTING A CASH DONATION OF \$44,000.00 FROM THE “BAD BOY BLAST” FUND-RAISING PROJECT SPONSORED BY CONOCO-PHILLIPS; THE DONATED FUNDS WILL BE USED TO PURCHASE LAW ENFORCEMENT EQUIPMENT, TECHNOLOGY, AND TRAINING; AND APPROPRIATING SAID FUNDS

WHEREAS, the Council finds it to be in the public interest to accept a cash donation of \$44,000.00.00 which is the result of the “Bad Boy Blast” fund-raising project sponsored by Conoco-Phillips; and

WHEREAS, said funds will be used by the Midland Police Department to purchase law enforcement equipment, technology, and training; and

WHEREAS, the Council finds it to be in the public interest to appropriate said funds;

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

THAT the sum of \$44,000 is hereby appropriated from the General Fund (001) Unappropriated Fund Balance (5650) to the BBB 13 Equipment, Technology & Training Project (9052).

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

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

Robert McNaughton, Director of Finance

APPROVED AS TO CONTENT
AND COMPLETENESS:

Price Robinson, Police Chief

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:
CSharp
City Manager's Office

MEETING DATE: 8/13/2013

TO: City Council / City Manager

FROM: Price Robinson, Police Chief

SUBJECT: Consider a resolution to appropriate funds to the Police Supervisory Training Project

Purpose:

Consider a resolution to appropriate funds to the Police Supervisory Training Project

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

No fiscal impact to the City. Funds are being transferred from an existing Police Department project fund.

That the amount appropriated to the Police Equipment and Technology Project (8922) is reduced by the sum of \$48,000 and the appropriation to the Police Supervisory Training Project (9053) is increased by the amount of \$48,000

Discussion:

The Police Department will host a law enforcement supervisory training series, conducted by Strategic Government Resources, beginning in September. Two 4-hour sessions will be held each month for eleven months. Forty-five MPD supervisors will attend as well as participants from outside agencies. Registration fees collected from outside participants will offset some of the training cost.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE MIDLAND POLICE DEPARTMENT TO TRANSFER THE APPROPRIATION OF FUNDS FROM THE POLICE EQUIPMENT AND TECHNOLOGY PROJECT TO THE POLICE SUPERVISORY TRAINING PROJECT IN THE AMOUNT OF \$48,000.00; THE MIDLAND POLICE DEPARTMENT WILL USE SAID FUNDS TO HOST A LAW ENFORCEMENT SUPERVISORY TRAINING SERIES; THERE IS NO FISCAL IMPACT TO THE CITY

WHEREAS, the City of Midland Police Department will host a law enforcement supervisory training series conducted by Strategic Government Resources beginning in September for two (2) four (4) hour sessions each month for eleven (11) months; and

WHEREAS, forty five (45) Midland Police Department supervisors will attend, and other participants from outside agencies will also attend and pay registration fees which will offset some of the training cost; and

WHEREAS, the City Council finds it to be in the public interest to appropriate said funds to provide funding for the Police Supervisory Training Project for the Midland Police Department;

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

THAT the amount appropriated to the Police Equipment and Technology Project (8922) is reduced by the sum of \$48,000 and the appropriation to the Police Supervisory Training Project (9053) is increased by the amount of \$48,000.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

Robert McNaughton, Director of Finance

APPROVED AS TO CONTENT
AND COMPLETENESS:

Price Robinson, Police Chief

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:
CSharp
City Manager's Office

MEETING DATE: 8/13/2013

TO: City Council / City Manager

FROM: Price Robinson, Police Chief

SUBJECT: Consider a resolution to enter into a contract with Del Carmen Consulting, LLC to provide services in connection with the evaluation of racial profiling data collected by the Midland Police Department

Purpose:

Consider a resolution to enter into a contract with Del Carmen Consulting, LLC to provide services in connection with the evaluation of racial profiling data collected by the Midland Police Department.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

The annual fee to provide these services is \$8,750.

Discussion:

Dr. Alex Del Carmen has evaluated racial profiling data collected by the Midland Police Department since the inception of the Racial Profiling Law in 2001. He has trained all Texas Police Chiefs and evaluates racial profiling data for over 80 law enforcement agencies.

The department contracts with Dr. Del Carmen to provide quarterly data audits, provide search analysis, and to prepare and present the annual report to the Council.

The department is requesting to enter into a contract with Dr. Del Carmen to provide these services for fiscal year 2013-2014.

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE EXECUTION OF
AN AGREEMENT WITH DEL CARMEN CONSULTING,
LLC, TO PROVIDE SERVICES IN CONNECTION WITH
THE EVALUATION OF RACIAL PROFILING DATA
COLLECTED BY THE MIDLAND POLICE
DEPARTMENT**

WHEREAS, the City Council of the City of Midland, Texas, finds it to be in the public interest to execute an Agreement with Del Carmen Consulting, LLC to provide services in connection with the evaluation of racial profiling data collected by the Midland Police Department; and

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

THAT the City Manager and the City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, an agreement with Del Carmen Consulting, LLC to provide services in connection with the evaluation of racial profiling data collected by the Midland Police Department. Said agreement is attached hereto as Exhibit "A," 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., 2013, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

Robert McNaughton, Director of Finance

APPROVED AS TO CONTENT
AND COMPLETENESS:

Price Robinson, Police Chief

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

Del Carmen Consulting, LLC

This Agreement (the "Agreement") is entered into by and between Del Carmen Consulting, LLC, 3051 Trevino, Grand Prairie, Texas 75054 (the "CONSULTANT") and the City of Midland, Texas (the "CITY").

WHEREAS, CITY wishes to engage CONSULTANT to provide certain services in connection with the evaluation of racial profiling data collected by the Midland Police Department (hereinafter referred to as MPD); **NOW THEREFORE:**

I. TERM

- 1.1 Unless sooner terminated in accordance with the provisions of this agreement, the term of this contract shall commence on date of execution and shall terminate upon the earlier of project completion or September 30, 2014.

II. PERFORMANCE

- 2.1 CONSULTANT, in accordance and compliance with the terms, provisions, and requirements of this contract, shall manage, perform, and provide all of the services and produce all of the reports as set forth in article III of this contract.
- 2.2 CITY agrees to provide to CONSULTANT, upon the *Data Delivery Dates* specified in Article 3.5 below, the necessary racial profiling data to be evaluated by CONSULTANT. CITY shall provide the data to CONSULTANT in a quantifiable manner in an excel spreadsheet.
- 2.3 Modifications to the schedule set forth in article III may be made pursuant to the prior written approval of CITY.

III. STATEMENT OF WORK

- 3.1 CONSULTANT agrees to conduct audits, draft the 2014 report and perform a statistical analysis of the 2014 racial profiling data collected by Midland Police Department. Such audits and statistical analyses shall be done in accordance with:
 - 3.1.1 The requirements of Texas Senate Bill 1074.
 - 3.1.2 Accepted professional standards for testing the validity of statistical data.
- 3.2 On the Completion Date for each Audit specified in Section 3.5, CONSULTANT shall provide a written letter to Midland Police Department outlining the data audit findings and recommendations regarding data acquisition mechanisms.
- 3.3 On the Completion Date of the 2014 Annual Racial Profiling Report in specified in Section 3.5, CONSULTANT shall provide a comprehensive statistical analysis including appropriate tables, graphs and citations to referenced materials.

Further, CONSULTANT will present findings of said report to Midland City Council by March 1, 2015, on a date agreed upon by both parties.

- 3.4 An original of all audit and annual reports shall be delivered to:

The Midland Police Department
Attn: Chief Price Robinson

- 3.5 Audits shall be performed as follows:

Service	Delivery Date
Audit 1: October – December 2013	January 15, 2014
Racial Profiling Report (2014 data)	February 2015
Racial Profiling Report Presentation to Council	Prior to March 1, 2015
Audit 2: January - March 2014	April 15, 2014
Audit 3: April – June 2014	July 15, 2014
Audit 4: July – September 2014	October 15, 2014

IV. COMPENSATION AND CONTRACT BILLING

- 4.1 CITY agrees to pay CONSULTANT a fee of Eight Thousand Seven Hundred Fifty dollars (\$8,750) as total compensation to be billed in October 2013 and paid within 30 days of the billing date.
- 4.2 CITY shall not be obligated or liable under this contract to any party, other than CONSULTANT, for payment of any monies or provision of any goods or services.
- 4.3 This amount includes expected expenditures for personnel, equipment, software/hardware, mileage, and document production. This rate is an expected expenditure and is not a flat rate. Further consideration may be required in order for CONSULTANT to fulfill the agreement. CONSULTANT will notify the CITY in writing of the additional expenses and a written amendment will be executed, upon written agreement of both parties. Consultant understands and agrees that any expenditures beyond \$8,750.00 will be approved in writing prior to incurring the expense.

V. LICENSES AND CERTIFICATIONS

- 5.1 All licenses, legal certifications, or inspections (if any) required for the services, facilities, equipment, or materials and all applicable state and federal laws and local ordinances must be complied with by CONSULTANT. Failure to comply with this requirement shall be treated as a default and will result in termination of this contract.

VI. RECORDS

- 6.1 CONSULTANT shall properly, accurately, and completely maintain all books, documents, papers, accounting, or records pertaining to, or generated as a result of; this contract and shall make such materials available at CONSULTANT office at all reasonable times, and as often as CITY may deem necessary, until this contract has been terminated and for four years thereafter for the purpose of accounting or audit inspections by CITY and/or any authorized representative of CITY to audit, examine, and make excerpts and/or copies of same. All costs of audits, examinations, inspections, or copies as related to this paragraph are to be borne by CITY.

VII. CONFIDENTIALITY

- 7.1 CONSULTANT shall comply with the confidentiality procedures pertaining to records and other information relating to CITY in accordance with the applicable federal, state and local laws. This provision shall not be construed as limiting CITY's right of access pursuant to articles VI and IX.

VIII. TERMINATION

- 8.1 CITY may terminate this contract in accordance with this article, in whole or in part, whenever such termination is in the best interest of CITY.
- 8.2 The CITY may terminate this Agreement at will for any or no reason upon giving thirty (30) days written notice to the CONSULTANT. The parties to this Agreement understand and agree that it is in the CITY's sole discretion to cancel the Agreement during the term of the Agreement without penalty to the CITY. The CONSULTANT has no expectation and has received no guarantees that this Agreement will not be terminated before the end of the Agreement term. The parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the term of the Agreement. All work and services under the Agreement shall be suspended upon termination of Agreement becoming effective.
- 8.3 In addition to any other provision of this contract, CITY may terminate this contract for the following reasons:
- (A) neglect or failure of CONSULTANT to perform or observe any of the terms, conditions, covenants, or guarantees of this contract or of any amendment to this contract; or
 - (B) Violation by CONSULTANT of any rule, regulation, or law to which CONSULTANT is bound or shall be bound under the terms of this contract.
- 8.4 Upon a decision to terminate by CITY written notice of said termination shall be immediately provided to CONSULTANT specifying the effective date of termination.

- 8.5 Upon termination, any and all writings, documents, or information in whatsoever form and character produced by CONSULTANT pursuant to the provisions of this contract shall, if requested or agreed to by CITY, be delivered by CONSULTANT to CITY in a timely manner.
- 8.6 Within thirty days of the effective date of termination (unless an extension is authorized in writing by CITY), CONSULTANT shall submit to CITY its claim in detail for the monies owed by CITY for services performed under this contract through the effective date of termination. Upon agreement of both parties of the services rendered; CITY shall then pay all monies owed to CONSULTANT within 15 days.

IX. RIGHTS TO CONTRACTUAL MATERIAL

- 9.1 Any and all writings, documents, or information in whatsoever form and character produced by CONSULTANT pursuant to the provisions of this contract are the exclusive property of CITY; no such writing, document, or information shall be the subject of any copyright or proprietary claim by CONSULTANT.
- 9.2 CONSULTANT understands and acknowledges that as the exclusive owner of any and all such writings, documents, and information, CITY has the right to use all such writings, documents, and information as CITY desires, for any legal purpose.

X. INDEPENDENT CONTRACTOR

- 10.1 It is expressly understood and agreed by both parties hereto that CITY is contracting with CONSULTANT as an independent contractor. The parties hereto understand and agree that CITY shall not be liable for any claims which may be asserted by any third party occurring in connection with services performed by CONSULTANT under this contract.
- 10.2 The parties hereto further acknowledge and agree that neither party has authority to bind the other or to hold out to third parties that it has the authority to bind the other.
- 10.3 Nothing contained herein or any document executed in connection herewith, shall be construed to create an employer-employee partnership or joint venture relationship between the CITY and CONSULTANT. CONSULTANT is an independent contractor and not an employee of the CITY. It is understood that the CITY will not withhold any amounts for payment of taxes from the compensation of CONSULTANT hereunder. CONSULTANT will not represent to be or hold himself out as an employee of the CITY and CONSULTANT acknowledges that he/she shall not have the right or entitlement in or to any of the pension, retirement or other benefit programs now or hereafter available to the CITY's regular employees. Any and all sums subject to deductions, if any, required to be withheld and/or paid under any applicable state, federal or municipal laws or union or professional guild regulations shall be CONSULTANT's sole responsibility and CONSULTANT shall indemnify and hold CITY harmless from any and all damages, claims and expenses arising out of or resulting from any claims asserted by any taxing authority as a result of or in connection with said payments.

XI. SUBCONTRACTING

- 11.1 Any other clause of this contract to the contrary notwithstanding, none of the work or services covered by this contract shall be subcontracted without the prior written approval of CITY. Any work or services approved for subcontracting hereunder, however, shall be subcontracted only by written contract or agreement and, unless specific waiver is granted in writing by CITY, shall be subject by its terms to each and every provision of this contract. Compliance by subcontractors with this contract shall be the responsibility of CONSULTANT.
- 11.2 Despite CITY approval of a subcontract, CITY shall in no event be obligated to any third party, including any subcontractor of CONSULTANT, for performance of work or services, nor shall CITY funds ever be used for payment of work or services performed prior to the date of contract execution or extending beyond the termination of this contract.

XII. CONFLICT OF INTEREST

- 12.1 No member of CITY's governing body or of its staff who exercises any function or responsibility in the review or approval of the undertaking or carrying out of this contract shall:
- (A) Participate in any decision relating to this contract which may affect his or her personal interest or the interest of any corporation, partnership, or association in which he or she has a direct or indirect interest; or
 - (B) Have any direct or indirect personal interest in this contract or the proceeds thereof.

XIII. INDEMNIFICATION

- 13.1 **CONSULTANT COVENANTS AND AGREES TO FULLY INDEMNIFY, DEFEND, AND HOLD HARMLESS CITY AND ITS MEMBERS, AGENTS, EMPLOYEES, OFFICERS, DIRECTORS, AND REPRESENTATIVES OF CITY, INDIVIDUALLY OR COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY, AND SUITS OF ANY KIND AND NATURE, INCLUDING, BUT NOT LIMITED TO, PERSONAL INJURY OR DEATH AND PROPERTY DAMAGE, MADE UPON CITY DIRECTLY ARISING OUT OF, RESULTING FROM, OR RELATED TO CONSULTANT'S ACTIVITIES UNDER THIS CONTRACT, INCLUDING ANY ACTS OR OMISSIONS OF CONSULTANT, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT, OR SUBCONTRACTOR OF CONSULTANT, AND ITS RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS, AND REPRESENTATIVES WHILE IN THE EXERCISE OR PERFORMANCE OF**

THE RIGHTS OR DUTIES UNDER THIS CONTRACT.

CONSULTANT SHALL PROMPTLY ADVISE CITY IN WRITING OF ANY CLAIM OR DEMAND AGAINST CITY OR CONSULTANT KNOWN TO CONSULTANT RELATED TO OR ARISING OUT OF CONSULTANT'S ACTIVITIES UNDER THIS CONTRACT AND SHALL SEE TO THE INVESTIGATION OF AND DEFENSE OF SUCH CLAIM OR DEMAND AT CONSULTANT'S COST. CITY SHALL HAVE THE RIGHT, AT ITS OPTION AND AT ITS OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING CONSULTANT OF ANY OF ITS OBLIGATIONS UNDER THIS ARTICLE.

13.2 IT IS THE EXPRESS INTENT OF THE PARTIES TO THIS CONTRACT THAT THE INDEMNITY PROVIDED FOR IN THIS SECTION, IS AN INDEMNITY EXTENDED BY CONSULTANT TO INDEMNIFY, PROTECT AND HOLD HARMLESS CITY FROM THE CONSEQUENCES OF CITY'S OWN NEGLIGENCE CONSULTANT FURTHER AGREES TO DEFEND, AT ITS OWN EXPENSE AND ON BEHALF OF CITY AND IN THE NAME OF CITY, ANY CLAIM OR LITIGATION BROUGHT AGAINST CITY AND ITS ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, VOLUNTEERS, AND REPRESENTATIVES IN CONNECTION WITH ANY SUCH INJURY, DEATH, OR DAMAGE FOR WHICH THIS INDEMNITY SHALL APPLY, AS SET FORTH ABOVE.

13.3 IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT CONSULTANT IS AND SHALL BE DEEMED TO BE AN INDEPENDENT CONTRACTOR AND OPERATOR RESPONSIBLE TO ALL PARTIES FOR ITS RESPECTIVE ACTS OR OMISSIONS AND THAT CITY SHALL IN NO WAY BE RESPONSIBLE THEREFORE.

XIV. CHANGES AND AMENDMENTS

14.1 Except when the terms of this contract expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall be by amendment in writing executed by both CITY and CONSULTANT.

14.2 It is understood and agreed by the parties hereto that changes in local, state, and federal rules, regulations or laws applicable hereto may occur during the term of this contract and that any such changes shall be automatically incorporated into this contract without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation, or law.

XV. ENTIRE AGREEMENT

15.1 This contract and its exhibits constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this contract shall be deemed to exist or

to bind the parties hereto unless same is in writing, dated subsequent to the date here of, and only executed by the parties.

XVI. NOTICES

- 16.1 For purposes of this contract, all official communications and notices between the parties shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to the addresses set forth below:

CITY

Chief Price Robinson
Midland Police Department
601 N. Loraine
Midland, Texas 79701

CONSULTANT

Alex del Carmen, Ph.D.
Del Carmen Consulting, LLC.
3051 Trevino
Grand Prairie, Texas 75054

XVII. LAW APPLICABLE

- 17.1 THIS CONTRACT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN MIDLAND, TEXAS.

XVIII. LEGAL AUTHORITY

- 18.1 The signer of this contract for CONSULTANT represents, warrants, assures, and guarantees that he has full legal authority to execute this contract on behalf of CONSULTANT and to bind CONSULTANT to all of the terms, conditions, provisions, and obligations herein contained.

XIX. PARTIES BOUND

- 19.1 This contract shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns, except as otherwise expressly provided for herein.

XX. GENDER

- 20.1 Words of any gender used in this contract shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

XXI. CAPTIONS

- 21.1 The captions contained in this contract are for convenience of reference only and in no way limit or enlarge the terms and/or conditions of this contract.

XXII GOVERNING LAW, SEVERABILITY

22.1 This Agreement shall be governed by the laws of the State of Texas.

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision.

22.2 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.

EXECUTED and **AGREED** to as of the dates indicated below.

CITY OF MIDLAND		CONSULTANT Del Carmen Consulting, LLC.
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<i>(Signature)</i>	<i>(Signature)</i>
Printed Name: <u>Courtney Sharp</u>	Printed Name: <u>Alex del Carmen</u>
Title: <u>City Manager</u>	Title: <u>President Del Carmen Consulting LLC</u>
Date: <u></u>	Date: <u></u>



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 8/13/2013

TO: City Council / City Manager

FROM: Stuart Purvis, Utilities Director

SUBJECT: Consider a Resolution Approving the Execution of a Task Order for Additional Inspection and Construction Management Services for the Several Ongoing Projects with CDM Smith Inc. and Appropriate Funds

Purpose:

Consider a resolution approving the execution of a Task Order for additional inspection and construction management services for several ongoing projects with CDM Smith Inc. and appropriate funds

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Award amount is \$248,000.00 from the Water and Sewer Fund. That the sum of \$248,000 is hereby appropriated from the Water and Sewer Fund (300) Unappropriated Fund Balance (5650) to the following projects in the following amounts:

Effluent Reuse Satellite Plant Project (8757)	\$142,000
Distribution System Pipelines Project (8758)	\$106,000

Discussion:

It is proposed to task CDM Smith with the following expanded tasks:

- Midland Raw Water Project - The contractor has been assigned additional work on this project that has been approved and funded by the Council. This additional work has caused the end date of the project to be extended by an additional 20 weeks. Both CDM and their contracted inspector are not funded for this additional time. This is an additional cost of \$106,000.

- MBR Satellite Reuse Project - Construction and startup of this project has also been delayed by 20 weeks. As above, CDM and their contracted inspector are not funded for this extension. Additionally, since this is the first facility of this kind, the City has requested assistance from CDM during its start up and initial operation. Finally, the soil testing lab had to perform additional tests not anticipated. The total of these changes result in an additional cost of \$142,000.

RESOLUTION NO.

RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT TASK ORDER WITH CDM SMITH INC., FOR PROFESSIONAL INSPECTION SERVICES AND CONSTRUCTION MANAGEMENT SERVICES FOR THE MIDLAND WATER PURIFICATION PLANT RAW WATER PROJECT AND THE MBR SATELLITE REUSE PROJECT, AT AN ESTIMATED TOTAL COST OF \$248,000.00; AND APPROPRIATING FUNDS

WHEREAS, the City Manager advertised a Request for Qualifications for professional engineering support services (“Professional Services”); and

WHEREAS, CDM Smith Inc., has agreed to perform said Professional Services for an estimated \$248,000.00; and

WHEREAS, the Council finds that CDM Smith Inc., is qualified to perform said Professional Services; and

WHEREAS, the Council finds that the professional fees proposed by CDM Smith Inc., are consistent with and not higher than the recommended practices and fees published by the applicable professional associations and do not exceed any maximum provided by law; and

WHEREAS, the Council finds that CDM Smith Inc., provides professional services for a fair and reasonable price; and

WHEREAS, the Council finds it to be in the public interest to execute a professional services agreement task order with CDM Smith Inc., as the most highly qualified provider for such services based on demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee for the services;

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

SECTION ONE. That the Mayor and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a professional services agreement task order with CDM Smith Inc., for said Professional Services, said agreement being attached hereto as Exhibit “1” and incorporated herein for all legal

purposes.

SECTION TWO. That the sum of \$248,000.00 is hereby appropriated from the Water and Sewer Fund (300) Unappropriated Fund Balance (5650) to the FOLLOWING projects in the following amounts:

- Effluent Reuse Satellite Plant Project (8757).....\$142,000.00
- Distribution System Pipelines Project (8758).....\$106,000.00

SECTION THREE. That the City Treasurer is hereby authorized and directed to make payments to CDM Smith Inc., for professional services pursuant to the terms of said agreement in an amount not to exceed \$248,000.00 from funds appropriated herein upon receipt of proper invoices or statements approved by the City Manager.

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

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Stuart Purvis, Director of Utilities

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

**PROFESSIONAL SERVICES AGREEMENT TASK ORDER FOR
PERFORMANCE OF ENGINEERING SUPPORT SERVICES**

THIS AGREEMENT is made and effective the 14th day of August, 2013, by and between the CITY OF MIDLAND, TEXAS, a municipal corporation, hereinafter called "City," and CDM SMITH INC., hereinafter referred to as "Company."

**ARTICLE I.
PURPOSE**

The purpose of this Agreement is to state the terms and conditions under which Company shall perform professional inspection services and construction management services for the Midland Water Purification Plant Raw Water Project and the MBR Satellite Reuse Project, as enumerated on the Scope of Work attached hereto as Exhibit "A" and incorporated herein for all legal purposes.

**ARTICLE II.
SERVICES TO BE PERFORMED**

1. Company shall provide those services described in the Scope of Services attached hereto as Exhibit "A" and incorporated herein for all legal purposes.
2. Company shall perform all the services under this Agreement consistent with the same level of skill and care as other professionals in approximately the same location at approximately the same point in time and for the same types of projects. Company represents that any employee who performs services under this Agreement shall be fully qualified and competent to perform the services described in Exhibit "A."

**ARTICLE III.
FINANCIAL CONSIDERATIONS**

City agrees to pay Company in an amount not to exceed \$248,000.00 for the professional services described in Exhibit "A." City agrees to pay Company for Labor, Incidental Direct Costs and Sub-Contractor Costs as set forth in Exhibit "A" upon presentation of a monthly invoice. The invoice shall set out Labor fees for the month and those Incidental Direct Costs and Sub-Contractor Costs described in Exhibit "A" incurred during the previous month. The City Manager or Interim City Manager must approve all additional expenses and reimbursable expenses in advance. Within 30 days of receipt of the monthly invoice, City shall pay the full amount of such invoice; provided, however, that if City objects to any portion of an invoice, City shall notify Company of City's objection and the grounds therefor within 30 days of the date of receipt of the invoice, and the parties immediately shall make every effort to settle the disputed portion of the invoice. City in any

event shall pay every portion of the invoice that is not in dispute within the 30-day period for payment.

ARTICLE IV. TERM

The term of this Agreement shall be from August 14, 2013, until August 13, 2018, unless the project is completed sooner or the Agreement is terminated as provided below.

ARTICLE V. TERMINATION

Either party may terminate this Agreement at will, for no or any reason, upon giving the other party One Hundred Eighty (180) days written notice. The parties to this Agreement understand and agree that it is in either party's sole discretion to cancel the Agreement during the term of the Agreement without penalty to the other party. All work and services under this Agreement shall be suspended immediately upon termination of the Agreement becoming effective. The parties have bargained for the flexibility to terminate the Agreement upon giving the requisite notice.

ARTICLE VI. CONTRACT PERSONAL

This Agreement provides for personal or professional services, and the Company shall not assign this Agreement, in whole or in part, without the prior written consent of City. It is understood that any necessary engineering services shall be subcontracted by the Company.

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

All reports, information and other data ("instruments of service"), given to, prepared or assembled by Company under this Agreement, and any other related documents or items shall become the sole property of City and shall be delivered to City, without restriction, except that Company may make copies of any and all instruments of service for its files. The City shall not make any modification to the plans and specifications or make them available for use by third parties without the prior written authorization of Company, which consent shall not be unreasonably withheld.

ARTICLE VIII.

INDEPENDENT CONTRACTOR

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

ARTICLE IX. INSURANCE

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

Commercial General Liability (including Contractual liability):

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

<u>Business Automobile Liability:</u>	\$250,000.00 combined single limit - Personal Injury and Property Damage
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<u>Worker's Compensation:</u>	Statutory limits
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<u>Employers' Liability:</u>	\$500,000.00 per accident or occurrence
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The Commercial General Liability shall be on a per project aggregate, including completed operations, and shall be on an occurrence basis.

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

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

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

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

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

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

ARTICLE X. ATTORNEY FEES

BY EXECUTING THIS AGREEMENT, COMPANY AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST THE CITY, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE AGREEMENT. THE COMPANY SPECIFICALLY AGREES THAT IF THE COMPANY BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS

AGREEMENT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET. SEQ., AS AMENDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, THE COMPANY AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH COMPANY MIGHT OTHERWISE BE ENTITLED.

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

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

ARTICLE XI. SOVEREIGN IMMUNITY

By executing this Agreement the City is not waiving its sovereign immunity and retains all immunity from suit. The City is not granting consent to be sued by legislative resolution or action. **THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.**

ARTICLE XII. NO THIRD PARTY BENEFICIARIES

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

ARTICLE XIII. RELEASE

NOTWITHSTANDING ANY OTHER PROVISIONS, COMPANY HEREBY

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

**ARTICLE XIV.
GENERAL PROVISIONS**

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

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

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

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

If to Company:	CDM Smith Inc. Attn: J. Dan Shannon, PE 777 Taylor Street, Ste. 1050 Fort Worth, Texas 76102
----------------	---

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

ARTICLE XV. NOTICE OF ALLEGED BREACH: STATUTORY PREREQUISITES

As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, Company or his legal representative, shall give the City Manager, or any other reasonable official of the City, notice in writing (consisting of one original and seven copies of notice attached to a copy of this Agreement) of such damages, duly verified, within one-hundred-twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which the Company will settle, the physical and mailing addresses of Company at the time and date the claim was presented and the physical and mailing addresses of Company for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Company relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except the City from any

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

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

ARTICLE XVI. ASSIGNMENT

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

ARTICLE XVII. FEDERAL WAGE REQUIREMENTS

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

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

Company :
CDM SMITH INC.

By: _____

Title: _____

STATE OF _____ §

COUNTY OF _____ §
§

BEFORE ME, the undersigned authority, on this day personally appeared _____
_____ known to me to be the person whose name is subscribed to the foregoing
instrument and acknowledged to me that he executed the same for the purposes and
consideration therein expressed on behalf of CDM SMITH INC.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS _____ day of
_____, A.D., 2013

Notary Public, State of Texas

Printed Name

My Commission Expires: _____



100 Throckmorton Street, Suite 600
Fort Worth, Texas 76102
tel: +1 817 332-8727
fax: +1 817 820-0450
cdmsmith.com

July 30, 2013

Mr. Stuart Purvis, P.E.
Utilities Department
City of Midland
300 N. Loraine
Midland, TX 79701

Subject: City of Midland
Water Supply System Engineering
Scope of Work Proposal for Additional Engineering Services

Dear Mr. Purvis:

CDM Smith is currently contracted with the City of Midland to perform construction services and resident project representative services for the Midland Raw Water Project at the Water Purification Plant and the MBR Satellite Reuse Plant. Our services related to these two projects were originally planned and budgeted to be completed by the end of July 2013. The construction schedules for both projects have been extended due to additional work requested of the general contractors for these projects or due to construction constraints faced by the contractors. Because of the extensions of these two construction projects, CDM Smith requests additional funds to cover the costs for these efforts. In addition, the MBR Satellite Reuse Plant project has required a greater amount of materials testing during construction than originally budgeted. Lastly, the City has requested CDM Smith provide start-up and operations training for the new MBR Plant facilities when they come on line. This work is not part of our current contracted scope of work. A summary of the additional requested services and associated fees, are presented below:

Midland Raw Water Project

The Midland Raw Water Project includes services during construction at the Water Purification Plant (WPP), the Edgewood Booster Pump Station, and Lake Peggy Sue. Services during construction were originally planned to run through the end of July 2013. During the course of construction, some additional construction items were requested of the contractor, including structural repairs to the existing flocculation basins; repairs and replacement of existing Paul Davis pipeline and vault; and installation of a new 6-inch sanitary sewer. The Contractor's current schedule for completion is December 20, 2013, approximately 20 weeks beyond the originally budgeted schedule. This extended schedule will require additional on-site resident inspection services, performed by the McCluskey Group, and additional construction services effort by CDM Smith.



Mr. Stuart Purvis, P.E.

July 30, 2013

Page 2

CDM Smith work includes an average of four hours per week to cover project management responsibilities, including attending monthly construction meetings, and an average of four hours per week for the project engineer to continue coordination of construction submittals, and contractor and on-site inspector questions. The resident inspection services include an average 45 hours per week. An additional five hours per week has been included to cover additional inspection services for the MBR Satellite Reuse Plant project. These costs are summarized below:

CDM Smith work:

Labor:	160 hours (8 hr/wk)	\$ 28,000
Expenses:		<u>\$ 1,800</u>
	Subtotal	\$ 29,800

McCluskey Group work:

Labor and Expenses:		
(20 wks x 45 hr/wk x \$77/hour)		\$ 69,300
10% Markup:		<u>\$ 6,900</u>
	Subtotal	\$ 76,200

Total: \$ 106,000

MBR Satellite Reuse Project

Construction and startup of the MBR Satellite Reuse project have been extended by approximately 20 weeks beyond the original completion date due to construction related constraints faced by the general contractor. This extended schedule will require additional construction services effort by CDM Smith. In addition, the amount of geotechnical and materials testing required by Terra Testing has increased beyond their original budget. The City has also requested that CDM Smith provide assistance during startup of the facility and development of operational guidelines and standard operating procedures for the City staff. The estimated effort for additional support is summarized below:

Mr. Stuart Purvis, P.E.
July 30, 2013
Page 3

CDM Smith work:

General Services During Construction. Work to include site visits and construction meetings, project management, coordination with general contractor for the additional 20 weeks.

Labor:	260 hours (14 hr/wk)	\$ 48,000
Expenses:		<u>\$ 3,000</u>
	Subtotal	\$ 51,000

Assistance During Startup. Work to include checking aeration and seeding requirements for startup, start-up assistance for equipment and overall plant, and development of standard operating procedures and an Operation Guidance Manual for the MBR Plant.

Labor:	400 hours	\$ 62,000
Expenses:		<u>\$ 7,000</u>
	Subtotal	\$ 69,000

Terra Testing work:

Labor and Expenses:	\$ 20,000
10% Markup:	<u>\$ 2,000</u>
	Subtotal \$ 22,000

Total: \$ 142,000



Mr. Stuart Purvis, P.E.
July 30, 2013
Page 4

A summary of the proposed engineering services fees and SCADA applications engineering fees for the additional scope of work is presented below:

1. Midland WPP Raw Water Project	\$ 106,000
2. MBR Satellite Reuse Plant Project	<u>\$ 142,000</u>
Total Fee	\$ 248,000

Upon review of this proposal please let me know if you have any questions or comments. We appreciate your consideration of our proposal.

Sincerely,

A handwritten signature in blue ink, reading "J. Dan Shannon".

J. Dan Shannon, P.E.
Project Manager
CDM Smith Inc.
Texas PE Firm No. F-3043

File: CO-1.0



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 08/13/2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Ken VanDyne, Acting Planning Division Manager

SUBJECT: Consider an ordinance on second reading for a request by Kenneth Huseman for a zone change from FD, Future Development to LR-2, Local Retail District on a 6.08-acre tract of land (Tract 1), to LI, Light Industrial District on a 40.90-acre tract of land (Tract 2), to PD, Planned District for a Housing Development on a 37.72-acre tract of land (Tract 6) and to 1F-3, One-Family Dwelling District on a 55.83-acre tract of land (Tract 10), from PD, Planned District for a Shopping Center, to LR-2, Local Retail District on a 13.70-acre tract of land (Tract 3), to PD, Planned District of a Housing Development on a 16.61-acre tract of land (Tract 4), to BP, Business Park District on a 21.82-acre tract of land (Tract 7), from BP, Business Park District to PD, Planned District for a Housing Development on a 34.39-acre tract of land (Tract 5), to 1F-3, One-Family Dwelling District on a 2.77-acre tract of land (Tract 9), and from LR-2, Local Retail District to BP, Business Park District on a 0.74-acre tract of land (Tract 8) all out of Section 12, Block 40, T-2-S, T & P RR Co. Survey, City and County of Midland, Texas. (Generally located on the south side of W. Interstate Hwy 20, south of S. Loop 250 West).

Purpose:

Consider an ordinance on second reading for a request by Kenneth Huseman for a zone change from FD, Future Development to LR-2, Local Retail District on a 6.08-acre tract of land (Tract 1), to LI, Light Industrial District on a 40.90-acre tract of land (Tract 2), to PD, Planned District for a Housing Development on a 37.72-acre tract of land (Tract 6) and to 1F-3, One-Family Dwelling District on a 55.83-acre tract of land (Tract 10), from PD, Planned District for a Shopping Center, to LR-2, Local Retail District on a 13.70-acre tract of land (Tract 3), to PD, Planned District of a Housing Development on a 16.61-acre tract of land (Tract 4), to BP, Business Park District on a 21.82-acre tract of land (Tract 7), from BP, Business Park District to PD, Planned District for a Housing Development on a 34.39-acre tract of land (Tract 5), to 1F-3, One-Family Dwelling District on a 2.77-acre tract of land (Tract 9), and from LR-2, Local Retail District to BP, Business Park District on a 0.74-acre tract of land (Tract 8) all out of Section 12, Block 40, T-2-S, T & P RR Co. Survey, City and County of Midland, Texas.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to process this request.

Discussion:

This item was approved on first reading at the July 23rd Council meeting. The developer recently completed annexing additional land in November of 2012 totaling approximately 254 acres. The applicant is rezoning all of the proposed property to bring the area into alignment with a more comprehensive approach to develop the area.

All of the applicant's property is currently vacant, and is seeking to phase the development for this area through the platting process. The preliminary plat was approved for this area along with the zoning at the July 23rd Council meeting.

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 6.08-ACRE TRACT OF LAND (“TRACT 1”) WHICH IS PRESENTLY ZONED FD, FUTURE DEVELOPMENT DISTRICT, TO BE USED AS AN LR-2, LOCAL RETAIL DISTRICT; BY PERMITTING A 40.90-ACRE TRACT OF LAND (“TRACT 2”) WHICH IS PRESENTLY ZONED FD, FUTURE DEVELOPMENT DISTRICT, TO BE USED AS AN LI, LIGHT INDUSTRIAL DISTRICT; BY PERMITTING A 13.70-ACRE TRACT OF LAND (“TRACT 3”) WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A SHOPPING CENTER, TO BE USED AS AN LR-2, LOCAL RETAIL DISTRICT; BY PERMITTING A 16.61-ACRE TRACT OF LAND (“TRACT 4”) WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A SHOPPING CENTER, TO BE USED AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT; BY PERMITTING A 34.39-ACRE TRACT OF LAND (“TRACT 5”) WHICH IS PRESENTLY ZONED BP, BUSINESS PARK DISTRICT, TO BE USED AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT; BY PERMITTING A 37.72-ACRE TRACT OF LAND (“TRACT 6”) WHICH IS PRESENTLY ZONED FD, FUTURE DEVELOPMENT DISTRICT, TO BE USED AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT; BY PERMITTING A 21.82-ACRE TRACT OF LAND (“TRACT 7”) WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A SHOPPING CENTER, TO BE USED AS A BP, BUSINESS PARK DISTRICT; BY PERMITTING A 0.74-ACRE TRACT OF LAND (“TRACT 8”) WHICH IS PRESENTLY ZONED LR-2, LOCAL RETAIL DISTRICT, TO BE USED AS A BP, BUSINESS PARK DISTRICT; BY PERMITTING A 2.77-ACRE TRACT OF LAND (“TRACT 9”) WHICH IS PRESENTLY ZONED BP, BUSINESS PARK DISTRICT, TO BE USED AS A 1F-3, ONE-FAMILY DWELLING DISTRICT; BY PERMITTING A 55.83-ACRE TRACT OF LAND (“TRACT 10”) WHICH IS PRESENTLY ZONED FD, FUTURE DEVELOPMENT DISTRICT, TO BE USED AS A 1F-3, ONE-FAMILY DWELLING DISTRICT; ALL OF SAID TRACTS BEING OUT OF SECTION 12, BLOCK 40, T-2-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS; ALL OF SAID TRACTS BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS MADE A PART HEREOF; SAID TRACTS ARE GENERALLY LOCATED ON THE SOUTH SIDE OF WEST INTERSTATE HIGHWAY 20, SOUTH OF LOOP 250; 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 an LI, Light Industrial District, two LR-2, Local Retail Districts, two 1F-3, One-Family Dwelling Districts, two BP, Business Park Districts, and three PD, Planned Districts for Housing Developments, as set out hereinafter;

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

SECTION ONE. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned FD, Future Development District, and it shall be used as an LR-2, Local Retail District, subject to the special conditions and restrictions hereinafter set out, said property being described as follows:

A 6.08-acre tract of land ("Tract 1"), being out of Section 12, Block 40, T-2-S, T&P RR Co. Survey, City and County of Midland, Texas, said tract being more specifically described by metes and bounds in Exhibit "A", which is attached hereto and incorporated herein.

SECTION TWO. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned FD, Future

Development District, and it shall be used as an LI, Light Industrial District, subject to the special conditions and restrictions hereinafter set out, said property being described as follows:

A 40.90-acre tract of land ("Tract 2"), being out of Section 12, Block 40, T-2-S, T&P RR Co. Survey, City and County of Midland, Texas, said tract being more specifically described by metes and bounds in Exhibit "B", which is attached hereto and incorporated herein.

SECTION THREE. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned PD, Planned District for a Shopping Center, and it shall be used as an LR-2, Local Retail District, subject to the special conditions and restrictions hereinafter set out, said property being described as follows:

A 13.70-acre tract of land ("Tract 3"), being out of Section 12, Block 40, T-2-S, T&P RR Co. Survey, City and County of Midland, Texas, said tract being more specifically described by metes and bounds in Exhibit "C", which is attached hereto and incorporated herein.

SECTION FOUR. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned PD, Planned District for a Shopping Center, and it shall be used as a PD, Planned District for a Housing Development, subject to the special conditions and restrictions hereinafter set out, said property being described as follows:

A 16.61-acre tract of land ("Tract 4"), being out of Section 12, Block 40, T-2-S, T&P RR Co. Survey, City and County of Midland, Texas, said tract being more specifically described by metes and bounds in Exhibit "D", which is attached hereto and incorporated herein.

Special Conditions and Restrictions:

1. That this planned district shall conform to the regulations of the MF-1, Multiple-Family Dwelling District.
2. That this planned district shall be subject to future site plan review in the same manner as a zone change.

SECTION FIVE. 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 BP, Business Park 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:

A 34.39-acre tract of land (“Tract 5”), being out of Section 12, Block 40, T-2-S, T&P RR Co. Survey, City and County of Midland, Texas, said tract being more specifically described by metes and bounds in Exhibit “E”, which is attached hereto and incorporated herein.

Special Conditions and Restrictions:

1. That this planned district shall conform to the regulations of the MF-1, Multiple-Family Dwelling District.
2. That this planned district shall be subject to future site plan review in the same manner as a zone change.

SECTION SIX. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned FD, Future Development District, and it shall be used as a PD, Planned District for a Housing Development, subject to the special conditions and restrictions hereinafter set out, said property being described as follows:

A 37.72-acre tract of land (“Tract 6”), being out of Section 12, Block 40, T-2-S, T&P RR Co. Survey, City and County of Midland, Texas, said tract being more specifically described by metes and bounds in Exhibit “F”, which is attached hereto and incorporated herein.

Special Conditions and Restrictions:

1. That this planned district shall conform to the regulations of the MF-1, Multiple-Family Dwelling District.
2. That this planned district shall be subject to future site plan review in the same manner as a zone change.

SECTION SEVEN. That Chapter 1, Title XI, of the City Code of Midland, Texas,

and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned PD, Planned District for a Shopping Center, and it shall be used as a BP, Business Park District, subject to the special conditions and restrictions hereinafter set out, said property being described as follows:

A 21.82-acre tract of land ("Tract 7"), being out of Section 12, Block 40, T-2-S, T&P RR Co. Survey, City and County of Midland, Texas, said tract being more specifically described by metes and bounds in Exhibit "G", which is attached hereto and incorporated herein.

SECTION EIGHT. 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 BP, Business Park District, subject to the special conditions and restrictions hereinafter set out, said property being described as follows:

A 0.74-acre tract of land ("Tract 8"), being out of Section 12, Block 40, T-2-S, T&P RR Co. Survey, City and County of Midland, Texas, said tract being more specifically described by metes and bounds in Exhibit "H", which is attached hereto and incorporated herein.

SECTION NINE. 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 BP, Business Park District, and it shall be used as a 1F-3, One-Family Dwelling District, subject to the special conditions and restrictions hereinafter set out, said property being described as follows:

A 2.77-acre tract of land ("Tract 9"), being out of Section 12, Block 40, T-2-S, T&P RR Co. Survey, City and County of Midland, Texas, said tract being more specifically described by metes and bounds in Exhibit "I", which is attached hereto and incorporated herein.

SECTION TEN. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned FD, Future Development District, and it shall be used as a 1F-3, One-Family Dwelling District, subject

to the special conditions and restrictions hereinafter set out, said property being described as follows:

A 55.83-acre tract of land ("Tract 10"), being out of Section 12, Block 40, T-2-S, T&P RR Co. Survey, City and County of Midland, Texas, said tract being more specifically described by metes and bounds in Exhibit "J", which is attached hereto and incorporated herein.

SECTION ELEVEN. That City of Midland Ordinance No. 8391 is hereby repealed.

SECTION TWELVE. 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 THIRTEEN. 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 FOURTEEN. 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 FIFTEEN. 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 SIXTEEN. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time

prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2013; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2013, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2013.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



ENVIRONMENTAL • CIVIL ENGINEERING • LAND SURVEYING

FIRM # 001363

**521 NORTH TEXAS • ODESSA, TEXAS 79761
(432) 332-5058 or 580-8812 • FAX (432) 332-8812**

Legal Description
For a 6.08 Acre Tract of Land Located in
Section 12, Block 40, T-2-S, T&P RR Company Survey,
Midland County, Texas

PROPOSED FD to LR 2 ZONING FOR A 6.08 ACRE TRACT

Boundary Being More Fully Described By Metes and Bounds As Follows:

BEGINNING at (y=10,676,656.64' and X= 1,736,703.06') the most southeast corner of this tract, whence the southeast corner of said Section 12 bears South 14°17'45" East, a distance of 2,314.60, AND North 75°08'41" East a distance of 300.01 feet;

THENCE South 59°22'48" West a distance of 1,136.37 feet the southwest corner of this tract;

THENCE North 30°16'41" West a distance of 231.28 feet to the northernmost southwest corner of this tract;

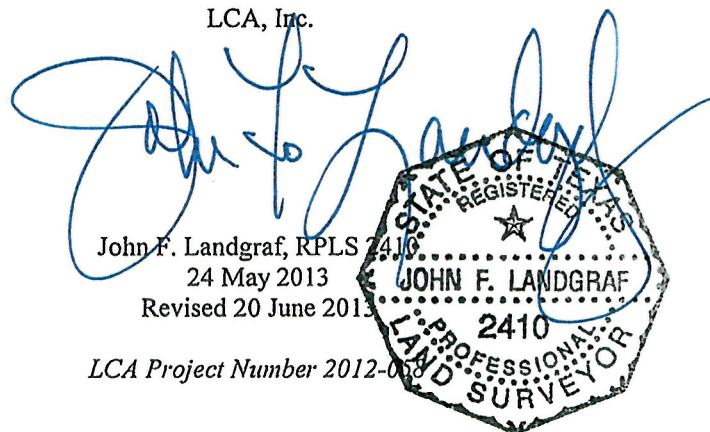
THENCE North 59°49'06" East, a distance of 1,200.07 feet to the northeast corner of this tract;

THENCE South 14°17'45" East a distance of 231.42 feet to the Point of Beginning, containing 6.08 surface acres of land.

Bearings and distances are relative to the Texas Coordinate System, 1983 NAD, Central Zone, with a combined grid factor of 0.999884655. Acreage stated is average surface.

This document was prepared under 22 TAC 663.21, and is not to be used to convey or establish interest in real property except those rights and interest implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.

LCA, Inc.



LCA Project Number 2012-008



ENVIRONMENTAL • CIVIL ENGINEERING • LAND SURVEYING

FIRM # 001363

**521 NORTH TEXAS • ODESSA, TEXAS 79761
(432) 332-5058 or 580-8812 • FAX (432) 332-8812**

Legal Description
For a 13.70 Acre Tract of Land Located in
Section 12, Block 40, T-2-S, T&P RR Company Survey,
Midland County, Texas

PROPOSED PDSC to LR 2 ZONING FOR A 13.70 ACRE TRACT

Boundary Being More Fully Described By Metes and Bounds As Follows:

BEGINNING at (Y= 10,676,077.84' and X= 1,735,725.15') the southeast corner of this tract, whence the southeast corner of said Section 12 bears South 14°51'18" East, a distance of 2005.83 feet and North 75°08'42" East, a distance of 1371.03 feet;

THENCE South 59°22'48" West a distance of 857.89 feet to the southwest corner of this tract;

THENCE North 30°16'41" West a distance of 796.63 feet to the northwest corner of this tract;

THENCE North 82°06'06" East a distance of 310.27 feet to a TxDOT concrete monument for a point of deflection in the north line of this tract;

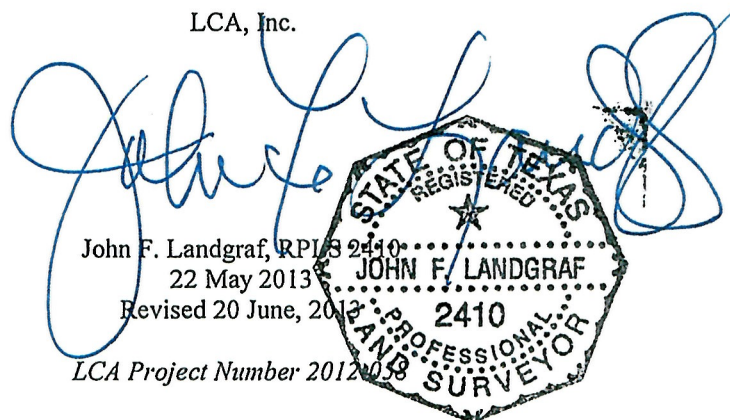
THENCE North 59°43'32" East with the south right of way line of Interstate Highway 20, a distance of 570.97 feet to the northeast corner of this tract;

THENCE South 30°16'41" East a distance of 673.34 feet to the Point of Beginning, containing 13.70 acres of land.

Bearings and distances are relative to the Texas Coordinate System, 1983 NAD, Central Zone, with a combined grid factor of 0.999884655. Acreage stated is average surface.

This document was prepared under 22 TAC 663.21, and is not to be used to convey or establish interest in real property except those rights and interest implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.

LCA, Inc.



LCA Project Number 2012058



ENVIRONMENTAL • CIVIL ENGINEERING • LAND SURVEYING

FIRM # 001363

**521 NORTH TEXAS • ODESSA, TEXAS 79761
(432) 332-5058 or 580-8812 • FAX (432) 332-8812**

Legal Description
For a 55.83 Acre Tract of Land Located in
Section 12, Block 40, T-2-S, T&P RR Company Survey,
Midland County, Texas

PROPOSED FD to 1F-3 ZONING FOR A 55.83 ACRE TRACT

Boundary Being More Fully Described By Metes and Bounds As Follows:

BEGINNING at (Y=10,673,135.54' and X=1,732,456.00') the northeast corner of Section 13, whence the southwest corner of said Section 12 bears South 75°08'42" West a distance of 194.13;

THENCE North 14°25'48" West a distance of 7.20 feet to the Point of Curvature of a curve to the left;

THENCE along a curve to the left in a northwesterly direction, said curve having a radius length of 970.00 feet, an arc length of 428.03 feet, a delta angle of 25°16'27" and a chord length of 424.56 feet bearing North 27°04'16" West to a point of reverse curvature;

THENCE along a curve to the right in a northwesterly direction, said curve having a radius length of 1,030 feet, an arc length of 457.78 feet, a delta angle of 25°27'33" and a chord length of 454.02 feet bearing North 26°58'49" West to the Point of Tangency;

THENCE North 14°14'52" West a distance of 32.98 feet to the northwest corner of this tract;

THENCE North 59°43'34" East a distance of 1,945.47 feet to the most northerly northeast corner of this tract;

THENCE South 30°16'41" East a distance of 1,049.42 feet to an ell corner of this tract;

THENCE North 59°43'34" East a distance of 119.68 feet to an ell corner of this tract;

THENCE South 30°16'41" East a distance of 452.79 feet to the southeast corner of this tract;

THENCE South 75°08'42" West with the south line of said Section 12, a distance of 2,205.59 feet to the Point of Beginning, containing 55.83 surface acres of land.

Bearings and distances are relative to the Texas Coordinate System, 1983 NAD, Central Zone, with a combined grid factor of 0.999884655. Acreage stated is average surface.

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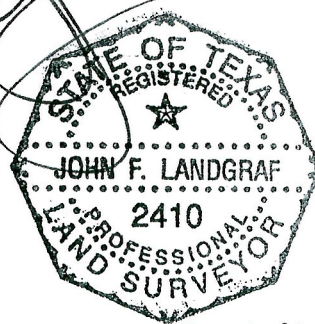
LCA, Inc.

John F. Landgraf, R.P.L.S. 2410

22 May 2013

Revised 20 June 2013

LCA Project Number 2012-058



CASE NO. Z-12-049



ENVIRONMENTAL • CIVIL ENGINEERING • LAND SURVEYING

FIRM # 001363

**521 NORTH TEXAS • ODESSA, TEXAS 79761
(432) 332-5058 or 580-8812 • FAX (432) 332-8812**

Legal Description

For a 40.90 Acre Tract of Land Located in
Section 12, Block 40, T-2-S, T&P RR Company Survey,
Midland County, Texas

PROPOSED FD to LI ZONING FOR A 40.90 ACRE TRACT

Boundary Being More Fully Described By Metes and Bounds As Follows:

BEGINNING at (Y=10,674,413.71' and X=1,737,274.60') the southeast corner of this tract, whence the southeast corner of Section 12 bears North 75°08'41" East, a distance of 300.01 feet;

THENCE South 75°08'42" West with the south line of said Section 12, a distance of 517.70 to the southwest corner of this tract;

THENCE North 30°16'41" West a distance of 2,080.76 feet to the northwest corner of this tract;

THENCE North 59°22'48" East a distance of 1,136.37 feet to the northeast corner of this tract;

THENCE South 14°17'45" East a distance of 2,314.68 feet to the Point of Beginning, containing 40.90 surface acres of land.

Bearings and distances are relative to the Texas Coordinate System, 1983 NAD, Central Zone, with a combined grid factor of 0.999884655. Acreage stated is average surface.

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LCA, Inc.

John F. Landgraf

John F. Landgraf, RPLS 2410

22 May 2013

Revised 20 June 2013

LCA Project Number 2012-058



CASE NO. 2-12-049



ENVIRONMENTAL • CIVIL ENGINEERING • LAND SURVEYING

FIRM # 001363

**521 NORTH TEXAS • ODESSA, TEXAS 79761
(432) 332-5058 or 580-8812 • FAX (432) 332-8812**

Legal Description

For a 37.72 Acre Tract of Land Located in
Section 12, Block 40, T-2-S, T&P RR Company Survey,
Midland County, Texas

PROPOSED FD to PDHD ZONING FOR A 37.72 ACRE TRACT

Boundary Being More Fully Described By Metes and Bounds As Follows:

BEGINNING at (Y= 10,674,280.92' and X=1,736,774.26') the southeast corner of this tract, whence the southeast corner of said Section 12 bears North 75°08'42" East, a distance of 817.67 feet;

THENCE South 75°08'42" West a distance of 2,261.97 feet to the most southwest corner of this tract;

THENCE North 30°17'16" West a distance of 452.75 feet to the northwest corner of this tract;

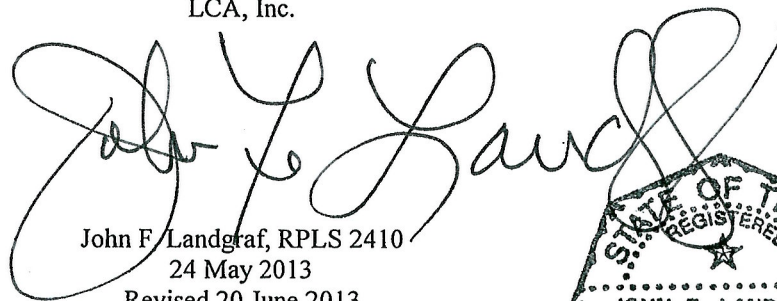
THENCE North 59°43'19" East a distance of 2,180.61 feet to the northeast corner of this tract;

THENCE South 30°16'41" East a distance 1,054.34 feet to the Point of Beginning, containing 37.72 surface acres of land.

Bearings and distances are relative to the Texas Coordinate System, 1983 NAD, Central Zone, with a combined grid factor of 0.999884655. Acreage stated is average surface.

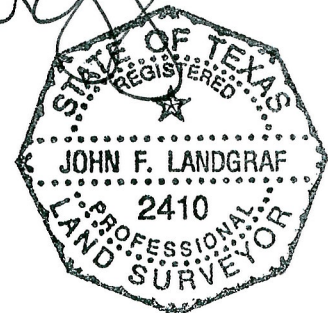
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LCA, Inc.



John F. Landgraf, RPLS 2410
24 May 2013

Revised 20 June 2013
LCA Project Number 2012-058



CASE NO. Z-12-049



ENVIRONMENTAL • CIVIL ENGINEERING • LAND SURVEYING

FIRM # 001363

**521 NORTH TEXAS • ODESSA, TEXAS 79761
(432) 332-5058 or 580-8812 • FAX (432) 332-8812**

Legal Description

For a 34.39 Acre Tract of Land Located in
Section 12, Block 40, T-2-S, T&P RR Company Survey,
Midland County, Texas

PROPOSED FD to PDHD ZONING FOR 34.39 ACRES TRACT

Boundary Being More Fully Described By Metes and Bounds As Follows:

BEGINNING at (Y=10,675,191.44' and X=1,736,242.66') the southeast corner of this tract, whence the southeast corner of said Section 12 bears South 14°51'18" East, a distance of 1,016.32 feet and North 75°08'42" East, a distance of 1,098.13 feet;

THENCE South 59°43'34" West a distance of 2,180.61 feet to the southwest corner of this tract;

THENCE North 30°17'16" West a distance of 1,009.41 feet to the northwest corner of this tract;

THENCE North 59°43'34" East a distance of 447.05 feet to a point of deflection of this tract;

THENCE North 55°33'00" East a distance of 100.20 feet to a point of deflection of this tract;

THENCE North 59°22'48" East a distance of 42.56 feet to the northeast corner of this tract;

THENCE South 30°16'27" East a distance of 449.92 feet to an interior ell corner of this tract;

THENCE North 59°43'34" East a distance of 1,591.25 feet to the northeast corner of this tract;

THENCE South 30°16'41" East a distance of 567.00 feet to the Point of Beginning, containing 34.39 surface acres of land.

Bearings and distances are relative to the Texas Coordinate System, 1983 NAD, Central Zone, with a combined grid factor of 0.999884655. Acreage stated is average surface.

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LCA, Inc.
John F. Landgraf
John F. Landgraf, RPLS 2410
24 May 2013
Revised 6 June 2013
LCA Project Number 2012-058



CASE NO. Z-12-049



ENVIRONMENTAL • CIVIL ENGINEERING • LAND SURVEYING

FIRM # 001363

**521 NORTH TEXAS • ODESSA, TEXAS 79761
(432) 332-5058 or 580-8812 • FAX (432) 332-8812**

Legal Description
For a 21.82 Acre Tract of Land Located in
Section 12, Block 40, T-2-S, T&P RR Company Survey,
Midland County, Texas

PROPOSED PDSC to BP ZONING FOR A 21.82 ACRE TRACT

Boundary Being More Fully Described By Metes and Bounds As Follows:

BEGINNING at (Y=10,675,640.99' and X=1,734,986.88') southeast corner of this tract, whence the southeast corner of said Section 12 bears South 14°51'18" East, a distance of 1,772.76 feet and North 75°08'41" East, a distance of 2,196.66 feet;

THENCE South 59°22'48" West a distance of 733.37 feet to the southwest corner of this tract;

THENCE North 30°16'41" West a distance of 573.08 feet to an ell corner of this tract;

THENCE South 59°43'19" West a distance of 589.69 feet;

THENCE North 30°17'16" West a distance of 459.78 feet;

THENCE North 59°43'34" East with the south right-of-way of said Interstate Highway 20, a distance of 429.61 feet to a point of deflection of this tract;

THENCE North 67°40'24" East with the south right-of-way of said Interstate Highway 20, a distance of 505.00 feet to a point of deflection of this tract;

THENCE North 82°06'06" East with the south right-of-way of said Interstate Highway 20, a distance of 425.37 feet to a point of deflection of this tract;

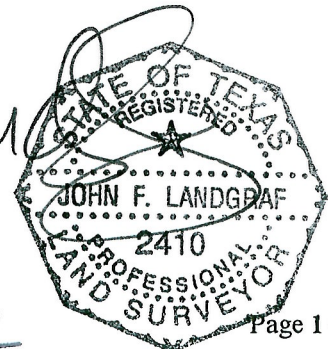
THENCE South 30°16'41" East a distance of 796.63 feet to the Point of Beginning, containing 21.82 surface acres of land.

Bearings and distances are relative to the Texas Coordinate System, 1983 NAD, Central Zone, with a combined grid factor of 0.999884655. Acreage stated is average surface.

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LCA, Inc.
John F. Landgraf
John F. Landgraf, RPLS 2410
24 May 2013
Revised 7 June, 2013
LCA Project Number 2012-058



CASE NO. 2-12-049



ENVIRONMENTAL • CIVIL ENGINEERING • LAND SURVEYING

FIRM # 001363

**521 NORTH TEXAS • ODESSA, TEXAS 79761
(432) 332-5058 or 580-8812 • FAX (432) 332-8812**

Legal Description

**For a 16.61 Acre Tract of Land Located in
Section 12, Block 40, T-2-S, T&P RR Company Survey,
Midland County, Texas**

PROPOSED PDSC to PDHD ZONING FOR A 16.61 ACRE TRACT

Boundary Being More Fully Described By Metes and Bounds As Follows:

BEGINNING at (Y=10,675,681.09' and X=1,735,956.78') the southeast corner of this tract, whence the southeast corner of said Section 12 bears South 14°51'18" East, a distance of 1,562.89 feet and North 75°08'42" East, a distance of 1,248.82 feet;

THENCE South 59°43'34" West a distance of 1,591.25 feet to the southwest corner of this tract;

THENCE North 30°16'41" West a distance of 449.92 feet to the northwest corner of this tract;

THENCE North 59°22'48" East a distance of 1,591.25 feet to the northeast corner of this tract;

THENCE South 30°16'41" East a distance of 459.42 feet to the Point of Beginning containing 16.61 surface acres of land.

Bearings and distances are relative to the Texas Coordinate System, 1983 NAD, Central Zone, with a combined grid factor of 0.999884655. Acreage stated is average surface.

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LCA, Inc.



CASE NO. 2-12-049

John F. Landgraf, RPLS 2410
24 May 2013

Revised 20 June 2013
LCA Project Number 2012-058





ENVIRONMENTAL • CIVIL ENGINEERING • LAND SURVEYING

FIRM # 001363

**521 NORTH TEXAS • ODESSA, TEXAS 79761
(432) 332-5058 or 580-8812 • FAX (432) 332-8812**

Legal Description
For a 6.20 Acre Tract of Land Located in
Section 12, Block 40, T-2-S, T&P RR Company Survey,
Midland County, Texas

PROPOSED FD to LR 2 ZONING FOR A 6.20 ACRE TRACT

Boundary Being More Fully Described By Metes and Bounds As Follows:

BEGINNING at (y=10,676,656.64' and X= 1,736,703.06') the most southeast corner of this tract, whence the southeast corner of said Section 12 bears South 14°17'45" East, a distance of 2,314.60, AND North 75°08'41" East a distance of 300.01 feet;

THENCE South 59°22'48" West a distance of 1,136.37 feet the southwest corner of this tract;

THENCE North 30°16'41" West a distance of 231.28 feet to the northernmost southwest corner of this tract;

THENCE North 59°49'06" East, a distance of 1,200.07 feet to the northeast corner of this tract;

THENCE South 14°17'45" East a distance of 231.42 feet to the Point of Beginning, containing 6.20 surface acres of land.

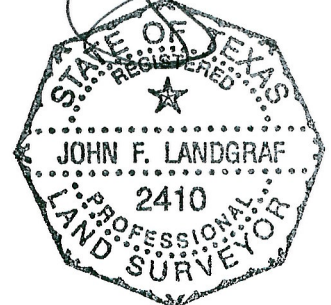
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LCA, Inc.

John F. Landgraf, RPLS 2410
24 May 2013
Revised 20 June 2013

LCA Project Number 2012-058



CASE NO. 2-12-049



ENVIRONMENTAL • CIVIL ENGINEERING • LAND SURVEYING

FIRM # 001363

521 NORTH TEXAS • ODESSA, TEXAS 79761

(432) 332-5058 or 580-8812 • FAX (432) 332-8812

Legal Description
For a 2.77 Acre Tract of Land Located in
Section 12, Block 40, T-2-S, T&P RR Company Survey,
Midland County, Texas

PROPOSED BP TO 1F-3 ZONING FOR A 2.77 ACRE TRACT

Boundary Being More Fully Described By Metes and Bounds As Follows:

BEGINNING at (Y= 10,674,091.98' and X=1,734,359.51') the southeast corner of this tract, whence the southeast corner of said Section 12 bears South 14°51'22" East, a distance of 436.46 feet and North 75°08'42" East, a distance of 3,200.16 feet;

THENCE South 59°43'19" West a distance of 119.68 feet to the southwest corner of this tract;

THENCE North 30°16'41" West a distance of 1,009.42 feet to the northwest corner of this tract;

THENCE North 59°43'19" East a distance of 119.68 feet to the northeast corner of this tract;

THENCE South 30°17'16" East a distance of 1,009.42 feet to the Point of Beginning, containing 2.77 surface acres of land.

Bearings and distances are relative to the Texas Coordinate System, 1983 NAD, Central Zone, with a combined grid factor of 0.999884655. Acreage stated is average surface.

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LCA, Inc.

John F. Landgraf, RPLS 2410
24 May 2013
Revised 20 June, 2013

LCA Project Number 2012-058



CASE NO. 2-12-049



ENVIRONMENTAL • CIVIL ENGINEERING • LAND SURVEYING

FIRM # 001363

**521 NORTH TEXAS • ODESSA, TEXAS 79761
(432) 332-5058 or 580-8812 • FAX (432) 332-8812**

Legal Description
For a 0.74 Acre Tract of Land Located in
Section 12, Block 40, T-2-S, T&P RR Company Survey,
Midland County, Texas

PROPOSED LR2 to BP ZONING FOR A 0.74 ACRE TRACT

Boundary Being More Fully Described By Metes and Bounds As Follows:

BEGINNING at (Y=10,675,474.95' and X=1,734,235.75') the most southerly southeast corner of this tract, whence the southeast corner of said Section 12 bears South 14°51'22" East, a distance of 1,803.01 feet and North 75°08'42" East, a distance of 2,965.74 feet;

THENCE South 59°43'34" West a distance of 96.00 feet to the southwest corner of this tract;

THENCE North 30°16'41" West a distance of 335.00 feet to the northwest corner of this tract;

THENCE North 59°43'34" East a distance of 96.00 feet to the westernmost northeast corner of this tract;

THENCE South 30°17'16" East a distance of 335.00 feet to the Point of Beginning, containing 0.74 surface acres of land.

Bearings and distances are relative to the Texas Coordinate System, 1983 NAD, Central Zone, with a combined grid factor of 0.999884655. Acreage stated is average surface.

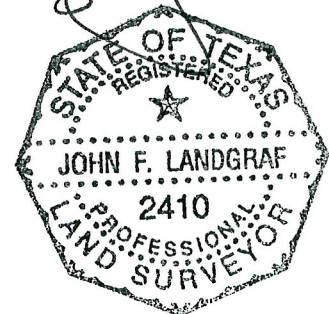
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LCA, Inc.



John F. Landgraf
John F. Landgraf, LRPLS 2410
24 May 2013
Revised 20 June 2013

LCA Project Number 2012-058



CASE NO. 2-12-049

PLANNING AND ZONING COMMISSION

July 1, 2013

CASE: Z-12-049

REQUEST: Hold a public hearing and consider a request for a zone change from FD, Future Development District, PD, Planned District for a Shopping Center, BP, Business Park District and LR-2, Local Retail District to LR-2, Local Retail District, LI, Light Industrial District, PD, Planned District for a Housing Development, 1F-3, One-Family Dwelling District and BP, Business Park District.

APPLICANT/OWNER: Kenneth Huseman

LEGAL DESCRIPTION: A 6.08-acre tract of land (Tract 1), a 40.90 acre tract of land (Tract 2), a 37.72-acre tract of land (Tract 6) a 55.83-acre tract of land (Tract 10), a 13.70-acre tract of land (Tract 3), a 16.61-acre tract of land (Tract 4), a 21.82-acre tract of land (Tract 7), a 34.39-acre tract of land (Tract 5), a 2.77-acre tract of land (Tract 9), a 0.74-acre tract of land (Tract 8) all out of Section 12, Block 40, T-2-S, T & P RR Co. Survey City and County of Midland, Texas.

LOCATION: Generally located on the south side of W. Interstate Hwy 20, south of S. Loop 250 West.

CURRENT ZONING: FD, Future Development District, PD, Planned District for a Shopping Center, BP, Business Park District, and LR-2, Local Retail District.

RELATED CASES: P-12-073

DETAILS OF REQUEST:

1. The above described property was annexed into the city in three successive stages. The first being a 165-acre tract that was annexed on the February 25th, 1966 Council meeting, followed by a 132-acre tract at the November 4th, 2005 Council meeting, and then most recently a 193.29-acre tract that was annexed in at the November 27th, 2012 Council meeting.

Initial zoning was established on the 165-acre piece, and has since been zoned as LR-2, Local Retail District, and PD, Planned District for a Shopping Center also with an underlying zoning of LR-2, Local Retail District. The 132 acre tract was established with a BP, Business Park District, and a small LR-2 Local Retail District, and lastly the most recently annexed land of 193.29 acres was established with FD, Future Development District.

All of the applicant's property is currently vacant, and is bringing forward this request with a related preliminary plat that is more of a comprehensive approach to developing the property. The applicant is requesting to establish new zoned districts for the property that is currently zoned FD, Future Development District, as well as rezone other districts to bring them in alignment with the proposed development plan.

SURROUNDING ZONING AND LAND USE:

2. This property is now the southern-most boundary of the city limits for the City of Midland. The property immediately surrounding the southern, western, and eastern borders are part of the City's Extra Territorial Jurisdiction. The nearest zoned property is on the north side of W. Interstate Highway 20 which includes a large BP, Business Park District, a LI, Light Industrial District, and another BP, Business Park District which extends eastward along W. Interstate Highway 20.

ANALYSIS:

3. The applicant provided zoning along the W. Interstate Highway 20 corridor that is in line with the City of Midland's comprehensive plan with Local Retail and Business Park Districts. These districts are recommended to be located at arterial or higher class thoroughfares. Furthermore, the applicant is providing approximately 75-acres of PD, Planned District for a Housing Development. These districts will have underlying zoning of MF-1, Multi-Family Dwelling Districts and will be subject to future site plan review. The discrepancy from the acreage in the legal description and the amount denoted in this report is due to the large amounts of R.O.W. to be dedicated to the city with the subsequent approval of the preliminary plat. The applicant is also providing 40.90-acres of LI, Light Industrial District on the eastern most property boundary. Lastly, the applicant is providing for approximately 58.6 acres of 1F-3, Single Family Dwelling District zoning. The applicant is proposing to develop these zoned districts in a phased manner and will not be final platting all of the property simultaneously.

Additionally, the applicant submitted a traffic study with the zoning and preliminary plat applications for the above described property. The study indicated that the all major intersections would sustain F level service with its current development plan. Staff is recommending that traffic concerns be addressed with each successive phased development is brought in for final platting.

STAFF RECOMMENDATION:

Staff recommends approval of this request for a zone change from FD, Future Development District, PD, Planned District for a Shopping Center, BP, Business Park District and LR-2, Local Retail District to LR-2, Local Retail District, LI, Light Industrial District, PD, Planned District for a Housing Development, 1F-3, One-Family Dwelling District and BP, Business Park District subject to the below conditions.

- A. That all above described PD, Planned District for Housing Developments are subject to future site plan review in the same manner as a zone change.



Ken VanDyne
Acting Planning Division Manager
Department of Development Services

Martin Siwek, City Planner
Department of Development Services

Attachments:

Application
Maps

Case Number: 2:12-044

CITY OF MIDLAND
Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

<u>LCA</u> Applicant Name	<u>432-332-5058</u> (Phone/e-mail)
<u>521 N. Texas</u> Address	<u>Odessa, Texas 79761</u> Zip Code
<u>Kenneth V. Huseman</u>	<u>432-699-4789</u>
<u>Property Owner Name</u> <u>3900 Baybrook Court</u>	<u>(Phone/e-mail)</u> <u>Midland, TX 79707</u>
<u>Address</u>	<u>Zip Code</u>
<u>LCA</u> Representative Name	<u>432-332-5058</u> (Phone/e-mail)
<u>521 N. Texas</u> Address	<u>Odessa, Texas 79761</u> Zip Code

Street address and Legal Description of property (complete Lot, Block, and Subdivision Name description below, or, if not in a recorded plat, attach a Metes and Bounds Description. Describe by tracts if more than one zoning district is requested):

The property is 260.74 acres located in Section 12, Block 40, T-2S, T&P RR Co. Survey, Midland, Midland County Texas.

Reason for requesting a zone change: Better use of the property

PRESENT ZONE: SEE ATTACHED REQUESTED ZONE: SEE ATTACHED SUMMARY
(List by tracts if more than one zoning district is requested)

Present Use of Property: Vacant

Proposed Use of Property: Mixed Uses

How will zone change affect the public health, safety and welfare? This Zone Change will not affect the public health, safety and welfare.

Describe how conditions affecting the property have changed since it was designated its present zone: The growth of the area has dictated more housing and retail space

Will a Specific Use Permit with Term for alcoholic beverages sales be needed: ___ Yes X No

APPLICATION FEES:

- Single, standard zone change: **\$400**. Multiple, standard zone change: add **\$100** per district.
- Single PD, Planned District zone change: **\$550**. Multiple PD proposal: add **\$100** per district.
80% of fee will be refunded if no P&Z public hearing is called; if no City Council public hearing is called, then 30% of fee will be refunded.
- If a Traffic Impact Analysis is required, a fee of up to \$500.00 will be assessed.

SITE PLAN SUBMITTALS (if applicable):

16 copies of the PD site plan: _____
Site plan on CD in .pdf and .jpg format: _____

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 George E. Thornley who, being by me duly sworn, upon oath says: That (S)he is authorized by Kenneth V. Huseman, LLC, the owner of the above described property, to fully represent him/her in this application and that (S)he has the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

George E. Thornley
Authorized Agent (signature)

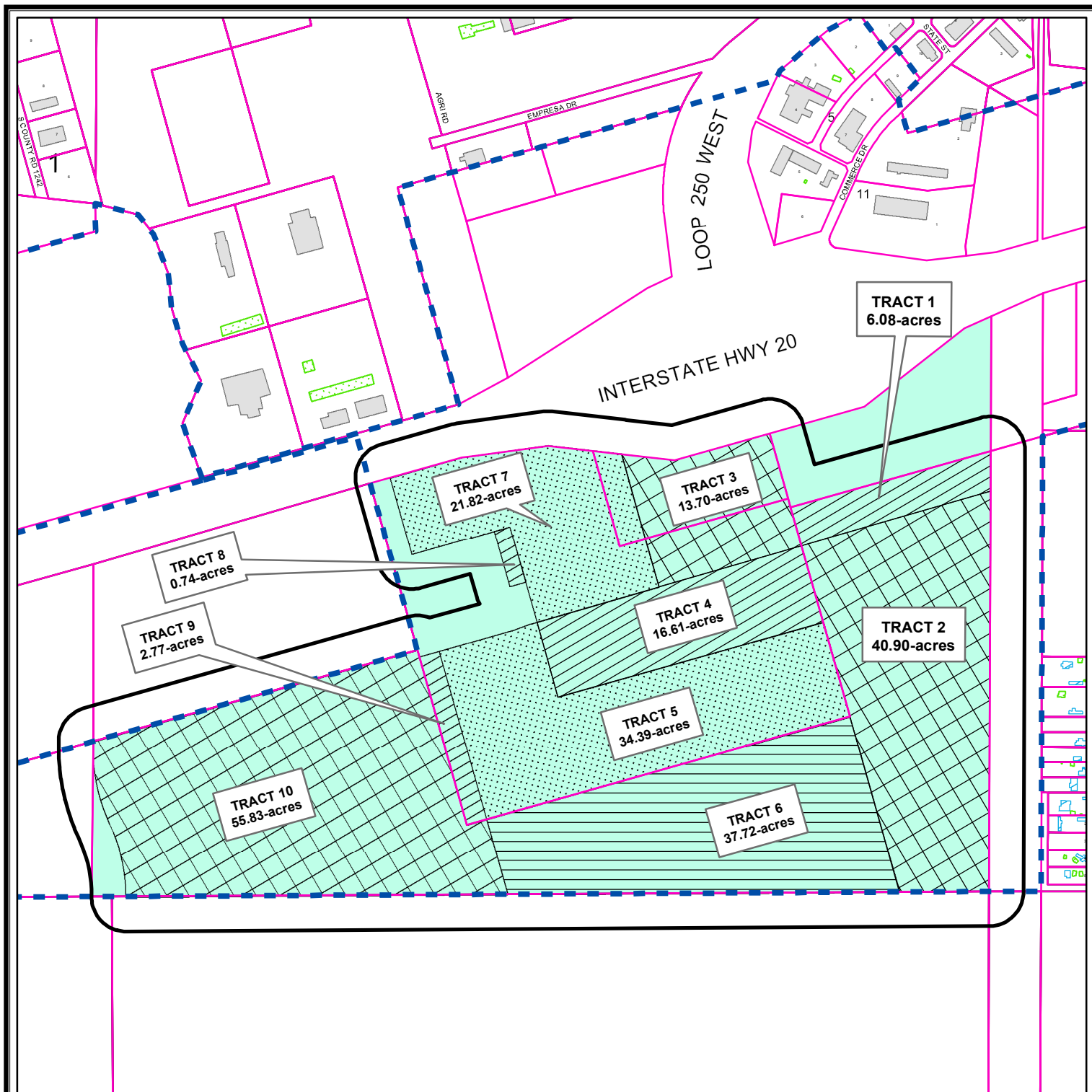
Subscribed and sworn to before me, by the said George Thornley, this 24th day of May, 2013, to certify which witness my hand and seal of office.

Shani Dawson
Notary Public, Midland County, Texas

FOR OFFICE USE ONLY	
Rec'd By: <u>DS</u>	Date: <u>5/28</u>
Assigned: <u>MS</u>	
For: <u>P+Z</u>	On: <u>7/1/13</u>



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



Consider a request for a zone change from FD, Future Development to LR-2, Local Retail District on a 6.08-acre tract of land (Tract 1), to LI, Light Industrial District on a 40.90-acre tract of land (Tract 2), to PD, Planned District for a Housing Development on a 37.72-acre tract of land (Tract 6) and to 1F-3, One-Family Dwelling District on a 55.83-acre tract of land (Tract 10), from PD, Planned District for a Shopping Center, to LR-2, Local Retail District on a 13.70-acre tract of land (Tract 3), to PD, Planned District of a Housing Development on a 16.61-acre tract of land (Tract 4), to BP, Business Park District on a 21.82-acre tract of land (Tract 7), from BP, Business Park District to PD, Planned District for a Housing Development on a 34.39-acre tract of land (Tract 5), to 1F-3, One-Family Dwelling District on a 2.77-acre tract of land (Tract 9), and from LR-2, Local Retail District to BP, Business Park District on a 0.74-acre tract of land (Tract 8) all out of Section 12, Block 40, T-2-S, T & P RR Co. Survey, City and County of Midland, Texas.

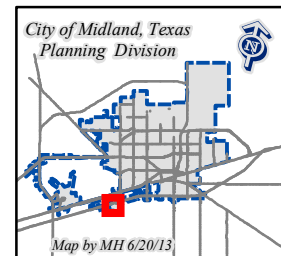
NOTIFICATION MAP

Scale: 1" = 800'

Z - 12 - 049

LEGEND

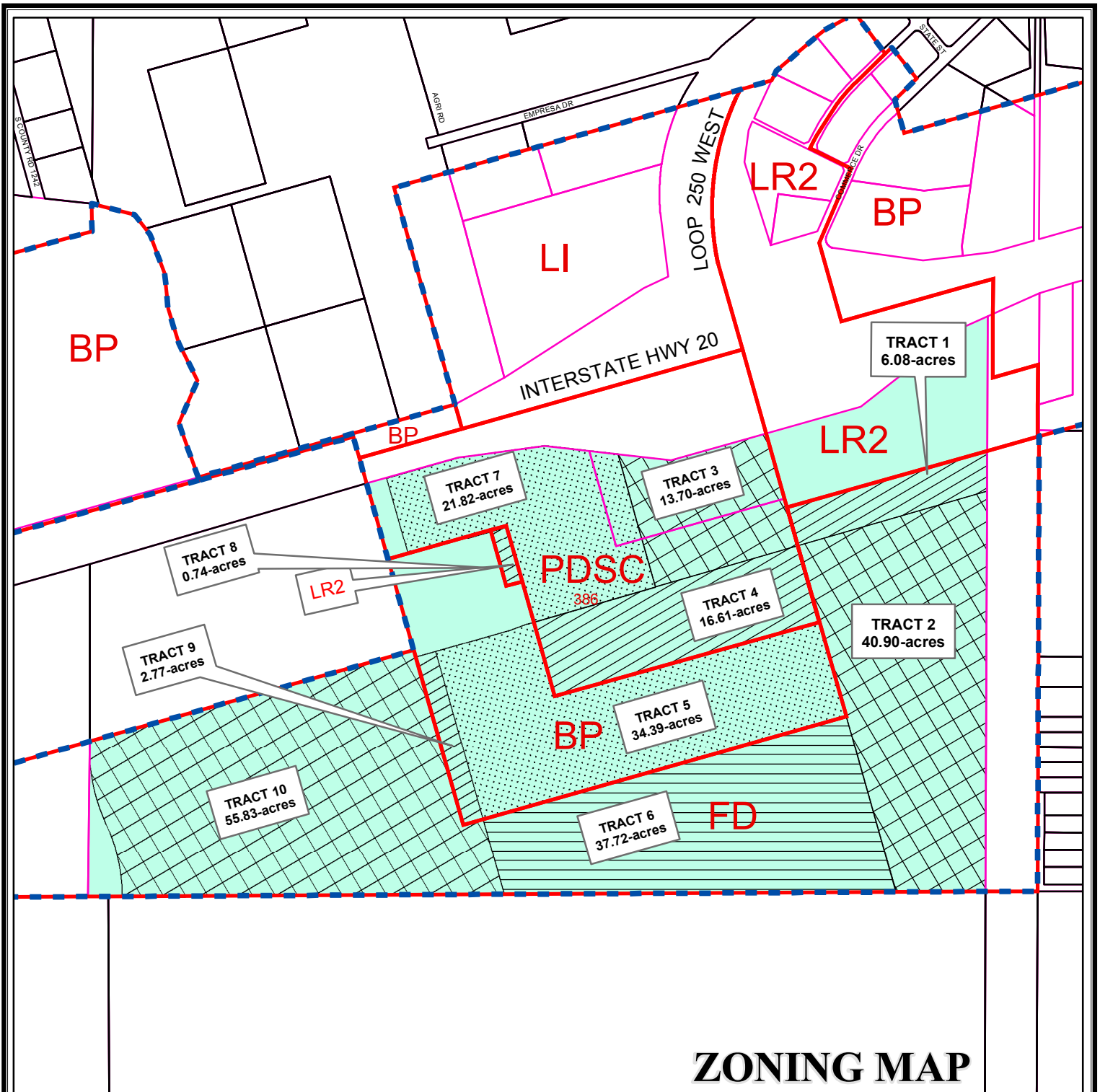
- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- CITY PARCEL
- COUNTY PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



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(OWNER NOTIFICATION WITHIN CITY LIMITS ONLY)

37.27



ZONING MAP

Z - 12 - 049

Scale: 1" = 800'

Consider a request for a zone change from FD, Future Development to LR-2, Local Retail District on a 6.08-acre tract of land (Tract 1), to LI, Light Industrial District on a 40.90-acre tract of land (Tract 2), to PD, Planned District for a Housing Development on a 37.72-acre tract of land (Tract 6) and to 1F-3, One-Family Dwelling District on a 55.83-acre tract of land (Tract 10), from PD, Planned District for a Shopping Center, to LR-2, Local Retail District on a 13.70-acre tract of land (Tract 3), to PD, Planned District of a Housing Development on a 16.61-acre tract of land (Tract 4), to BP, Business Park District on a 21.82-acre tract of land (Tract 7), from BP, Business Park District to PD, Planned District for a Housing Development on a 34.39-acre tract of land (Tract 5), to 1F-3, One-Family Dwelling District on a 2.77-acre tract of land (Tract 9), and from LR-2, Local Retail District to BP, Business Park District on a 0.74-acre tract of land (Tract 8) all out of Section 12, Block 40, T-2-S, T & P RR Co. Survey, 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	CL, 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: 8/13/2013

TO: City Council / City Manager

FROM: Ken VanDyne, Planning Division Manager

SUBJECT: Consider an ordinance on second reading on a request by Redneck's Drafthouse for a Specific Use Permit with term for on-premise consumption of alcoholic beverages in a lounge on a 5000 square foot portion of Lot 1, Block 1, Mesa Verde Addition, City and County of Midland, Texas. (Generally located on the southsest corner of the intersection of N. Midland Drive and Neely Avenue.)

Purpose:

Consider an ordinance on second reading on a request by Redneck's Drafthouse for a Specific Use Permit with term for on-premise consumption of alcoholic beverages in a lounge on a 5000 square foot portion of Lot 1, Block 1, Mesa Verde Addition, City and County of Midland, Texas. No changes have been made to this item since its first reading on the July 23, 2013 Council Meeting. This request is located in Council District 4.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

There is no cost to the City associated with approving this request.

Discussion:

This request for a Specific Use Permit with Term for on-premise consumption of alcoholic beverages in a lounge was presented for first reading at July 23rd Council meeting. The lounge area was limited to 5,000 contiguous square feet with 255 seats. Hours of alcoholic beverage service were set from Monday – Sunday from 3:00 p.m to 2:00 a.m No changes have been made since this item's first reading.

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF THE PROPERTY DESCRIBED AS A 5,000 SQUARE FOOT PORTION OF LOT 1, BLOCK 1, MESA VERDE ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTHWEST CORNER OF THE INTERSECTION OF NORTH MIDLAND DRIVE AND NEELY 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 THE SALE OF ALL ALCOHOLIC BEVERAGES IN A LOUNGE 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-2, Local Retail District, to-wit:

A 5,000 square foot portion of Lot 1, Block 1, Mesa Verde 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 lounge, 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:

- A. That the lounge shall be limited to 5,000 contiguous square feet.
- B. That the lounge shall be limited to 255 seats.
- C. That the days and hours of alcoholic beverage sales and consumption shall be limited to the following: Monday through Sunday from 3:00 p.m. until 2:00 a.m. of the following day, unless otherwise prohibited by state law.
- D. 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., 2013; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2013, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2013.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

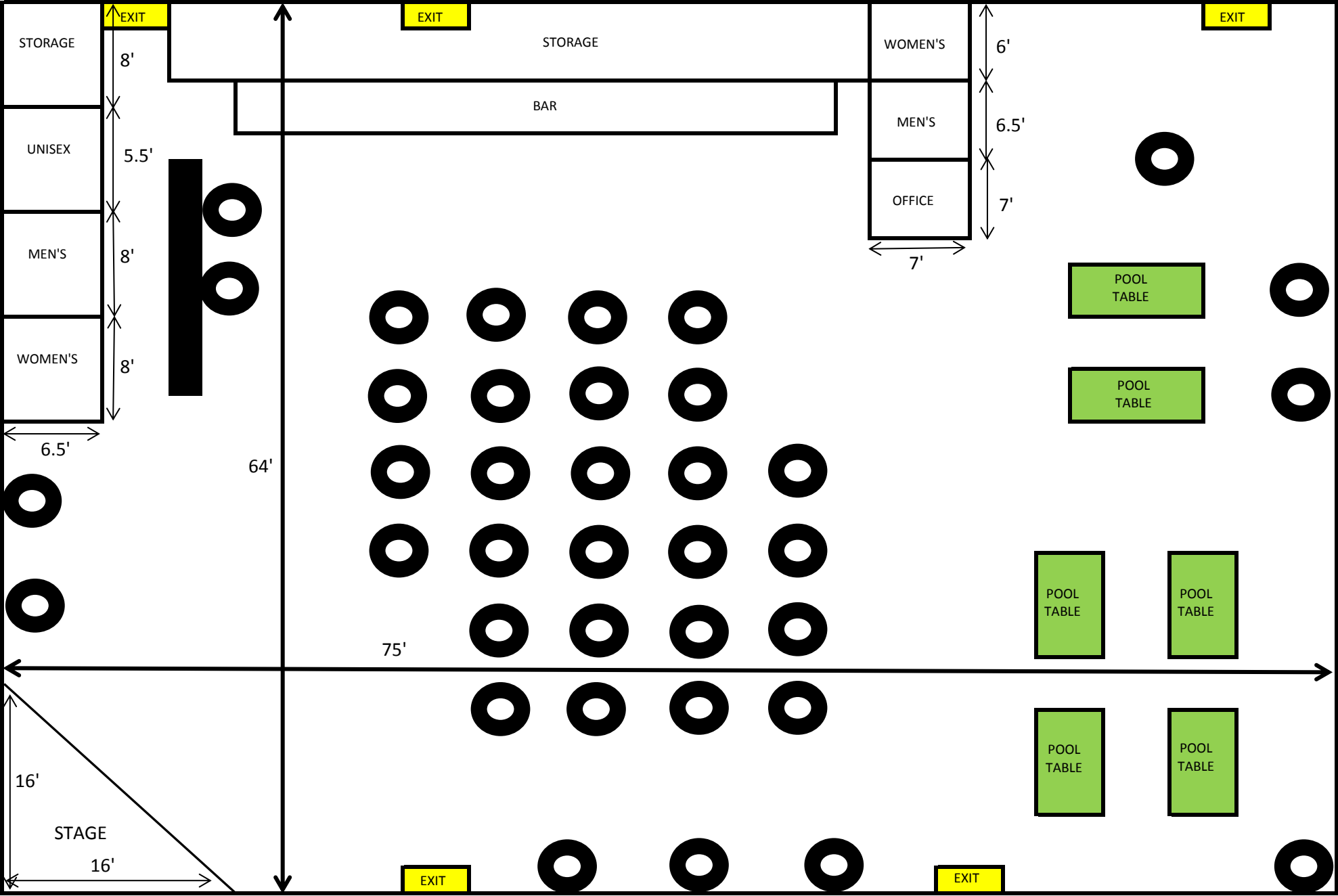
APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

REDNECK'S DRAFTHOUSE INTERIOR LAYOUT



PLANNING AND ZONING COMMISSION

July 1, 2013

CASE: S-13-006

REQUEST: Hold a public hearing and consider a request for an Amended Specific Use Permit with Term for on-premise consumption of alcoholic beverages in a lounge.

APPLICANT: Redneck's Draffhouse.

OWNER: William Gene Roumell.

LEGAL DESCRIPTION: A 5,000 square foot portion of Lot 1, Block 1, Mesa Verde Addition, City and County of Midland, Texas.

LOCATION: Generally located on the southwest corner of the intersection of N. Midland Drive and Neely Avenue.

CURRENT ZONING: LR-2, Local Retail District

DETAILS OF REQUEST:

1. The applicant is currently doing business as Redneck's Draffhouse under a Specific User Permit approved in October of 2009. Mr. Roumell would like to change the maximum number of seats allowed in the lounge and maintain current beverage service hours. The previous SUP permitted a maximum of 140 seats, and since then the business has expanded into the neighboring suite. Mr. Roumell is requesting a maximum occupancy of 220 seats, and has alcoholic beverage service hours from 3:00 p.m. until 2:00 a.m.

SURROUNDING ZONING AND LAND USE:

2. The lounge is located in a LR-2, Local Retail District, and is currently one of four Specific Use Permits with Term located within its current shopping center for the sale of on-premise consumption of alcoholic beverages. Immediately north of this property is a medium sized MF-1, Multi-Family Dwelling District, and west and south of this property is a large 1F-2, Single Family Dwelling District. Immediately east of this property is a small MF-1, Multi-Family Dwelling District.

ANALYSIS:

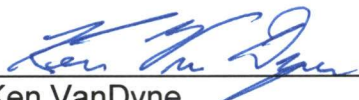
3. Redneck's Draffhouse will have a maximum floor area of 4,800 square feet. The Building Official has determined that seating capacity will be set at 255 seats based on the square footage available for serving patrons. Staff has no objections to the requested hours of service Monday thru Sunday 3:00 p.m. until 2:00 a.m.

STAFF RECOMMENDATION:

We recommend approval of the request for a Specific Use Permit with Term for on-premise consumption of alcoholic beverages in a Restaurant, together with the uses permitted in the LR-2, Local Retail District, subject to the following conditions:

- A. That the lounge shall be limited to 4,800 square feet in contiguous area.
- B. Occupancy shall be limited to 255 seats.
- C. That alcoholic beverages may be sold only during the hours specified as follows:

Monday thru Sunday 3:00 p.m. until 2:00 a.m.
- D. That the sale of alcoholic beverages for on-premise consumption shall comply with state and local laws.



Ken VanDyne
Acting Planning Division Manager
Department of Development Services



Martin Siwek, City Planner
Department of Development Services

Attachments:

Application
Maps
Exhibit A

Case Number:

513-006

CITY OF MIDLAND

Planning Division

SPECIFIC USE PERMIT APPLICATION

William Gene Roumell (432) 352-9335
 Applicant Name Contact Phone #s
4805 BRIARWOODS #C205 MIDLAND, TX 79707
 Address Zip Code
 E-Mail address: gene.roumell@yahoo.com
MESA VERDE MIDLAND LP (432) 686-2800
 Property Owner Name Contact Phone #s
2215 N MIDLAND DR SUITE 2A MIDLAND, TX 79707
 Address Zip Code
 E-Mail address: NA
NA
 Operator (if different from Applicant or Property Owner) Contact Phone #s

Address Zip Code
 Type of Permit: SPECIAL USE PERMIT ALCOHOL SALES

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.)

2215 N MIDLAND DR, SUITE 2A & 2B, MIDLAND, TX 79707

LOT 1, BLOCK 1, MESA VERDE ADDITION

Current Zoning: LR-2

Maximum Floor Area: 5,000 sq. ft Max. Occupancy: 220

Proposed hours and days of use or operation: 3pm - 2am MON - SUN

Reason for request: AMENDMENT from 3,000 sq. ft to 5,000 sq. ft

Applicant's opinion as to why the request will not adversely affect the public safety, health, morals, general welfare, and convenience: CURRENTLY IN BUSINESS, SIMPLY AMENDING THE CURRENT SUP

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:

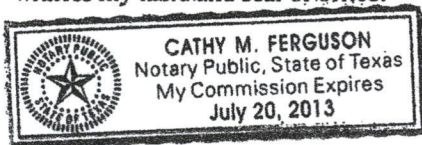
Applicant: [Signature] Date: 3-18-13
Property Owner: [Signature] Date: 3/19/13

If an Agent is authorized by the property owner to me 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 Mano Houn who, being by me duly sworn, upon oath says: That (s)he is authorized by Mesa Verde Midland LP, 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.

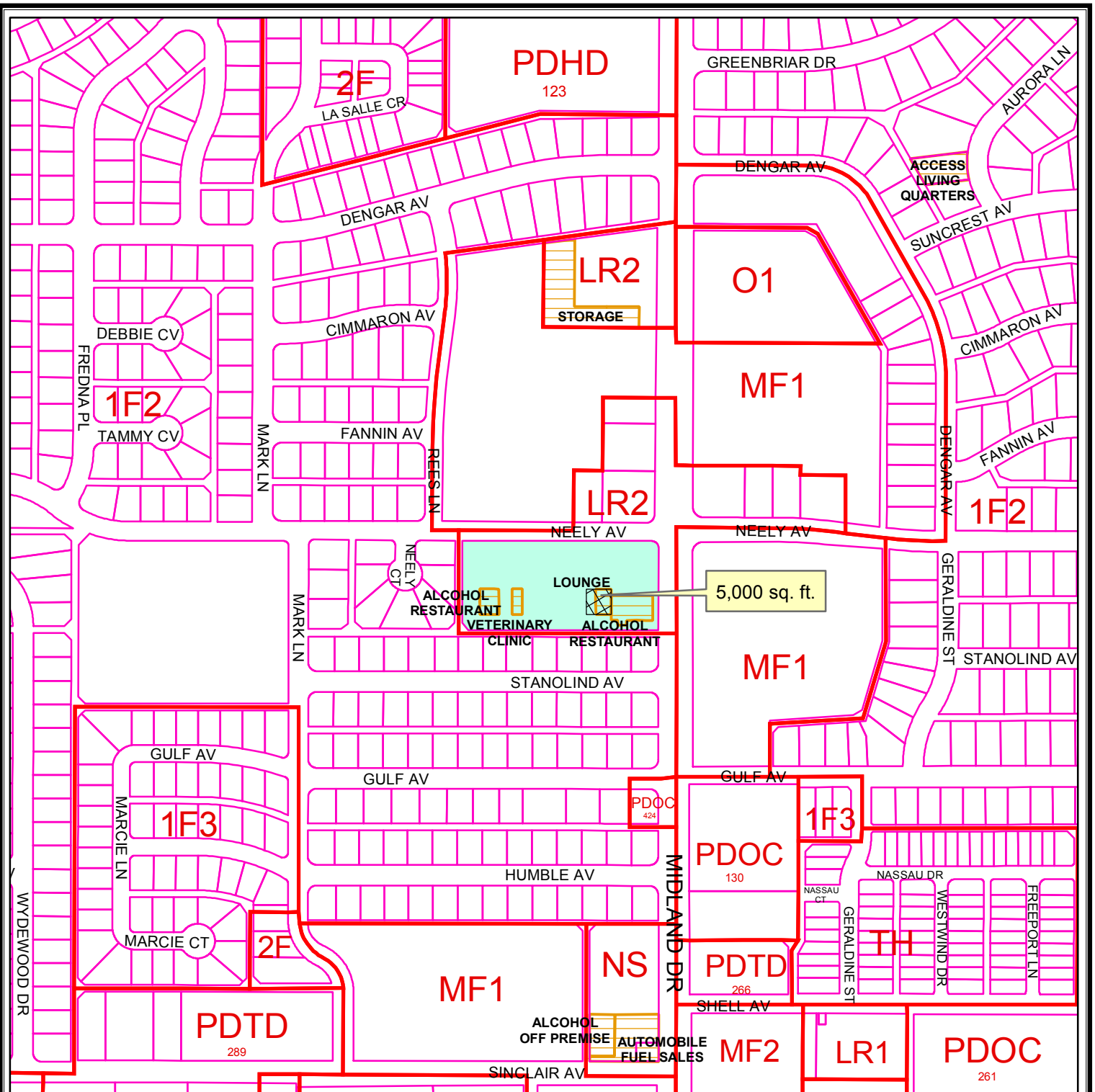
Subscribed and sworn to before me, this 19th day of March, 20 13, to certify which witness my hand and seal of office.



Cathy M. Ferguson
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: <u>[Signature]</u>	Date: <u>4/2/13</u>
Assigned: <u>MS</u>	
For: <u>P&Z</u>	On: <u>7/1/13</u>

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



ZONING MAP

S - 13 - 006

Scale: 1" = 400'

Consider a request for an Amended Specific Use Permit With Term for the sale of all alcoholic beverages, for on-premises consumption, in a lounge, on a 5,000 square foot portion of Lot 1, Block 1, Mesa Verde Addition, City and County of Midland, Texas.

LEGEND

ZONING PARCELS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	O1, O2	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: August 13, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Ken Van Dyne, Acting Planning Division Manager

SUBJECT: Hold a public hearing at approximately 10:30 a.m. and consider a resolution on a request by Museum of the Southwest for approval of a Temporary Land Use Permit for an Outdoor Amusement Function. (Generally located on the south side of Missouri Avenue, between "J" and "L" Street. - District – 3)

Purpose:

Hold a public hearing at 10:30 a.m. and consider a resolution on a request by Museum of the Southwest for approval of a Temporary Land Use Permit for an Outdoor Amusement Function.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

No City funds are required to process this request.

Discussion:

"Septemberfest" is an annual event that the Museum of the Southwest has conducted for the last 43 years.

This year, the proposed days and hours of operation are:

Friday, September 6, 2013 from 6:00 p.m. to 11:00 p.m.

Saturday, September 7, 2013 from 8:30 a.m. to 6:00 p.m.

Sunday, September 8, 2013 from 12:00 p.m. (noon) to 5:00 p.m.

As shown in the site plan, this year's theme, "Return to Storyland," will include artist's exhibits, live music and performances, a petting zoo, and other activities. Food and drinks will be available; on-premise consumption of alcoholic beverages is planned and must

comply with state and local laws. 15 portable restrooms and 21 restrooms within the art gallery, children's museum, and planetarium buildings will be provided. The event will be enclosed in a temporary fence. The applicants have submitted a Special Event application, including a Traffic Control Plan, approved by the Transportation Division. 12 security officers will be available throughout the event. According to police reports from the event held last year from September 7 to 9, 2012, no incidences were reported. Some impact is expected on the area from music, traffic, and other activities, but we do not anticipate any significant disruptions.

Attachments: Application, Maps, Proposed Resolution, Exhibit A (Site Plan)

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE TEMPORARY USE
OF LAND FOR AN OUTDOOR AMUSEMENT
FUNCTION ON LOTS 10-12, BLOCK 93, LOTS 1-5,
BLOCK 105, AND BLOCKS 94 AND 104, WEST END
ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS
(GENERALLY LOCATED ON THE SOUTH SIDE OF
MISSOURI AVENUE, BETWEEN “J” STREET AND “L”
STREET); AND MAKING SAID PERMIT SUBJECT TO
CERTAIN SPECIAL CONDITIONS AND
RESTRICTIONS CONTAINED HEREIN**

WHEREAS, pursuant to Section 11-1-6(D) of the City Code of Midland, Texas, Museum of the Southwest has applied for authorization to temporarily use land for an outdoor amusement function on Lots 10-12, Block 93, Lots 1-5, Block 105, and Blocks 94 and 104, West End Addition, City and County of Midland, Texas; and

WHEREAS, the Council finds and determines that such temporary use shall be allowed;

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

SECTION ONE. That Museum of the Southwest is hereby authorized by the City Council to have an outdoor amusement function on the following described land:

Lots 10-12, Block 93, Lots 1-5, Block 105, and Blocks 94 and 104, West End Addition, City and County of Midland, Texas.

SECTION TWO. That said temporary use shall be allowed within the area designated herein, subject to the following conditions and restrictions:

- A. That the days and hours of operation of the festival shall be limited to the following:

Friday, September 6, 2013 from 6:00 p.m. to 11:00 p.m.;
Saturday, September 7, 2013 from 8:30 a.m. to 6:00 p.m.; and
Sunday, September 8, 2013 from 12:00 p.m. (noon) to 5:00 p.m.
- B. That the festival site and access arrangements shall conform in all respects to the site plan attached hereto as Exhibit “A” and incorporated herein for all purposes.
- C. That alcoholic beverage sales and consumption shall be allowed during all operating hours of the festival and shall be in compliance with local and state laws.

- D. That live music shall be allowed during all operating hours of the festival.
- E. That a minimum of twelve (12) certified peace officers shall be provided as security guards during all operating hours of the festival.
- F. That a minimum of fifteen (15) portable restrooms and twenty-one (21) restrooms in the art gallery, children's museum, and planetarium buildings shall be provided.
- G. That a temporary service fence shall be erected as shown on the site plan.
- H. That temporary street closures shall follow the Traffic Control Plan approved by the Transportation Division.
- I. That a barricade shall be set up parallel to at least 15 feet from the west fence in the area labeled "Artist Parking" on the site plan.
- J. That the event shall comply with all requirements of the Fire Code:
 - a. All food vendors using heat producing equipment, open flame, or grills shall have all fire protection equipment available, inspected, and verified to prepare and sell food products.
 - b. Emergency responders shall have full access to all areas, gates, and buildings during the festival.
 - c. Emergency access points shall not be obstructed by booths, tents, or other structures during the festival.
 - d. The applicant must call for a site inspection by the Fire Marshal prior to commencing operation of the festival.
- K. That the applicant shall obtain a temporary exhibition permit per Section 6-2-6(B) of the Midland City Code anytime up to the week before the festival from the Animal Services Division.
- L. That the applicant shall obtain approval from the Utilities Department for a refuse collection and clean-up plan prior to the festival.
- M. That the Code Administration Division shall be notified no later than 48 hours preceding the festival.
- N. That Brian Whisenhunt, Director of the Museum of the Southwest, shall be responsible for ensuring that the conditions of this permit are observed.

SECTION THREE. The City Council reserves at all times the full right and power to revoke said temporary use for violation of any of its terms or any misrepresentations contained in the application, after a hearing of which the holder of said temporary use has been given at least one (1) day notice.

On motion of Council member _____, seconded by Council member

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

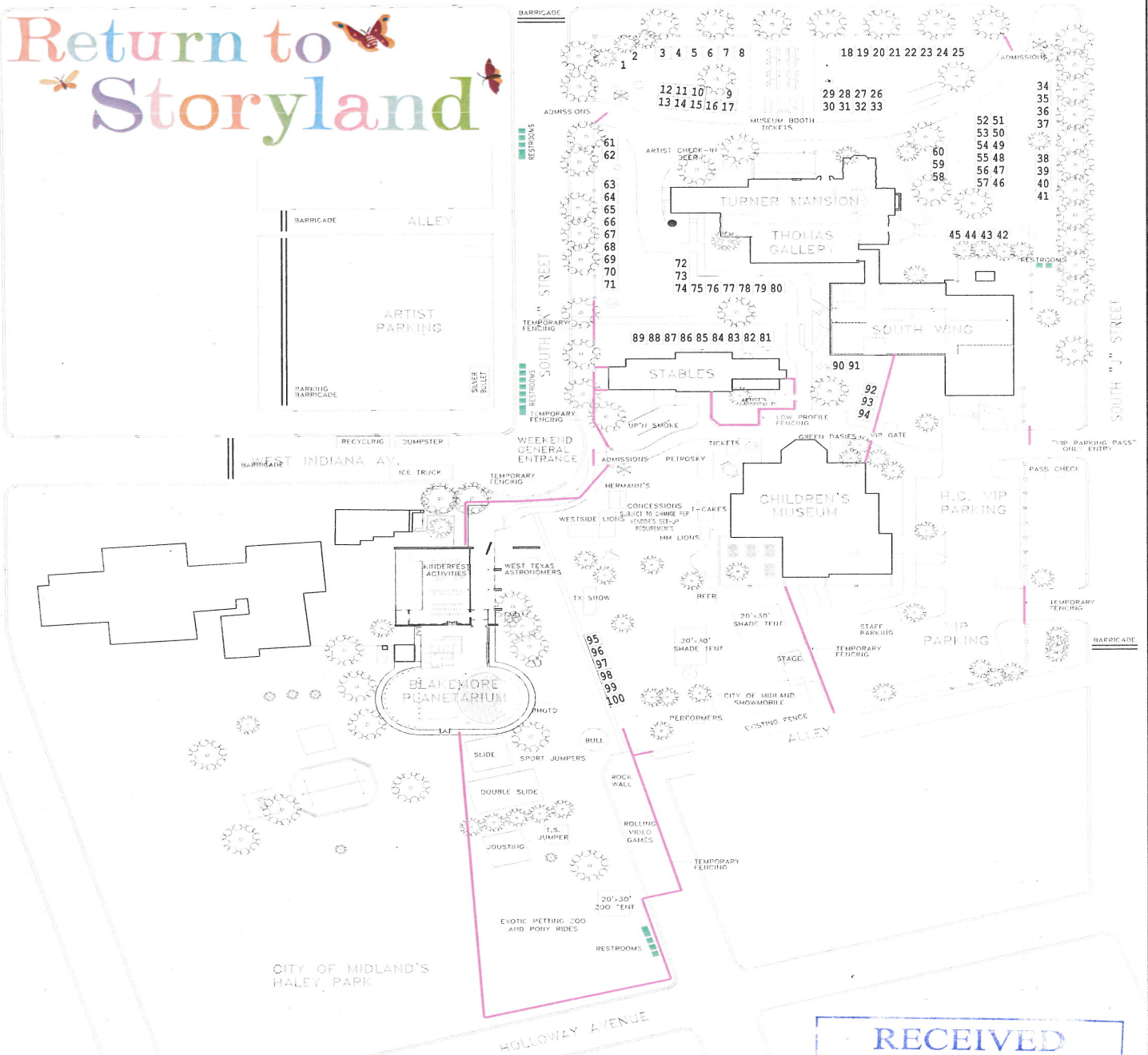
Keith Stretcher, City Attorney

Return to Storyland

WEST MISSOURI AV.

SOUTH "L" STREET

SOUTH "J" STREET



Museum of the Southwest | 1705 W. Missouri Ave. | Midland, TX 79701 | 432.683.2882 | MuseumSW.org

MADE POSSIBLE IN PART BY
TOLLESON
WEALTH MANAGEMENT



0' 10' 20' 40' 60' 100'

SITE PLAN

EXHIBIT A

CASE NO. M-13-015

39.6

Case No.:

M-13015

CITY OF MIDLAND, TEXAS Planning Division

TEMPORARY LAND USE PERMIT APPLICATION

Submission Requirements: Application shall be submitted to the Planning Division not less than twenty-eight (28) days prior to the City Council meeting at which action is desired.

Application is hereby made to the City Council for a Temporary Land Use Permit:

*angela
grawan
ext 306*

Name of Applicant: Museum of the Southwest

Phone: 432-683-2882

E-mail: cpervier@museumsw.org

↳ 432-260-9300

Applicant's Address: 1705 W. Missouri Ave.

Property Owner: Museum of the Southwest

Phone: 432-683-2882

E-mail: bwhisenhunt@museumsw.org

Owner's Address: 1705 W. Missouri Ave.

Other required information:

1. Street address and legal description of property: 1705 W. Missouri Ave.

2. Zoning District: _____

3. Type of temporary use requested: Septemberfest 2013

4. Duration of temporary use: September 6, 7 and 8, 2013

If more than One (1) day and is located within any residential district or is located within 1000 feet of any residential district, then a public hearing is required.

5. Proposed days and hours: 9/6 6pm to 11pm; 9/7 8:30am to 6pm; 9/8 12pm to 5pm

11/7/13

6. Will alcoholic beverages be sold? ☒ Yes ☐ No

7. A detailed Site Plan is required (16 copies needed (FOLDED), plus digital - .jpg and .pdf). Show existing buildings, parking, access arrangements, surrounding streets, activity areas, areas of alcoholic beverage sales, proposed street closures, etc.

Site Plan received: ☒ Yes ☐ No Same as last years
6/28/13

8. Are you requesting the temporary closure of any streets? X Yes _____ No

If yes, you must:

A. Obtain and complete the "Special Event and Street Closure Application", available in the Transportation Division office (5th Floor, City Hall).

B. Provide the City with a **general liability insurance certificate**, naming the **City** as an **Additional Insured**, in the amount of one million dollars (\$1,000,000) for the term of the closure.

9. Other information: Number of security guards provided: 12

Number of restrooms provided: 15

Type of music (carnival, live, etc.): live

Delivery scheduled 9/4/2013

Showmobile requested Y Days and hours

Pick up scheduled 9/9/2013

10. A **\$500.00 Clean-up Deposit** and a **\$500.00 Damage Deposit** are required for all events. Checks need to be dated day of event. Inspection of site after the event for trash and damage is a City responsibility. The deposits, or a portion thereof, may be refunded following inspection.

Clean-up Deposit received: ✓ (Y) (N) Clean-up Deposit refunded: (Y) (%) (N)

Damage Deposit received: ✓ (Y) (N) Damage Deposit refunded: (Y) (%) (N)

11. A **\$200 Application Review fee** is required. Fee received: ✓ Yes No
\$25.00 for each additional event date.

Owner or Operator (if other than Applicant) responsible for ensuring that the conditions of this permit will be observed:

Director - Brian Whisenhunt 1705 Missouri 74701
Printed Name of Owner/Operator Address Zip Phone

683-2882

Signature of Owner/Operator

Date

Signature of Applicant

6-18-13
Date

Signature of Property Owner, if other than Applicant

Date

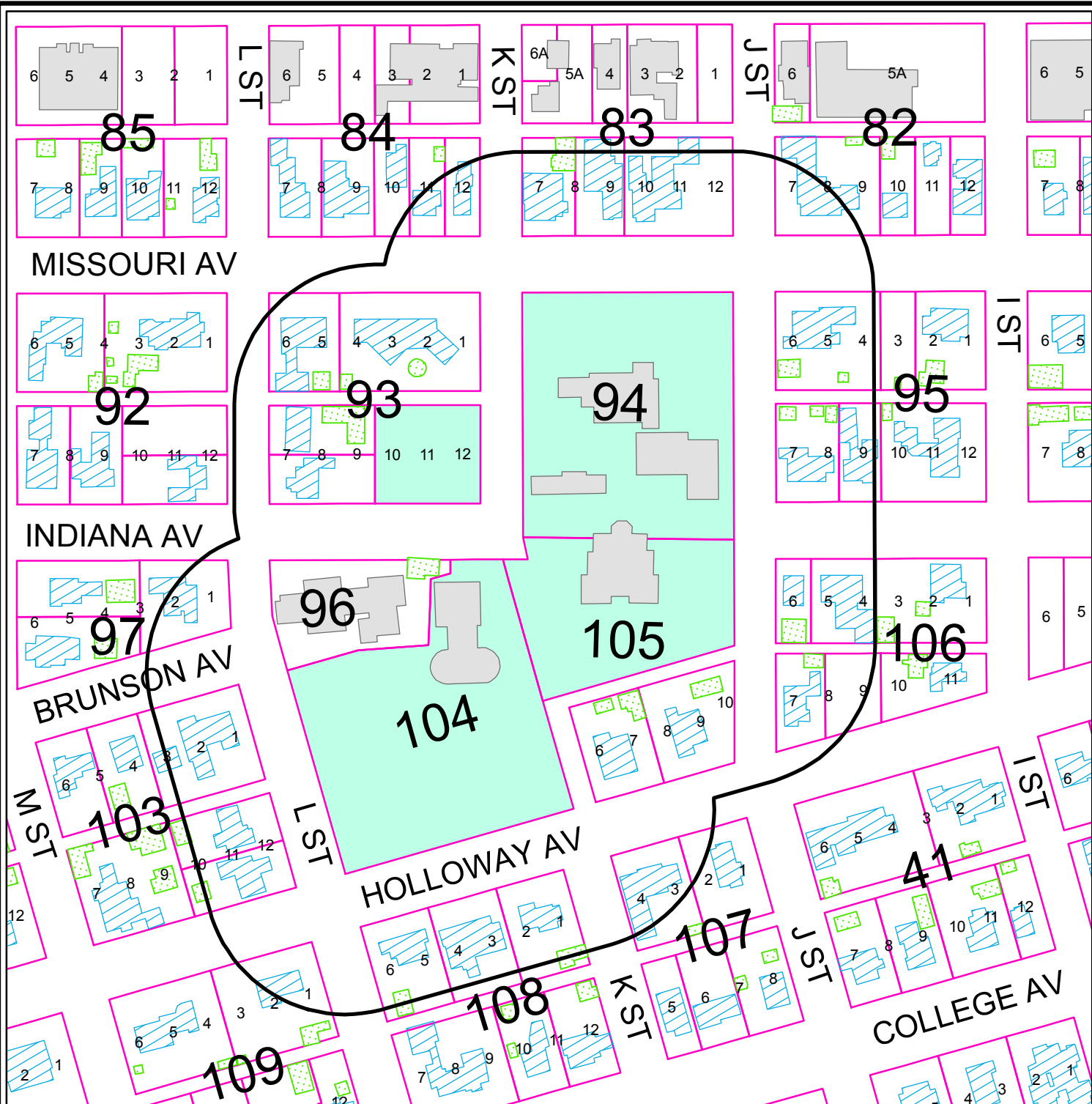
****Application will not be considered for scheduling until reviewed by a planner.****

FOR OFFICE USE ONLY

Received By: JC Date: 6-18-13

Assigned: MK

For: CC On:



PROPERTY OWNER NOTIFICATION MAP

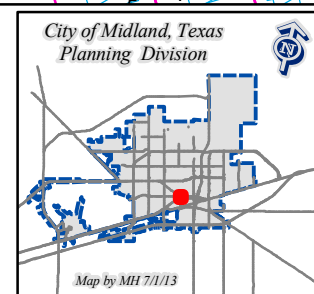
M - 13 - 015

Scale: 1" = 200'

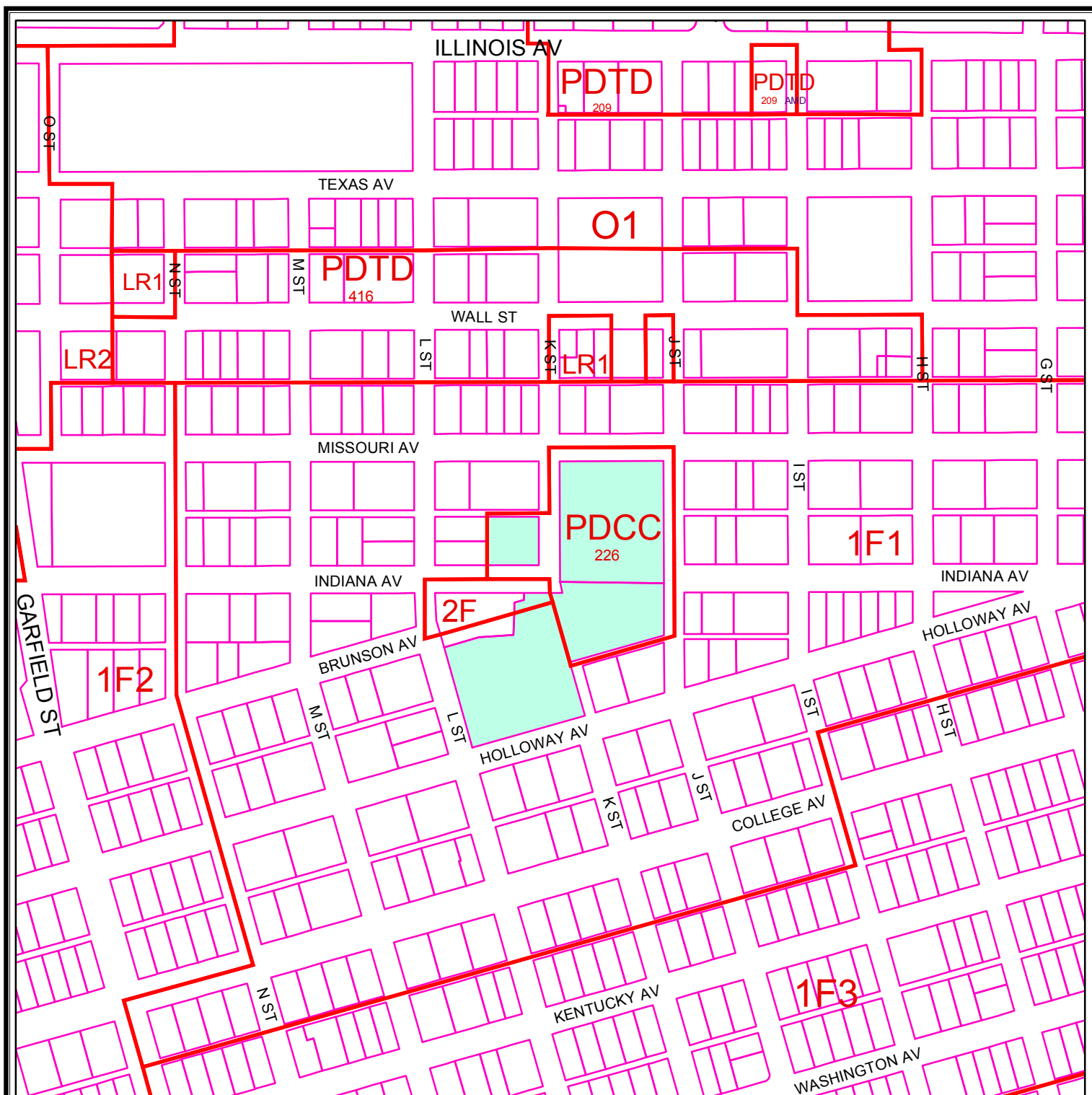
Consider a request for a Temporary Land Use Permit for a Outdoor Amusement Function on Lots 10 -12, Block 93; Lots 1 – 5, Block 105; and Blocks 94 and 104, West End Addition, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



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ZONING MAP

M - 13 - 015

Scale: 1" = 400'

Consider a request for a Temporary Land Use Permit for a Outdoor Amusement Function on Lots 10 -12, Block 93; Lots 1 – 5, Block 105; and Blocks 94 and 104, West End Addition, City and County of Midland, Texas.

LEGEND

ZONING

PARCELS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT
PD	PLANNED DISTRICT
AE	AGRICULTURE ESTATE
CE	COUNTRY ESTATE
IF1, IF2, IF3	ONE-FAMILY DWELLING
MH	MOBILE HOME DWELLING
TH	TOWNHOUSE DWELLING
2F	TWO-FAMILY DWELLING
MF1, MF2	MULTIPLE FAMILY DWELLING

BP	BUSINESS PARK
P	PARKING
01, 02	OFFICE
NS	NEIGHBORHOOD SERVICE
LR1, LR2, LR3	LOCAL RETAIL
C1, C2, C3	COMMERCIAL
IP, IP1, IP2, IP3	INDUSTRIAL PARK
LI	LIGHT INDUSTRY
HI	HEAVY INDUSTRY

BP	BUSINESS PARK
P	PARKING
01, 02	OFFICE
NS	NEIGHBORHOOD SERVICE
LR1, LR2, LR3	LOCAL RETAIL
C1, C2, C3	COMMERCIAL
IP, IP1, IP2, IP3	INDUSTRIAL PARK
LI	LIGHT INDUSTRY
HI	HEAVY INDUSTRY





City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: August 13, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Ken Van Dyne, Acting Planning Division Manager

SUBJECT: Hold a public hearing at approximately 10:33 a.m. and consider a resolution on a request by Community and Senior Services for a Temporary Land Use Permit for a Philanthropic Event. (Generally located on the north side of Scharbauer Drive, approximately 250 feet west of Lamesa Road.) - District – 2

Purpose:

Hold a public hearing at approximately 10:33 a.m. and consider a resolution on a request by Community and Senior Services for a Temporary Land Use Permit for a Philanthropic Event.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

No City funds are required to process this request.

Discussion:

Community and Senior Services will hold its 19th annual fund raiser at 407 E. Scharbauer Drive. The three day garage sale includes the following proposed days and hours of operation:

Friday, October 18, 2013 from 10:00 a.m. to 3:00 p.m.

Saturday, October 19, 2013 from 8:30 a.m. to 3:00 p.m.

Sunday, October 20, 2013 from 12:00 p.m. (noon) to 4:00 p.m.

No street closures have been requested, no outdoor music is planned, and alcoholic beverages will not be sold. To address limited parking, two vans will shuttle customers between the Super Mercado parking lot and the garage sale. Seven off-duty police officers will provide security on Friday and Saturday, and two will be present on Sunday. Two

public restrooms will be available on site. According to police reports from the event held last year from October 19-21, 2012, no incidences were reported.

Attachments: Application, Maps, Exhibit A

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE TEMPORARY USE OF LAND FOR A PHILANTHROPIC EVENT ON THE WEST 51.5 FEET OF LOT 5, ALL OF LOTS 6-10, AND THE EAST 22 FEET OF LOT 11, BLOCK 8, LOMA LINDA REPLAT, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTH SIDE OF SCHARBAUER DRIVE, APPROXIMATELY 250 FEET WEST OF LAMESA ROAD); MAKING SAID PERMIT SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS CONTAINED HEREIN

WHEREAS, pursuant to Section 11-1-6(D) of the City Code of Midland, Texas, Community and Senior Services, Inc. has applied for authorization to temporarily use land for a Philanthropic Event (Garage Sale) on the west 51.5 feet of Lot 5, all of Lots 6-10, and the east 22 feet of Lot 11, Block 8, Loma Linda Replat, City and County of Midland, Texas; and

WHEREAS, the Council finds and determines that such temporary use shall be allowed;

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

SECTION ONE. That Community and Senior Services, Inc. is hereby authorized by the City Council to have a Philanthropic Event (Garage Sale) on the following described land:

The west 51.5 feet of Lot 5, all of Lots 6-10, and the east 22 feet of Lot 11, Block 8, Loma Linda Replat, City and County of Midland, Texas;

SECTION TWO. That said temporary use shall be allowed within the area designated herein, subject to the following conditions and restrictions:

A. That the days and hours of operations shall be limited to the following:

Friday, October 18, 2013 from 10:00 a.m. to 3:00 p.m.;
Saturday, October 19, 2013 from 8:30 a.m. to 3:00 p.m.; and
Sunday, October 20, 2013 from 12:00 p.m. (noon) to 4:00 p.m.

B. That the operation of the Philanthropic Event (Garage Sale) shall conform to the site plan attached hereto as Exhibit "A" and incorporated herein.

- C. That a minimum of two (2) portable restrooms shall be provided on this site.
- D. That a minimum of seven (7) certified peace officers shall be provided during the operating hours of the event on Friday and Saturday, and a minimum of two (2) certified peace officers shall be provided during the operating hours of the event on Sunday.
- E. That no music shall be played during the event.
- F. That no sales or consumption of alcoholic beverages shall be permitted.
- G. That customer parking shall be available in the Super Mercado grocery store parking lot to the west.
- H. That the event must comply with all requirements of the Fire Code:
 - a. All means of egress shall be maintained according to the IFC-2009 Chapter 10 including: exit signs, emergency lighting, established aisles, and clearance.
 - b. Portable fire extinguishers shall meet the size and distance requirements according to NFPA-10.
 - c. Event parking shall maintain access for emergency vehicle access.
 - d. The applicant must call for a site inspection by the Fire Marshal prior to commencing operation of the function.
- I. That the applicant must obtain approval from the Solid Waste Division for refuse collection and clean-up prior to the event.
- J. That the Code Administration Division shall be notified no later than 48 hours preceding the event.
- K. That Jody Sneed, Executive Director of Community and Senior Services, Inc., shall be responsible for ensuring that the conditions of this permit are observed.

SECTION THREE. The City Council reserves at all times the full right and power to revoke said temporary use for violation of any of its terms or any misrepresentations contained in the application, after a hearing of which the holder of said temporary use has been given at least one (1) day notice.

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

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

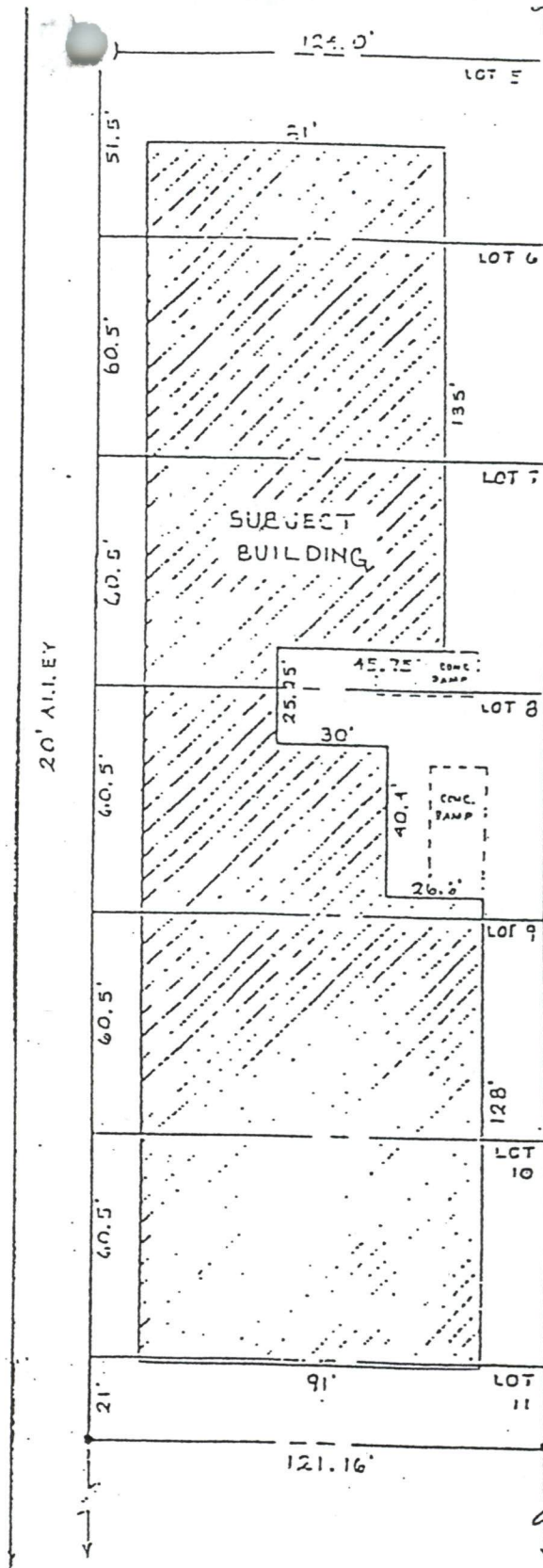
Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



SCHARBAUER DRIVE

SITE PLAN

SITE PLAN

SCALE: 1" = 50.0'

CASE NO. M-13-014

EXHIBIT A

CITY OF MIDLAND, TEXAS
Planning Division

TEMPORARY LAND USE PERMIT APPLICATION

Submission Requirements: Application shall be submitted to the Planning Division not less than eighteen (18) days prior to the City Council meeting at which action is desired.

Application is hereby made to the City Council for a temporary land use (Carnival, Circus, Fair, Tent Sale, Mobile Food Vendor, etc.):

Name of Applicant: COMMUNITY SENIOR SERVICES, INC. Phone: 432-689-6693

Applicant's Address: 3301 SINCLAIR AVE., MIDLAND, TX 79707

Property Owner: COMMUNITY SENIOR SERVICES, INC. Phone: 432-689-6693

Owner's Address: 3301 SINCLAIR AVE., MIDLAND, TX 79707

Other required information:

1. Street address and legal description of property: 407 E. SCHARBAUER, MIDLAND, TX
WEST 51.5 FEET OF LOT 5. ALL OF LOT 6 THROUGH 10 AND THE EAST 22 FEET OF
LOT 11, BLOCK 8, LOMA LINDA REPLAT, CITY AND COUNTY OF MIDLAND, TX

2. Zoning District: LR-2

3. Type of temporary use requested (Carnival, Fair, etc): PHILANTHROPIC EVENT
(GARAGE SALE)

4. Duration of temporary use: THREE DAYS
 If event does not exceed One (1) day (must conclude by 10:00 p.m.), then no public hearing is required. If more than One (1) day and is located within any residential district or is located within 1000 feet of any residential district, then a public hearing is required.

5. Proposed days and hours: OCTOBER 18, 19, 20, 2013 10-3 (Fri)
8:30-3 (Sat)
12-4 (Sun) - MY 6/21/13

6. Will alcoholic beverages be sold? Yes X No

7. A detailed Site Plan is required on CD in .jpg and .pdf format (16 copies needed). Show existing buildings, parking, access arrangements, surrounding streets, activity areas, areas of alcoholic beverage sales, proposed street closures, etc.

Site Plan received: X Yes No

8. Are you requesting the temporary closure of any streets? _____ Yes X No

If yes, you must:

- A. Obtain and complete the "Special Event and Street Closure Application", available in the Transportation office (5th Floor, City Hall).
- B. Provide the City with a **general liability insurance certificate**, naming the City as an **Additional Insured**, in the amount of one million dollars (\$1,000,000) for the term of the closure.

9. Other information: Number of security guards provided: 7 (FRI. & SAT.)
Number of restrooms provided: 2 (SUN)
Type of music (carnival, live, etc.): TWO
Showmobile requested N/A Days and hours N/A

10. A \$500.00 Clean-up Deposit and a \$500.00 Damage Deposit are required for all outdoor events. Checks need to be dated day of event. Inspection of site after the event for trash and damage is a City responsibility. The deposits, or a portion thereof, may be refunded following inspection.

Clean-up Deposit received: __ (Y) __ (N) Clean-up Deposit refunded: __ (Y) __ (%) __ (N)

Damage Deposit received: __ (Y) __ (N) Damage Deposit refunded: __ (Y) __ (%) __ (N)

11. A \$200 Application Review fee is required. Fee received: _____ Yes _____ No
\$25.00 for each additional event date. \$250.00

Owner or Operator (if other than Applicant) responsible for ensuring that the conditions of this permit will be observed:

JODY SNEED, EXECUTIVE DIRECTOR, 3301 SINCLAIR AVE., MIDLAND, TX 79707
Printed Name of Owner/Operator Address Zip Phone
Sneed 5-8-13
Signature of Owner/Operator Date

Signature of Applicant

Date

N/A

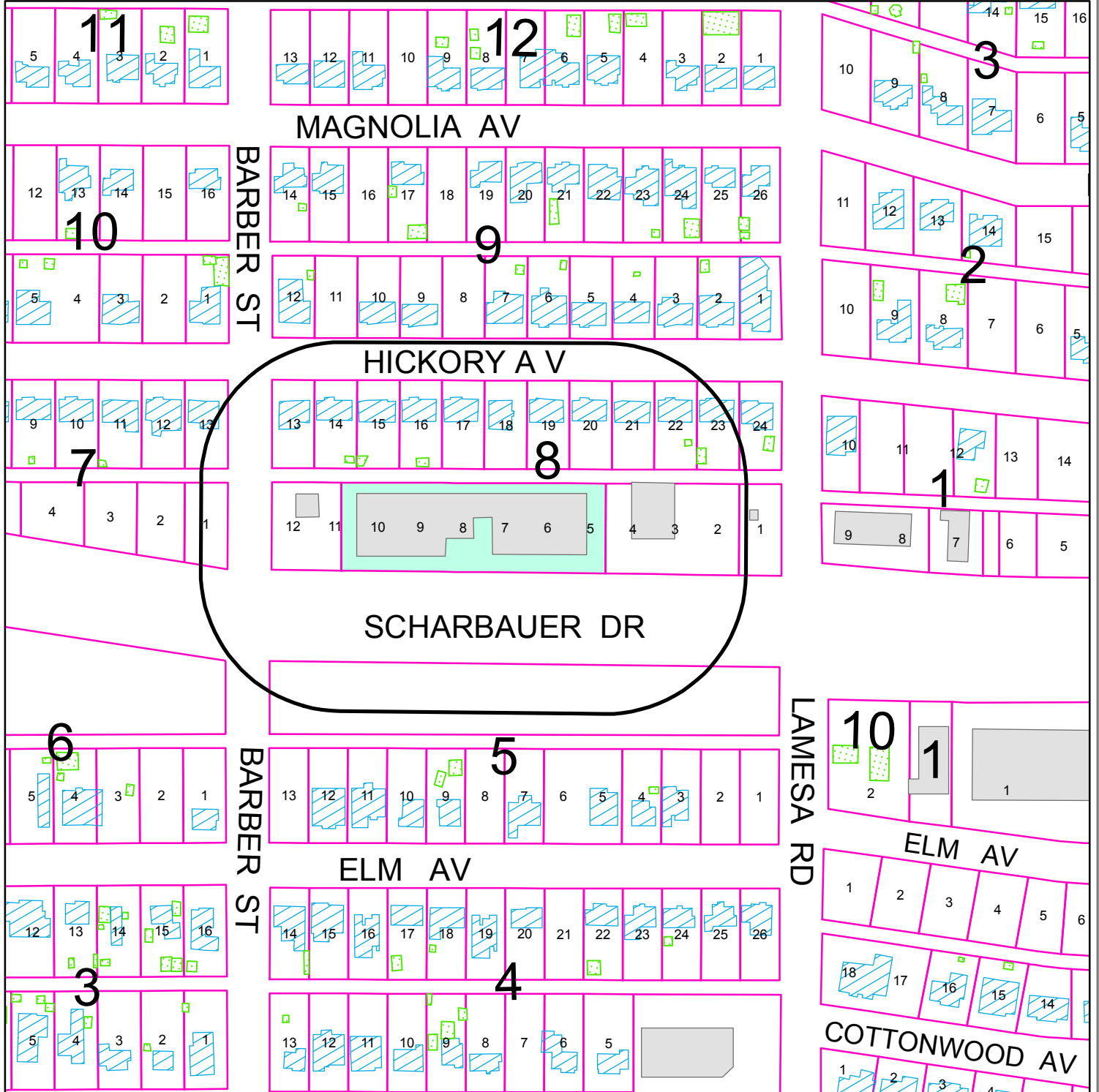
N/A

Signature of Property Owner, if other than Applicant

Date

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

FOR OFFICE USE ONLY	
Received By: <u>JS</u>	Date: <u>6/17/13</u>
Assigned: _____	
For: _____	On: _____



PROPERTY OWNER NOTIFICATION MAP

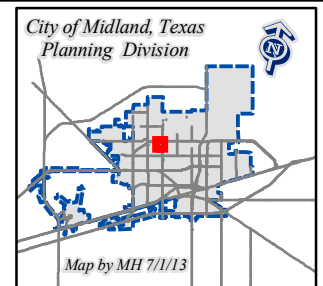
M - 13 - 014

Scale: 1" = 200'

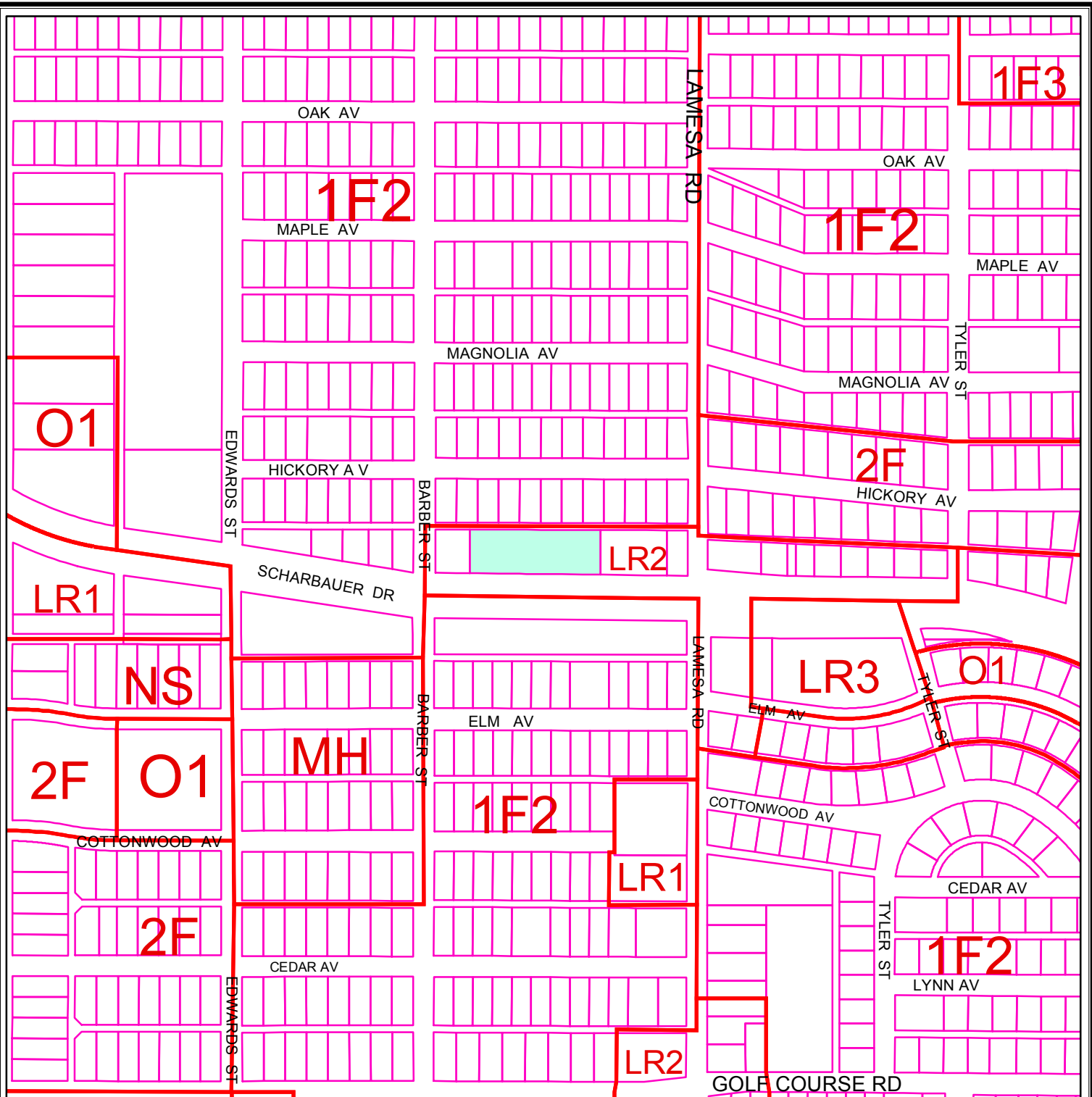
Consider a request for a Temporary Land Use Permit for a Philanthropic Event (Garage Sale) on the west 51.5 feet of Lot 5, all of Lots 6 -10, and the east 22 feet of Lot 11, Block 8, Loma Linda Replat, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



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ZONING MAP

M - 13 - 014

Scale: 1" = 400'

Consider a request for a Temporary Land Use Permit for a Philanthropic Event (Garage Sale) on the west 51.5 feet of Lot 5, all of Lots 6 - 10, and the east 22 feet of Lot 11, Block 8, Loma Linda Replat, City and County of Midland, Texas.

LEGEND

ZONING PARCELS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	O1, O2	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: August 13, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Ken Van Dyne, Acting Planning Division Manager

SUBJECT: Hold a public hearing at approximately 10:36 a.m. and consider an ordinance on a request by David and Nancy Tyler for a Specific Use Permit Without Term for a Vineyard. (Generally located on the west side of Irvin Drive, approximately 240 feet south of E. Loop 250 North.) - District – 2.

Purpose:

Hold a public hearing at approximately 10:36 a.m. and consider an ordinance on a request by David and Nancy Tyler for a Specific Use Permit Without Term for a Vineyard. (City Council District 2).

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

No City funds are required to process this request.

Discussion:

Mr. and Mrs. Tyler live on a 2.33-acre property at 4405 Irvin Drive, just south of Loop 250 North, within a large AE, Agriculture-Estate District. The applicants are requesting a Specific Use Permit without Term for a Vineyard to grow grapes for sale to commercial wineries. They wish to plant about 700 vines in an approximately 1 ½-acre vineyard growing area on the western portion of the property, west of their residence and south of an existing shop and a water well. Typically, a farm, ranch, stable, garden, orchard, or plant nursery (similar uses to a vineyard) is a permitted use by right in the Agriculture-Estate District on a five acre or more tract of land, with the stipulation that no retail sales are conducted from the premises. This use is permitted on a smaller lot (on

a tract not less than 40,000 square feet) in this zoning district with the approval of a Specific Use Permit. Thus, the applicants are requesting the SUP as their lot is greater than 40,000 square feet, but less than 5 acres. The vineyard would not require mechanical harvesting, and high efficiency drip systems will be used. Currently, a variable 6' to 7' fence exists on the western and southern portions of the lot, with a possible fence built in the future on the northern portion. The Planning and Zoning Commission voted for approval, and staff concurs, subject to the conditions listed in the attached ordinance proposal.

Attachments:

Application

Map

August 5, 2013 Staff Report

Exhibit A (Site Plan)

Proposed Ordinance

ORDINANCE NO. _____

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF A 1.50-ACRE PORTION OF LOT 53, BLOCK 2, SKYVIEW DEVELOPMENT, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF IRVIN DRIVE, APPROXIMATELY 240 FEET SOUTH OF EAST LOOP 250 NORTH), WHICH IS PRESENTLY ZONED AE, AGRICULTURE ESTATE DISTRICT, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT WITHOUT TERM FOR A VINEYARD; 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 and 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 health, safety and general welfare will be best served by the granting of a Specific Use Permit Without Term, set out hereinafter, subject to the special conditions and restrictions 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 AE, Agriculture Estate District, to wit:

A 1.50-acre portion of Lot 53, Block 2, Skyview Development, City and County of Midland, Texas;

is hereby changed to permit same to be used under a Specific Use Permit Without Term for a vineyard, together with the uses permitted in an AE, Agriculture Estate District, subject to

the following conditions:

1. That the vineyard shall conform to the conditions on Exhibit "A", which is attached hereto and incorporated herein.
2. That the vineyard shall not exceed 1.50 acres in area.
3. That no retail sales shall be conducted on the premises.

SECTION TWO. 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 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 City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2013; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting “NAY”:

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2013, at a regular meeting of the City Council:

Council members voting “AYE”:

Council members voting “NAY”:

PASSED AND APPROVED THIS _____ day of _____, A.D., 2013.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

243.22'

FND
I.P.

FND 1/2"
I.R. W/CAP

Vineyard
Growing
Area

water
well

shop

417.69'

417.69'

RECEIVED

JUN 10 2013

CITY OF MIDLAND
PLANNING DIVISION OFFICE

EXHIBIT A SITE PLAN

CASE NO. S-13-008

WATER WELL

A/C

18.9

22.8

37.83

8.0

22.4

4.1

19.4

17.9

13.8

16.5

13.5

42.0

22.4

6.0

0.12

29.3

15.6

1.2

18.5

25.0

4.0

13.5

8.0

22.8

18.9

37.83

8.0

22.4

4.1

19.4

17.9

13.8

16.5

13.5

42.0

22.4

6.0

0.12

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PLANNING AND ZONING COMMISSION

August 5, 2013

CASE: S-13-008.

REQUEST: Hold a public hearing and consider a request for a Specific Use Permit Without Term for a Vineyard.

APPLICANT/OWNER: David Mark Tyler and Nancy Darlene Tyler.

LEGAL DESCRIPTION: On a 1 ½-acre portion of Lot 53, Block 2, Skyview Development, City and County of Midland, Texas.

LOCATION: Generally located on the west side of Irvin Drive, approximately 240 feet south of E. Loop 250 North.

CURRENT ZONING: AE, Agriculture-Estate District.

DETAILS OF REQUEST:

1. The applicants are requesting a Specific Use Permit without Term for a Vineyard on a portion of their 2.33-acre property located at 4405 Irvin Drive. The applicants would like to grow grapes for sale to commercial wineries. They wish to plant about 700 vines in an approximately 1 ½-acre vineyard growing area on the western portion of the property, west of their residence and south of an existing 1,200 square foot shop and a water well. According to our Zoning Code, a Specific Use Permit without Term is required for a "farm, ranch, garden, orchard or plant nursery (including commercial) or the raising, training or boarding of livestock on a tract of not less than 40,000 square feet in an AE, Agriculture-Estate District."

SURROUNDING ZONING AND LAND USE:

2. The applicants' property is located on the west side of Irvin Drive, classified as a residential street, and south of Loop 250 North, within a large AE, Agriculture-Estate District. The area to the north is within the same AE District. To the west is a continuation of the Agriculture-Estate District as well as a currently vacant PDSC, Planned District for a Shopping Center further west. Both the areas to the south (primarily composed of residences) and the east (mainly vacant) are outside the City limits.

ANALYSIS:

3. A commercial farm, ranch, stable, garden, orchard or plant nursery is a use permitted by right in the AE, Agriculture-Estate District, on a tract of five acres or more, provided no retail sales are conducted from the premises. This use is permitted on a smaller lot (on a tract not less than 40,000 square feet) in an AE District through the approval of a Specific Use Permit. Thus, a vineyard on an AE District is permitted, but the SUP is required because of the smaller lot size. The applicants' lot is less than five acres, but greater than 40,000 square feet, and thus, meets these requirements. The vineyard would not require mechanical harvesting, and irrigation would be addressed through high efficiency drip systems using private wells. There is also a variable 6'-7' fence on the western and southern portions of the property. The property owners will also build a fence on the northern portion when the lot to the north is no longer vacant. We do not anticipate any adverse impacts upon adjacent properties should this request be approved. Therefore, we believe that the applicant's request is reasonable, and staff recommends approval.

STAFF RECOMMENDATION:

We recommend approval of this request for a Specific Use Permit Without Term for a Vineyard, subject to the following conditions:

- A. That the vineyard shall significantly conform to the conditions on Exhibit A in all respects;**
- B. That the vineyard shall not exceed 1 ½ acres in area;**
- C. That no retail sales are conducted from the premises.**



Ken Van Dyne
Acting Planning Division Manager
Department of Development Services



Madhuri Kulkarni, City Planner
Department of Development Services

Attachments:

Application
Exhibit A, Site Plan

Case Number: S-13-008

CITY OF MIDLAND
Planning Division

SPECIFIC USE PERMIT APPLICATION

David Mark Tyler + Nancy Darlene Tyler 432-638-1183
Applicant Name Contact Phone #s
4405 Irvin Dr 79705
Address Zip Code
E-Mail address: tylermark@suddenlink.net

David Mark + Nancy Darlene Tyler 432-638-1183 + 638-1185
Property Owner Name Contact Phone #s
4405 Irvin Dr 79705
Address Zip Code
E-Mail address: tylermark@suddenlink.net + dtyler@pentecostsions.com

Operator (if different from Applicant or Property Owner) Contact Phone #s
Address Zip Code

Type of Permit: NO Term specific use

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.)

4405 Irvin Dr, Midland, Tx 79705 - Lot 53, Block 2,
SKYview Development

Current Zoning: Agriculture Estate - AE

Maximum Floor Area: 62,500 Max. Occupancy: _____
(142 acres)

Proposed hours and days of use or operation: _____

Reason for request: Would like to grow grapes for sale to Commercial Wineries.
Wish to plant 200 vines on the back half of our property.

Applicant's opinion as to why the request will not adversely affect the public safety, health, morals, general welfare, and convenience: the proposed vineyard is small + would not require
mechanical harvesting. Irrigation would be done using high efficiency
Drip systems using Private wells. This will be a test vineyard allowing
us to learn the art of growing grapes.

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: D Mark Siler Midland County Date: 6-9-2013

Property Owner: D Mark Siler Midland County Date: 6-9-2013

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

STATE of TEXAS

COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared

_____ who, being by me duly sworn, upon oath says: That (s)he is authorized by _____, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

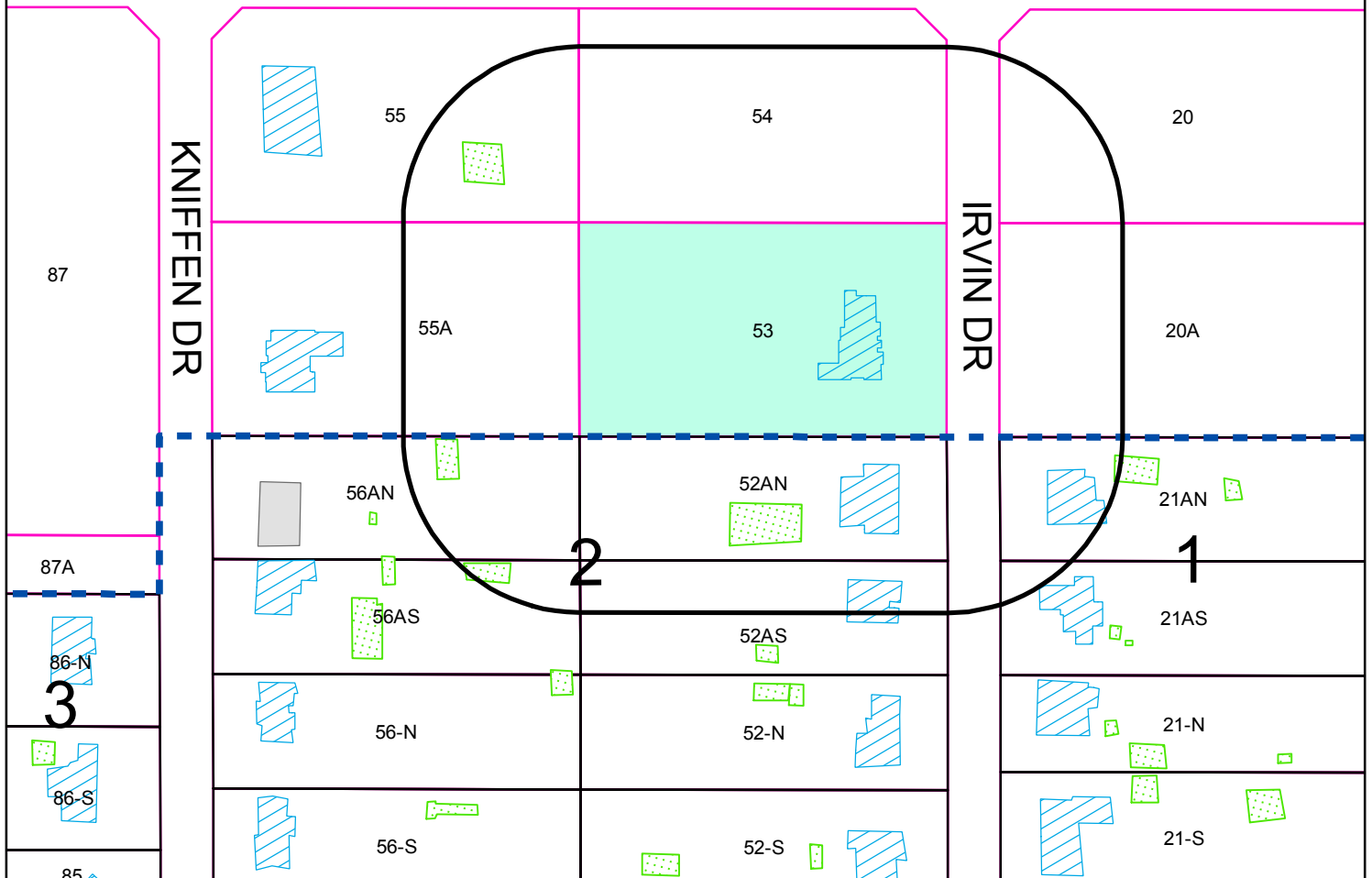
Subscribed and sworn to before me, this _____ day of _____, 20 ____, to certify which witness my hand and seal of office.

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: <u>RS</u>	Date: <u>6/10/13</u>
Assigned: <u>MK</u>	
For: <u>P&Z</u>	On: <u>7/15/13</u>

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

LOOP 250 NORTH



OWNER NOTIFICATION WITHIN CITY LIMITS ONLY

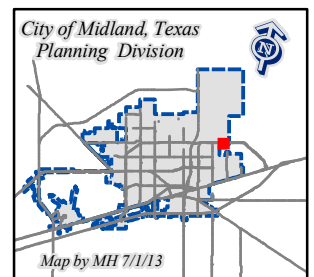
S - 13 - 008

Scale: 1" = 200'

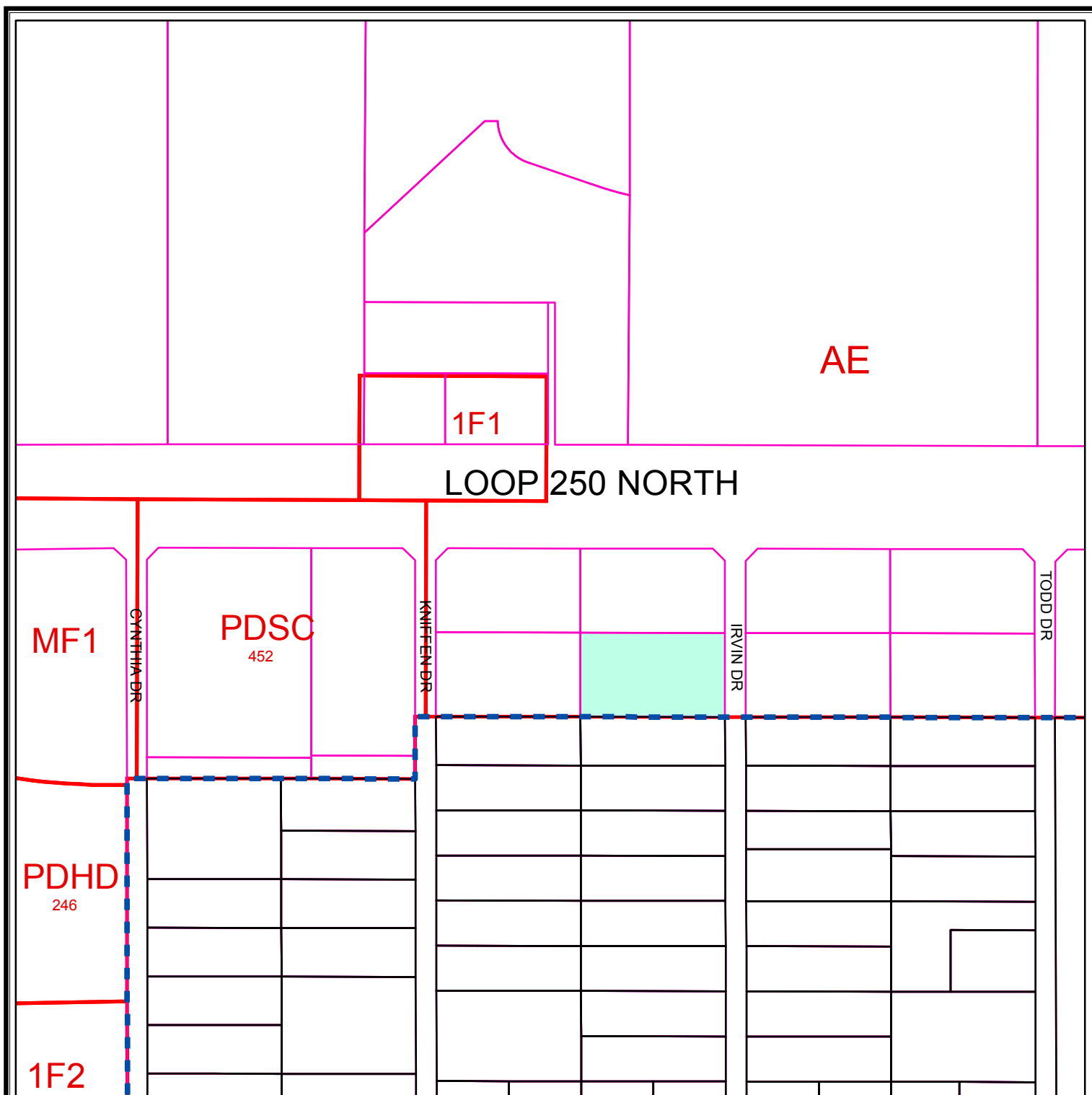
Consider a request for a Specific Use Permit Without Term for a Vineyard on a 1 1/2-acre portion of Lot 53, Block 2, Skyview Development, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- CITY PARCEL
- COUNTY PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



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ZONING MAP

S - 13 - 008

Scale: 1" = 400'

Consider a request for a Specific Use Permit Without Term for a Vineyard on a 1 1/2-acre portion of Lot 53, Block 2, Skyview Development, City and County of Midland, Texas.

LEGEND

- ZONING
- CITY PARCELS
- CITY LIMITS
- COUNTY PARCELS

ZONING DISTRICTS:

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

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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: August 13, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Ken Van Dyne, Acting Planning Division Manager

SUBJECT: Hold a public hearing at approximately 10:39 a.m. and consider an ordinance on a request by Darrell Mann/GRACO for a zone change from PD, Planned District for a Shopping Center to Amended Planned District on Lot 20, Block 5, North Park, Section 16, City and County of Midland, Texas (Generally located on the north side of W. Loop 250 N. approximately 1,200 feet west of Whitman Drive - District 1)

Purpose:

Hold a public hearing at approximately 10:39 a.m. and consider an ordinance on a request by Darrell Mann/GRACO for a zone change from PD, Planned District for a Shopping Center to Amended Planned District

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to process this application.

Discussion:

This is a request to approve a Planned District site plan for a restaurant, specifically Abuelo's, to be located at the southwest corner of The Commons shopping center. Access to this site will be from a driveway on Loop 250, as well as through the existing parking lot. There is a reciprocal access and parking agreement throughout this shopping center, which accounts for the lack of parking on this site. The applicant has provided Exhibits A, B and C to fulfill the Planned District requirements. Exhibit C is a plan view showing the location of the 10,200 square foot restaurant. Exhibit B shows the elevation views, where the exterior building materials will be EIFS with glass tile accents. Exhibit C is an artist rendering of the building. The Planning and Zoning Commission recommended unanimous approval of this request. Staff concurs in this recommendation.

Attachments:

August 5th, 2012 P&Z Staff Report
Proposed Ordinance and Exhibits A, B and C

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOT 20, BLOCK 5, NORTH PARK, SECTION 16, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A SHOPPING CENTER, TO BE USED AS AN AMENDED PLANNED DISTRICT (GENERALLY LOCATED ON THE NORTH SIDE OF LOOP 250, EAST OF BILLINGSLEY BOULEVARD); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter and the State law with reference to the creation of “Planned Districts” under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by the creation of an Amended Planned District, set out hereinafter and subject to the conditions and restrictions set out hereinafter;

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

SECTION ONE. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned PD, Planned District for a Shopping Center, and it shall be used as an Amended Planned District, subject to the special conditions and restrictions hereinafter set out, said property being described as follows:

Lot 20, Block 5, North Park, Section 16, City and County of Midland, Texas.

SECTION TWO. That said property shall be subject to the following special conditions and restrictions:

1. That Exhibits “A”, “B” and “C”, which are attached hereto and incorporated herein, are hereby adopted as required by City of Midland Ordinance No. 7773.
2. That the development of this property shall conform to Exhibits “A”, “B” and “C” in all respects, except as otherwise stated below.
3. That the exterior building materials shall be EIFS and/or masonry with glass tile accents. Red canvas awnings shall be allowed over the windows.
4. That all other development conditions not otherwise set forth in this ordinance and the exhibits hereto shall conform to the regulations of the LR-2, Local Retail District, and all other applicable regulations of the Midland City Code.

SECTION THREE. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION FOUR. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FIVE. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION SIX. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SEVEN. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the ____ day of _____, A.D., 2013; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the ____ day of _____, A.D., 2013, at a regular meeting of the City Council:

Council members voting “AYE”:

Council members voting “NAY”:

PASSED AND APPROVED THIS ____ day of _____, A.D., 2013.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

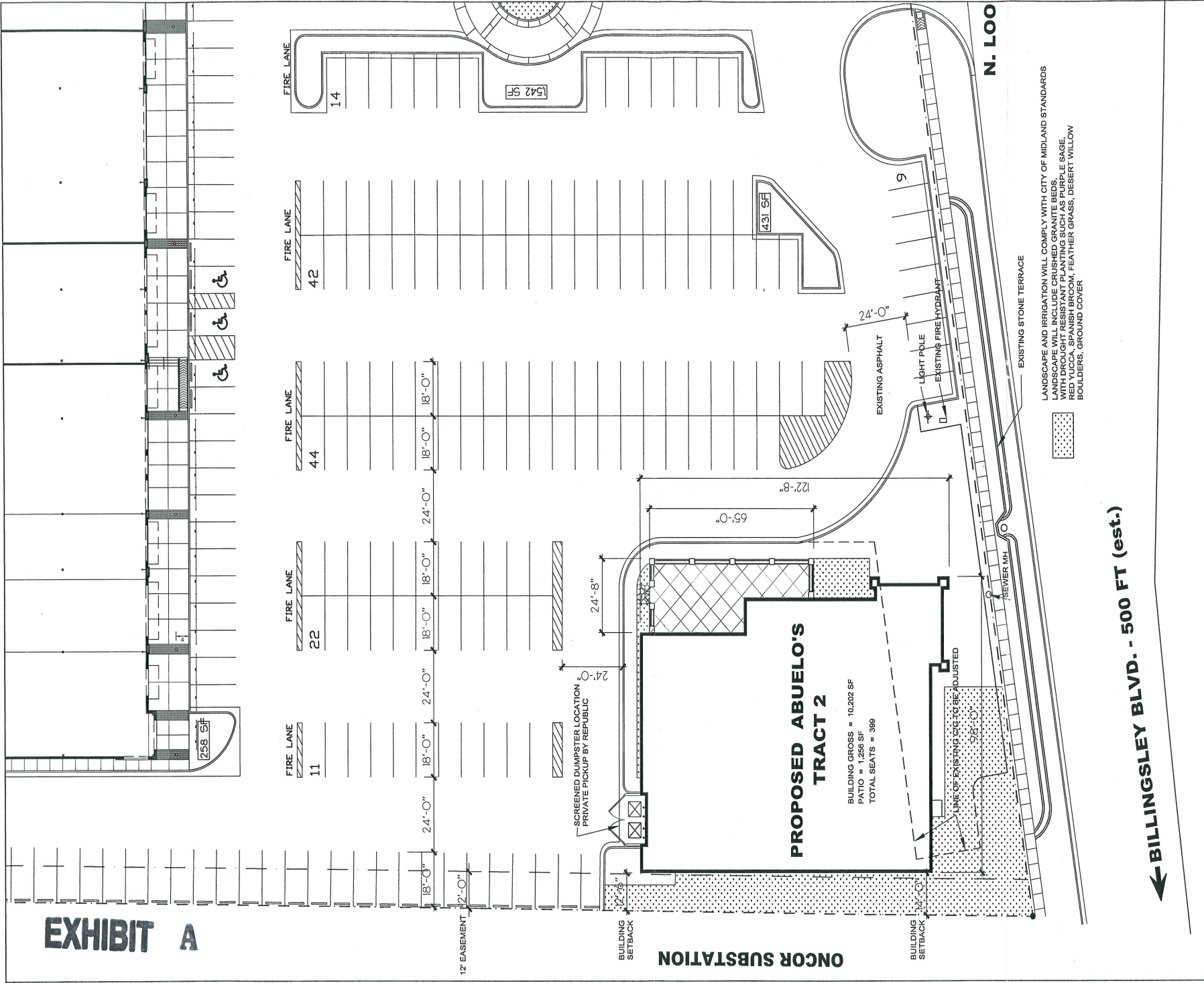
APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

EXHIBIT A



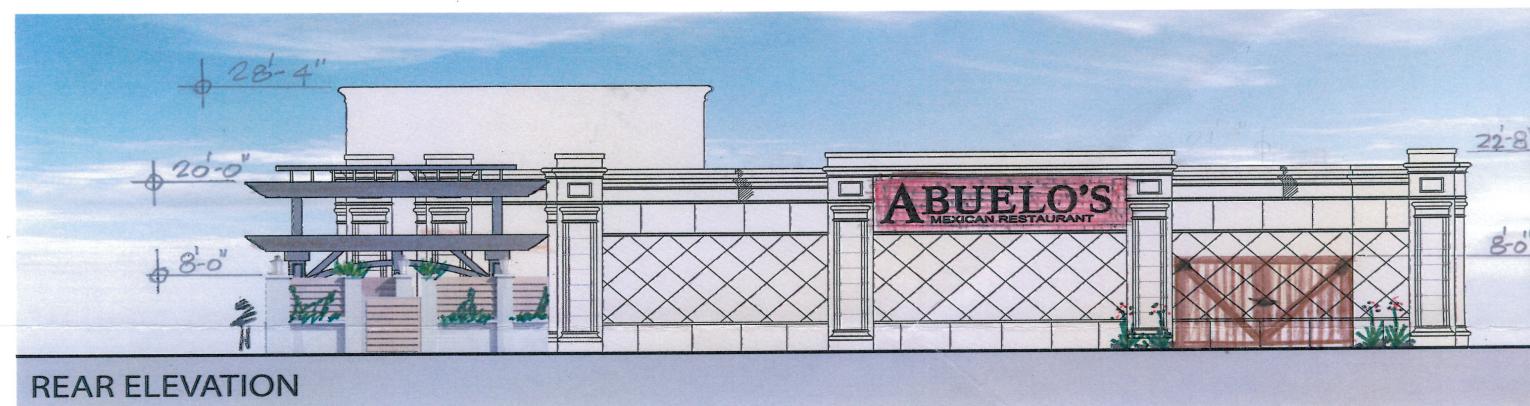
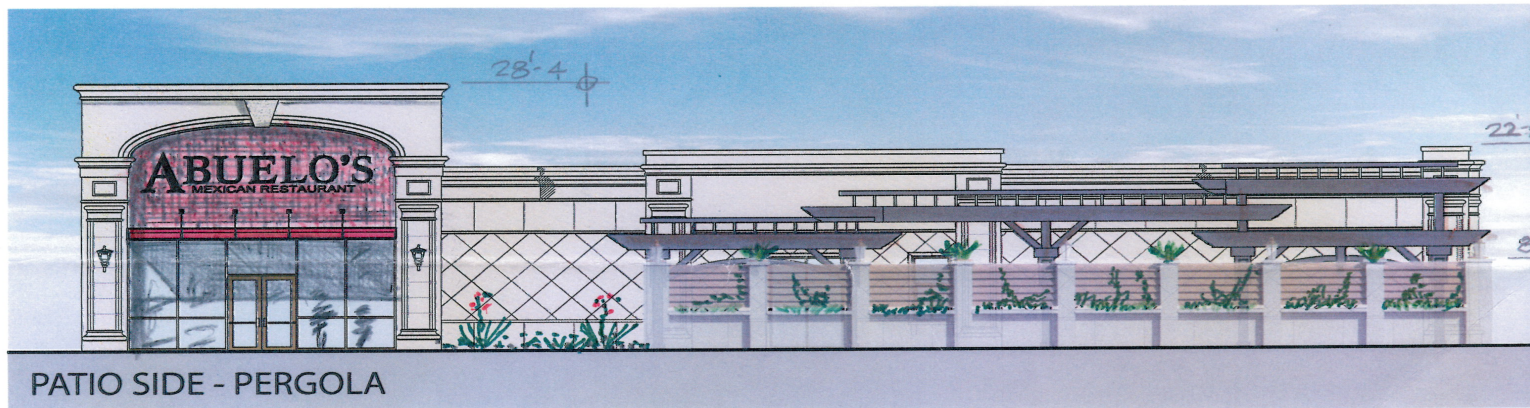
← BILLINGSLEY BLVD. - 500 FT (est.)



PROPOSED SITE PLAN

SCALE: 1/32"=1'-0"

PRELIMINARY NOT FOR
REGULATORY APPROVAL,
PERMITTING, OR
CONSTRUCTION
DATE: 6/13/13
JASON MOORE NO. 10265
MELANIE MULNIER NO. 19102



5-30-13

PRELIMINARY NOT FOR
REGULATORY APPROV
PERMITTING, OR
CONSTRUCTION
DATE: 5/13/13
JASON MENDOZA NO. 19005
MELANIE MENDOZA NO. 19102

EXHIBIT B

CASE NO. Z-13026

Page 1

MWM
architects

MWM Architects, Inc.
2574 74th Street, S
Lubbock, TX 79423
Phone: 806.745.7771
Fax: 806.745.7820

42.8

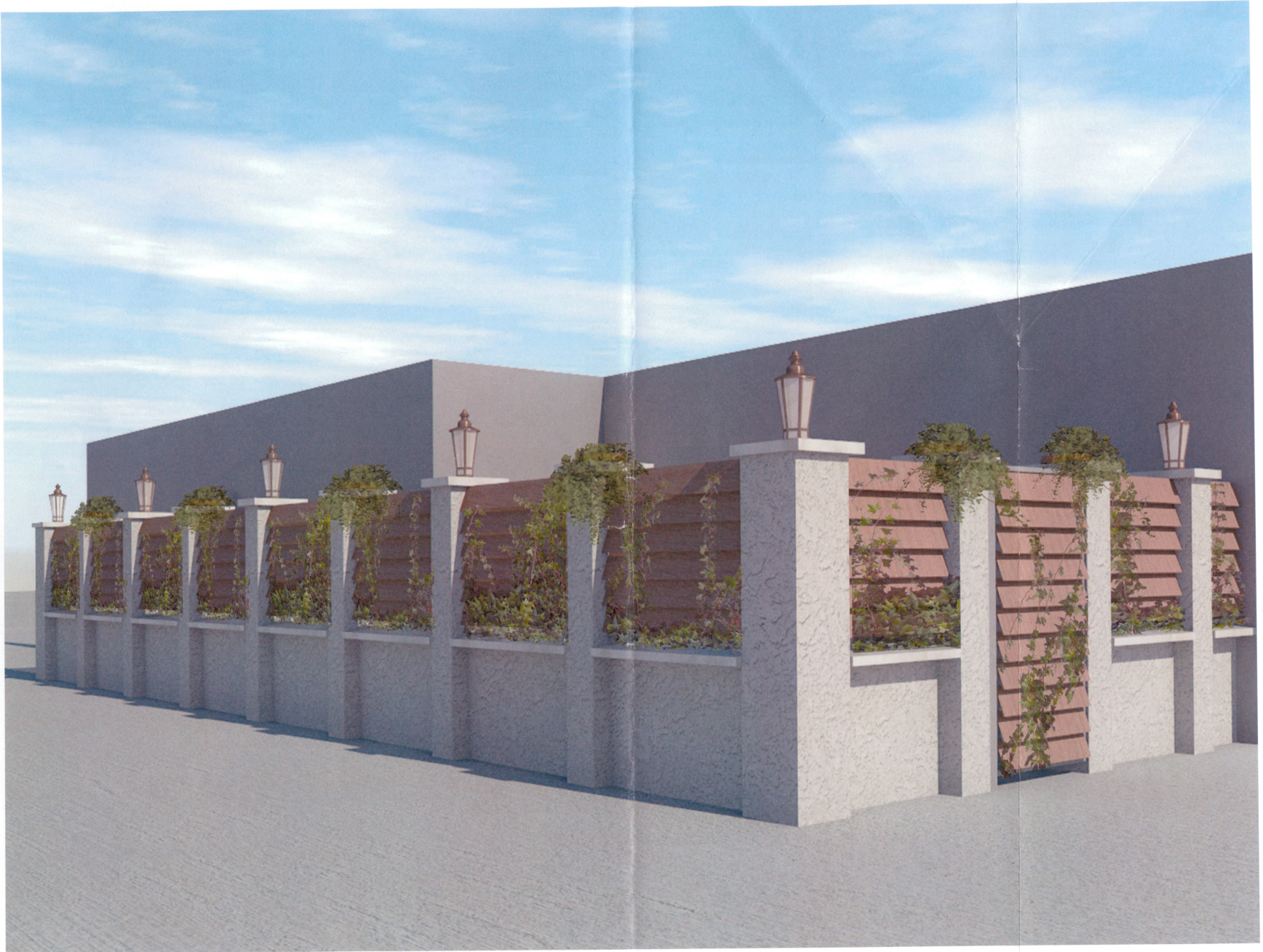


EXHIBIT C

CASE NO. 213026

Case Number: 213.026

CITY OF MIDLAND
Planning Division

APPLICATION TO AMEND A PLANNED DISTRICT

Applicant: DARRELL MANN - MWM ARCHITECTS, INC.
Address: 2574 74th St. Ste 201 DMANN@MWM-ARCH.COM
Street Address LUBBOCK TX. (Phone/e-mail) 806-745-7707
City State Zip Code
Property Owner: NORTHPARK COMMONS, LLC.
Address: 2574 74th St. Ste 210 (806)745-9718
Street Address LUBBOCK TX. (Phone/e-mail) RCHILIE@GRACOREALESTATE.CO
City State Zip Code

Street address and Legal Description of Planned District (complete Lot, Block, and Subdivision Name description below, or, if not in a recorded plat, attach a sealed Metes and Bounds Description:

LOT 20 BLOCK 5, NORTHPARK, SECTION 15

Current PD Classification: PPSC

Requested PD Classification: PPSC
(List by tracts if more than one zoning district is requested)

Reason for amendment request: We are developing the West out parcel which was not included in the original site plan Review application. TRACT 2.

Describe how conditions affecting the property have changed since it was designated its present zone: The property was developed as a shopping center since it was designated its present zone and we are developing the last of the two out parcels. (TRACT 2)

Will a Specific Use Permit with Term for alcoholic beverage sales be needed? ☒ Yes ☐ No

FEES:

Single, Planned District amendment: **\$550**. Multiple, PD proposal: add \$75 per district.

SUBMITTALS:

16 copies of the PD site plan (FOLDED):

✓

Site Plan in digital format .pdf and .jpg:

✓

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

Property Owner (signature): _____ 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

Darrell Mann who, being by me duly sworn, upon oath says: That (s)he is authorized by ~~MWM Architects~~ ^{GN Commons} ~~North Commons~~ 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.

Darrell S. Mann

Authorized Agent (signature)

Subscribed and sworn to before me, this 30 day of May, 2013, to certify which witness my hand and seal of office.

Casey Lynn Hopkins

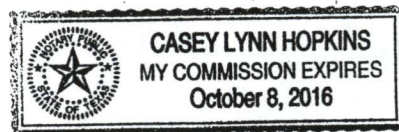
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY

Rec'd By: MS Date: 5/31/13

Assigned: JC

For: pxz On: 8/5/13



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

PLANNING AND ZONING COMMISSION

August 5, 2013

CASE: Z-13-026.

REQUEST: Hold a public hearing and consider a request for a zone change from PD, Planned District for a Shopping Center to Amended Planned District.

APPLICANT: Darrel Mann.

OWNER: Northpark Commons, LLC.

LEGAL DESCRIPTION: Lot 20, Block 5, Northpark, Section 15, City and County of Midland, Texas.

LOCATION: North side of Loop 250, east of Billingsley Boulevard.

DETAILS OF REQUEST:

1. This property is located at the southwest corner of The Commons shopping center, adjacent to Loop 250. The property is zoned Planned District for a Shopping Center, subject to the LR-2 District regulations. Additionally, a site plan must be approved before a building permit can be issued. The purpose of this application is to adopt site plans for a new pad site for an Abuelo's restaurant.

SURROUNDING ZONING AND LAND USE:

2. This shopping center is still under development; this would be the third separate building for this center. The land north of this property is zoned Planned District for a Housing Development District, and is the location of the Blue Ridge Apartments. The area to the east is also zoned Planned District for a Shopping Center, but remains vacant at this time. The south side of this property is bounded by Loop 250, and the area immediately to the west is an electrical substation. Farther west is Billingsley Boulevard, which is developed with a variety of retail uses.

ANALYSIS:

3. The proposed use of this property is a restaurant, which is allowed in the underlying LR-2 District zoning. This lot has already been platted, and is a part of the larger shopping center. This shopping center has blanket cross-parking and mutual access easements. Thus, the parking within the shopping center will fulfill the parking requirements on this lot. Also, there is no direct driveway access to this property. Access restrictions were imposed to the shopping center by the Texas Department of Transportation. Access to this site will be across the common parking area that serves this center.

The attached Exhibit A is a plan view of the proposed restaurant pad. The gross floor area is proposed to be 10,200 square feet. Included in this area is a 1,256 square-foot outdoor patio. A maximum seating capacity of 399 persons is proposed. This seating requires 100 spaces, which is available throughout the shopping center. The building will be setback a minimum of 12.5 feet from the west property line, and a setback of 15 feet is required from the front property line. The screened dumpster location is on the north side of the building. Landscaping and outdoor lighting were installed with the first phases of development. Exhibit B is an elevation view of the restaurant. The maximum building height is 22 feet, 8 inches, although a parapet wall extends to 29 feet. These standards meet the Zoning Code requirements. The exterior building materials include EIFS in a light stone color, accents of glass tile above the entrance and red canvas awnings over the windows. Note that the patio area will be enclosed with a screening wall, and covered with a pergola. The dumpster site will be screened with a gate. Exhibit C is an artist rendering of the rear corner of the building, and indicates a neutral color scheme. We believe that from an architectural, material and color standpoint, this proposed restaurant building conforms to the characteristics of the existing buildings, and will be a positive addition to this shopping center.

STAFF RECOMMENDATION:

We recommend approval of this request for a zone change from PD, Planned District for a Shopping Center to Amended Planned District, subject to the following conditions:

- A. That this property shall be developed in accordance to the conditions shown on the attached Exhibits A, B and C in all respects, except as otherwise stated below.
- B. The exterior building materials shall consist of EIFS, stone, and glass tile.

PLANNING AND ZONING COMMISSION

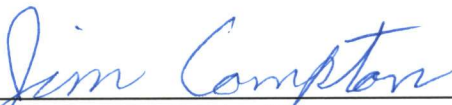
August 5, 2013

Z-13-026

- C. All other development conditions not otherwise expressed in this ordinance or on Exhibits A, B and C shall conform to the regulations of the LR-2, Local Retail District**



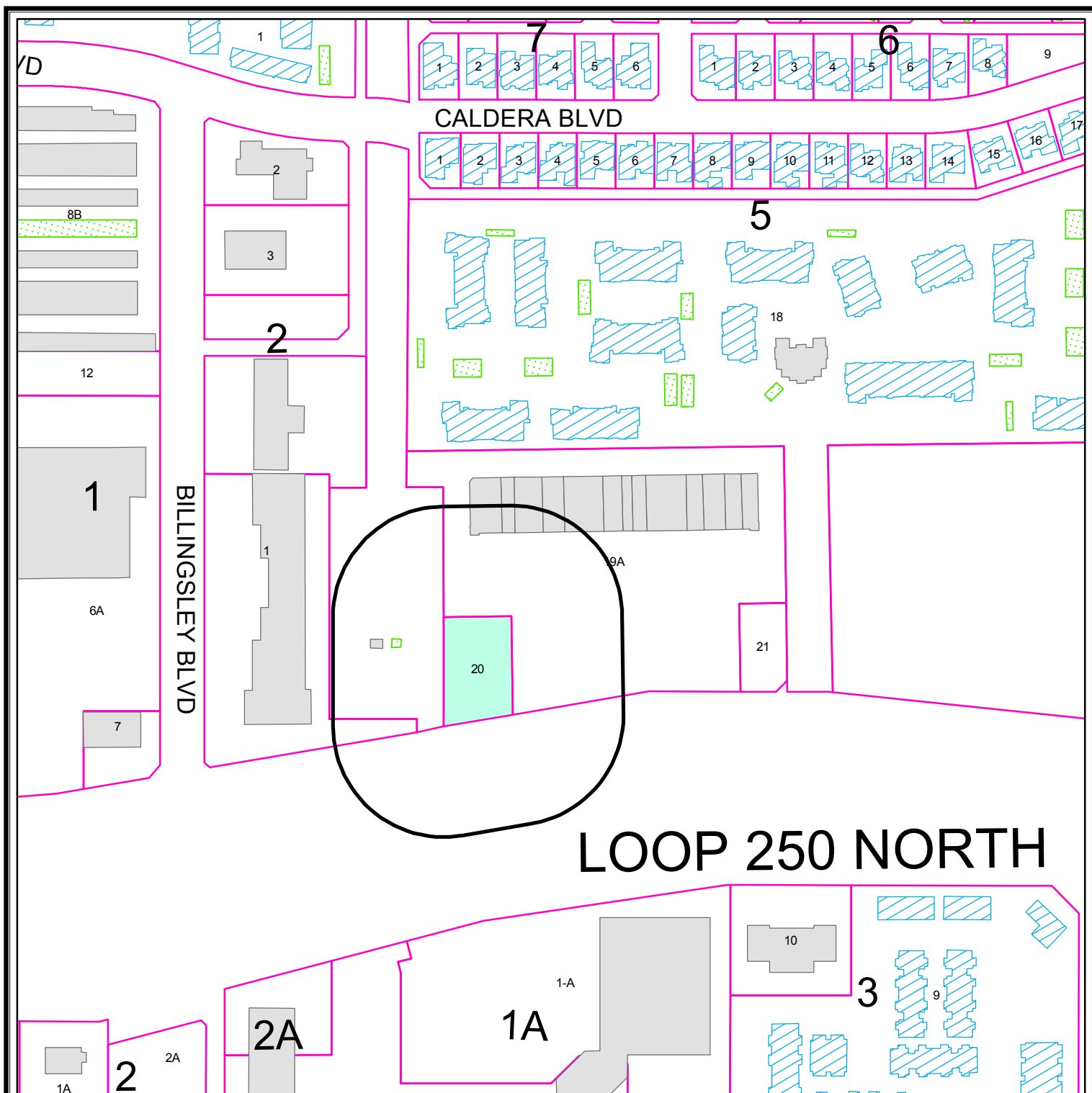
Ken Van Dyne
Acting Planning Division Manager
Department of Development Services



Jim Compton, Senior Planner
Department of Development Services

Attachments:

Application
Maps
Exhibits A, B and C



LOOP 250 NORTH

PROPERTY OWNER NOTIFICATION MAP

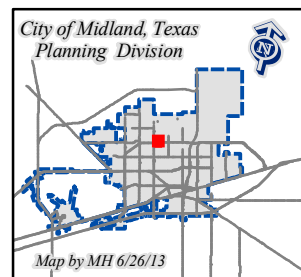
Z - 13 - 026

Scale: 1" = 250'

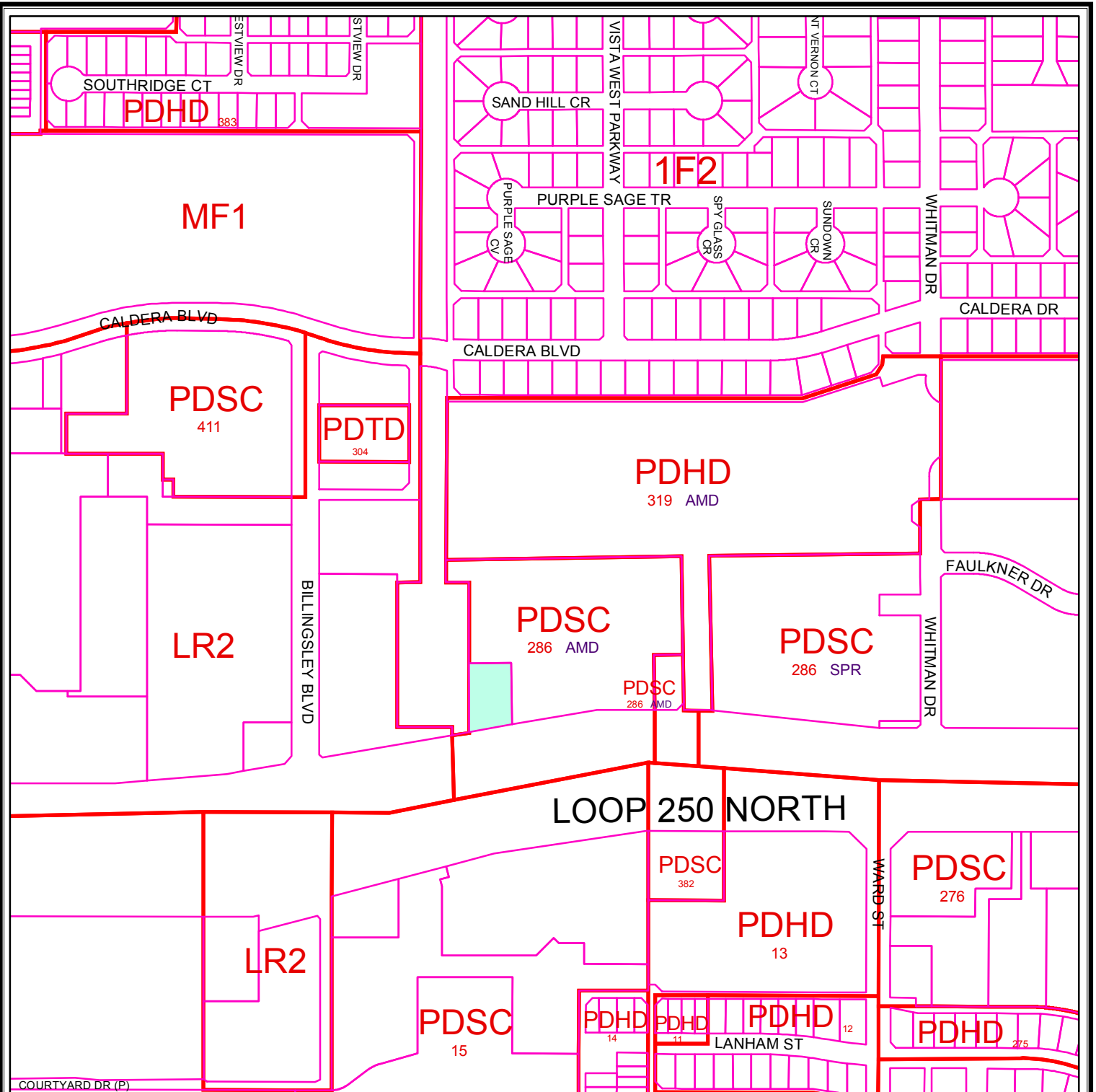
Consider a request for a zone change from PD, Planned District for a Shopping Center, to an Amended Planned District on Lot 20, Block 5, North Park, Section 16, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



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



ZONING MAP

Z - 13 - 026

Scale: 1" = 400'

Consider a request for a zone change from PD, Planned District for a Shopping Center, to an Amended Planned District on Lot 20, Block 5, North Park, Section 16, 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: August 13, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Ron Jenkins, Oil & Gas Compliance Coordinator

SUBJECT: Hold a public hearing at approximately 10:42 a.m. regarding a proposed oil and gas permit to Rust Oil Corporation (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (Moss Partnership "9" No. 1) located 2,183 feet from the south line and 1,616 feet from the east line located in Section 9, Block X, H.P. Hilliard Survey, City and County of Midland, Texas. (Generally located on the west side of the extension of North Garfield Street, approximately 1/2 mile north of Mockingbird Lane. – District 1) This is a public hearing only. No further action will be taken.

Purpose:

At approximately **10:42** a.m. hold a public hearing on a request from Rust Oil Corporation (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (Moss Partnership "9" No. 1) located 2,183 feet from the south line and 1,616 feet from the east line located in Section 9, Block X, H.P. Hilliard Survey, City and County of Midland, Texas. This is an opportunity for the Council to receive public comment. Council may consider this permit following a 30-day public comment period and at a regularly scheduled meeting. No letters of objection received.

Recommended City Council Action

☐ Approve

☐ Deny

☒ Direction/Informational

Fiscal Impact:

There is no cost to the City to process this application.

Discussion:

The Oil and Gas Advisory Committee has reviewed this well site in detail and recommends approval of the application with a notation to the operators certification, send additional letters for the notification, include an updated road repair agreement, correction of the concept plan concerning floodplain and include address in the emergency action plan. Rust Oil Corporation has addressed the recommendations and updated the application. Concerning landscaping and irrigation variance request the committee recommends landscaping be installed within two years and acceptance of Rust Oil Corporation offer to provide security for pedestrian traffic by Midland Classical Academy during school hours on Whitman Drive during the mobilizing of the drilling operations.

Attachments: Application; Location map; Exhibit - Drill site map, Exhibit – Flow Line Location.



APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

RECEIVED

MAY 30 2013

CITY OF MIDLAND
PLANNING DIVISION

I. General Information

Date	Operator Name (must match W-1)	Operator Address
2.23.12	RUST OIL CORPORATION	6300 RIDGLEA PL, 904 FORT WORTH, TX 76116
Representative Name	Representative Address (within Midland City Limits)	Rep. Tele. 432.681.1333
ROGER STONE	401 W. TEXAS - SUITE 801 MIDLAND, TX 79701	Rep. Fax 432.381.7839
Fee: \$4,000.00 Rec'd Yes ☒ No ☐		

Permit Compliance Contact (Choose 1):

Option A:

24/7 Answering Services - No. 1 (Tele.): 432.681.1333 No. 2 (Tele.): 432.381.7710

Option B:

Company Compliance Representative (Name, Address, Local Telephone) (ATTACH STATEMENT AS EXHIBIT A):

Emergency Contact Representative (Name, Address, 24-Hour Tele. No.):

CURTIS LEONARD - 432.664.6607 - 2 SADDLE CLUB DRIVE - MIDLAND, 79705
CB RUST - 817.990.4019 - 152 CROWN RIDGE CT - FORT WORTH, 76133

Other Permitted Wells in City (ATTACH EXHIBIT B [see § J(26)]). SMITH HUGHES 9 #1

II. Mineral Ownership

Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease):

1. VARIOUS (See EXHIBIT C)

2.

3.

ATTACHED AS EXHIBIT C is (a Title Opinion by _____, a licensed Texas Attorney/Title Commitment by Abstract Company/a Take-off from _____, a Certified Petroleum Landman/an opinion letter from _____, a licensed Texas Attorney) indicating that [Operator] has a legal right to develop the mineral estate that is the subject of this Application. [See § J(5)].

III. Surface Ownership & Use

General Description of Current Surface Use (within 860 feet of proposed surface location):

CITY STREET; UNDEVELOPED; OWNER IS NORTH MIDLAND PARTNERSHIP, WHICH HAS ENTERED INTO A SURFACE USE AGREEMENT WITH RUST OIL CORP.

ATTACHED AS EXHIBIT D is (a Title Opinion by _____, a licensed Texas Attorney/a Take-off from _____, a Certified Petroleum Landman/Current Tax Roll from Midland Central Appraisal District), which lists the name(s) and address(es) of all surface owners within 860 feet of the surface well location. [See § J(7)].

ATTACHED AS EXHIBIT E is (a map/p lat/satellite/aerial photo) depicting all Residences, commercial structures, public buildings, all publicly dedicated Streets and alleys, Rights of Way, and permanent accessory structures surrounding the proposed Drill Site. The (map/p lat/satellite/aerial photo) includes two circles, as required by the Ordinance—one depicting a 500 foot radius and one depicting an 860 foot radius from the proposed well's surface location. [See § J(10)].

ATTACHED AS EXHIBIT F is a copy of the notification letter(s) sent to 100 percent of the surface owners, Certified Mail, Return Receipt Requested. [See § J(36)].

IV. Well & Operations Information

Proposed Well Name: MOSS PARTNERSHIP "9" NO. 1

Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary) [See § J(11) and § L(4)]:

17" hole to 300'; 13 7/8" casing to 300'; cemented to surface; 11" hole to 5200'; 8 5/8" casing to 5200'; cemented to surface; 7 7/8" hole to 11500'; cemented to base 8 5/8"

Legal Description of Proposed Well Site:

2183' FSL & 10110 FEL OF SECTION 9, BLK. X, H. P. HILLIARD SURVEY

ATTACHED AS EXHIBIT G is the Location Site Plan [See § J(9)].

ATTACHED AS EXHIBIT H is the Map with the proposed transportation route(s) and road(s) for equipment, chemicals, or refuse products used or produced in the proposed oil and gas operations. [See § J(12)].

ATTACHED AS EXHIBIT I is a copy of the approved Texas Railroad Commission permit to drill (Form W-1), together with all attachments (also file copy of W-1 with City Secretary before commencement of drilling operations). [See § J(16) and (20)].

ATTACHED AS EXHIBIT J is a copy of the required TCEQ report as to depth of usable quality ground water. [See § J(17)].

ATTACHED AS EXHIBIT K (if applicable) is the list of alternative locations developed in consultation with the Oil & Gas Advisory Committee. [See § J(27)].

ATTACHED AS EXHIBIT L is the Fencing and Irrigation Plan. [See § J(30)].

ATTACHED AS EXHIBIT M is the Road Repair Agreement and Letter of Credit/Certificate of Deposit/Surety Bond in the amount of at least \$25,000. Option (if applicable): Applicant would further state that no City-owned streets or alleys will be used by the Operator in connection with its oil and gas operations and as a result, requests a waiver from the Council of this requirement. Option B (if applicable): Because Applicant has three Road Repair Agreements in effect that have been approved by the Council, Applicant requests that the Council consolidate all agreements into one and is filing the necessary \$75,000 letter of credit/certificate of deposit/surety bond in conjunction with this request. [See § J(31)].

ATTACHED AS EXHIBIT N is the Concept Plan depicting the proposed Operations Site (which includes tanks, roads, power lines, and pipeline routes). [See § J(32)].

Description of Public Utilities required during (1) drilling and (2) operations:

- (1) Drilling: NONE
- (2) Operations: GEXA ENERGY
440 VOLT ELECTRICITY

Description of water source to be used during Drilling:

FRESH WATER WELLS CURRENTLY IN PLACE ON DEDICATED SURFACE AREA

Description of all electric lines to production facilities (reference exhibits as necessary) [See § L(10)]:

SEE EXHIBIT N FOR DETAILS OF ROUTING OF ELEC. & PIPE LINES

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]:

SEE EXHIBIT O; PITS WILL BE DEEP BURIED TO COMPLY WITH CITY REQUIREMENTS

V. Additional Required Exhibits

ATTACHED AS EXHIBIT P is the Letter of Credit/Certificate of Deposit in accordance with Subsection (K)(2). [See § J(18)].

ATTACHED AS EXHIBIT Q are Tax certificates from Midland Central Appraisal District to be submitted indicating that all taxes on personal and real property, including minerals, owned by Applicant are current. [See § J(29)].

ATTACHED AS EXHIBIT R is the required Insurance Certificate. [See § J(19) and § K(3)].

ATTACHED AS EXHIBIT S (if applicable) is the Drainage Plan approved by the City Engineer relating to Applicant's proposed operations. [See § J(21)].

ATTACHED AS EXHIBIT T is Applicant's Emergency Action Response Plan. [See § J(22)].

ATTACHED AS EXHIBIT U is Applicant's Hazardous Materials Management Plan, a copy of which has been submitted and is on file with the Midland Fire Department. [See § J(23)].

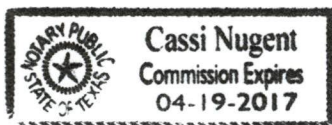
Rust Oil Corporation
[NAME OF COMPANY]

By CB Rust
Its President

State of Texas))

County of Midland)

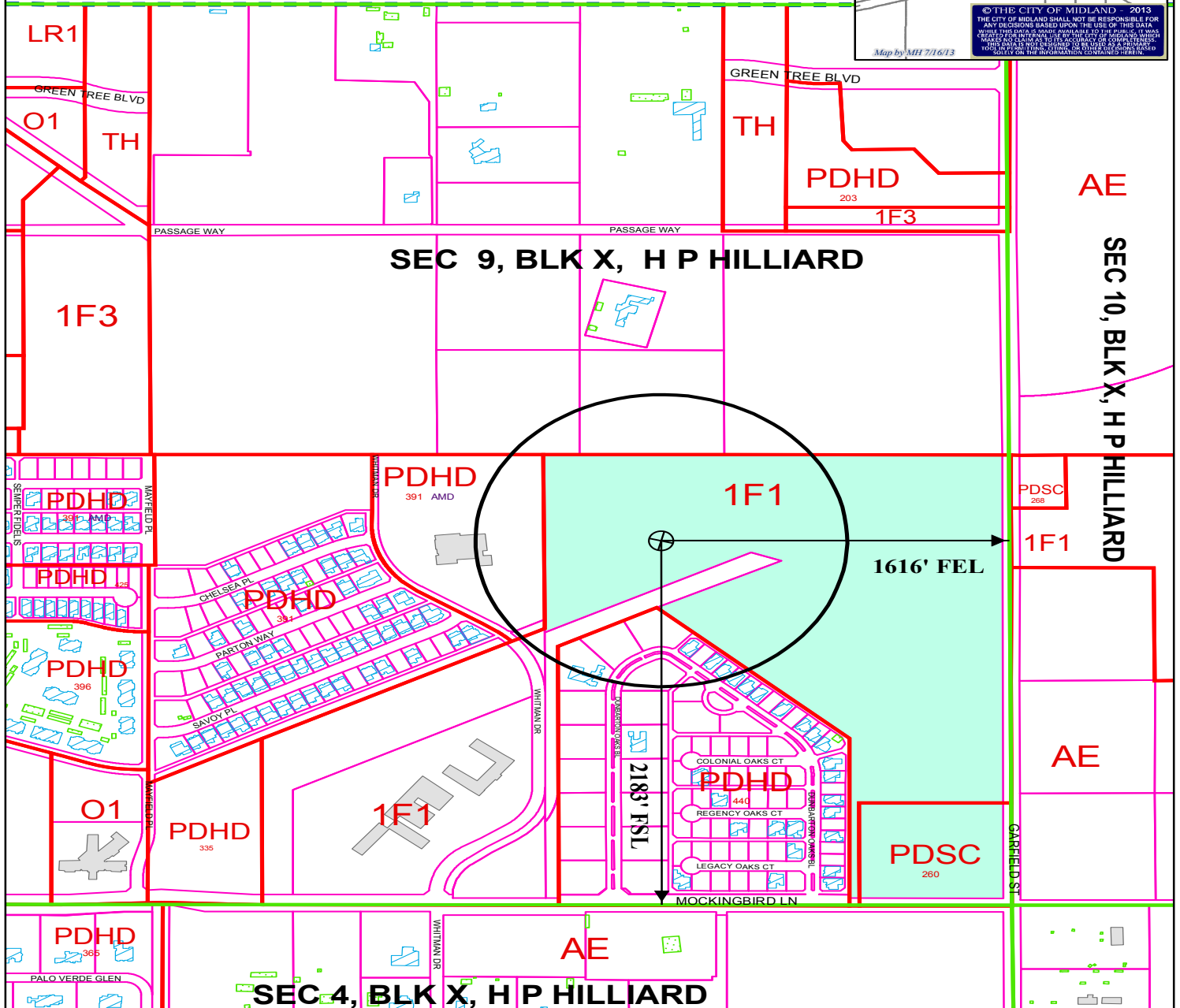
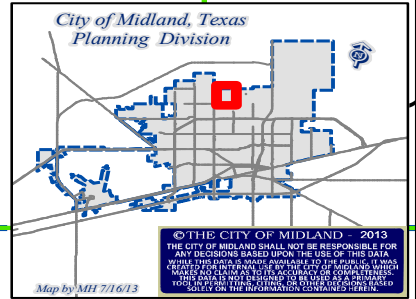
, personally appeared before me, and being first duly sworn declared he/she signed the application in the capacity designated, if any, and further states that he/she has read the above application and attached exhibits and the statements therein are true and correct to the best of their knowledge.



Cassi Nugent
Notary Public, State of Texas

[SEAL]

SEC 9, BLK 39, T-1-S



LOCATION AND ZONING MAP

O - 13 - 013

Scale: 1" = 700'

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 2183' FSL and 1616' FEL, Section 9, Block "X", H. P. Hilliard Survey, City and County of Midland, Texas.

Moss Partnership "9" No. 1

LEGEND

CITY PARCELS	PUBLIC BLDGS	CITY LIMITS
COUNTY PARCELS	PRIVATE BLDGS	860 FT. BUFFER
ZONING	ACCESSORY BLDGS	SURVEY SEC.

ZONING DISTRICTS:

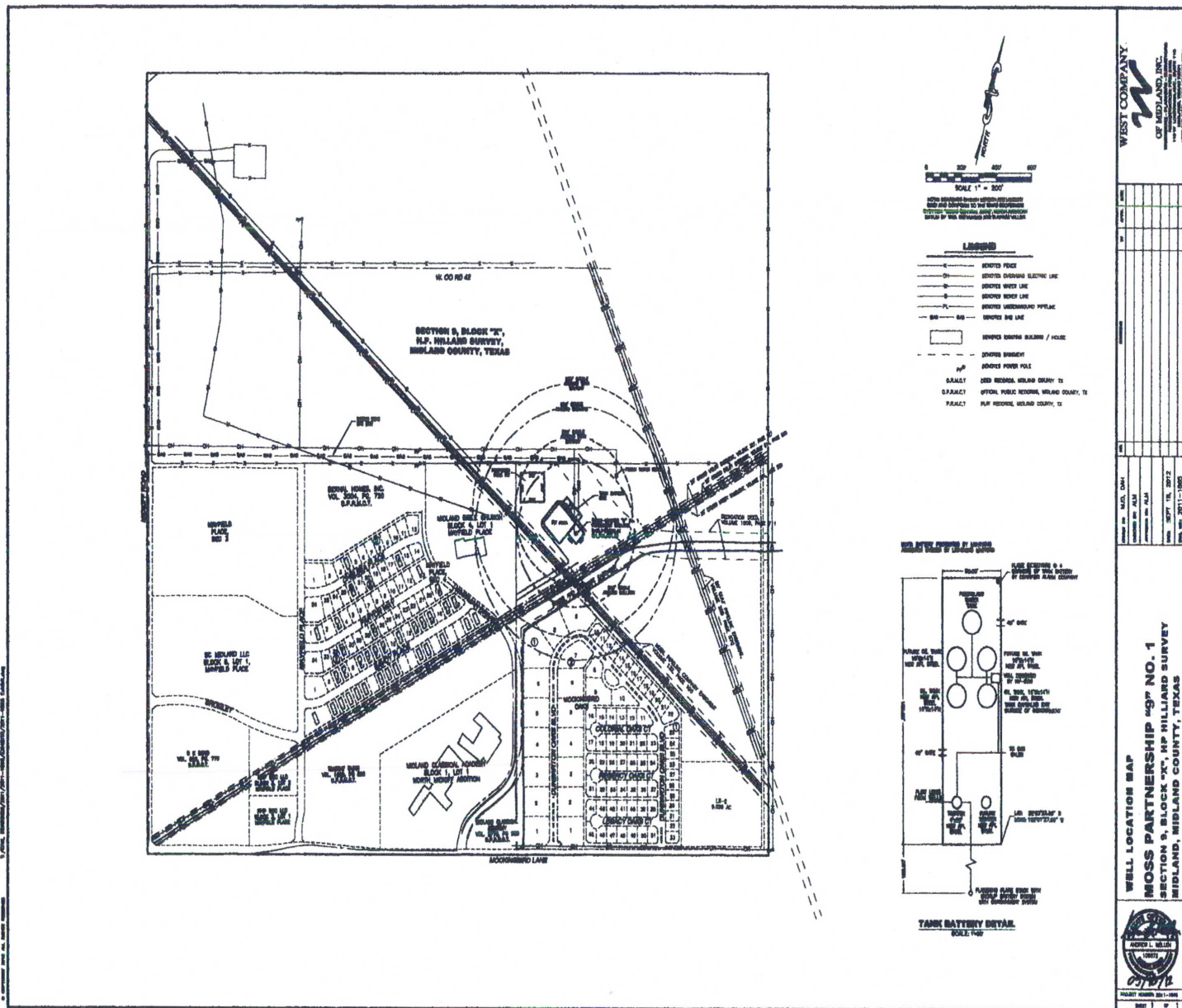
FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	O1, O2	OFFICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	NS	NEIGHBORHOOD SERVICE
MH	MOBILE HOME DWELLING	LR1, LR2, LR3	LOCAL RETAIL
TH	TOWNHOUSE DWELLING	C1, C2, C3	COMMERCIAL
2F	TWO-FAMILY DWELLING	IP, JP1, IP2, IP3	INDUSTRIAL PARK
MF1, MF2	MULTIPLE FAMILY DWELLING	LI	LIGHT INDUSTRY
		HI	HEAVY INDUSTRY



CITY OF MIDLAND
PLANNING DIVISION OFFICE

O-13-013

MOSS PARTNERSHIP "9" NO 1





City Council Agenda

Approved for Agenda:
CSharp
City Manager's Office

MEETING DATE: 8/13/2013

TO: City Council / City Manager

FROM: Bob McNaughton, Finance Director

SUBJECT: Second Public Hearing on Tax Increase

Purpose:

At 6:00 p.m. hold a public hearing regarding a proposal establishing the ad valorem tax rate of .431927 per \$100 taxable assessed valuation for the Fiscal Year 2013 - 2014.

Recommended City Council Action

☐ Approve ☐ Deny ☒ Directional / Informational

Fiscal Impact:

Proposed ad valorem tax rate of .431927 per \$100 valuation

Discussion:

The proposed rate is a 2.9161 cent, 6.32%, decrease from the current rate of .461088.

The proposed rate is a 1.16999 cent, 2.782% increase over the effective rate of .4202271.

The combined proposed rate of .431927 per \$100 valuation for fiscal year 2013 - 2014 is composed of a maintenance and operations rate of .385719 per \$100 valuation and a debt service levy of .046208 per \$100 valuation.

Attached are the certified appraisal roll received from MCAD on July 22, 2013, the "Notice of Public Hearing on Tax Increase" as published in the MRT on July 26, 2013, and the distribution worksheet for current and delinquent ad valorem tax revenues.

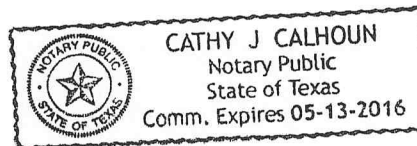
**CERTIFICATION OF 2013 APPRAISAL ROLL
CITY OF MIDLAND**

	REAL ESTATE	P P	P&A MIN	P&A PP	TOTALS
GROSS VALUE	\$8,395,246,080	\$747,817,130	\$67,734,830	\$329,882,870	\$9,540,680,910
LOSS DUE TO AGRICULTURAL USE	(\$59,687,120)	\$0	\$0	\$0	(\$59,687,120)
CONSTITUTIONAL EXEMPT PROPERTY	(\$406,020,515)	(\$2,419,340)	(\$183,230)	\$0	(\$408,623,085)
DISABLED VETERAN EXEMPTION	(\$4,589,210)	(\$5,210)	\$0	\$0	(\$4,594,420)
DISABLED VETERAN EXEMPTION FROZEN	\$0	\$0	\$0	\$0	\$0
DISABLED VETERAN EXEMPTION (100%)	(\$14,531,670)	\$0	\$0	\$0	(\$14,531,670)
GENERAL HOMESTEAD EXEMPTION	\$0	\$0	\$0	\$0	\$0
GENERAL HOMESTEAD EXEMPTION FROZEN	\$0	\$0	\$0	\$0	\$0
HOMESTEAD EXEMPTION (LOCAL OPTION)	\$0	\$0	\$0	\$0	\$0
HOMESTEAD EXEMPTION FROZEN (LOCAL OPTION)	\$0	\$0	\$0	\$0	\$0
HOMESTEAD EXEMPTION (LOCAL PERCENT OPTION)	\$0	\$0	\$0	\$0	\$0
HOMESTEAD EXEMPTION (LOCAL PERCENT OPTION) FROZEN	\$0	\$0	\$0	\$0	\$0
OVER 65 EXEMPTION	\$0	\$0	\$0	\$0	\$0
FROZEN OVER 65 EXEMPTION	\$0	\$0	\$0	\$0	\$0
OVER 65 EXEMPTION (LOCAL OPTION)	(\$48,748,074)	(\$91,423)	\$0	\$0	(\$48,839,497)
OVER 65 EXEMPTION FROZEN (LOCAL OPTION)	\$0	\$0	\$0	\$0	\$0
DISABLED EXEMPTION	\$0	\$0	\$0	\$0	\$0
DISABLED EXEMPTION FROZEN	\$0	\$0	\$0	\$0	\$0
DISABLED EXEMPTION (LOCAL OPTION)	\$0	\$0	\$0	\$0	\$0
DISABLED EXEMPTION (LOCAL OPTION) FROZEN	\$0	\$0	\$0	\$0	\$0
ABATEMENTS	\$0	\$0	\$0	\$0	\$0
POLLUTION CONTROL	\$0	\$0	\$0	(\$142,810)	(\$142,810)
FREEPORT EXEMPTION	\$0	(\$398,767)	\$0	\$0	(\$398,767)
MINIMUM VALUE LOSS (MINERALS & PERSONAL PROPERTY	\$0	(\$20,110)	(\$41,230)	\$0	(\$61,340)
PARTIAL YEAR EXEMPTION/ LEASED VEHICLES & OTHER	(\$850,000)	(\$47,000)	\$0	\$0	(\$897,000)
10% CAP LOSS	(\$122,687,160)	(\$2,610)	\$0	\$0	(\$122,689,770)
TOTAL TAXABLE VALUE FOR 2013	\$7,738,132,331	\$744,832,670	\$67,510,370	\$329,740,060	\$8,880,215,431
LESS VALUE STILL UNDER PROTEST	(\$470,921,510)	(\$29,114,380)	\$0	\$0	(\$500,035,890)
ESTIMATED VALUE THAT WILL BE CERTIFIED BY ARB	\$359,784,034	\$22,243,386	\$0	\$0	\$382,027,420
ESTIMATED TOTAL TAXABLE VALUE FOR 2013	\$7,626,994,855	\$737,961,676	\$67,510,370	\$329,740,060	\$8,762,206,961

I, Jerry M. Bundick, Chief Appraiser for the Midland Central Appraisal District, do solemnly swear or affirm that I have made, or caused to be made, a diligent effort to ascertain all property in the City of Midland subject to appraisal by me and that I have included in the certification the market and taxable values of property that I am aware of at an appraised value determined as required by law.

Jerry M. Bundick

Jerry M. Bundick, RPA, RTA
Sworn to and subscribed before me the 19th day of July, 2013



Cathy Calhoun

CERTIFICATION OF 2013 APPRAISAL ROLL CITY OF MIDLAND

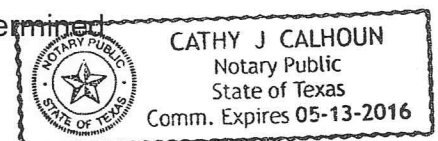
GROSS VALUE	\$9,540,680,910
LOSS DUE TO AGRICULTURAL USE	(\$59,687,120)
CONSTITUTIONAL EXEMPT PROPERTY	(\$408,623,085)
DISABLED VETERAN EXEMPTION	(\$4,594,420)
DISABLED VETERAN EXEMPTION FROZEN	\$0
DISABLED VETERAN EXEMPTION (100%)	(\$14,531,670)
GENERAL HOMESTEAD EXEMPTION	\$0
GENERAL HOMESTEAD EXEMPTION FROZEN	\$0
HOMESTEAD EXEMPTION (LOCAL OPTION)	\$0
HOMESTEAD EXEMPTION FROZEN (LOCAL OPTION)	\$0
HOMESTEAD EXEMPTION (LOCAL PERCENT OPTION)	\$0
HOMESTEAD EXEMPTION (LOCAL PERCENT OPTION) FROZEN	\$0
OVER 65 EXEMPTION	\$0
FROZEN OVER 65 EXEMPTION	\$0
OVER 65 EXEMPTION (LOCAL OPTION)	(\$48,839,497)
OVER 65 EXEMPTION FROZEN (LOCAL OPTION)	\$0
DISABLED EXEMPTION	\$0
DISABLED EXEMPTION FROZEN	\$0
DISABLED EXEMPTION (LOCAL OPTION)	\$0
DISABLED EXEMPTION (LOCAL OPTION) FROZEN	\$0
ABATEMENTS	\$0
POLLUTION CONTROL	(\$142,810)
FREEPORT EXEMPTION	(\$398,767)
MINIMUM VALUE LOSS (MINERALS & PERSONAL PROPERTY	(\$61,340)
PARTIAL YEAR EXEMPTION/ LEASED VEHICLES & OTHER	(\$897,000)
10% CAP LOSS	(\$122,689,770)
TOTAL TAXABLE VALUE FOR 2013	\$8,880,215,431
LESS VALUE STILL UNDER PROTEST	(\$500,035,890)
ESTIMATED VALUE THAT WILL BE CERTIFIED BY ARB	\$382,027,420
ESTIMATED TOTAL TAXABLE VALUE FOR 2013	\$8,762,206,961

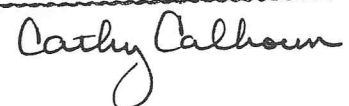
I, Jerry M. Bundick, Chief Appraiser for the Midland Central Appraisal District, do solemnly swear or affirm that I have made, or caused to be made, a diligent effort to ascertain all property in the City of Midland subject to appraisal by me and that I have included in the certification the market and taxable values of property that I am aware of at an appraised value determined as required by law.



Jerry M. Bundick, RPA, RTA

Sworn to and subscribed before me the 19th day of July, 2013





Notice of Public Hearing on Tax Increase

The City of Midland City Council will hold two public hearings on a proposal to increase total tax revenues from properties on the tax roll in the preceding tax year by 2.78 percent. Your individual taxes may increase at a greater or lesser rate, or even decrease, depending on the change in the taxable value of your property in relation to the change in taxable value of all other property and the tax rate that is adopted.

The first public hearing will be held on August 6, 2013, at 9:00 a.m. at Midland City Hall, City Council Chambers, 300 N. Loraine.

The second public hearing will be held on August 13, 2013, at 6:00 p.m. at Midland City Hall, City Council Chambers, 300 N. Loraine.

The members of the governing body voted on the proposal to consider the tax increase as follows:

FOR: Trost, Morales, James, Perry, Dufford, Love
AGAINST: None
PRESENT and not voting: None
ABSENT: Sparks

The average taxable value of a residence homestead in The City of Midland last year was \$174,934. Based on last year's tax rate of \$.461088 per \$100 of taxable value, the amount of taxes imposed last year on the average home was \$806.60.

The average taxable value of a residence homestead in The City of Midland this year is \$188,884. If the governing body adopts the effective tax rate for this year of \$.4202271 per \$100 of taxable value, the amount of taxes imposed this year on the average home would be \$793.74.

If the governing body adopts the proposed tax rate of \$.431927 per \$100 of taxable value, the amount of taxes imposed this year on the average home would be \$815.84.

Members of the public are encouraged to attend the hearings and express their views.

CERTIFIED TAX ROLL
CITY of MIDLAND, TEXAS
ESTIMATED AD VALOREM TAX REVENUE #####
BUDGET YEAR 2013-2014 (FY14)

7/22/2013

07/22/13
15:21:47

*est chg pr yr base at left				
**est net new adds				
30,650,293	Prior Yr tot. M&O anticipation			
31,275,809	Prior Yr curr. M&O levy			
\$4,288,766	Prior Yr curr. I&S levy			
\$35,564,575	Prior Yr adj. tot curr. levy			
\$7,713,185,962	10.63% * 2.97% **			
2014 ESTIMATED TAXABLE VALUE:		\$8,599,994,472	\$8,599,994,472	\$8,599,994,472
TAX RATE PER \$100 OF VALUATION		\$0.431927	\$0.420227	\$0.432834
TOTAL 2014 TAX LEVY (est.)		37,145,698	36,139,525	37,223,710
EST. 2014 REV. AT COLLECTION RATE OF	98.00%	36,402,784	35,416,734	36,479,236
EST. DEL. COLLECT AT 2.0% OF PREV YR	\$33,384,453	667,689	667,689	667,689
ESTIMATED TOTAL COLLECTIONS		37,070,473	36,084,423	37,146,925
REQUIRED I&S CURRENT LEVY		3,973,909	3,973,909	3,973,909
GENERAL FUND OPERATIONS (Net of TIRZ Increment)		\$33,093,379	\$32,107,329	\$33,169,831
Gen. Fund REVENUE FROM EACH \$0.01 OF TAX RATE (est.)		842,799	842,799	842,799
Gen. Fund REVENUE FROM EACH 1% OF RATE CHANGE (est.)		354,167	354,167	354,167
EFFECT OF INCREASE (DEC) ON \$100,000 PROPERTY		\$11.70	\$0.00	\$12.61
approx. Eff. plus		2.78%		\$23.00

ESTIMATED DISTRIBUTION OF
TAX RATE AND REVENUE FROM 2012 AND PRIOR ROLLS

	RATE	PERCENT	AMOUNTS
	----	-----	-----
GENERAL	0.404049	87.62%	\$585,026
INTEREST AND REDEMPTION	0.057039	12.38%	82,663
	-----	-----	-----
TOTAL	0.461088	100.00%	\$667,689
	=====	=====	=====

INTEREST AND SINKING FUND REQ. (from I&S Service model)	3,977,094

EFFECTIVE RATE	\$0.4202
EFFECTIVE PLUS 3%	\$0.4328
TIRZ INCREMENT	162,212,489
TIRZ INCREMENT REVENUE AT PROPOSED	700,640

PROPOSED DISTRIBUTION OF
TAX RATE AND REVENUE FROM 2013 ROLL

	CURRENT RATE	CURRENT PERCENT	CURRENT AMOUNTS
	----	-----	-----
GENERAL	0.385719	89.30%	\$32,508,353
INTEREST AND REDEMPTION	0.046208	10.70%	3,894,431
	-----	-----	-----
TOTAL	0.431927	100.00%	\$36,402,784
	=====	=====	=====

PERCENT CURR \$	TOTALS	DELINQUENT
-----	-----	-----
89.30%	33,093,379	585,026
10.70%	3,977,094	82,663
	-----	-----
100.00%	37,070,473	667,689
	=====	=====

BOARDS AND COMMISSIONS OF THE CITY OF MIDLAND

August 13, 2013

AIRPORT PLANNING AND DEVELOPMENT BOARD

(Advisory)

(Membership-10; Terms - 3 Years expiring 3-3-4.)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Ronald Schwisow	09/06	Sept 30 2012	Sept 30 2012
Herbert Blankinship	09/06	Sept 30 2012	Sept 30 2012
Jerry Walton	11/09	Sept 30 2015	Sept 30 2015
Mike Owen	10/07	Sept 30 2013	Sept 30 2013
Gregory F. Baiano	09/10	Sept 30 2013	Sept 30 2016
John T. Echols	09/10	Sept 30 2013	Sept 30 2016
Dallas L. Smith	09/10	Sept 30 2013	Sept 30 2016
Earl Erdmann, Chairman	09/08	Sept 30 2014	Sept 30 2014
J. Ross Lacy	09/12*	Sept 30 2014	Sept 30 2020
Don "Woody" Woodward	11/11	Sept 30 2014	Sept 30 2017

Ex-Officio members are Harry Spannaus, the City Manager and the City Attorney. The Secretary is the Director of Aviation.

ANIMAL SERVICES ADVISORY COMMISSION

(Advisory)

(Membership - 6; Terms - 4 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Vacancy-Tony Carrillo	09/09	Sept 30 2013	Sept 30 2017
Dr. Tom Green (Veterinarian)	10/07*	Sept 30 2013	Sept 30 2017
Kelly Spencer	09/09	Sept 30 2013	Sept 30 2017
Laura Hollifield	09/08*	Sept 30 2013	Sept 30 2017
Justin Petty	04/07*	Sept 30 2013	Sept 30 2017
Paul O'Neill	09/09	Sept 30 2013	Sept 30 2017

BUILDING CODES REVIEW COMMITTEE

(Membership – 9; Terms – 2 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
James Rigger	12/09	Dec 31 2013	Dec 31 2013
Chris Repman	12/09	Dec 31 2013	Dec 31 2013
John Cooper	12/09	Dec 31 2013	Dec 31 2013
Bill Routh	12/09	Dec 31 2013	Dec 31 2013
Tom Woodruff	12/09	Dec 31 2013	Dec 31 2013
Ron Ainsworth	12/09	Dec 31 2013	Dec 31 2013
Walter Pate	12/09	Dec 31 2013	Dec 31 2013
Robert Harrington	12/09	Dec 31 2013	Dec 31 2013
Jerry Morales	12/09	Dec 31 2013	Dec 31 2013

CITY DEVELOPMENT ADVISORY COMMITTEE

(Advisory)

(Membership - 5; Terms - 2 Years expiring 2 even & 3 odd)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Reggie Lawrence	09/10	Sept 30 2012	Sept 30 2014
Alonda Massey	11/11	Sept 30 2013	Sept 30 2015
Tim Bryson	11/11	Sept 30 2013	Sept 30 2015
W. Roger Beebe	02/13	Sept 30 2014	Sept 30 2016
Avery I. Pullins	02/13*	Sept 30 2013	Sept 30 2017

CONSTRUCTION BOARD OF ADJUSTMENTS AND APPEALS

(Decision Making)

(Membership - 7; Terms - 4 Years expiring 2-2-2-1)

Position to include: 1. Registered Architectural or Builder Superintendent, 2. Registered Structural Engineer, 3. Registered Mechanical and Plumbing, 4. Registered Electrical Engineer, 5. Registered Fire Protection Engineer

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>	<u>Position</u>
Don Woodward (At Large)	11/11*	Sept 30 2016	Sept 30 2020	5
Richard D. Dunham	10/05	Sept 30 2013	Sept 30 2013	1
Greg Turner	03/11*	Sept 30 2013	Sept 30 2021	4
Chris Repman	10/07*	Sept 30 2014	Sept 30 2018	3
Jay K. Bradford	09/10	Sept 30 2014	Sept 30 2018	2

ALTERNATES:

Vacancy	Sept 30 2007	Any
Vacancy	Sept 30 2007	Any

HOTEL/MOTEL TAX ADVISORY BOARD

(Advisory)

(Membership - 7; Terms - 2 Years Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Karmen Hendrix Bryant	02/12*	Sept 30 2013	Sept 30 2017
David Baur	09/10	Sept 30 2013	Sept 30 2014
Lisa Grissom	09/09	Sept 30 2013	Sept 30 2013
Steve Jones	02/09*	Sept 30 2013	Sept 30 2013
Annabell Ramirez	09/12	Sept 30 2014	Sept 30 2016
Brian Smith	09/12	Sept 30 2014	Sept 30 2016
Alex Singh-Hotel/Motel Assn. Rep.	09/09	Dec 31 2013	Assn. Appt.
Vicky Hailey (Liaison Officer)			

* Indicates appointment to an unexpired term.

HOUSING AUTHORITY COMMISSION

(Membership - 5; Terms - 2 Years expiring 2 even & 3 odd.)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Gregory Maes	11/11	Oct 2013	Oct 2015
Carla Repman, Vice Chairman	09/09	Oct 2013	Oct 2013
James A. Blischke	01/10	Oct 2013	Oct 2015
Dennis Bade	09/12	Oct 2014	Oct 2016
Norma Duran	11/08*	Oct 2014	Oct 2014

ALTERNATES:

Vacancy	Oct 2013	Oct 2015
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JOINT ECONOMIC DEVELOPMENT TASK FORCE

(Ad Hoc)

	<u>Appt. Date</u>
(Midland)	
Wes Perry	01/08
LuAnn Morgan	12/00
Keith Stretcher	12/00
Tommy Hudson	08/07
John Breier	01/04
(Odessa)	
Larry Melton	08/01
Jim Morris	11/00
Richard Morton	11/02
Joel Roberts	11/00
Neil McDonald	11/00

MANAGED COMPETITION COMMITTEE

(Ad Hoc)

	<u>Appt. Date</u>
Jon Morgan	01/02
Wes Perry	01/02
Roy Nelson	01/02
Hugh "Andy" Shaffer	12/03
Scott Dufford	01/02
Ted Tipton	04/04
Kevin Sparks	11/07
Scott Lovett	04/10
P. Lourcey Sams	04/10

Ex-Officio members are the Mayor and the City Manager.

MIDLAND CENTER ADVISORY BOARD

(Advisory & Decision Making)

(Membership - 9; Terms - 3 Years expiring 3-2-2.)

		<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Brent Blackburn	(City)	09/09*	Sept 30 2013	Sept 30 2016
Charles Spence	(CC)	11/07	Sept 30 2013	N/A
Lorri Lyon West	(City)	09/10	Sept 30 2013	Sept 30 2016
Patricia S. Blackwell	(City)	10/07*	Sept 30 2014	Sept 30 2014
Paula Mitchell	(City)	09/08	Sept 30 2014	Sept 30 2014
Vicky Hailey	(CC)	01/13*	Sept 30 2014	N/A
Tracy Bacon	(CC)	12/11	Sept 30 2014	N/A
Jerry Morales (Liaison Officer)				

Ex-Officio members are the City Manager and Executive Director of the Chamber of Commerce.

MIDLAND CENTRAL APPRAISAL DISTRICT BOARD OF DIRECTORS

Five Directors, Elected by Local Taxing Entities.

City Nominates/Cast Vote for one Director

(Terms - 2 Years)

	<u>Appt Date</u>	<u>Term Expires</u>
Chad Clark	3/12*	Dec 31 2013

MIDLAND DEVELOPMENT CORPORATION

(Membership - 5; Terms -3 Years - Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Laura Roman	01/08	Jan 14 2014	Jan 14 2014
Robert Rendall, Chairman	01/09*	Jan 14 2014	Jan 14 2017
Michael Trost	02/11*	Jan 14 2016	Jan 14 2019
Cary J. Love	12/09	Jan 14 2016	Jan 14 2016
Gary Douglas	11/11*	Jan 14 2016	Jan 14 2019

MIDLAND FRESH WATER SUPPLY DISTRICT #1

(Ad Hoc)

(3 Non Voting Members)

Appt Date

Wes Perry
 Gary Harris
 Wayne Merritt

05/12
 05/12
 05/12

**MIDLAND FOOTBALL-SOCCER AND BASEBALL COMPLEX
 DEVELOPMENT CORPORATION**

(Decision Making)

Membership - 7; Terms - 2 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Ken Marks, Vice President	10/07	Nov 2011	Nov 2011
James G. Smith	12/07	Nov 2011	Nov 2011
Mike Thompson	11/11	Nov 2013	Nov 2015
Tim Bryson	11/11	Nov 2013	Nov 2015
Wesley D. Bownds	02/09*	Nov 2013	Nov 2013
John James	08/08*	Nov 2013	Nov 2013
Rick Davis (MISD Resp.)	10/10*	Nov 2013	Nov 2015

MIDLAND HIGHER EDUCATION FACILITIES CORPORATION

(Membership - 7; Terms - 2 Years Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Vacancy		Jan 1 2007	
Vacancy		Jan 1 2007	
Vacancy		Jan 1 2007	
Vacancy		Jan 1 2009	
Cathy Oestmann	11/05*	Jan 1 2010	Jan 1 2010
Steve Jones	09/08*	Jan 1 2010	Jan 1 2012
Curt Kamradt	11/05*	Jan 1 2014	Jan 1 2014

* Indicates appointment to an unexpired term.

MIDLAND HOUSING FINANCE CORPORATION

(Decision Making)

(Membership - 5; Terms - 2 Years - Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Vacancy - (Damon L. Blakeley)	07/07*	Sept 30 2010	
Adrienne Valencia	10/07	Sept 30 2011	Sept 30 2011
Melissa Wicker	10/07	Sept 30 2011	Sept 30 2011
Jerry Morales (Liaison Officer)	10/08	Sept 30 2012	Sept 30 2012
Nathan Miller	11/11*	Sept 30 2012	Sept 30 2016

MIDLAND MUNICIPAL MANAGEMENT DISTRICT BOARD

(Ad Hoc)

Appt. Date

Vacancy	
Richard Hatchett	11/08
W. L. "Scooter" Brown	09/04
Ken Burgess	09/04
Jim Hightower	11/08
Ted H. Jones	09/04
Mitch Malouf	11/08
Christi Newton	09/04
Dan Rush	09/04

MIDLAND-ODESSA URBAN TRANSIT DISTRICT BOARD

(Decision Making)

(Membership - 6; Terms - 2 Years Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Willie Barber	09/08	Sept 30 2012	Sept 30 2012
Michael Trost	09/08	Sept 30 2012	Sept 30 2012
John H. James	09/09	Sept 30 2013	Sept 30 2013
Karen York	06/09*	Sept 30 2013	Sept 30 2013
Guy McKenize	03/11*	Sept 30 2013	Sept 30 2015
Rebecca Bell	09/12	Sept 30 2014	Sept 30 2016

* Indicates appointment to an unexpired term.

OIL AND GAS ADVISORY COMMITTEE

(Advisory)

(Membership – 5; Terms – 3 Years expiring 2-2-1)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Russell Richards (Petroleum Eng.)	09/12	Sept 30 2015	Sept 30 2018
Perry Dan Taylor (Real Estate)	09/12	Sept 30 2015	Sept 30 2018
Lance Friday (Real Estate)	09/12*	Sept 30 2013	Sept 30 2019
Paul Brown (Petroleum Eng.)	11/11	Sept 30 2014	Sept 30 2017
David Rosen (Petroleum Eng.)	11/11	Sept 30 2014	Sept 30 2017

PARKS AND RECREATION COMMISSION

(Advisory)

(Membership - 9; Terms - 3 Years expiring 3-3-3.)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Charles A. Spence	01/10*	Sept 30 2013	Sept 30 2016
Susan Nichols	02/06*	Sept 30 2013	Sept 30 2013
Eric L. West	10/07	Sept 30 2013	Sept 30 2013
Kenny Harper	03/12*	Sept 30 2013	Sept 30 2019
P. Lourcey Sams	09/08	Sept 30 2014	Sept 30 2014
Tina Corbett	09/08	Sept 30 2014	Sept 30 2014
Katey Howard	09/12*	Sept 30 2014	Sept 30 2020
Amanda McCann	11/11*	Sept 30 2015	Sept 30 2018
Edward Mayberry	09/12	Sept 30 2015	Sept 30 2021

PERMIAN BASIN AIRPORT BOARD

(Advisory)

(Membership - 30; Terms - 1 year.)

	<u>Appt. Date</u>	<u>Term Expires</u>
10 Members of the Airport Planning and Development Board		
Bob Forrest (Carlsbad, NM)	10/04	Sept 30 2010
Larry Shed (Hobbs, NM)	10/01	Sept 30 2010
Larry Gill (Abilene)	10/10	Sept 30 2011
David Hardwick (Ft. Stockton)	10/07	Sept 30 2012
Lex Hinds (Seminole)	10/08	Sept 30 2012

PERMIAN BASIN AIRPORT BOARD CON'T

	<u>Appt. Date</u>	<u>Term Expires</u>
Elvin Brownlee III (Andrews)	12/10*	Sept 30 2013
Jim Little (Big Spring)	09/03	Sept 30 2013
Frankie Rolfe (Kermit)	09/12	Sept 30 2013
Don Bethel (Lamesa)	02/91	Sept 30 2013
Willie Taylor (Odessa)	02/00	Sept 30 2013
Gloria Pena (Odessa)	03/03*	Sept 30 2013
Barbara Graff (Odessa)	06/10*	Sept 30 2013
Henry Cutbirth (Monahans)	09/05	Sept 30 2013
Isabelle Blanchard (Pecos)	10/10	Sept 30 2013
Luis E. Elguezabal (San Angelo)	10/07	Sept 30 2013
Glenn Wortham (Sweetwater)	10/07	Sept 30 2013
John Rogotzke (Snyder)	01/12	Sept 30 2013
Lance Goodrich (Artesia, NM)	09/09	Sept 30 2013
Larry Fry (Roswell, NM)	09/00	Sept 30 2013

Ex-Officio members are the City Manager and the City Attorney. The Secretary is the Director of Aviation.

**PERMIAN BASIN COMMUNITY CENTER FOR MENTAL HEALTH
AND MENTAL RETARDATION**

(Decision Making)

(Membership - 2 (City); Terms - 2 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Janet R. Pritchett (City)	05/09*	June 2014	June 2014
Larry Edgerton	07/10*	June 2015	June 2015

PERSONNEL BOARD OF APPEALS

(Decision Making)

(Membership - 3; No designated terms.)

	<u>Appt. Date</u>
John James	03/08
Hugh A. "Andy" Shaffer	09/05
Michael Trost	01/10

PLANNING AND ZONING COMMISSION

(Advisory & Decision Making)
(Membership - 9; Terms - 3 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Jane Wolf	03/09*	Sept 30 2013	Sept 30 2016
Cindy Lanning	09/10	Sept 30 2013	Sept 30 2016
Jay Norris	11/11	Sept 30 2014	Sept 30 2017
Galen Gatten, Vice Chairman	09/08	Sept 30 2014	Sept 30 2014
Warren Lvey	10/12*	Sept 30 2014	Sept 30 2020
Kevin Wilton	09/08*	Sept 30 2015	Sept 30 2017
Karen York	10/10*	Sept 30 2015	Sept 30 2018
Sharla Hotchkiss	10/12	Sept 30 2015	Sept 30 2018
Brad Bullock	07/13*	Sept 30 2015	Sept 30 2021
<u>ALTERNATES:</u>			
Tony Carrillo	11/11	Sept 30 2014	Sept 30 2017

TAX INCREMENT REINVESTMENT ZONE BOARD

(Decision Making)
(Membership - 12; Terms - 2 Years, or 3 Years if appointed after 3/1/07)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Mark T. Wellen (City), Chairman	07/01	Mar 20 2010	Mar 20 2010
Randy Prude (County)	03/07	Mar 20 2010	Mar 20 2013
Ken Burgess (City)	10/12*	Mar 20 2013	Mar 20 2018
Judge Mike Bradford (County)	01/07*	Mar 20 2010	Mar 20 2014
Bob Lanier (City), Secretary	04/03	Mar 20 2011	Mar 20 2011
Pete Hulder (Hospital)	03/10	Mar 20 2016	Mar 20 2016
Michael Blonkvist (City)	09/12*	Mar 20 2014	Mar 20 2020
John L. Kennedy (City)	10/09*	Mar 20 2015	Mar 20 2018
Link Grimes (City)	12/12*	Mar 20 2015	Mar 20 2021
Charlene McBride (College)	12/12	Mar 20 2016	Mar 20 2019
Steve Castle (College)	04/13*	Mar 20 2015	Mar 20 2021
Russell Meyer (Hospital)	12/12	Mar 20 2016	Mar 20 2019

Ex-Officio member is President, Board of Trustees, Midland Independent School District

ZONING BOARD OF ADJUSTMENT
AND
AIRPORT ZONING BOARD OF ADJUSTMENT

(Decision Making)

(Membership - 5; Terms - 2 Years expiring 3 odd & 2 even.)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Manny Ribera	10/07	Sept 30 2011	Sept 30 2011
Ken Morgan	01/10*	Sept 30 2012	Sept 30 2014
Carla Repman	01/10*	Sept 30 2013	Sept 30 2015
Scott Young	09/12*	Sept 30 2013	Sept 30 2017
Todd Byars	02/08*	Sept 30 2014	Sept 30 2014

ALTERNATES: (not applicable to Airport Zoning)

Vacancy		Sept 30 2006	
Vacancy		Sept 30 2009	
Annabel Holguin	11/11	Sept 30 2013	Sept 30 2015
Greg Turner	11/11	Sept 30 2013	Sept 30 2015

* Indicates appointment to an unexpired term.

City of Midland
City Secretary's Office
Interoffice Memorandum

Date: August 8, 2013
To: The Honorable Mayor Perry and Council
From: Amy M. Turner, City Secretary
Subject: Membership - Boards and Commissions

Attached is an updated membership listing for the City's Boards and Commissions effective August 13, 2013. Remaining expirations and vacancies are listed below:

AIRPORT PLANNING AND DEVELOPMENT BOARD – Two terms expired on September 30, 2012.

ANIMAL SERVICES ADVISORY COMMISSION – One vacancy which will expire on September 30, 2013.

CITY DEVELOPMENT ADVISORY COMMITTEE – One terms expired on September 30, 2012.

CONSTRUCTION BOARD OF ADJUSTMENTS AND APPEALS – Two vacancies for Alternate terms expired on September 30, 2007.

HOUSING AUTHORITY COMMISSION – One vacancy as Alternate term expiring in October 2015

MIDLAND FOOTBALL-SOCCER AND BASEBALL COMPLEX DEVELOPMENT CORPORATION – Two terms expired in November 2011.

MIDLAND HIGHER EDUCATION FACILITIES CORPORATION – Three vacancies expired on January 1, 2007, one term expired on January 1, 2009, and two terms expired on January 1, 2010.

MIDLAND HOUSING FINANCE CORPORATION – One vacancy expired on September 30, 2010, two terms expired on September 30, 2011 and one term expired on September 30, 2012.

MIDLAND MUNICIPAL MANAGEMENT DISTRICT BOARD – One vacancy.

MIDLAND-ODESSA URBAN TRANSIT DISTRICT BOARD – Two terms expired on September 30, 2012.

PERMIAN BASIN AIRPORT BOARD – Two terms expired on September 30, 2010 (Carlsbad and Hobbs New Mexico), one term expired on September 30, 2011 and two terms expired on September 30, 2012.

TAX INCREMENT REINVESTMENT ZONE BOARD –Four terms expired on March 20, 2010, one term expired March 20, 2011, one terms expired on March 20, 2012 and two terms expired on March 20, 2013. (Four City representatives, two Hospital representatives and two County representatives.)

ZONING BOARD OF ADJUSTMENT AND AIRPORT ZONING BOARD OF ADJUSTMENT- One term expired on September 30, 2011, one term expired on September 30, 2012 and one vacancy for Alternate term expired on September 30, 2006 and one vacancy for Alternate term expired September 30, 2009.